

CITY COUNCIL AGENDA

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

Tuesday, February 21, 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.

Page

1. OPENING CEREMONIES

- 1.1. Pledge of Allegiance - Mayor Pro Tem Gandara.
- 1.2. Pets of the Week.
- 1.3. Jobs of the Week.
- 1.4. Presentation of Certificates of Appreciation/Proclamations - Mayor Pro Tem Gandara.

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 February 13, 2023 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

- 6.1. Regular City Council Meeting of January 17, 2023. 4 - 29
[City Council - Jan 17 2023 - Minutes - Pdf](#)
- 6.2. Work Session of January 23, 2023. 30 - 52
[Work Session - Jan 23 2023 - Minutes - Pdf](#)

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). 53 - 67
[Resolution No. 23-096 - Pdf](#)
- 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. 68 - 71
[Resolution No. 23-097 - Pdf](#)
- 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. 72 - 75
[Resolution No. 23-098 - Pdf](#)
- 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. 76 - 175
[Ordinance No. 3025 - Pdf](#)

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). 176 - 279
[Resolution No. 23-099 - Pdf](#)
- 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 \$12,150,000 280 - 523

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.

[Ordinance No. 3024 - Pdf](#)

- 8.3. COUNCIL BILL NO. 23-020; ORDINANCE NO. 3026: AN ORDINANCE AMENDING CHAPTER 24, PROCUREMENT CODE, OF THE LAS CRUCES MUNICIPAL CODE. 524 - 627

[Ordinance No. 3026 - 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. 23-021; 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. 628 - 719

[Ordinance No. 3027 - Pdf](#)

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT



MINUTES

City Council Meeting

1:00 PM - Tuesday, January 17, 2023

City Council Chambers, City Hall

The City Council of the City of Las Cruces was called to order on Tuesday, January 17, 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 - COUNCILOR CORRAN.

1.2 PETS OF THE WEEK.

Jennifer Martinez, Communications Office presented Pets of the Week.

1.3 JOBS OF THE WEEK.

Amanda Tapia, New Mexico Workforce Connection presented Jobs of the Week.

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

Councilor Corran read a proclamation for MLK Day.

Councilor Corran presented a proclamation to Victoria Tafoya for National Day of Racial Healing.

Councilor Corran presented a proclamation for Celebrate Catholic Schools Week.

Councilor Corran presented a proclamation to Beth Hoffman for National Youth Mentoring Month.

Presentation was given by Kat Tirre from Arrowhead Park Early College, called "No Minor Sales".

Councilor Flores asked is there a Federal Law that we are concerned about as well as a New Mexico or is it just a law in New Mexico, where we are preempted?

Andrea McNeely, No Minor Sale Campaign Manager said the main issue is that there is preemption in New Mexico at the moment so we are trying to get it repealed so that we can ultimately decide if we would like to pass a flavor restriction policy on our own.

Agenda Item #6.1.

So, if it was to be repealed Las Cruces could take that issue into their own hands and pass the policy.

Councilor Flores asked there isn't a Federal preemption?

Andrea McNelly said I don't believe so. There are certain states that are able to pass policies on their own just not New Mexico.

Councilor Flores asked you are asking the city to work on behalf of this issue to eliminate the preemption law that we have?

Andrea McNeely said yes, so we are asking if you would support the preemption repeal that would be on your own. No Minor Sale is not focused on trying to go after that policy but that is something that would be helpful in allowing flavor restriction policy to be passed at some point so that is an issue if you could support that would be great.

Councilor Abeyta asked on this card we have the logo for the New Mexico Department of Health, are you working in conjunction then? Are they supportive?

Andrea McNeely said we are funded by the New Mexico Department of Health.

Mayor Pro Tem Gandara asked will you come back and let us know how it is going at the Legislative Session and which bill, I am assuming there will be a bill?

Andrea McNeely said I believe for this Legislative Session there is not a specific bill focused on flavor restriction but it is something that we are discussing with legislatures and we are hoping in the coming years we will be able to get that.

Councilor Flores asked in terms of doing your lobbying work with the state legislature are you presenting facts about how bad tobacco is? You are doing all the medical stuff?

Andrea McNeely said as far as No Minor Sales goes we are an educational and advocacy campaign. Our main goal is to educate. We do have lobbyist who work with New Mexico Department of Health who actually try to push policies but for us we are just going to educate.

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

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Agenda Item #6.1.

Juan Garcia, Member of the Public said I believe proposed Resolution 23-87, to help small businesses recover financial losses as a result of violent destructive attacks by the Las Cruces crime element incurred through no fault of their own should be approved. It is interesting that we just heard a proclamation against violence and yet violence continues against small businesses unabated. Since I started involvement with small businesses about two months ago, there have been over 25 businesses that I have met that have been attacked. I sat with Moses at the Rib Smoke Shack yesterday on El Paseo, where they experienced their second break-in in seven months. Las Cruces is built as a business friendly city so why is this issue still not fixed. During the pre-legislative meetings, I brought up crime. Senator Steinborn, Representative Ferrary, no engagement. Rubio is concerned about “police brutality and reform”. Representative Small indicated there may be money for more policing. Until the victims organize and remove elected officials that care more for criminals more than hard working citizens, nothing will change because property crime just like illegal immigration, sexualization of our kids is being normalized. It is going to get to the point that politicians feel that if you continue to ignore it, it will just go away and people will forget about it. But they won’t. There is a lot of upset people out here in this community that are not happy with the way things are going.

Sarah Smith. Member of the Public said I really appreciate that your agenda today includes the item that is working towards helping small businesses with their property crime expenses. At your last meeting you voted to move forward on pilot program to implement hygiene stations where homeless people can use the restroom, dispose of used drug needles, and potentially shower. I understand that the specific details such as the locations, the equipment, and the cost for this program are not yet known and I ask that once the city has developed a plan for this the people of the city are given a chance to provide input before the hygiene stations are implemented. The city of Seattle previously tried having similar public toilets over a decade ago. These were intended to help the homeless population and others, but Seattle abandoned this initiative after the toilets became “a haven for drug deals, drug and alcohol use and prostitution”. Seattle spent five million dollars on these toilets. Seattle ended up selling their toilets on E-bay for only a few thousand dollars at a huge loss to the city. I am concerned that the hygiene stations in Las Cruces could end up having the same issues they faced in Seattle. It seems also unlikely that people are going to travel long distances in order to use the hygiene stations so I wonder if they will be really able to make an impact on the dirty needles, the feces and the urine that is being found around the city. If the hygiene stations do end up being used a lot, there is a potential for people to be congregating in the nearby areas. Like the Desert Hope Homeless Housing Project there is a potential for the hygiene stations to increase other problems in the nearby neighborhoods and businesses. If the city moves forward with implementing hygiene stations, it will be important to access the level of crime disturbance in the nearby area before and after the hygiene stations are put into place so that we can tell whether or not these are having a positive impact in the community as a whole. Overall, I am concerned that the policies being implemented by the city may be making it easy or enticing for people to continue their self-destructive drug abuse behaviors. It feels like the city is inadvertently making it easy to be a drug addict such as through funding organizations that provide food and shelter regardless of whether people who are using illegal drugs. Having no real consequences for people who are repeatably committing crimes in the city and now tacitly supporting

Agenda Item #6.1.

illegal drug use by providing containers in which to collect dirty needles. Las Cruces children, families and businesses are counting on you to make our community a safe place to live and work. Over the last years we have watched as things have gotten worse and worse. Please be willing to consider that the hygiene stations and other recent policy may actually make the situation worse.

4. ACCEPTANCE OF AGENDA

Councilor Yvonne Flores moved, seconded by Councilor Becki Graham, to accept the agenda as presented with the removal of item 7.6 in its entirety.

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

5. CITY COUNCIL MINUTES

5.1 REGULAR CITY COUNCIL MEETING OF DECEMBER 5, 2022.

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

6.1 RESOLUTION NO. 23-084: A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF THE CONTRACT FOR SECURITY GUARD SERVICES FOR THE MESILLA VALLEY INTERMODAL TRANSIT TERMINAL, FROM \$95,000 TO \$130,000 PLUS NEW MEXICO GROSS RECEIPTS TAX ANNUALLY (PROCUREMENT NO. 19-20-004).

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

7.1 RESOLUTION NO. 23-085: A RESOLUTION TO SUPPORT STATE OF NEW MEXICO LEGISLATIVE ACTIONS THAT ADVANCE SUSTAINABILITY AND CLIMATE ACTION.

Lisa LaRocque, Sustainability Officer gave the overhead presentation.

Councilor Bencomo said I know that we have not had a TSI meeting in a while, holidays got in the way for future reference I would love to have these go through TSI PRC before they come to council. I think that would be most appropriate given how lengthy some of them are. Remind me the name of the coalition.

Lisa LaRocque said the Coalition of Sustainable Communities of New Mexico.

Councilor Bencomo asked this coalition is seeking endorsement on these bills statewide from folks like us?

Lisa LaRocque said yes, we will go forward and advocate for any of the bills that the members are supporting.

Councilor Bencomo said I think for me when these types of resolutions come forward in terms of endorse or support this "X" policy at the Legislature, I personally think it is best when there is an advocacy group behind it asking for endorsements. Often, I feel that we pass these resolutions and they go into the ether and don't really go anywhere. So, when it is an actual advocacy organization asking us for an endorsement that they believe will be critical in the passage of a legislation I much more rather do that. I agree with most of these. If you could please put the no recommend one up. I personally would like to remove the Green Amendment from the list before voting yes on this resolution. I have pretty serious frustrations regarding the intention of the Green Amendment. I feel like it is putting the burden of accountability on municipalities, thus the taxpayer as opposed to industry who is the main primary driver of climate change. This to me feels like it is placing municipalities like ours at great risk and it is placing the taxpayer as the responsible party for climate change, when municipalities like ours are in fact ahead of the curve on climate action. I have yet to see why this Green Amendment is actually good for communities when it is not holding the parties who are responsible for climate action. I completely disagree on the no recommendation for Reforming the New Mexico Legislature. I completely support this piece of legislation and will continue to. New Mexico is the only volunteer legislature in the country, one of two volunteer legislations in the country and that breeds corruption. After this I would like to make an amendment to remove the Green Amendment from the list so that I can vote for the whole resolution, but I will allow my council colleagues to go first.

Mayor Pro Tem Gandara said I am a little confused because these are bills that the group did not recommend moving forward.

Councilor Bencomo said I think they are in the resolution.

Christine Rivera, City Clerk said they are listed in the exhibits so she would be correct. We would need to amend it to remove that one.

Councilor Graham said I am inclined not to vote for this resolution. In terms of these big blanket, I am being asked to say yes to twenty different things, ten of which are very vague at this point. I have no idea where some of these things are going to go and the coalition providing the input specifically says in the exhibit we are just kind of speculating here. As a probably no vote, I want to make it clear that I am not pro-drought, anti-resiliency, anti-environment. I also recognize I am still a relative newbie here and I get, this is how it works sometimes. We are asked to look at a big package of things all at once for sake of efficiency. I just wanted to provide a little clarity on where my thinking is and to say this is not declaring myself an anti-environmentalist but rather somebody who is concerned about voting on something before I have enough detail and yes to reform of the New Mexico State Legislature for all of the reasons you said Councilor Bencomo.

Councilor Abeyta said I am also going to preface this that I am not anti-environment however there is a few process items with this. Out of the twenty items that we had, 14 did not have sponsors which means it is not written. What I know from my time

Agenda Item #6.1.

working up north is what is good policy and what is a good idea can sometimes be two very different things. I often want to see exactly what is written out and what is included in this type of legislation before I approve different items. We also have a few items on here that were noted that were approved in prior council years but haven't been made into law. So, I would be very curious to know what were the barriers for that to pass? What was the analysis of impacts to the communities? Is that the reason why they haven't gone further? So, for those types reasons I'm not inclined either to pass this as a whole and I would rather go piece by piece if we are being asked to support this type of legislation. These items do have high impacts to municipalities. Councilor Bencomo was very right when she talked about the Green Constitutional Amendment, there can be some serious issues when it comes to how municipalities have to work with some of these bills that are passed and it can have a lot of unintended consequences which is perhaps why some of these items maybe didn't make it to the finish line in previous years and so for that I am inclined not to approve.

Councilor Corran said I appreciate it when community organizations come and say can we support this, can you talk about it, can you inform folks. There is even one included in here, Public Banking that we have been having conversations about. I know that is not actually going to be in the Legislature this year. I feel like this packet of things shows me where we can inform folks or we can be better educated but I don't feel comfortable voting for things that seem pretty unclear about the implications except that I do also support the reform of the Legislature and that is why I have questions about these recommendations. I would like to know what sort of the rationale for recommendation versus what not recommendation is. I am definitely not comfortable making a decision when I don't totally understand the rationale for recommendation or not recommendation and this isn't really a criticism of you. I think we need to have more conversations about a lot of things in here and I think I would be happy to engage in those especially in the TSI Committee. I don't feel comfortable approving a blanket statement, especially when I don't completely understand the rationale behind recommendation and not recommended things. Similarly, I am not anti-environment.

Councilor Flores said I find it very offensive that it comes this late for a group to go through our city, through your department and this is of course nothing to criticize anything that you have done but the fact that they didn't come to the City Council maybe a year or two years ago. With some of these things, they have been floating around for quite some time. The Constitutional Amendment on the Environmental Rights, that I think is a red herring. The reform of the New Mexico State Legislature, we need that more than ever. To have a State Legislature that only meets thirty days. We need a full time Legislature. I will definitely not vote in favor of it. I think that it has to go through a PRC. I think Councilor Bencomo said it would be the TSI. Do you sit on that, or do you attend those meetings?

Lisa LaRocque said yes, I do.

Councilor Flores said it would be a perfect place to kick it around and weed out some of this and see how we can come up with something that is really impactful.

Agenda Item #6.1.

Mayor Pro Tem Gandara said this is in no means a criticism on you. There have been things that each of us have requested that when these sorts of things come to us that we are given the bill, that the analysis, just a lot of research that you and our policy analyst and maybe legislative aides need to be looking at and presenting to us in its entirety so that we are able to make the best choice and I do agree about moving this through the PRC's. I feel very strongly, although I appreciate what was in the packet and the exhibits and I read all of them, I too had issues and am very concerned about those bills that didn't have a sponsor at this point. Lastly, Ifo would like to speak to us on process and explain to us so that we have a better understanding from the administrative standpoint and where he was going with many of these.

Ikani Taumoepeau, Assistant City Manager said on the question for rationale on bills not recommended, that is on me. A few members of CMO, myself, we met with Larry Horan. The rationale is simple, with the Green Amendment, there is a lot of the reasons mentioned on why that was not recommended but the other two bullet points the rationale was, as we had our discussion with Larry Horan, which by the way he is on Zoom right now if there is any questions as well. The rationale is operational, these had to do with operations from the government. Reform from New Mexico State Legislature, that had to do with governance and support for NM Environmental Departments that had to do with budget increases. So, what the political strategy was and again this was just a staff recommendation, knowing that it would be presented in front of the dais and so what the plan was if questions came from the dais, then we would share what the rationale was. It was staying in our lane, not telling the government up north how to increase their budgets or how to increase their sessions and so strategically it was remaining silent, remaining neutral on this.

Councilor Bencomo said I would rather table this indefinitely because I don't want anyone to take my no out of context in terms of what I support and what I don't support. If Lisa and staff want to work through TSI as these begin to clear up, I would much rather do that Mayor Pro Tem.

Ifo Pili, City Manager said I think Ikani answered what I wanted to say regarding the rationale. The only thing I would add to maybe process, as you know Lisa is very thorough as she comes with presentations. This just happens to be something that we bring every year. This is something that has been brought in this format, in this fashion for I don't know how long.

Lisa LaRocque said this is the fifth year.

Ifo Pili, said the city has been a part of this coalition for five years. This had been the process. This is a little more detailed than what we have brought in the past and when this was brought to our attention there are some of these like the Public Bank. I don't know if we necessarily just wanted to have neutral stance. We are talking about environment and this coalition. Some of these are outside the scope of that, so if we are going to discuss it we should be discussing it on its own or in a different format and those are some of the rationale. Some where we knew there was controversy where we looked at some of these and really having no impact to the city in some way we also looked at that criteria. I just want to point that out with Lisa. The way it is

Agenda Item #6.1.

presented this way is because as part of the coalition, the city has been a part of this coalition, that has been the process. We just bring it forward, it gets approved. I think it was originally put on a consent agenda, right?

Lisa LaRocque said I have done this exact same thing for five years.

Ifo Pili, said when we looked at it, we kind of pushed it this way. Lisa was pretty accommodating to us in the CMO office to go through this a little bit. Hearing from you all I think it was good direction for us to break them up and we will continue to do that further. We have heard you loud and clear.

Larry Horan, Lobbyist said when you look at those three staff recommendations and Ikani did a good job explaining our discussion. The first one, Green Amendment which we have all had discussions when we had our individual meetings, there are potential implications for the city that may be unforeseen and may be negative. That is why that was recommended taken off. The other two are just, at least initially when you are talking about budgets for state agencies, that is not something as a municipality we have typically weighed in on before at least not in a direct manner. I think it was really helpful for me to really hear the discussion about the third, which is a reform of the State Legislature and Ikani described it very well. Do we want to weigh in on how another governmental entity decides to enact their rules and govern themselves and I think we heard loud and clear from you members of the council that you think that is something that is important that you would want us to weigh in on.

Councilor Johana Bencomo moved, seconded by Councilor Yvonne Flores, to table Resolution No. 23-085 indefinitely.

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

7.2 RESOLUTION NO. 23-086: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT VARIOUS GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY’S ADOPTED FY2023 BUDGET.

Rocio Gamboa, Budget Analyst gave the overhead presentation.

Councilor Flores asked on page 2, the department below Fire. What does that stand for?

Miguel Dominguez, Police Chief said it stands for High Intensity Drug Trafficking Area.

Councilor Flores asked that is the money that is coming from the Homeland Security?

Agenda Item #6.1.

Rocio Gamboa said National Drug Control Policy, Executive Office of the President, Office of National Drug Control Policy.

Councilor Flores asked that is Homeland Security, Chief Dominguez?

Sandra Russell, Finance Director for the High Intensity Drug Trafficking Area said we are a federal grant program and we are funded by the office of National Drug Control Policy. The City of Las Cruces acts as our fiduciary for some of these grant funds.

Councilor Flores asked when you say fiduciary agent, are there any services related to being more than a fiduciary medium?

Sandra Russell said yes, we do fund several of the city projects such as Metro Narcotics. We provide funding for the enforcement efforts that are at that location.

Councilor Flores asked there is direct funding to personnel?

Sandra Russell said in support of overtime and operating expenses.

Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to Approve Resolution No. 23-086.

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

7.3 RESOLUTION NO. 23-087: A RESOLUTION ADOPTING A SMALL BUSINESS STOREFRONT REPAIR PROGRAM.

Chris Faivre, Deputy Director of Economic Development gave the overhead presentation.

Councilor Graham said what is eligible is extremely limited and I was wondering if you could provide some insight. In the packet for instance, it specifically says graffiti removal is not covered. Can you just give us the sense of what is covered and why?

Chris Faivre said we modeled this after other programs across the country and that was just kind of the basis for what was covered and what was not covered. Obviously if you guys feel otherwise, we can certainly make adjustments to that but most of the issues revolve around broken windows, sometimes broken locks, damage to windows and things of that nature. It is obviously up for discussion if we want to expand some of that as well.

Councilor Graham said I would be interested in hearing from my colleagues on that. If we could be a little more expansive with how we are deciding what counts as damage. The other questions I have received, I am thinking that it is the nature of the

Agenda Item #6.1.

ARPA Funding that puts us on this type of Covid timeline, that is the reference to March 2020.

Chris Faivre said that is correct.

Councilor Flores asked when we discussed this at the Economic Development Policy Review Committee did the issue of insurance by the business owner come up? I don't see that as a requirement to qualify for reimbursement.

Chris Faivre said I think a lot of these will go to reimburse businesses for expenses they had to pay for a deductible, things of that nature.

Councilor Bencomo asked what is a 501(c) 6 & 19? Can you give me an example of one?

Chris Faivre said I am not exactly sure of what a (c) 6 or 19 is. I will need to get some clarification. Those were the criteria we used for the CARES Grant when we did that a couple of years ago. It seemed like those were the ones that should be accepted.

Councilor Bencomo asked you will be accepting applications retroactively then?

Chris Faivre said that is correct. We dated back to January 1st of 2021.

Councilor Bencomo said I also did appreciate some of the pieces you had on this slide for fewer than 40, locally owned non-corporate, I think those are really important. While I think this is important and good use of these funds that are left over, it is still a Band Aid. We can never payback someone's lost peace of mind. I am curious about perhaps a collaboration between Economic Development and the Police Department around preventative measures. We keep hearing around businesses in our districts getting broken into. It just seems like it keeps happening and happening. I would love to hear whatever you can share Chief and Chris about what are the preventative initiatives that PD is putting forth. And if there is anything this Council can do to support whatever might be missing I just feel like this is a good Band Aid but Band Aid none the less. I am curious if anyone has an answer on this?

Chief Miguel Dominguez said our patrol officers and patrol shifts and our street crime units continue to work projects diligently day in and night to prevent, especially commercial burglaries because that is what we are discussing right now. It is important to point out that we have had a large rise in commercial burglaries since Covid and it continues to happen. We have seen small decreases at times based on weather and things of that nature, but we do continue to see a large increase in commercial burglaries. We feel the frustration from business owners as well as citizens who come forth. We continue to work on projects in attempting to get more personnel which is obviously prevention is the key and bodies are going to be a big difference for us. Right now, we are trying to add more to our staffing and discussions that I have had with Mr. Pili to add more staffing so that we can prevent a lot of these things from happening.

Agenda Item #6.1.

Councilor Abeyta said I do know that we are going to have a lot of our budget conferences next month and so I hope that this type of issue is something that is brought up during those meetings as we look at what is necessarily needed for the budget next year.

Mayor Pro Tem Gandara said I didn't see anything about a police report being made as part of the criteria. The reason that I am pushing this a little more today is because I am getting the impression and when I do speak to businesses they are not calling police and there has been a couple of instances where I have tagged or copied Chief, Officer Glymph and Klimeck and the folks on the receiving end of some of this crime have not called police. We have to work together, and this is one of the things. I know there is a lot of frustrations. When you start digging in, our business community isn't calling police. The first thing that they should be doing so police can start investigating and I am not saying that is happening all the time. Please don't misunderstand what I am saying but this needs to be a part of the criteria. They have to make a police report in order for police and the groups that are established to do the work that they are supposed to be doing to catch the criminal. If they can't even do the basic thing, then I think we have a problem.

Chris Faivre said we talked about that and my thought is that if someone dating back to early 2021 applied but did not file a report at that time I did not want them to not be eligible for this program and I did not want to make that a blanket requirement. So, what we are doing internally is when we get applicants that come in with something that happened recently through the process our staff will tell them, please file a police report and have that conversation with them. If I had made that a blanket requirement, I was afraid I was going to eliminate those businesses from those early days of the pandemic that didn't file one. I hear what you're saying but I thought that might be the best way to handle that.

Mayor Pro Tem Gandara said that is something to think about and I am wondering if we can grandfather in from the previous time up to February 1st. It concerns me that we are not utilizing our police force like we need to, although they get a lot of calls. This for me is very basic so that it initiates the investigation moving forward. I am asking that maybe there is that grandfathering in from that period of time but also encouraging the folks like you said when they come and present this application that a police report is. I am afraid that people are taking things into their own hands. Prevention is really important and I have been thinking about how the Las Cruces Care Unit, although they are just two could just really help and provide some guidance along with the victim advocates that PD has specifically when our business community is being targeted. I'd like to see at least one or hiring another Las Cruces Cares Advocate specific to our business community so that they can reach out upon hearing that they have been broken into and sort of outline what are the steps like a warm handoff almost, the liaison if you will to the people on patrol.

Christine Rivera, City Clerk said the resolution is written so that non-substantive and substantive issues can be made to the program itself so we can give direction to the City Manager to add that if you would like instead of an amendment.

Agenda Item #6.1.

Councilor Graham said we would be able to relax the standards on what is eligible and remove the provision that is graffiti.

Chris Faivre said I can go back and rewrite the language and work with the City Manager’s office to make a little more expansive.

Mayor Pro Tem Gandara said I did get a couple of emails about the urination and defecation and why isn’t that included. I want to say that we have very specific programs like the spot clean up van that comes if that has happened. Maybe it is not working in its entirety because it is not a 24/7 program and I want us to consider looking at that. That is pretty tough thing to do when it happens late at night, you are in the morning having to open up and the onus is on you to clean that up and you can’t wait for the spot van to come and clean that up. Also, the Mano a Mano Program, those are all things that I think will work in conjunction with all of this that I think we need to partner with PIO to ensure that the public is aware of those things. Ifo, I am wondering if we can have an element to the spot clean up that is 24/7? Hopefully the hygiene stations will alleviate that but until then that continues to be an issue.

Councilor Tessa Abeyta moved, seconded by Councilor Becky Corran, to Approve Resolution No. 23-087.

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

7.4 RESOLUTION NO. 23-088: A RESOLUTION APPROVING A HOUSING TRUST FUND LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE THREE SISTERS CIC, LLLP, INCLUDING THE NECESSARY BUDGET ADJUSTMENT FOR A MULTI-FAMILY FEDERAL LOW INCOME HOUSING TAX CREDIT PROJECT.

Jan Lauterbach, Housing Development Coordinator gave the overhead presentation.

Councilor Flores asked what is the qualification, the amount of dollars and cents at 60%?

Jan Lauterbach said the 60% currently right now for a household size of a family of four is \$36,600 for a low housing tax credit project and those limits are set by the Mortgage Finance Authority.

Councilor Flores asked a family earning \$36,600 or less qualify?

Jan Lauterbach said yes, that is for a family size of four.

Councilor Flores said are there adjustments for a family beyond four members? The 60% will adjust accordingly?

Jan Lauterbach said yes, I have the chart up in front of you showing the household size is in the top.

Councilor Flores asked someone with eight members in the family?

Jan Lauterbach said right across that is \$48,360 would be a limit for a family size of eight.

Councilor Flores asked that would be a limit and anyone 70-80 would not qualify?

Jan Lauterbach said that is correct. Sixty percent is the limit for the complex.

Councilor Graham asked on page 155 of 491, is this a typical funding structure for a project like this? City of Las Cruces is the fourth mortgagee, mortgage holder, there are three others. Can you just help me understand a little bit, is this the norm?

Jan Lauterbach said it is a norm on a low income housing tax credit project. We have a construction lender to start off with when the end of construction that gets paid then there becomes the permanent lender. Right behind the permanent lender is the Mortgage Finance Authority Home funds, they are required in second position. If the City of Las Cruces had home funds in it we would be in second position there. So, MFA, their money and the National Housing Trust Fund money come in before the City of Las Cruces funding.

Councilor Graham asked does it affect our ongoing relationship with the project?

Jan Lauterbach said I do not believe it affects our funding. There are so many pieces of the puzzle and so many legal papers in here and so many commitments to make this project work our funding should not have any effect on being in fourth position.

Tim Baker, Chelsea Investment Corporation said I have about 25 years of experience in affordable housing and have done about forty developments. The way the stack of financing works, typically it's the biggest government agency, it's the feds first, the state second, the local governments are third or fourth. No matter what the amount of money is, the king rules so to speak, or queen. It is very common for the City's jurisdictions to be third or fourth in a lien position. In terms of oversight, we have annual inspections by the State of New Mexico. If it is in the loan documents, but I have not seen them but I would imagine there is inspections by the city also. From our funder standpoint which will be Key Bank, Rocky Mountain, the investor will be the Richmond Group they all have inspections. We also like to say the best way to market our projects in terms of future projects is that we are the best one on the block. We take great pride and honor in terms of receiving public dollars and take great responsibility that way to honor those dollars. Our company is over thirty years old. We have 130 developments in California, Arizona, New Mexico and now one in Utah. We do not sell our developments. We look to be long term custodians and this project will remain affordable for 35 years in term of compliance.

Agenda Item #6.1.

Councilor Flores asked if the City of Las Cruces is fourth in line in terms of lien holder and there was a foreclosure Chelsea would be first in line?

Tim Baker said if there was foreclosure in affordable housing the key thing in affordable housing is the equity investor that buys the tax credits is a limited partner and they own 99% of the partnership. If we are doing something wrong most likely what will happen is they will kick us out and they will bring somebody else in our place. They own the property, they don't want to be foreclosed upon by any of the funders. The Richmond Group, they don't have a lien position they are part of the ownership. Way before they foreclose on us and this would be Rocky Mountain CRC and they are in the business to do community lending. We would be kicked out and somebody would be brought in to make sure the project is being run correctly because they have an obligation to their investors in the tax credits to make sure the project is being operated correctly.

Councilor Flores asked that is not likely to happen?

Tim Baker said very unlikely. In the affordable housing world you have tax rates and it is highly unusual to see a foreclosure. Part of the ownership structure is that we provide guarantee. We provide construction guarantee, occupancy guarantee, and we provide funding guarantees. Some of these go on for four to five years.

Councilor Flores asked what is the term of the loan?

Tim Baker said the loans will vary. Rocky Mountain will have a loan for 30 years. New Mexico Finance Housing Agency is for 55 years and the City's loan is 20 years.

Eddie Binns, Member of the Public said first off, the project you are looking at is needed in Las Cruces and we need that type of housing. I am also in the housing market and I have an understanding. As you all are aware I am involved in an apartment complex under construction up on Roadrunner Boulevard. That particular project has 270 units ultimately in it and it is interesting enough that we are providing Olympic swimming pool. We are providing all types of amenities from recreation rooms to exercise rooms and that project is coming in at probably \$150,000 a unit. With all of those amenities and that type of project and when I hear a project of this nature coming in at \$250,000 unit I would like to get involved. I question the use of our tax dollars. I don't think they are being used in the most advantageous way or if we have looked at the market very seriously. From market standpoint we are involved in over 3,000 apartments in Artesia, Carlsbad, Hobbs and Las Cruces. In Las Cruces we probably have about 1,500 or more apartments here and of those 1,500 I have about 500 apartments that are renting under \$600 a month. We are covering the market on a pretty broad scale and have a pretty good feel of what should be going on and it is something that I don't want to table this contact but I am asking that you take a real serious look at the numbers because they are way different from what private enterprise is doing at this time.

Tim Baker said this is not the first time I have heard this argument. The site specifically, I am not sure if the gentleman is aware of the site at all. Site wise it has

Agenda Item #6.1.

some challenges to the heights, elevations, grading, there is also some contamination issues from the plume. We are going to be doing some grading, doing some walls. As much as I would like to build this at market rate there are constraints that we face that market rate developers never have to face and I will respectfully disagree with the fellow gentleman. You get government involved, it has its positives and its services, sustainability, we are way above code in terms of what is required to do sustainability. MFA requires for these projects to be really efficient. The negatives if you will or positives is governments involved in terms of design criteria in all of that. Unlike market rate developers, our rents are restricted. We can't increase them, however our operating expense are market rate. There is a challenge there that market rate developers don't have to deal with.

Mike Tellez, Member of the Public asked would it be possible to get a police report of the units in different areas they have to see what kind of control they have on crime and what goes on in these units? I would like to know what the crime is like in their developments.

Tim Baker said I am very open to any police report from any of our projects here in New Mexico, Artesia, Hobbs, Grants, Los Lunas, we are closing deals in Taos, Belen, Rio Rancho and also here this year. We take great pride in terms of our developments being secure. The tenants basically have two chances and then they are out. In terms of that we do criminal background checks before people and along with employment background checks. For our projects we tend to have long wait list. There is no reason why we need to work for somebody that is not going to honor their unit in terms of keeping it clean.

Councilor Bencomo said I also want to challenge private developers, the housing team is always looking for new partnerships for developers who want to build affordable housing. I certainly want to through that challenge out to anybody who is interested in building more affordable housing because we certainly need it.

Councilor Tessa Abeyta moved, seconded by Councilor Yvonne Flores, to Approve Resolution No. 23-088.

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

7.5 RESOLUTION NO. 23-089: A RESOLUTION RECOMMENDING THE CITY MANAGER TO NEGOTIATE THE LEASING OF LAS CRUCES UTILITIES PROPERTY FOR A COMMUNITY SOLAR PROJECT TO AMERESCO, INC., OF PHOENIX, ARIZONA.

Adrienne Widmer, Utilities Director gave the overhead presentation.

Councilor Corran said I still find community solar slightly incomprehensible if I am honest and how exactly it works and what the benefits are for our community. This seems like a company that has been doing this for a bit. If this comes through what would be the ultimate outcome in terms of diversifying the energy sources for the

Agenda Item #6.1.

people of Las Cruces? How many people? What kind of options might it provide? It is the first time that we have really talked about community solar necessarily to take action on so I would love to hear a little bit more.

Adrienne Widmer said with community solar you have a developer come in. For this particular one it is up to 5 megawatts and out of that 5 megawatts they develop it, they tie into El Paso Electric's grid. Then from there, 40% of that has to be dedicated to low to moderate income households and that is where the solar that is generated is providing the electrical power for them. They will be a subscriber and we promise at least 40% of that, 30% can actually be city facilities and then the rest is open. For instance, Ameresco is going to have a rate that they are going to charge people to actually utilize this amount of solar that they are putting out based on the subscriptions.

Theoretically that is supposed to be cheaper than buying just regular electric from the electric company. That is how it helps the community in that sense that the power is going to be cheaper, then on top of that it also lowers the greenhouse gas emissions which is part of our carbon action plan.

Councilor Corran asked the more the better, is that the general idea if we are thinking about the community benefit in terms of people being able to buy it and people who have low to moderate income being able to buy it for more cheaply?

Adrienne Widmer said that is correct. One of the things that Utilities is looking at as part of our transition plan is where there any places that we than in 2025 when the RFP comes back out again from the PRC so we can apply for ourselves. Part of our natural gas and energy line of business is so that we can actually have energy in multiple forms that we can actually provide to the community to lower the greenhouse gas emission and at the same time to be competitive and be as cheap as possible.

Eddie Binns, Member of the Public said there is no question that we need solar help all over the place we have, in fact I am very involved in it and we currently have 3 projects that are in front of the PRC for support of projects in various locations. These projects that I am involved in we will be going on private property paying taxes, ad valorem taxes and the structure that goes on it. I have a question whether the project going on city property will be paying ad valorem taxes or paying taxes ad valorem on the structures that are there which makes an uncompetitive situation between private enterprise and the City of Las Cruces. Part of that will depend on what the City Manager negotiates and how it is worded but it is my concern in following dollars and the use of our tax dollars and to trying to collect tax dollars as due on projects that are going on in other locations but it is something that I wanted to call you attention to, there is no question about it. There is a limited number of projects that will be going in New Mexico because there is a limited number of funds that the Legislature made available. As of January 31st, that process will close and the state PRC will make a selection of the projects which are most desirable or beneficial.

Mayor Pro Tem Gandara asked you're in competition with other folks across the state and how do we jockey into position to make it that ours get funded?

Agenda Item #6.1.

Adrienne Widmer said yes, it is going to be quite competitive and so one of the things that is required is that as part of the application is that the more that you are showing that you are ready to actually shovel ready the better. This is one of them that you are able to sit down and provide the resolutions from the Utilities Board and from the City Council to attach as part of Ameresco’s application for additional points in order for them to score as high as they possibly can.

Lisa LaRocque, Sustainability Officer said it is not just about the competition, there is about 72 applicants for 6 positions in the El Paso Electric territory. It is about providing the lowest rate possible for low and moderate income people and the goal that we have set is about 20% reduction in our electricity cost. Although the minimum you can provide is 30%, we are shooting for 50% and that will be about 500 households. That is especially valuable for renters which are the folks that are most at risk of energy burdens as well as other people who don’t have the initial capital to be able to do this. The association that this project has with LCU will do a lot to bring forward a new model where we are actually doing, from my understanding this is the only municipal partnership with a community solar project.

Councilor Bencomo said it is very expensive to go solar on your home and so people with means, wealthy folks will be able to do so, and I think programs like this community solar are trying to interrupt that. Saying we are going to uplift and ensure that people who are not only most at risk of energy burden but are also inherently are most disproportionately impacted by climate change are at the center of this transition.

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to Approve Resolution No. 23-089.

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

7.6 RESOLUTION NO. 23-090: A RESOLUTION REVERSING THE PLANNING AND ZONING COMMISSION'S DECISION TO APPROVE A SPECIAL USE PERMIT ALLOWING A CANNABIS RETAILER WITHIN THE REQUIRED BUFFER DISTANCE TO A SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT.

Removed.

7.7 COUNCIL BILL NO. 23-016; ORDINANCE NO. 3022: AN ORDINANCE APPROVING A ZONE CHANGE FOR MULTIPLE PROPERTIES/PARCELS FROM A-2 (RURAL AGRICULTURE, 1981 ZONING CODE) C-3C (COMMERCIAL HIGH INTENSITY - CONDITIONAL), AND M-2 (INDUSTRIAL STANDARD) TO C-2 (COMMERCIAL MEDIUM INTENSITY), C-3 (COMMERCIAL HIGH INTENISITY), AND M-1/M-2 (INDUSTRIAL STANDARD) FOR A PROPERTY ENCOMPASSING 18.598 + ACRES LOCATED NORTHEAST CORNER OF BATAAN MEMORIAL WEST AND

**RINCONADA BOULEVARD. SUBMITTED BY UNDERWOOD
ENGINEERING, REPRESENTATIVE.**

David Weir, Deputy Director Community Development gave the overhead presentation.

Councilor Corran asked is this the sort of thing that will be corrected by Realize Las Cruces?

David Weir said that is one of the biggest things we want to accomplish with Realize. We have not only an update to our development codes but as a part of that project we have a city wide rezoning map to take place which would be indorsed.

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to Approve Ordinance No. 3022.

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

8. BOARD APPOINTMENTS

8.1 LUIS RIOS

Councilor Becky Corran moved, seconded by Councilor Tessa Abeyta, to Appoint Luis Rios to the Realize Las Cruces Ad Hoc Committee.

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

9. 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).

9.1 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.

Council agreed to bring it forward.

- 9.2 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.**

Council agreed to bring it forward.

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

10.1 MAYOR PRO TEM GANDARA

I have received a number of emails with the increase of gas prices. Some of my constituents are paying triple what they normally pay. One of them I will be sending an email to Adrienne about her bill being over \$400. Her request is to renegotiate the gas prices. People are not aware of how the city negotiates gas prices so I thought that I would recommend that we have a Work Session that explains how we are negotiating.

Adrienne Widmer, Utilities Director said there was a discussion and we had actually spoken to the Utility Board last Thursday to talk about that and we are putting an insert into everyone's billing. Depending on what cycle they are actually on with their billing cycle is when they will actually get it. We do order our base load every month and we try to get the peaks, we look a few days ahead and order it. If you order too much and you don't use it then you pay penalties, so our Gas Analyst Mario Puentes, he has been doing this for decades. Unfortunately, one of the main places that we get our gas is from El Paso Natural Gas Pipeline that comes out of the Permian Basin. They have been having maintenance issues with their pipes. There is only so much gas that they can send to us. Well, the cheapest gas is also coming out of the Permian, which is super cheap. Which is what a lot of people are saying this is what our prices used to be. We have no other choice then to get gas from the San Juan Basin which is in this case at least three times higher. Now one of the things that

Agenda Item #6.1.

Utilities is offering is that if someone feels like this is going to cause hardship, if they will just get with customer service, billing and receivables we can sit down and work out an actual payment plan. I can certainly forward the email that I sent to Councilor Graham and then we are more than willing to have a Work Session with you to go over it as to how that works.

Mayor Pro Tem Gandara said going back to your comment about the maintenance issues at the Permian Basin, where we are used to getting our gas. Is there anything that we can do to help? When you talk about maintenance issues, can you be a little more specific?

Adrienne Widmer said they ended up having a rupture in one of their lines last year and which then puts them under regulatory requirements to get a bunch of stuff done and then report back and then work with the Federal Government. Just this last week that had completed all repairs and they have turned in all their paperwork into the regulators who then come down and take a look at it for inspection. If everything turns out then they will be able to go ahead and add additional pressure and provide the natural gas as they previously did. It is a temporary thing which they happened to have a blowout which lowered the amount of pressure that they could actually provide in their lines. Also, to tell our customers that it is not our rates that are causing a high cost it is actually the cost of gas because that is just a pass through. We don't make any money on it. Whatever we are paying for the gas gets passed on to the consumer.

Mayor Pro Tem Gandara asked would it help to inform our federal delegation that this is happened? That we are waiting for the inspectors to come down and they need to pressure, this needs to happen immediately. I am thinking we should have some sort of letter to our federal delegation informing them that this has happened. As you mentioned it is not going to solve the problem because gas is so expensive right now.

Adrienne Widmer said we can certainly work with our natural gas consultant, he is kind of on our legal team for that to see if we write a letter will that assist or would it actually just end up putting their feet in the mud. All we can do is be as transparent as we can. This is unfortunately just the price of natural gas right now. It is a pass through, if you are having a hard time paying the bill or you would like to have a payment plan, we are more than willing to do that. All of the Southwest is dealing with this right now it is just not us.

Mayor Pro Tem Gandara said I would like to have a letter. I ask that we replenish or increase the fund that we have to pay for utilities, gas and the like so water. I think that is something that we really need to look at. I don't know about anybody else but paying over \$400 for gas and water is astronomical and it is going to make it very difficult for many of our families here in Las Cruces.

Ifo Pili, City Manager said when we talk about negotiating our gas prices, we have like Adrienne mentioned our base load purchase. We have purchased that block and I think we have contracts in place that secure some of that to prevent fluctuations in that and we have gotten secure as we can be. What we are talking about is peak.

Agenda Item #6.1.

When you get the cold front. When you get it throughout the country the demand is higher naturally and so what we are talking about is just that. The difference of what our base load is and what the fluctuations are and our demand. That where we are left open to the market. We have to go off of what our based demand is and maybe as we are moving forward, we look at increasing that base load but we are right in the middle of that battle right now. It is really about managing that demand. We are really subject to the market. I know that it is hard to explain to the residents. I think the only thing we can do is contemplate something where we can look at a sustain and it would certainly have to come from the General Fund as it has from the past and not from the Utilities.

Mayor Pro Tem Gandara said Adrienne, I appreciate your words and being transparent with the public about what is happening, explaining as many ways that we can. Not only in inserts in our bill but also a press release, on our social media accounts and having something to be able to write. I think that would be very helpful. I am asking because I am not only negotiating your payment plans but also this fund that we replenish every budget cycle, I think we are going to have to consider replenishing that sooner rather than later. Those are things that I would like for us to consider moving forward.

Adrienne Widmer said right now that particular fund has a balance of \$112,000. That is another thing that, sure we will look at the payment plan but obviously those who are low income that are really struggling there is \$112,000 that is still in that fund.

Mayor Pro Tem Gandara said I want to speak again about the hygiene stations and getting an idea of where we are at and what needs to happen to get these off the ground. I would like just an update on that lfo if we can? I am very excited about the store front repair program I think this is going to be very helpful to our businesses. I agree with Councilor Bencomo that this is just a Band Aid and we need to look for a few other preventative programming. Also, in our discussion at the PRC we talked about staff looking at our other grants that don't connect us to the anti-donation, so from a federal standpoint looking at grants that help our businesses so that we can continue to utilize this particular program.

Lastly, I had mentioned a month or so ago about wanting to reexamine the Mesilla Valley Housing Authority Resolution. Sergio has done that and sent it to me last week. I would like to propose to moving that to our Housing Policy Review Committee, Councilor Bencomo. I think that would be a good opportunity to look at that. I will work with you Councilor Bencomo to get it on the agenda, not this week because we have our meeting tomorrow, but for the following month.

Happy MLK Day, I went to the breakfast Monday. It was phenomenal and so energizing. Martin Luther King Jr.'s words just resonate with me, especially around using love and thinking about how not only would we love our family members but loving people we don't know and doing things with love. That is a lot to live up to but I am certainly up for the task.

10.2 COUNCILOR FLORES

Agenda Item #6.1.

I was out of town for three weeks or so. In the meantime I received a bill from Utilities and when I went to pick up my mail, I was presumably sent a bill while I was out of town. When I collected my mail at the post office there wasn't a bill there, there was a letter there telling me my that my utilities would be cut off by January 26th if I didn't pay \$197 immediately which I went online and paid it through my bank but I thought it was a harsh letter. What if it is someone who didn't receive the initial bill and all of a sudden they get this bill, \$197 is extraordinarily high for me but I thought the letter was a little harsh. Adrienne, once the Permian Basin fiasco is taken care of will the gas rates go down a little?

Adrienne Widmer, Utilities Director said it should give us an opportunity to buy more out of the Permian as opposed to the San Juan.

Councilor Flores asked the prices should go down a little?

Adrienne Widmer said we certainly hope so, I think that may actually help once they get up and running. There is not going to be the same kind of pressure because it is supply and demand. In regard to your bill I will have that looked into because usually there is some kind of notices of reminders, at least two or three before they send that. If you still have that letter, I would love to have that so we can pass that on and we can look into that specifically for you.

Councilor Flores said I also would like to share that I was at the Martin Luther King Jr. breakfast yesterday and I brought the program because the keynote speaker was Sgt. Jamar Cotton, he is with the Dona Ana Sheriff's Department. He was really powerful, just a lovely human being. He is working with youth. He had a youth group, about a dozen children, I think middle school and six of them read the principles of Dr. Martin Luther King Jr. and to live by those principles. The prevailing theme was love. It was very moving.

10.3 COUNCILOR CORRAN

The Red Hawk Golf Club Road, south Arroyo will be closed through about Thursday of this week for some work that they are doing on housing developments.

There has been a number of recent, well there was one very proximate high profile situation where someone took into their own hands following someone who was perceived to have committed a crime and we heard about the sad outcome of that. In addition in Albuquerque we heard about the outcome of people who were elected to office engaging in conversations and then having their homes shot up as a result of conversations which we all hear about and feel in our own worlds but I want to point out sort of how our rhetoric and the rhetoric that might appear here in our public meetings and even more to things that are happening right now in our community. I know that there are folks outside of the high schools right now shouting with signs. Some reports of recording the students going into the high schools in an aggressive way shaming students in particular LGBTQ students and I do want to point out that first of all, I am confident those folks aren't from here because I know that the city of Las Cruces is better than that and I also want to point out to the people of Las Cruces

Agenda Item #6.1.

or say to the kids in particular that are being subjected to that right now when they are going into school those folks don't represent any of us. We are here to support you and we want a better future for our kids and I hope that those same high school students are up here and are able to counter act any of that rhetoric that has built up and around them but I would also say to the folks screaming in their megaphones at children I would urge to come and talk to us as adults if you have a beef because frankly it is pretty horrifying to go and yell at children through megaphones, screaming and telling them that they are sinners. We see you, you don't belong here but we are happy to hear you come talk to us as adults in a public forum where we can use our rhetorical strategy to say we reject everything that you stand for.

10.4 COUNCILOR BENCOMO

We have a Housing PRC meeting at 2 o'clock on the second floor. I will be hosting a neighborhood meeting at Legends West with Parks and Rec., Public Works, and Codes at Picacho Middle School tomorrow at 6 p.m. for folks who live in that neighborhood.

I did want to bring up a couple of pieces of legislation that I know are relevant to public safety conversations that we have been having here at City Council that I was recently made aware of. There is legislation being presented at this Legislative Session to expand access to Medicaid medication for addiction treatment in correctional facilities, for our jail to actually commit to using medication for addiction treatment that can actually help people wean off of substance abuse before they get out and can hopefully get additional support. It is also my understanding that there is a commission under the New Mexico Supreme Court that is working to address mental health issues as an intersection of criminal justice work and they are also working on a bill to address issues around competency and people who are deemed incompetent and what happens after that.

Lastly I know that Jamie Michaels had come to council before to talk to us about a piece of legislation that they are working on with Senator Ortiz y Pino around the licensing regulations for crisis triage centers. Currently they say they are only to be used on voluntary purposes and they are looking to change those regulations to allow for both voluntary and involuntary admissions. Those I think are very critical pieces of legislation that will have a huge impact on people here in Las Cruces and what we have been seeing in recent months.

I do want to request information from MVRDA regarding calls that can be diverted to 988 and that information. I want to know how MVRDA is going to work with Project LIGHT and that whole situation so that we can get the right first responder to the right emergency. Whether that is a Work Session or a report that can be presented but I really do want us to better understand how 911 dispatch is better collaborating with 988 and crisis intervention so we can get the right folks to the right place.

Lastly I just want to give a huge shout out to the Animal Service Shelter because last Friday my family and I went in and we adopted a new pup. Her name is Lola and think she is a Lab/Boxer mix, and she is a troublemaker and I couldn't be happier to have adopted a new pup into our family. I just wanted to extend my gratitude to the staff at the shelter who do such a phenomenal job.

10.5 COUNCILOR GRAHAM

I sit on the MVRDA Board and Jamie Michaels was a recent presenter and we were privy to some of the information that you were talking about. I know it is there and it is being formulated. This is a significant paradigm shift, the move to 988. I know MVRDA is very committed to doing the training. We got to see some of the materials that are in each call takers station. Kind of a small decision tree of where should a call be routed. I would also welcome a Work Session. I would love for everyone to see how that is going.

Speaking of great developments in behavioral health, just about thirty minutes ago an event wrapped up. FYI Plus, NMSU, DACC and Apple had a hackathon or getting some people together to see how we can improve behavioral health, resource access and outcomes through some mobile app development. I am going to be really excited to hear about the outcome.

I had a great meeting with our Community School's Board. There is some very exciting news coming out that I am not able to divulge quite yet. It is just wonderful to see how the Community Schools group is continuing to develop and dealing with the whole students, families, and neighborhoods.

10.6 COUNCILOR ABEYTA

I have a few updates. One is from MVEDA. We did have a meeting today. Mid-year reports are going to be coming out. I should be receiving one, when I do, I will forward that to Christine so that everybody is able to get a copy of that report.

Tomorrow will be an Oversight Meeting. We will be getting an update about the Inspector General hiring process and update and we will also be going over the Accountability and in Governance Ordinance and possible revisions and this is one that I would suggest for my colleagues especially those that are new to look back over the revision. It was a new ordinance, if there are things that we need to look at to tailor we want to make sure to get your input as well.

We are going to have another OIR group report here in a bit. A third presentation, one of the suggestions that I made during this group is to also have a report from our PD at the same time so that we are able to kind of be able to have more questions answered and or have the department respond to some of the issues that are brought up in the OIR report. I think those two go along well for one session.

It is the Legislative Session, it started today. I will just give an update on some of the items with the Municipal League. There are a series of the six key priorities this year. They are increasing funding for statewide EMS, from what is now \$2.8 million to \$10 million. Increasing the Fire Fighters Survivor Benefits to \$1 million. Supporting Public Safety agencies implementation of the Statewide Public Safety Radio Network, creating a data base to track incidences of excessive use of force and other serious violations from law enforcement officers. Using Motor Vehicle excise tax revenue to invest in statewide road infrastructure and this will include adding additional \$140

million annually to the road funds and investing state funds strategically into local airport infrastructure.

11. CITY MANAGER REPORT

11.1 IFO PILI

The Power Up Expo at the Las Cruces Convention Center, just a reminder it is this Friday January 20th from 12 p.m. to 5 p.m. and Saturday January 21st from 9 a.m. to 5 p.m. Lisa LaRocque and the Sustainability Office mobilized community partners to host. This is to be the first Power Up Expo. This is an opportunity to hear from builders of all electric homes, test the best electric appliances, talk with energy saving retailers and receive estimates for converting your living and working spaces to energy reducing equipment.

New Mexico State Aggie celebration in the Plaza. Free for the public. City has partnered with NMSU to host the Aggie Bowl Celebration. It will be from 12 noon to 1 p.m. The event opens with the Aggie Football Team and Marching Band performing in the Aggie Walk precession through the Farmer’s Market. Starting from City Hall and ending at the Plaza. There will be free posters, shirt giveaways, autograph signings and more.

During this Legislative Session we are going to have updates and we are monitoring these bills. For example, we have already put Larry on notice to monitor the minimum wage bill that is going through and there are others that we will be providing regular updates this session.

I just wanted to mention, I don’t have much of an update for the hygiene stations. Right now we need the scope of work and we were trying to figure out whether or not we had to bid this out. We are still trying to figure this out through procurement. I still need to pull in legal on that to give us some guidance. It is a little tricky because if we use one of these potentials, I think we talked about FYI, if they give us the scope of work and we have to go out to bid then there is a conflict there. We will hopefully have more of an update by the end of this week on that.

12. ADJOURNMENT

12.1

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to Adjourned at 4:12 p.m.

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

Mayor

City Clerk

City of Las Cruces
MINUTES

Work Session

Monday, January 23, 2023 @ 1:28 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 introduced Pets of the Week.

2. JOBS OF THE WEEK

2.1

Giselle Palomares, New Mexico Workforce Solutions introduced Jobs of the Week.

3. AGENDA ITEM

3.1 METROPOLITAN REDEVELOPMENT AREA DESIGNATION

Chris Faivre, Deputy Director of Economic Development introduced the topic.

Maren Neldam, Community Planner gave the presentation.

Erika Robers, Community Natural Resource Planner continued the overhead presentation.

Councilor Graham asked the darker blue is an existing neighborhood plan?

Erika Robers said that is correct. The darker blue is the El Paseo blueprint.

Councilor Graham asked the focus area, does it get treated any differently than the rest of the MR area?

Erika Robers said it does not. The only reason it is separated is just to highlight that the darker color indicates that it has already been through some

Agenda Item #6.2.

community engagement and outreach. The idea would be to link those two areas together in the planning process for the MRA.

Councilor Graham said the statistics you provided on things like households below poverty level, unemployment, are there other data points that go into, these are just samples. Can you give me an idea of what else?

Maren Neldam said the statute is very flexible and I kind of generally describes some of the conditions that you might witness in an MR area you are proposing to designate. We are looking at median income, households below the poverty line, unemployment rate. We were looking at population decline, median home value, research into the real estate market in the area. We reviewed a lot of city data that was provided by the Planning Department. We were looking at vacant parcels, abandoned and vacant buildings. When we went and did the existing conditions assessment, we were looking for prevalence of deteriorating buildings, missing, or deteriorating infrastructure. We were looking at the conditions of the streets and sidewalks and some other more minor things show up like vandalism, litter, and illegal dumping.

Councilor Graham said looking at the El Paseo and South Solano, large chunk of what I represent, the overriding public concern is crime there. We have an illusion to crime with vandalism, litter, illegal dumping.

Maren Neldam said we did actually look at crime data and one of the reasons that elevated El Paseo and South Solano as an area to focus on. We looked at both property and violent crime statistics for that area.

Councilor Graham asked Chief Dominguez, would you agree that is a higher crime area in the city?

Miguel Dominguez, Chief of Police said I would. We have supported the project and provided a lot of the crime statistics that they are speaking of.

Councilor Bencomo said West Picacho is one of the areas that I represent as well, and it is very much a focus area for me and I am wondering if you did any condition assessment on that corridor?

Erika Robers said we did some analysis in that area as well. I would say the biggest challenge in that area because it has many if not most of the indicators on this list to be designated. However, some of the census data isn't as reliable for that area. That made it a little more challenging to evaluate, with like hard numbers. That district definitely was one of the highest in some of these indicators that we saw. We didn't leave that off as a designation, it was more thinking about what might the City of Las Cruces have the staff capacity and resources to do at a time but if at a later date you wanted to come back and add that on I think that would be a definite option for an MR district.

Councilor Bencomo asked that is your recommendation now, is to include that? Do you have thoughts about timeline and what that looks like in other cities

Agenda Item #6.2.

where they adopted one area and then said look, we are ready to move on to another?

Erika Robers said there is a lot of factors as of to how long all of these things take. Often just the planning the next step, the planning process often takes upwards of a year to just finish the planning process.

Maren Neldam said I think it really depends on capacity. It is going to involve determining the timeframe for bringing on a consultant for the MRA plan and going through that planning process, developing community routed strategies for revitalization of those areas and working towards implementation. I can't set a specific timeframe because it really varies from city to city. I do think that 3-5 year timeframe seems fairly reasonable. The City of Albuquerque, they are at a moment in time where whether or not they should slow down or stop designating areas. They have gone through in the last several years designating about one MRA per year. They have a lot of the commercial corridors throughout the city are designated at this point. That is kind of spreading resources thinly and it is also working against some of the goals of an MRA which are to incentivize redevelopment in an area where it wouldn't otherwise occur. I don't think that is a challenge with two districts, it does tend to be helpful to start with one district and really signal to private investors that this an area that the city is focusing on and is interested in developing partnerships for and bringing on additional districts as projects are implemented.

Councilor Bencomo said this is where it gets tough sometimes because I hear you say, like staff capacity and I take that very seriously. This is sort of where that rub happens because I am also trying to advocate for a part of my district that needs a lot of care and love and support. There are many reasons as you said why West Picacho feels like an important focus area to include and not to pick over but to include within El Paseo/South Solano corridor. One of the many reasons and one of the examples you showed, for me is motel rehab opportunities. We are experiencing a tremendous housing crisis. I am going to keep pushing for the inclusion of that and I am going to ask my colleagues to really consider that as well. I did have follow up questions regarding some of the motel rehab and I was wondering if you talk a little bit more about what those private public partnerships look like in some of those cites in New Mexico?

Maren Neldam said if we wanted to go back to El Vado. This was a public private partnership, the city put out an RFP. They had purchased this property, there was a possibility that it was going to be condemned and so the city saw a great opportunity for catalytic redevelopment along Central Avenue. They put out an RFP and connected with a private development firm that specializes in these kinds of micro retail development projects. The total project cost was approximately \$7 million. They leveraged a lot of different funding sources for this project. They used low income housing tax credits, equity, historical preservation tax credit equity, capital outlay, MRA grants, the city donated some funds to the project and provided technical assistance throughout the process. That made the redevelopment process more possible, and it resulted in 32 affordable multi family housing units. Twenty-two rehabbed hotel rooms.

Agenda Item #6.2.

It is a really great example of a project that has been created to support small local independent businesses.

Councilor Bencomo asked have you seen any private public partnerships for development rehab of motel/hotels that come become affordable housing units where the city does not own the property?

Maren Neldam said a lot of the projects that we are seeing the city has acquired the property prior to doing redevelopment. Clovis Hotel is an example of that, and part of the reason is some of these properties require significant ground field remediation and in order for them to access the funds for that it was important that the city owned that property and the time of the assessment and the remediation. It is not required but it is often part of the process.

Councilor Bencomo asked there is nothing then that would prohibit the city from partnering with privately owned motels/hotels for rehab, redevelopment that could end up as affordable housing?

Maren Neldam said rehabilitation programs, those are really common around the state. They can be used around a lot of different contexts. Those support grants being given to restaurants or motels or any other business in the designated area. That could be for façade improvements but also if the program is structured to provide funding for interior improvements that is also possible.

Councilor Bencomo said I will continue to advocate that West Picacho be included in this first phase as we move forward and would love to continue having those conversations before this comes to council for a final decision.

Councilor Flores said the \$300,000 GRT revenue that is a good indication of a building that wasn't generating any money before that presumably. My question is generally, do you do any follow up in so far as the changes, the financial impact? I don't think any of that is in your presentation that shows not just the actual project but the outcome, the effect, the impact and do you do that and if you don't why not?

Erika Robers said in this initial phase the designation report, just designating. That isn't necessarily part of the report, but I will let Maren talk about examples of evaluations that have been done to understand how much revenue has been generated.

Councilor Flores said it isn't so much revenue per say. I would like to see data on how the human condition has improved generally not just in dollars and cents but how has this stabilized a community where people have jobs, a home, all of that. The other question I have is MRA state statute, you made reference to HUD money. Those are the two areas I would like for you to address.

Maren Neldam said we don't have that data as part of this presentation, and I don't have that data in front of me. Typically, an MR agency or the MR Board

Agenda Item #6.2.

that is overseeing the implementation of projects is also tasked with tracking that type of data. I don't know if Chris or anyone from Las Cruces can speak to some of the outcomes of the Downtown MRA, but we would be happy to put together some of that information and share that with council.

Councilor Flores said I think that having that information is essential otherwise why bother. If it is just going to have a Band Aid effect and be nice for a little bit because we are looking at real fundamental issues and they are all economic based. That would be very helpful. How does the relationship between MRA and HUD work?

Maren Neldam said there is a lot of the same revitalization programs that are possible through HUD funding that do not require an MRA designation. Sometimes municipalities decide to pair kind of in the same way that we discussed with Lovington leveraging LEDA funds for the development of Drylands Brewery. Using HUD funding within an MRA for affordable housing development but pairing that with mixed use development, potentially developing public/private partnerships that establish ground floor retail or office space or space for community work organizations and so you are able to pair those financing tools together, but they are separate and distinct.

Councilor Gandara asked what would the planning consist of from this point on?

Erika Robers said part of it is that it is part of the state statute. After the designation there has to be an additional MR planning process. The length isn't specified. It just needs to include sufficient community engagement, as you say there is already the El Paseo blueprint but the South Solano area that was sort of added on doesn't really have its own adopted plan. There would have to be a little bit of additional community engagement and outreach and additionally I think there would need to be a little more digging in on what sorts of economic tools you would want to be using. What we just did was kind of a surface level of which area should be designated and does it have the indicators that show that designation could be helpful. We did not do any assessment of which tools might be helpful in this area. How much affordable housing needs to be developed? Those sorts of things have really not been dug into in this initial designation. There has already been a lot of plans that have been done over the years for these areas.

Councilor Gandara said they are just sitting on a shelf and we have committed for that not to happen that way anymore that we would use that plan, quickly. So, I am not in disagreement to that.

Maren Neldam said the MRA planning process tends to review. In a similar way we did a very cursory review of a lot of the adopted plans within the idea of what the MRA plan would really dig into those plans and help provide foundation and framework when thinking about revitalization strategies. One of the really important things that comes out of an MRA planning process is identifying catalytic projects. Identifying specific vacant parcels, specific buildings that are in need of rehabilitation and laying out a vision of how those might be revitalized in the future. It is also important to think about community

Agenda Item #6.2.

benefit and integrating that into the planning process. I don't want to go into too much detail into the MR planning process, I feel that is something that the city is going to be in charge of. We are a consultant here for the designation.

Councilor Gandara asked can staff answer that then? I think it is important to know what it is that staff is visioning around this and how quickly we can do it and what would be the timeframe that we could actually get off the ground? I feel like we need input from staff about what that is going to look like and the timeframes.

Srijana Basnyat, City Innovation and Strategy Manager said we do have a lot of plans in place but those are broader plans so if you look at the blueprint it was really intended to be a quick and dirty plan at that point. That was literally written into the ordinance for community planning blueprints. They don't replicate a very in-depth detailed process for project identification. Those redevelopment projects, catalytic projects would need a finer grained community engagement and also consulting with experts and defining the financing tools that would be most appropriate, so that does require another level of planning and it is a state requirement to do so. That follows the designation. We look to council for direction on the approach and what areas you would like to see designated as a Metropolitan Redevelopment Area and then we can bring forward options as to how to go about them, timeframes, and all of that.

Councilor Gandara said I will say that the West Picacho area needs to be included in this. I think I would agree with Councilor Bencomo that it is an area that is quite blighted, where we have a lot of issues. Is there a tool where staff can forecast what the financial impact may be and does that get factored into this?

Srijana Basnyat said there are revenue modeling tools that can be used. We don't currently use one at the city. There are several out there that allow that type of analysis to be done. If you're talking in terms of benefits other than just the dollar amounts of revenue it would depend on what type. Whether we are doing a TIFF or a TIDD. These things are the next step beyond the MRA designation but yes there are ways to project out. Do we have the capacity in house to do that right now? No but we are actually trying to build that exact capacity. Our consultants did go through all of these areas and compile a ranking of all the different indicators that they discovered either with their onsite field evaluations or the data and so since there were so many different areas that were considered I would maybe suggest if that is available right now to maybe just go over them briefly for the council so that they understand kind of the different things that were looked and how they ranked.

Councilor Abeyta said I think that it is really important to make sure that we are addressing El Paseo/South Solano area that I think was the precipice of why we are doing all of these things. So, I want to make sure that remains a top priority and focus and really that plan. Even perhaps if we are entertaining other areas I think that needs to be our first zone. We are about ready to go budget and I think I have said this at every Council Meeting but if we are looking at the next steps for the consultant and the plan, do we have cost

Agenda Item #6.2.

estimates on what that is going to need to be for next budget cycle and to get that all phased in?

Chris Faivre said those are things that we are looking at based on what your designation will be and then we can figure out amounts for the budget.

Councilor Corran asked related to the logistics of the dark lines or the zones that you designated, I am not sure if those are based on some specific data point or if they're blurry or not? The second part of that is, if we are designating a single MRA as you sort of recommend is it required that it be geographically bound or can we say this MRA is really these two focus areas combined into one request that we legitimize with similar data points?

Erika Robers said these are artificial boundaries. These are boundaries that mainly have been grouped together due to neighborhood, economic indicators.

Maren Neldam said an MRA designation does require a specific boundary. One of the ways to approach that if the proposal is to include West Picacho in this designation you can designate two areas. Clovis recently designated two different districts flanking their preexisting Downtown MRA and so within the designation there is two distinct boundaries and within the MRA planning process there is distinct strategies for each of these areas. A designation does not have to be just one area. It can be multiple districts. If implementation is possible in the near future, then it is appropriate to designate at this time.

Mayor Miyagishima asked regarding our infill that the city has designated areas, how does that compare with some of the proposed areas? Have you ever put a map over it?

Srijana Basnyat said the map in front of you right now, that dash line is the current infill district overlay boundaries. So as you can see almost all of the study areas and blueprint areas fall within that boundary.

Mayor Miyagishima asked would it be harmful to have the whole infill area designated as an MRA?

Srijana Basnyat said I believe that was option one that the consultants presented. The only downside would be the sheer scale of that for implementation.

Mayor Miyagishima said I think for those who want to develop it then it is available and then not having to come back to the city. What if hypothetically I know Amador Proximo is hopefully going to be used for the movie set but what if that had been left out and some investors liked that area and then we have to come back whereas if we just designate it. We are saying it's available, we are not saying that you have to use that. For those new council members the infill, the city has waived a lot of fees to accelerate the development of that area such as building permits. It is not a huge amount but it is some incentives. You can still use those incentives with the MRA?

Agenda Item #6.2.

Srijana Basnyat said the one thing that the MRA allows is the TIFF as a financing tool but other financing tools like the TIDD for example is independent of whether there is an MRA or not. If you wanted to establish financing tools not all of them have to be contingent on MRA designation.

Maren Neldam said I think it makes a lot of sense to want to identify as many areas as possible, the challenge is that you must go through an MRA planning process in order to utilize the tools that are enabled by designation. The primary ones are public/private partnership and getting around the anti-donation clause and TIFF financing. There are other tools available to the city for redevelopment that do not require MRA designation. The challenge that has been laid out with designating a lot of areas at this time is that it will dramatically increase the cost and timeframe of the planning process so that would delay the period of time in which you can start moving towards implementation. A lot of cities that have worked on designating multiple districts at one time end up only implementing in one district at a time just because of capacity. It is ok to designate multiple areas but keep in mind how capacity might be impacted.

Mayor Miyagishima asked could you also for this area here that is shaded, could you make that phase one? So, you can work on that and then maybe the one that hasn't been worked on you can make that phase two and maybe bring that to council and maybe they still want to move forward with phase two but that way you eventually cover the infill zone.

Maren Neldam said yes, if you wanted to designate multiple areas and kind of have those in your back pocket it is totally possible to designate and pass resolutions for multiple MRA boundaries all at one time and approach those based on capacity so maybe choose one or two districts invest for an MRA plan pursuing implementation in a couple of different districts and as capacity is built move on to additional MRA areas.

Mayor Miyagishima said I just wanted to put that out there for my colleagues so that they had yet another area to look at.

Maren Neldam said I would add though speaking with folks from City of Albuquerque they have noted that one of their challenges with having a lot of different districts, is it starts to weaken some of the power of the incentives. Areas that are doing a little bit better off to begin with tend to attract reinvestment first if the same kinds of tools and partnerships are available in those areas. It can be beneficial to focus on areas that have the greatest need first and really start sparking reinvestment in those areas before moving on.

Councilor Bencomo said there is some additional data they were going to show us.

Maren Neldam said all of those indicators that we referenced previously are included in it and so it's not a weighted ranking tool. It's a very basic ranking tool. Basically, if the presence of any of these indicators earned each area a point. We added these points, and we totaled them to rank the different areas based on prevalence indicators. So that is really how El Paseo/ South Solano

Agenda Item #6.2.

was elevated to the top. But we can share that spreadsheet so you can get a picture of how other areas ranked. West Picacho was definitely up there.

Councilor Bencomo asked what is the feasibility right now of doing two designated areas or like Councilor Corran said to have these 3 corridors be one area?

Srijana Basnyat said that is a tough question to answer just because of all the projects going on. If I were to look at just the MRA as the soul kind of objective for the next year or two I would say we could definitely tackle one district per year. If it's sized the way some of the ways the blueprints are sized, if we were to continue at current capacity doing all of the other planning work we are doing and implementation work that would probably be a stretch in itself and that would be a two year estimate but having said that capacity is dependent on the resources that we are provided with.

Ifo Pili, City Manager said capacity and also priority. Meaning what our goals are for each of the areas. If we can identify what those action items will be then I think we can make a better decision. Assistance with specific businesses we have talked about in the past. We did talk about having one so that we could focus, do it right, plan it out right and then move on to the next. We can look at the action items as we move forward.

Israel Chavez, Member of the Public said I just wanted to make a slight point about the IDO being used as the overlay for this. In addition to it excluding the Picacho area which is incredibly important, and I encourage while it may be difficult for the city to implement for staffing, I think we just need more staff. Going back to the infill area, the South Mesquite is excluded from infill development using that ordinance and so to say that everybody gets to use the IDO is not quite accurate. There are the historic districts that have been excluded from the IDO similar to how the West Picacho area has been excluded. That is an exclusion in the ordinance to the South Mesquite overlay ordinance excludes it from the IDO. I think we really need action and how many plans do we have to do. Councilors have said that there are plans sitting on shelves collecting dust. This excessive planning does not put people in housing. It doesn't get them food.

Councilor Graham said I agree Mr. Chavez with the spirit of what you are saying. I wish that I could create a whole bunch more staff positions, I also agree with that but what I think the point is that the money side is one thing, the staff time thing is the other. If we designate five areas and tell staff they can spend two hours a week on each area versus designating one area and saying staff can spend ten hours a week on that area I think that is the spirit of the MRA program as I am understanding it.

Chris Faivre said that in order for us to move forward with this process where we come back to you in March with the actual resolution for designation we have to come out of this meeting with actual boundaries because we have to move forward to advertise that. We kind of need to see which direction you guys are going in terms of the boundaries that you want to put forth for designation.

Councilor Flores asked literally boundaries?

Chris Faivre said yes, literal boundaries.

Councilor Flores said we would probably have to look what has been in the making first.

Chris Faivre said if you go back to the proposals that they put together they have the three options, all the way from the entire IDO to the 2-3 areas to just one area. We sort of need to decide which way we are going in that direction and then specifically if you pick options two or three which areas and which boundaries and they have kind of spelled that out on this map here.

Councilor Flores asked what do you see as being expeditious implementation?

Srijana Basnyat said I think staff is leaning toward number three approach, but this is an entirely City Council decision to make.

Councilor Flores asked how would you approach this to make it expeditious, effective and doable?

Srijana Basnyat said if it helps I would probably look at this in terms of how we can define a pilot MRA first to kind of define all of the challenges and opportunities. There is a danger of going too fast too far and I completely understand the desire to do everything at once but when you prioritize everything you prioritize nothing.

Councilor Flores asked you think moving with the El Paseo/Solano first would be the best way to approach it since that is the one who has had a community group focusing on that right?

Srijana Basnyat said you are correct. It is our oldest blueprint. I will say in terms of revising that blueprint is also essential and it is the actual state statute that we do have to do an MRA plan. When a plan is older than ten years you do want to go out to the public again and reestablish the need and voices and the projects.

Councilor Flores asked we would have to go back to the drawing board on the existing MRA?

Srijana Basnyat said not back to the drawing board, we don't have an MRA plan in place so we would have to establish a new MRA plan specifically to meet state statute. What I am saying is the plan that we do have, which is the blueprint it is pretty old. It warrants an update and with that in mind the MRA plan would take care of two birds with one stone. The community planning blueprint that the City Council adopted in 2011 I believe.

Councilor Flores asked we would have to go back to that before we could move forward?

Srijana Basnyat said no, the MRA plan should take care of the details.

Councilor Flores said you are asking for direction, and it is very hard for me to make a decision based on and we have been informed along these past five years but at this point it looks like we are still at square one.

Srijana Basnyat said the planning that we have done actually does provide the vision and framework to proceed. Even to say that we want an MRA in that area that direction was provided by the original plan. It was not a wasted effort, the only point that I am trying to make here is all plans do need updating anyway. I am just trying to address the concern that we are over planning.

Councilor Flores asked if we were to say, let's move forward with the El Paseo/Solano one and then that gets in motion and then we go back to the drawing board to make another designation?

Elizabeth Teeters, Economic Development Director said we were just talking back there about different options. You can always designate two areas right now. It does not mean that we have to start the planning process for both those areas. We could designate both Picacho and El Paseo but we can start the planning process for El Paseo right away and then move into Picacho. That way we do not have to come back and make another designation in another few years. That is what we are looking for right now, designation. That is the whole point of this whole process.

Councilor Flores asked did you say you needed a resolution for this?

Chris Faivre said yes, we will be coming back in March with the actual resolution to adopt.

Councilor Flores asked it will be consistent with making our choices today?

Chris Faivre said correct. When I said boundaries before, specific areas, if you said El Paseo/South Solano that is one area and West Picacho was another one. I didn't mean specific streets or things of that nature.

Ifo Pili, said I would agree with that recommendations to have those two designations and then we can come back just so that we can move forward. This presentation is actually just part of the process. The other thing I want to make mention of is there seems to be a feeling here that once we designate this area as an MRA we can't do anything for anywhere else. We have the Lift Up Program, we have all these other tools available to us, like the TIDD, at this point there is no funding mechanism for the MRA. It is really a designation. I do think we should have two designations. This allows us to move forward. The other issue as well as continuing further with more designations at one time is you can only have a priority number one. I don't think it would be problematic to have two designations right now.

Agenda Item #6.2.

Councilor Bencomo said I am really going to push to have West Picacho be included. I think it is a critical affordable housing opportunity that we cannot miss out on given the other economic development tools that could be an option for us in that area. Second Street to Motel is a mile and half, it doesn't even have to go further out north or west. It could go to Hadley and Tashiro. It could even be one block north and one block south. From Second Street to Motel, it is a small area, it is not as big as the El Paseo/ South Solano, which is clearly a priority that I think El Paseo/South Solano have very similar small business assistance needs. There is a very actionable item already on West Picacho that we could pursue with private/public partnerships and ensuring that motels can be affordable housing units. That would be my suggestion.

Councilor Gandara said what I would like to see and we have asked is the priority list and how you weighted each of those indicators that would be very important for all of the areas that you have highlighted here before I can make a decision. We have been talking about the El Paseo/South Solano for some time. That is absolutely first priority. I will say that West Picacho needs to be added. Is it a second priority? I am not sure. I also think that with that we have over the years since I have been here have limited staff in the ability to move forward in some of the things because we are all over the place. The need is so great so I will be advocating for extra some additional FTEs to help because it is within our scope to develop an MRA office. We have the Lift Up Las Cruces, in that Amador area where we do have a blueprint and where we are focusing our time and attention so I could very well argue that it should be the next place. If we could have that information before and I don't think that necessarily, I don't know why we are waiting till March? Is it just because that is the way the process is in terms of what you as staff have to do to get the resolution together?

Chris Faivre said yes, the state mandates a certain amount of time where things have to be advertised and so based on that schedule the soonest we could get it is March 20th to come back for resolution. We are trying to get the weighted slide so they are going to email it to Srijana so we can get it up here.

Councilor Gandara asked how will the changes in the MRA that we are advocating for at a state level, how would that affect any of this or will it?

Chris Faivre said if those changes at a state level were to happen that would allow council to adopt those changes into any existing or future MRAs. Which means if you were to set up West Picacho MRA you could go in and set up the funding source so that you would be pulling into similar how we do the TIDD downtown. Those would be a game changer for MRAs because you would have the ability to create a funding mechanism through the actual designated area.

Councilor Abeyta said my first choice obviously is the El Paseo neighborhood and planning area and then I will suggest the Alameda and Picacho area as the second. Those would be my recommendations with the strong advisement that we have the appropriate funding and staff to do it right.

Agenda Item #6.2.

Maren Neldam said this is an unweighted ranking tool. We did not create any rated ranking for any of the indicators. The very basic tool that we use to help us in focusing in different areas for existing conditions assessment. This is not a precise measure. El Paseo/South Solano has 12, that neighborhood east of that has 10, West Picacho also has 10 and others. They are all clustered. Every single area within the IDO demonstrates a number of indicators that would support designation. West Picacho is actually 8 and I think that is one of the challenges of reviewing census data for that area. Census data really doesn't track some of the populations that live in that area.

Councilor Gandara asked how did you identify the abandoned properties?

Maren Neldam said we received vacant parcel data from the city. We were looking both at vacant parcel, vacant commercial and vacant residential. There was abandoned property data we were told to look at that knowing that it is not regularly updated so it might not be completely accurate. We noted where concentrations of that is. Mesquite actually had some of the highest concentrations of abandoned properties and I think that was followed by El Paseo/South Solano.

Councilor Gandara said I know when we identified the Lift Up area and sent numerous correspondence to the residents handfals, large stacks returned back as abandoned residential. I was really concerned about that because I didn't think that we had identified or had a place to make that notation. It's something that I think if we are going to continue to do this and utilize this particular matrix that somewhere somehow, we have to update that and keep that updated. It was important to me, and I had let Ifo know that there was a number of abandoned residential properties that are just sitting there. Uninhabitable. They may not look bad but there are just sitting there and that always concerns me. I hear Councilor Bencomo just in the nature of the geographic area, those hotels that need so much updating and just seeing it is an entry point into our city. The numerous complaints that we get about the way it looks sometimes. That is something we should look at in terms of the number of tools that we can use to lift that community up. More specifically to affordable housing.

Councilor Graham said my inclination is to go with the recommendation of one MRA designation however I am definitely willing to add the West Picacho as priority two.

Ifo Pili said I don't see a problem with having two designations as recommended by Elizabeth. I would like the priority to have a one and two priority. El Paseo/Solano would be our recommendation and West Picacho would be the second.

3.2 MUNICIPAL COURT UPDATE.

Joy Goldbaum, Municipal Judge gave the overhead presentation.

Dawn Shults, Municipal Court Services Manager continued presentation.

Agenda Item #6.2.

Councilor Bencomo asked you go into this expungement process as soon as someone comes in front of you for any new charge then you identify that they have previous charges and that is how you start to identifying expungement?

Judge Joy Goldbaum said not really, we are not waiting. We are being totally proactive on every single case.

Councilor Bencomo said you talked about potentially 12 folks who I would characterize as familiar faces who are coming into the court system that have charges brought against them for trespassing, for vandalism and may also have some sort of mental health situation happening and then I am hearing you say which is really helpful because I did not know that then you refer someone to District Court and then it is in their jurisdiction. Once that has been determined, what options are at the court's disposal? Whether it is you or whether it is District Court right now?

Judge Joy Goldbaum said right now when somebody is found incompetent, my option, dismiss/release.

Councilor Bencomo asked what about District Court?

Judge Joy Goldbaum said District Court does have a mental health assisted outpatient treatment. It's a treatment court basically for people with mental health challenges, behavioral health challenges. They don't currently accept misdemeanor defendants which is all I have. So, I don't have options, but we are trying to fill that gap. New Mexico is with the majority of states that when somebody is found not competent, if it is a felony, if it is a violent felony especially the District Court will order the person to be treated to competency, you try to get them to be competent enough to stand trial. If that doesn't happen, they can face that amount of time that the conviction will hold in the state hospital. But you also have to understand that our hospital in Las Vegas has a very limited number of beds. Everybody in the state is trying to get those beds and it makes sense that they are violent felons. Nobody tries to treat people to competency for misdemeanors and that is almost nationwide.

Councilor Bencomo said I also appreciate you talking about the Criminal Justice Coordinating Council. Some of the things you mentioned are first time I am hearing of them and I am wondering what can you take back to that group because right now council is saying we want to work on options. This keeps happening and many of the times it is many of the same folks. I would like at some point for this continuum to come back and say these are some ideas that we have. This is priority for us right now.

Judge Joy Goldbaum said the SIMS Task Force, we are trying to come up with a solution for the entire county and I think that is where the solution lies for filling in the gaps. It is almost always "X" romantic partners. That is what I see. I am not getting these things where people do things on businesses. Now they may be filed in Magistrate Court, but I think it is really hard because what I primarily see are shoplifting and trespass and it's easier for law enforcement to catch those people. There are generally witnesses who see them because they often trespass over and over again at the same place where they have gotten a

Agenda Item #6.2.

trespass card. It is much easier to catch those people and cite them. It is very hard I think to catch the people who are doing the vandalism to the businesses.

Councilor Bencomo asked if those folks are caught the officer determines where to file that case?

Judge Joy Goldbaum said yes, they can file it in city court or state court.

Councilor Bencomo asked they would go to Magistrate Court is what you are saying?

Judge Joy Goldbaum said some of them may but I would be pretty surprised if they were getting a lot of criminal damage to business properties for the same reason. It is much more difficult to cite people for that.

Councilor Bencomo asked what specialty courts do we have right now in Dona Ana County?

Judge Joy Goldbaum said the Magistrate Court has a DWI Drug Court and they let me participate in it for a while and I did. One problem we had is the amount of time to resolve a misdemeanor in Magistrate Court is 18 months or the maximum probation is 18 months and in city court it is one year from beginning to end. That is a limitation and then it was just also a little difficult when they met because that court meets for several hours. There are several in District Court. There is a Veteran's Treatment Court, we sometimes refer people to that. There is the Outpatient Treatment. They also have Drug Court at District Court for felonies.

Councilor Bencomo asked is there a model where Municipal Court would have specialty courts?

Judge Joy Goldbaum said sure.

Councilor Bencomo asked what would be needed for that?

Judge Joy Goldbaum said a prosecutor and a single defense attorney and a court. The Director of Community of Hope already opened her conference room to us, it has Wi-Fi. We can use it once, twice a month. We need the support of the Council and City Attorney's Office.

Councilor Bencomo said I would love to see a proposal. I met with Judge Arrieta a while ago and he mentioned to me that Drug Court is significantly less expensive than putting someone in jail. Jail is very expensive for taxpayers. I would love to see a proposal of what a specialty court could look like for Las Cruces.

Councilor Abeyta asked you had said about the time of entering into the system and exiting the system and that whole process is around 182 days for resolution for most cases?

Agenda Item #6.2.

Judge Joy Goldbaum said correct.

Councilor Abeyta asked what is usually the reason for that date? Does that look pretty average for a court system?

Judge Joy Goldbaum said we have not really had any difficulty meeting it. Is that your question?

Councilor Abeyta said for efficiency's sake, and I know everybody wants to see resolution when things happen if a crime does occur, I'm sure it is peace of mind for those who have been affected on either side that these things are done with that efficient manner. I am curious as where we range as far as, does this look like a good time? Have you been able to become more efficient with that process? What does that look like when you have the use of alternative judges? Does that help alleviate timeframe? We have an alternate judge as well. I am curious to see if that is all working together to make a more efficient system.

Judge Joy Goldbaum said we don't have any trouble meeting the 182 days. Other than that period of the first fifteen months where we were doing things virtually and people who were demanding in person trials.

Councilor Abeyta asked what would you say is the average?

Judge Joy Goldbaum said I don't know. If you look at the life cycle of a case most cases settle at pretrial hearing. That is usually within the two months of arraignment and that is a plea bargain basically. The person knows what they are getting. The prosecutor knows what they are getting. Nobody gets 100% but they get certainty. There is a lot of benefits settling at pretrial and we generally do.

Councilor Abeyta asked with the use of alternates versus use of other judge, how is that going so far? What does that case load look like?

Judge Joy Goldbaum said to my knowledge Judge Streeter is planning to resign. I thought it was going to be because she was going back to District Court but when we had the conversation, she said I really want to be home with my kids. She also has very fixed times during the day, ten o'clock and two o'clock when she has to pump breast milk and that is just not conducive with the schedule we set up for hearings. It takes her about thirty minutes, and she said it is absolutely inflexible, so I am just covering everything for now.

Councilor Abeyta said that seems like an HR issue. I am going to move on to a different line of questioning. What modernization have you taken in your tenure for changes for the Municipal Court including perhaps computer systems that might be needed?

Judge Joy Goldbaum said after conversation with the Director of the Dona Ana County Detention Center we started sending out text to defendants to remind them of their hearing and due dates for payments. It cost us about twenty cents

Agenda Item #6.2.

per text and we have only been doing it for about six months, so we really don't have the data. The other problem is that homeless folks often do not have a phone.

Councilor Abeyta said regarding the building, obviously we saw some statewide issues that had significant security, not only with any elected officials' things like that. Can you talk about the security that you have within the facility, any changes that have been made including things like parking lot structures?

Judge Joy Goldbaum said we always have a security guard in the courtroom with anybody who is hearing cases in the courtroom, and we have a security guard at the door. Occasionally the firm that provides them will provide additional guards if we request them.

Councilor Abeyta asked the use of cameras?

Judge Joy Goldbaum said we have some cameras that are in the parking lot. We are looking into getting them.

Councilor Abeyta said I was told there were some. Are they not there anymore?

Judge Joy Goldbaum said they are in the parking lot but not where people come into the building or sides of the building and we are a little concerned about that.

Councilor Abeyta asked with a follow up with a question about specialty courts I am curious if we were to look into that would we need to make some adjustments to our ordinance? It does have here under Section 17-32 Section A that "The Municipal Judge I shall be present and shall preside at Municipal Court for at least 40 hours per week unless absent for annual leave, sick leave or attendance at a Municipal Judge's conference and I know you have been a frequent attendee here at all of our Council Meetings, I am sure that eats up into the 40 hours and I am curious to see if there is other times, I know the time here doesn't count because you are not presiding over the court. So, I am curious to see how all that stuff would be integrated together.

Judge Joy Goldbaum said I am not sure I understand your question. We don't have dockets on Monday afternoons and if I have like a doctor's appointment or something we have an alternate. I guess I am not understanding your question.

Councilor Abeyta said I am just curious to see if there is an amendment that would be needed to specialty courts so that you can preside over those because our ordinance is pretty specific to just presiding over the Municipal Court.

Judge Joy Goldbaum said it would be helpful.

Agenda Item #6.2.

Councilor Abeyta asked when it does say this item, shall be present and preside in Municipal court for at least 40 hours a week does that mean present in the building for that amount of time?

Judge Joy Goldbaum said I take it to be when the court hours are. Our courts open from 7:30-4:30, Monday to Thursday and we close at 12:30 on Fridays.

Councilor Abeyta asked you are able to adhere to the 40 hours?

Judge Joy Goldbaum said yes, and I have to work Sunday morning for probable cause hearings.

Mayor Miyagishima asked when you talked about incompetent and after so many times its remanded to District Court?

Judge Joy Goldbaum said every time.

Mayor Miyagishima said I am looking at one particular individual who from January 25th, 2021, to March 11th, 2021, he was on a payment plan because he was arrested for criminal trespassing and some other things. Interestingly on 7/9/2021 thru 7/3/2022 arrested sixty different times and was let go for dismiss or incompetent. He was charged with criminal trespass, assault, indecent exposure, resisting and obstructing arrest and shoplifting. If I was to go to District Court, will I find his name? What will I find?

Judge Joy Goldbaum said it sounds like. it sounds like he has been found not competent multiple times and that is not unusual. Somebody can be competent and then become not competent, it does happen occasionally but remember the referral doesn't have to come from me. It can come from someone at the jail, defense attorney, the officer, city attorney.

Mayor Miyagishima said I just want to clarify that, whether or not that is in District Court or not. About how many people do you think you saw in 2022?

Judge Joy Goldbaum asked are you talking about noncompetent?

Mayor Miyagishima said everybody that you see, from traffic tickets to criminal trespass.

Judge Joy Goldbaum said the total that was filed in 2022 was 6,486.

Mayor Miyagishima asked of those how many were put in jail?

Judge Joy Goldbaum said I don't know. It could have been before they were convicted. It could have been when that they were arrested on a warrant from another court. There is no way for me to isolate that.

Mayor Miyagishima asked how many did you put in jail last week?

Agenda Item #6.2.

Judge Joy Goldbaum said I don't know. I held some people in jail that I saw at prison arraignments.

Mayor Miyagishima said not prison arraignments. They came before you and you put them in jail.

Judge Joy Goldbaum said most people enter pleas and most pleas include a sentence from the prosecutor.

Mayor Miyagishima asked let's say they don't plead incompetency, and someone comes, and they are arrested for criminal trespass and then they show up. They are released on their own recognizance, do you tell them anything? Do you talk with them and say if I see you again something else is going to happen to you?

Judge Joy Goldbaum said absolutely not. That would be completely unethical for me to do that.

Mayor Miyagishima asked you can't make that a condition that if you are letting them out on their own recognizance?

Judge Joy Goldbaum said I thought you were talking about sentencing. No, I do it frequently as conditions of release. New charges, failing to attend court, yes.

Mayor Miyagishima said I remember one time you telling me and now I am going to switch to this brief time to homeless, the reason why a lot of these are Judge dismissed because they won't come back for the second hearing.

Judge Joy Goldbaum said I don't dismiss them if they don't come back. I issue a warrant.

Mayor Miyagishima asked a warrant for their arrest?

Judge Joy Goldbaum said correct.

Mayor Miyagishima said in March 21st, 2022, city passed a resolution allowing Municipal Court to squash the failure to pay warrants that dated back from like 1900 to 2017, it amounted to some \$3 million. After that date 2017, have you cleared or got rid of any failure to pay warrants?

Judge Joy Goldbaum said we set ability to pay hearings on every case where somebody owes fines, and they are not paying. If they show up we put them on a payment plan. If they don't and it is the first time we issue a summons and if they don't, it's a warrant.

Mayor Miyagishima asked since after March 2022, because we identified these failure to pay warrants and they dated to sometime in 2017, let's just say since 2018 because you started serving in 2017, so since 2018 up until today have you unilaterally squashed these failure to pay warrants?

Judge Joy Goldbaum said we did. We squashed the warrants and set everything for a failure to pay hearing if they owed and weren't paying. If they had not updated their address with us and we got returned mail that would trigger a warrant.

Mayor Miyagishima said that is taxpayer money that is owed, that is why the City Council has to sign off on that resolution that we did in March of last year. So I don't know how more clear to ask you this Judge, since 2018 to today these failure to pay warrants have you just squashed them and basically said you don't need to pay that anymore?

Judge Joy Goldbaum said if we didn't have information, like an order to show cause or returned mail. I had to give them an ability to pay hearing and if they don't show up it is the summons and then the warrant.

Mayor Miyagishima asked you are saying you have not squashed or gotten rid of any failure to pay warrants since 2018 other than the time that we gave the courts permission to do that in March 21, 2022?

Judge Joy Goldbaum said we did void some warrants because I didn't want the court to become like Ferguson, Missouri, where you just incarcerate people because they are poor. Yes, that's why I did. That is why I wanted to have ability to pay hearings.

Mayor Miyagishima asked when did the City Council approve those? Even though we keep separate we theoretically the executive branch of the city. There is a city code, Las Cruces Municipal Code that requires and that is why we did it March 20, 2022. That is why I wanted to find out if you did squash failure to pay warrants from 2018 on up to now and you said you think you did.

Judge Joy Goldbaum said yes because they were issued without hearings.

Mayor Miyagishima said I believe I might have a copy, but can you get me that copy of those warrants that you squashed for failure to pay because that has to have City Council approval, Judge. That is why we did the resolution in March of 2022.

Judge Joy Goldbaum said I am not giving them amnesty on paying. They still owe the money.

Mayor Miyagishima said for example when the city gets rid of utility bills that doesn't mean that they don't owe us, that just means we don't carry it on the books. We got rid of them. I think much like this is the same thing here.

Judge Joy Goldbaum said I think that the court has discretion to squash warrants and try to get the money other ways.

Agenda Item #6.2.

Mayor Miyagishima asked why did we do the resolution to do this in March of 2022?

Judge Joy Goldbaum said I am unfamiliar with it. I was not involved, and I wasn't here. If you will go back and look at the slide for the police hours and indigent representation cost. What I want to present to you is something that is being done in the Santa Fe Municipal Court. It is similarly situated. They have a full time Judge and an attorney that occasionally hears cases. Everything else is pretty similar but they have a single defense attorney and a single prosecutor so that the officers don't have to come in and spend thousands of hours at pretrial hearings. What it does is eliminate invoices from multiple attorneys. There are lawsuits from multiple attorneys suing us for payment, there is no need for auditing and accounting of attorney appointments, no need to create contracts for attorneys, you stop having no shows by panel attorneys. It saves thousands of dollars even after hiring a full-time defense attorney and a full-time prosecutor. Appeals by indigent defendant will always have the same attorney as the underlying matter. It saves officer hours. Officers only have to appear as witnesses in trials not for pretrials. Cases don't get dismissed at pretrial for officer failure to appear. Makes scheduling hearings easier. Decreases the likelihood of dismissal due to the violation of the six month rule. I think that if you looked at what we are spending on panel attorneys that would more than cover a full-time defense attorney. The only cons that I came up with were needing space to house the prosecutor and the defense attorney. I know the City Attorney's office is short handed right now and I think that hiring Assistant City Attorneys that have to have a breadth of knowledge in multiple areas has proved really difficult, but I think that hiring a single prosecutor and a single defense attorney would not be problematic. There are many attorneys in this this community that have been prosecutors and defense attorneys and I think those would really appeal to people.

Mayor Miyagishima said Ifo and I met with the DA ironically at a breakfast and were talking about how I believe there could be some changes. I have heard council talk about they want to be able to prosecute domestic violence and some other DWI, other things and he is open to working with the city. Please allow us to work with him and see what we can do and also benefit with what you are talking about.

Judge Joy Goldbaum said I am not sure how that would affect the City Attorney Office.

Mayor Miyagishima said the City Attorney would work with the DA's Office as well.

Jocelyn Garrison, Acting City Attorney said on the numbers that you presented the total numbers for 2022, 4869 cases. Are proposing a prosecutor and defense attorney handle all of those cases?

Joy Goldbaum said yes. I think it could be done. It could be expedited, and I think it could be done.

Agenda Item #6.2.

Jocelyn Garrison said I think we could have a discussion about this later. One of my concerns is just that according to ethical standards both parties, the prosecutor and defense attorney, have to be able to ethically handle that case load and although the American Bar Association hasn't established an exact number of how many cases you can handle, the suggestions are around 200-300 per year for misdemeanors and that would call for about 24 attorneys with that number.

Judge Joy Goldbaum said remember a lot of cases get dismissed for a variety of reasons but let's have this conversation and I think it is important. I was kind of interested on hearing what Chief Dominguez thought about not having to have his attorneys in court all that time.

Jocelyn Garrison said if I may on that topic as well one of the issues that presents on that topic as well Judge Goldbaum is the prosecutors when they officer prosecute cases, they are prosecuting them so if they were not present, who would be the person prosecuting and would that be you?

Judge Joy Goldbaum said no, for trials they would be there as witnesses.

Jocelyn Garrison asked who would be the prosecutor in that case?

Judge Joy Goldbaum said the prosecutor that hopefully the city would hire to prosecute.

Jocelyn Garrison said this is only in an event that there is a system established where there is an assigned prosecutor and defense attorney.

Judge Joy Goldbaum said I don't see how it would work otherwise.

Jocelyn Garrison said that was my concern and one thing that I would propose to you as far as if you are concerned about officer time is just to allow telephonic appearance so that you take out that driving time and they can appear while they are in their vehicle.

Judge Joy Goldbaum said the reason it didn't work when we were doing it before was getting signatures. Not just from defendants but also from officers.

Jocelyn Garrison said if you can approve anything like an e-sign type program, even Adobe you can send for signatures. If you would accept that we would think that everyone would be ok with that as well.

Councilor Flores said I am very disturbed by your presentation. I don't think it is totally appropriate for you to be discussing this directly with our City Attorney. On what authority do you believe you have the right to come and address questions directly to our City Attorney to presume that this body is going to in any way go outside of the scope of whatever we have in the Municipal Code. Some of your presentation frankly with all do respect was rambling. I don't know what conversations you have had with the Mayor or our City Attorneys or our City Manager or anybody else on this dais. All I know is that it seems highly

Agenda Item #6.2.

inappropriate for you to come before this body and then to be speaking directly to our City Attorney and then suggesting that you have meetings based on what you believe will come to a good end. You have not showed us a model of how this works. You rambled something about some city somewhere in the world that has something going and I don't understand why you are here. I don't know what your intent is. You have given us all these statistics, all these numbers but there is no reference to the importance or reference to support whatever it is you are asking for. I don't think it is appropriate for our City Attorney to be having a discussion with Judge Goldbaum regarding any potential changes in the Municipal Court, especially if they are outside the scope of the Municipal Code.

Councilor Corran said part of this was my request to learn more about Municipal Court and I do think that I have learned a number of things today that I did not know before. I do appreciate Judge Goldbaum coming and sharing these with us, but I would ask those linked Excel files that are included there and the one that you sent us there are only two linked so, I think it might not be the most updated one so if we could also have that most updated file, that would be excellent.

Judge Joy Goldbaum asked you mean from the slides?

Councilor Corran said the slide that shows these four data sources. The one you sent us only has two. I look forward to us thinking about alternative ways to addressing crime in whatever aspect we are considering it.

4. ADJOURNMENT

- 4.1** Councilor Tessa Abeyta made a motion to Adjourn at 4:29 p.m. Councilor Yvonne Flores seconded the motion. Carried unanimously.

Mayor

City Clerk



City of Las Cruces

City Council Action and Executive Summary

23-096

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:	Adopted: February 21, 2023		
Drafter:	Donny Prosis	Department:	Financial Services
Program:	Purchasing	Line of Business:	Procure-to-Pay
Title:	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).		

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

PURPOSE(S) OF ACTION:

To authorize an increase in the annual not-to-exceed amount for a contract for outside counsel services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City's Legal Department has contracted with Jarmie & Rogers, PC for specialized legal representation and outside counsel services. Services of attorneys are exempt from competitive bidding as outlined in the City's procurement code, Las Cruces Municipal Code chapter 24-4. The anticipated amount for outside counsel services for fiscal year 2023 and later years exceeds the City Council approval threshold of \$75,000. The Legal Department is requesting authorization to amend contract no. 22-23-024 from an amount not to exceed \$74,999 plus New Mexico Gross Receipts Tax, to an amount not to exceed \$180,000 plus New Mexico Gross Receipts Tax annually, as outlined in Exhibit "A."

SUPPORT INFORMATION:

[Exhibit "A" - 22-23-024 Outside Counsel Svcs Amendment No. 1](#)
[Attachment "A" 22-23-024 Outside Counsel PSA - Jarmie & Rogers](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

Agenda Item #7.1.

BUDGETED AMOUNT: 1,500,000 **AVAILABLE AMOUNT:** 641,737 **EXPENDITURE AMOUNT:**
180,000

Funding Source(s):
60331004-721030

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

- ☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

- ☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the increase in the annual not-to-exceed amount of the contract with Jarmie & Rogers, PC for specialized legal representation from \$74,999 to \$180,000 plus tax annually.
2. Vote "No"; this will not approve the Resolution and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on direction from City Council to staff.
4. Vote to "Table"; this will delay the increase in the annual not-to-exceed amount of the contract with Jarmie & Rogers, PC, which will impact Legal Department operations, and City Council will need to provide alternative direction to staff.

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).

The City Council is informed that:

WHEREAS, the City's Legal Department has contracted with Jarmie & Rogers, PC for specialized legal representation and outside counsel services; and

WHEREAS, services of attorneys are exempt from competitive bidding as outlined in the City's procurement code, Las Cruces Municipal Code chapter 24-4; and

WHEREAS, the anticipated amount for outside counsel services for fiscal year 2023 and later years exceeds the City Council approval threshold of \$75,000; and

WHEREAS, the Legal Department is requesting authorization to amend contract no. 22-23-024 from an amount not to exceed \$74,999 plus New Mexico Gross Receipts Tax, to an amount not to exceed \$180,000 plus New Mexico Gross Receipts Tax annually.

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

(I)

THAT the Resolution authorizing the increase in the annual not-to-exceed amount of contract no. 22-23-024 with Jarmie & Rogers, PC as outlined in Exhibit "A" is hereby approved.

(II)

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

DONE AND APPROVED this day of

Agenda Item #7.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



AMENDMENT NO. 1

22-23-024 OUTSIDE COUNSEL SERVICES

This amendment, made this ____ day of February, 2023 by and between the CITY OF LAS CRUCES and Jarmie & Rogers, PC of Albuquerque, New Mexico.

WITNESSETH

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated January 17, 2023, the parties hereby agree as set forth below:

The following provisions are added:

- 1. Section 4. COMPENSATION is modified to an annual amount not to exceed \$180,000, plus applicable taxes.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated January 17, 2023 between the parties is hereby ratified and confirmed.

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

JARMIE & ROGERS, PC

CITY OF LAS CRUCES

BY: _____
Name
Title

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 1/19/23

City Attorney



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 17th day of January, 2023 ^{AM} by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Jarmie & Rogers, PC, of 514 Marble Ave NW, Albuquerque, NM 87102, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Specialized legal representation – outside counsel services

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 \$74,999, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices monthly. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

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

5. DEVOTION OF ADEQUATE TIME

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

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of one year and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

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

8. CHANGES AND EXTRA SERVICES BY THE CITY

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

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

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

10. DELAYS

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

11. TERMINATION

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

Page 62 of 719

With Copies to: City Attorney
 Purchasing Manager

TO CONTRACTOR: Jarmie & Rogers, PC
 514 Marble Ave
 Albuquerque, NM 87102
 ATTENTION: Mark Jarmie

23. SCOPE OF AGREEMENT

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

24. SEVERABILITY

The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST

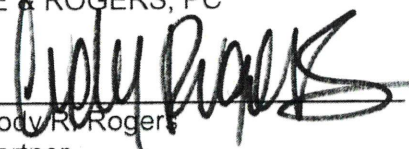
CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

(SIGNATURE BLOCK FOLLOWS ON NEXT PAGE)

22-23-024
Outside Counsel Services

JARMIE & ROGERS, PC

BY:


Cody R. Rogers
Partner

Date

1/12/23

CITY OF LAS CRUCES

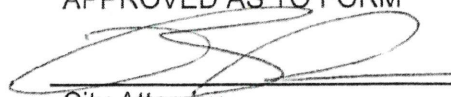
BY:


Alicia Hernandez
Interim Purchasing Manager

Date

1/17/2023

APPROVED AS TO FORM


City Attorney

11/4/22

EXHIBIT A

SERVICES

CONTRACTOR will provide specialized legal representation services including consultation in evaluation of and representation in any matters, including but not limited to defense of litigation on a case-by-case basis when assigned by the CITY.

The representation requires expertise and specialized knowledge of the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29 NMSA 1978 Sections 1983 and 1988 of the Civil Rights Act, the New Mexico Human Rights Act, Section 28-1-1 to 28-1-15 NMSA 1978, the Fair Pay for Women Act, Sections 28-23-1 to 28-23-6 NMSA 1978, the Whistleblower Protection Act, Sections 10-16C-6 NMSA 1978, the Inspection of Public Records Act, Sections 13-2-1 to 14-2-12 NMSA 1978, the Public Peace, Health Safety, & Welfare State Ethics Commission Act and any other cases as assigned where the CITY does not possess the capability to represent these matters in house.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/12/2023

PRODUCER Letherer Insurance Consultants, Inc. 1540 Juan Tabo NE, Suite H Albuquerque, NM 87112		THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Jarmie & Rogers PC 514 Marble NW Albuquerque, NM 87102		INSURERS AFFORDING COVERAGE INSURER A: Berkley Insurance Company INSURER B: INSURER C: INSURER D: INSURER E:	NAIC # 32603

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				☐ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER Professional Liability Insurance	PLP-1929455-2	04/01/2022	04/01/2023	\$2,000,000/\$2,000,000 per claim/aggregate \$5,000 per claim deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

City of Las Cruces Attn: Purchasing PO Box 20000 Las Cruces, NM 88001	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



City of Las Cruces

City Council Action and Executive Summary

23-097

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A
1st Reading:	Adopted: February 21, 2023
Drafter: Barbara DeLeon	Department: City Manager's Office
Program: Council & Community Support	Line of Business: Council & Community Support
Title:	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.

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

PURPOSE(S) OF ACTION:

Grant the City Manager authority to sign documents.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The opioid crisis began in the late 1990s with the drug OxyContin. Drug companies began telling the medical community that opioid drugs had a low risk of addiction, and health care providers began prescribing them at higher rates, according to the National Institute on Drug Abuse. The State of New Mexico has enacted a series of measures to combat the scourge of opioid addiction, but the epidemic has affected generations of New Mexicans.

In 2017, New Mexico's drug overdose rate of 24.8 per 100,000 was above the national average and Federal data put the state's number of deaths at 493. Figures show more than 70,000 drug overdose deaths occurred in the United States that year. That same year, New Mexico filed a lawsuit accusing opioid manufacturers of aggressively pushing highly addictive and dangerous drugs and falsely representing to doctors that patients would rarely succumb to addiction. It accuses distributors of failing to monitor, investigate and report suspicious orders of prescription opiates. Retailers were also targeted by the lawsuit which seeks to recover costs associated with the opioid epidemic.

Some claims related to the litigation have been resolved via settlements. The State of New Mexico has requested that individuals be authorized to sign participation agreements and this resolution establishes the City Manager as the authorized signatory.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

Agenda Item #7.2.

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution and grant the City Manager authority to sign agreements related to State of New Mexico opioid litigation.
2. Vote "No"; this will not approve the resolution nor grant the City Manager authority to sign agreements related to State of New Mexico opioid litigation.
3. Vote to "Amend"; this could modify the resolution based on direction from City Council to staff.
4. Vote to "Table"; this could delay the approval of the resolution. Staff may require additional direction from City Council on how to proceed.

RESOLUTION 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.

The City Council is informed that:

WHEREAS, the opioid crisis began in the late 1990s with the drug OxyContin, drug companies began telling the medical community that opioid drugs had a low risk of addiction, and health care providers began prescribing them at higher rates; and

WHEREAS, the State of New Mexico has enacted a series of measures to combat the scourge of opioid addiction, but the epidemic has affected generations of New Mexicans; and

WHEREAS, the State of New Mexico filed a lawsuit accusing opioid manufacturers, distributors, and retailers of fueling the opioid crisis through improper marketing and distribution of drugs; and

WHEREAS, some claims related to the litigation have been resolved via settlements.

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

(I)

THAT the City Manager is authorized to sign agreements related to the opioid litigation.

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



City of Las Cruces

City Council Action and Executive Summary

23-098

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A
1st Reading:	Adopted: February 21, 2023
Drafter: Barbara DeLeon	Department: City Manager's Office
Program: Council & Community Support	Line of Business: Council & Community Support

Title:	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.

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

PURPOSE(S) OF ACTION:

To develop a delegation.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The opioid crisis began in the late 1990s with the drug OxyContin. Drug companies began telling the medical community that opioid drugs had a low risk of addiction, and health care providers began prescribing them at higher rates, according to the National Institute on Drug Abuse. The State of New Mexico has enacted a series of measures to combat the scourge of opioid addiction, but the epidemic has affected generations of New Mexicans.

In 2017, New Mexico's drug overdose rate of 24.8 per 100,000 was above the national average and Federal data put the state's number of deaths at 493. Figures show more than 70,000 drug overdose deaths occurred in the United States that year. That same year, New Mexico filed a lawsuit accusing opioid manufacturers of aggressively pushing highly addictive and dangerous drugs and falsely representing to doctors that patients would rarely succumb to addiction. It accuses distributors of failing to monitor, investigate and report suspicious orders of prescription opiates. Retailers were also targeted by the lawsuit which seeks to recover costs associated with the opioid epidemic.

Some claims related to the litigation have been resolved via settlements. Settlement proceeds will be distributed to the State (45%) and to local governments (55%). This resolution establishes the creation of a local delegation to discuss the use of the opioid settlement funds distributed to the State.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

Agenda Item #7.3.

☒ 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 develop a delegation to discuss the use of opioid settlement funds distributed to the State of New Mexico.
2. Vote "No"; this will not approve the resolution nor develop a delegation to discuss the use of opioid settlement funds distributed to the State of New Mexico.
3. Vote to "Amend"; this could modify the resolution based on direction from City Council to staff.
4. Vote to "Table"; this could delay the approval of the resolution. Staff may require additional direction from City Council on how to proceed.

RESOLUTION 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.

The City Council is informed that:

WHEREAS, the opioid crisis began in the late 1990s with the drug OxyContin, drug companies began telling the medical community that opioid drugs had a low risk of addiction, and health care providers began prescribing them at higher rates; and

WHEREAS, the State of New Mexico has enacted a series of measures to combat the scourge of opioid addiction, but the epidemic has affected generations of New Mexicans; and

WHEREAS, the State of New Mexico filed a lawsuit accusing opioid manufacturers, distributors, and retailers of fueling the opioid crisis through improper marketing and distribution of drugs; and

WHEREAS, some claims related to the litigation have been resolved via settlements and will be distributed to the State of New Mexico (45%) and to local governments (55%).

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

(I)

THAT a local delegation be developed to discuss the use of the opioid settlement funds distributed to the State of New Mexico.

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



City of Las Cruces

City Council Action and Executive Summary

3025; Council Bill 23-019

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A			
1st Reading:	January 17, 2023	Adopted:	February 21, 2023	
Drafter:	Erika Jaquez	Department:	Financial Services	
Program:	Treasury	Line of Business:	Revenue Management	
Title:	AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS CRUCES, NEW MEXICO, 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.			

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

PURPOSE(S) OF ACTION:
Issue debt.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) took four questions to voters at the November 8, 2022 election:

1. Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$10,000,000 to acquire, plan, design, construct, and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land?
2. Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$5,000,000 to acquire, plan, design, construct, and equip the regional community recreation facility know as East Mesa Public Recreation Complex, including acquisition of necessary land?
3. Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$6,000,000, and placed into the Affordable Housing Trust Fund, to provide resources to plan, design, construct, acquire, and preserve housing affordable for low to moderate income households, including acquisition of necessary land?
4. Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$2,000,000 to renovate and improve existing parks and recreational facilities?

All four questions were approved.

Agenda Item #7.4.

The City intends to use the proceeds of the \$17,000,000 General Obligation Improvement Bonds, Series 2023, on question 1, questions 2, and question 4. The bonds will be payable from ad valorem taxes on property within the City also known as property taxes. Bonds for question 3 will be issued at a later date.

SUPPORT INFORMATION:

[Exhibit "A" Preliminary Official Statement](#)

[Exhibit "B" Disclosure Responsibility Memo - General Obligation Bonds Series 2023](#)

[Attachment "A" General Obligation Bond Ordinance - Series 2023](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance authorizing the issuance of \$17,000,000 General Obligation Improvement Bonds, Series 2023 for questions authorized by voters on November 8, 2022.
2. Vote "No"; this will not approve the Ordinance, thus not authorizing the issuance of \$17,000,000 General Obligation Improvement Bonds, Series 2023 for questions authorized by voters on November 8, 2022.
3. Vote to "Amend"; this could delay the issuance of the bonds.
4. Vote to "Table"; this could delay the issuance of the bonds.

ORDINANCE 3025; COUNCIL BILL 23-019

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.

The City Council is informed that:

WHEREAS, at the general obligation bond election held for the City of Las Cruces (the "City"), State of New Mexico, on the 8th day of November, 2022, the electors of the City authorized the City Council, the governing body of the City (the "Governing Body") to contract bonded indebtedness on behalf of the City and upon the credit thereof by issuing general obligation bonds of the City (the "Bonds") to secure funds for the following purposes in the following amounts:

<u>Purpose</u>	Amount Authorized by Election	Amount Previously Issued	Amount to Be Issued
Acquire, plan, design, construct and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land	\$10,000,000	\$0	\$10,000,000
Acquire, plan, design, construct and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land	\$5,000,000	\$0	\$5,000,000
Renovate and improve existing parks and recreational facilities	\$2,000,000	\$0	\$2,000,000

WHEREAS, the Governing Body has determined, and does hereby determine, that it is necessary and in the best interest of the City and the inhabitants thereof that the \$17,000,000 of the general obligation bonds authorized at the election (the "Bonds"), be authorized for issuance at this time; provided, however, that a satisfactory price for the Bonds be obtained upon a competitive sale; and

WHEREAS, the Governing Body expects to sell the Bonds in a competitive sale to the best bidder therefor (the "Purchaser"), as determined pursuant to the Award Certificate supplementing this Bond Ordinance, and to delegate authority to the City Manager or City Financial Services Director (collectively, the "Delegate") to execute and deliver an award certificate establishing the final terms of the Bonds (the "Award Certificate") as here, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Bonds set forth in the Award Certificate be within the parameters set forth in this Ordinance; and

Agenda Item #7.4.

WHEREAS, the Governing Body intends that the specific details of and requirements for bidding for the Bonds shall be provided in an official notice of sale (the "Notice of Sale") to be approved on behalf of the City by the City Financial Services Director or Treasurer or her designee; and

WHEREAS, the Governing Body desires to delegate to the Delegate the authority to determine the specific principal amounts, interest rates, maturity dates, prices, redemption features, and other final terms and other features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy (if any), to be set forth in a final terms and award certificate to be executed by the Delegate, and to award the Bonds to the best bidder therefor (the "Award Certificate").

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

(I)

Section 1.Ratification. All actions heretofore taken by the Governing Body and the officers and employees of the City directed toward the issuance and sale of the Bonds to secure funds for the Improvement Projects be, and the same hereby are, ratified, approved and confirmed.

Section 2.Improvement Projects Authorization.

A.Proceeds of the Bonds derived from \$10,000,000 in aggregate principal amount of the Bonds are hereby authorized to be applied to acquire, plan, design, construct and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land (the "Fire Station Project").

B.Proceeds of the Bonds derived from \$5,000,000 in aggregate principal amount of the Bonds are hereby authorized to be applied to acquire, plan, design, construct and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land (the "East Mesa Recreation Complex Project").

C.Proceeds of the Bonds derived from \$2,000,000 in aggregate principal amount of the Bonds are hereby authorized to be applied to renovate and improve existing parks and recreational facilities (the "Parks and Recreation Project" and, together with the Fire Station Project and the East Mesa Recreation Complex Project, the "Improvement Projects").

Section 3.Findings.

A.The issuance of the Bonds under the home rule powers of the City granted by the City Charter, this Bond Ordinance, Sections 6-14-8 through 6-14-11 NMSA 1978, and Sections 6-15-1 through 6-15-22 NMSA 1978, for the purpose of providing funds to finance the costs of the Improvement Projects, is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

B.The Bonds shall be authorized by an affirmative vote of a three-fourths of all the members of the Council.

C.The City will finance the costs of the Improvement Projects, in whole or in part, with the proceeds of the Bonds.

D.The Net Effective Interest Rate on the Bonds shall not exceed the statutory maximum of 10% per annum.

Section 4.Bonds are General Obligations. The Bonds shall constitute the general obligation debt of the City, payable from general ad valorem taxes which shall be levied without limitation as to the rate or amount.

Agenda Item #7.4.

The full faith and credit of the City shall be, and hereby is, irrevocably pledged to the payment of the principal of and interest on the Bonds.

Section 5. Authorization, Parameters and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of three-fourths of all of the members of the Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, general obligation bonds in one or more series in the total aggregate principal amount not to exceed \$17,000,000 to be designated in the Award Certificate as the "City of Las Cruces, New Mexico General Obligation Improvement Bonds, Series 2023" and the issuance, sale and delivery of the Bonds is hereby authorized.

The forms of the Continuing Disclosure Undertaking and Preliminary Official Statement as presented to the Governing Body, with the adoption of this Ordinance, and the sale of the Bonds to the Purchaser within the parameters set forth in this Ordinance are hereby approved by the Governing Body with the approval of the final terms of the Bonds to be accepted in the Award Certificate and approval of the final forms of the Preliminary Official Statement and Continuing Disclosure Undertaking delegated to the Delegate or designee as permitted by Section 6-14-10.2 NMSA 1978. The use and distribution of the Preliminary Official Statement and Official Statement by the Purchaser in connection with the sale of the bonds to the public are hereby ratified, authorized, approved and acknowledged.

B. Parameters Authorized. The Bonds shall be issued subject to the following parameters:

(1) The Bonds shall be issued in an aggregate principal amount not to exceed \$17,000,000 for the Improvement Projects.

(2) The net effective interest rate on the Bonds shall not exceed 10% per annum.

(3) The final maturity of the Bonds shall not be later than August 1, 2036.

(4) The Bonds shall be sold pursuant to a competitive public sale.

(5) The underwriter's discount shall be the discount included in the bid which provides the lowest interest cost to the City while maximizing net bond proceeds to the City.

(6) The Bonds shall be in substantially the form set forth in this Ordinance.

(7) The Bonds shall not be sold for less than \$17,000,000.

C. Details of Bonds.

(1) The forms, terms, and provisions of the Bonds in the form set forth in Section 11 are hereby approved with only such changes therein as are not inconsistent with this Bond Ordinance and as shall be approved in the Award Certificate.

(2) The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of \$5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on August 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on February 1 and August 1 in each year commencing on August 1, 2023, or such other date specified in the Award Certificate, until their respective

Agenda Item #7.4.

maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Award Certificate.

D. Notice of Sale. The Bonds shall be sold pursuant to the terms of the Official Notice of Sale appended to the form of preliminary official statement presented to the Governing Body in connection with this Ordinance (the "Preliminary Official Statement"). The City Financial Services Director is hereby authorized and directed to have published once, at least one week prior to the date of sale, a notice of sale of the Bonds in a newspaper of general circulation in the City, and the City Financial Services Director is hereby authorized and directed to give such other notice of the bond sale as she shall determine, including the publication of the notice in financial papers and periodicals and the distribution among investment bankers and others of the Preliminary Official Statement.

E. Final Terms; Award of Bonds. The exact principal amounts, maturity dates, interest rates, prices, redemption features and other final terms of the Bonds shall be as set forth in the Award Certificate. The Bonds shall be awarded to the Purchaser as provided in the Award Certificate.

F. Series Date; Numbering; Interest Payment Dates. The Bonds shall be dated the date of delivery (herein the "Series Date"), will be issued in one or more series and shall consist of bonds numbered consecutively from R-1 upward, issuable in the denomination of \$5,000 each or integral multiples thereof (provided that no individual bond will be issued for more than one maturity); shall bear interest from the Series Date to maturity at the rates set forth in the Award Certificate, payable to the registered owner thereof, or registered assigns, on August 1, 2023, and semiannually thereafter on August 1 and February 1 in each year in which the Bonds are outstanding and shall mature on August 1 of each year as set forth in the Award Certificate.

Section 6. Redemption of Bonds Prior to Maturity.

A. Optional Redemption. Redemption of the Bonds prior to maturity at the option of the City shall be as provided in the Award Certificate.

B. Notice of Redemption. Notice of redemption shall be given by the Registrar/Paying Agent by sending a copy of such notice by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar/Paying Agent on the fifth day prior to the mailing of notice on the registration books kept by the Registrar/Paying Agent. The City shall give notice of redemption of the Bonds to the Registrar/Paying Agent at least forty-five (45) days prior to the redemption date. The Registrar/Paying Agent's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Registrar/Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Such notice may be a conditional notice of redemption – the money required to pay the principal of and interest on the Bonds to be called for redemption need not be on deposit with the Registrar/Paying Agent at the time of mailing the conditional notice of redemption. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Registrar/Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Registrar/Paying Agent, the Registrar/Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Registrar/Paying Agent by the City.

Section 7. Execution of Bonds.

Agenda Item #7.4.

A. The Bonds shall bear the facsimile or manual signature of the Mayor of the City and shall be attested by the facsimile or manual signature of the City Clerk and shall bear the facsimile or original seal of the City. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar/Paying Agent. The Bonds bearing the signatures or facsimile signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the City, notwithstanding that before the delivery of the Bonds and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose signatures appear on the Bonds shall have ceased to fill their respective offices. The Mayor and City Clerk shall, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their respective signatures the facsimiles thereof appearing on the Bonds; and, at the time of the execution of the signature certificate, the Mayor and City Clerk may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Bonds. If facsimile signatures are to appear on the Bonds, the Mayor and City Clerk, pursuant to Sections 6-9-1 through 6-9-6, inclusive, NMSA 1978, shall each forthwith file his or her manual signature, certified by him or her under oath, with the Secretary of State of New Mexico, provided that such filing shall not be necessary for any officer where any previous filing shall have application to the Bonds.

B. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly executed by the Registrar/Paying Agent. The Registrar/Paying Agent's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the Registrar/Paying Agent, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 8. Registration of Bonds.

A. Books for the registration and transfer of the Bonds shall be kept by the City Treasurer, as Registrar/Paying Agent, which is hereby appointed by the City as registrar and as paying agent for the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment or reimbursement by the owner of any Bond requesting exchange or transfer of any transfer fee, tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each interest payment date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each interest payment date but such transfer will not include transfer of interest payable on such interest payment date.

B. The person in whose name any Bond shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided in this ordinance with respect to payment of interest; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

C. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Bond or Bonds of a like aggregate

Agenda Item #7.4.

principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar/Paying Agent may pay such Bond in lieu of replacement.

D. Bonds which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent interest payment date to which interest has been fully paid or provided for in full or, if no interest has been paid, from the Series Date.

E. The officers of the City are authorized to deliver to the Registrar/Paying Agent fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar/Paying Agent pending use as herein provided.

F. Whenever any Bond shall be surrendered to the Registrar/Paying Agent upon payment thereof, or to the Registrar/Paying Agent for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled by the Registrar/Paying Agent, and counterparts of a certificate of such cancellation shall be furnished by the Registrar/Paying Agent to the City.

G. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the depository, registered in the name of the depository or its nominee. Principal, premium, if any, and interest will be paid to the depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the depository, Participants or Indirect Participants.

(1) If (i) the Bonds are not eligible for the services of the depository, (ii) the depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

(2) Authorized Officers of the City are authorized to sign agreements with the depository relating to the matters set forth in this Section.

(3) Notwithstanding any other provision of this ordinance, so long as all of the Bonds are registered in the name of the depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Registrar/Paying Agent or the City to the depository as provided in this ordinance and by the depository to its Participants or Indirect Participants and to the Beneficial Owners of the Bonds.

Section 9. Successor Registrar/Paying Agent. If the Registrar/Paying Agent initially appointed hereunder shall resign, or if the City shall reasonably determine that such Registrar/Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor registrar/paying agent. Every such successor

Agenda Item #7.4.

registrar/paying agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, of not less than \$10,000,000.

Section 10.Bonds Negotiable. Subject to the registration provisions hereof, the Bonds hereby authorized shall be fully negotiable and shall have all the qualities of negotiable paper, and the registered owner or owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 11.Form of Bonds. The Bonds shall be in substantially the following form:

[Form of Bond]

REGISTERED

REGISTERED

NO. R-_____

\$

UNITED STATES OF AMERICA
STATE OF NEW MEXICO
CITY OF LAS CRUCES
DOÑA ANA COUNTY, NEW MEXICO
GENERAL OBLIGATION IMPROVEMENT BONDS
SERIES 2023

Registered Owner:

Principal Amount: _____DOLLARS

Interest Rate	Maturity Date	Series Date	CUSIP
_____% per annum	August 1, _____	_____, 2023	XXXXX

The City Council of the City of Las Cruces (the "Governing Body "), on the faith, credit and behalf of the City of Las Cruces, Doña Ana County, New Mexico (the "City"), for value received, hereby promises to pay to the registered owner named above, or registered assigns, the principal amount hereof on the Maturity Date and to pay interest on the principal amount at the Interest Rate on _____ 1, 2023, and thereafter on February 1 and August 1 of each year (the "Interest Payment Date") from the Series Date to its maturity. The principal of the bonds of the series of which this is one (the "Bonds") and interest due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by the City Treasurer, as "registrar/paying agent" (such registrar/paying agent and any successor thereto, the "Registrar/Paying Agent") for the Bonds, upon maturity and upon presentation and surrender thereof at the principal office of the Registrar/Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by said Bond until the principal thereof is paid in full. Payment of interest on the Bonds (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each Interest Payment Date (or, if such Interest Payment Date is not a business day, on or before the next succeeding business day), to the registered owner thereof as of the close of business on the Record Date (defined below) at his address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any Interest Payment Date shall mean the 15th day of the month preceding the Interest Payment Date. The person in whose name any Bond is registered at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable thereon on such

Agenda Item #7.4.

Interest Payment Date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date; but interest on any Bond which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name such Bond is registered at the close of business on a special record date (the "Special Record Date") fixed by the Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Bonds as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

The Bonds are fully registered and are issuable in denominations of \$5,000 and any integral multiple thereof (provided that no individual bond may be issued for more than one maturity).

The series of Bonds of which this bond is one is limited to the total principal amount of \$17,000,000 of like tenor except as to number, denomination, maturity date, and interest rate, issued by the City of Las Cruces, Doña Ana County, New Mexico, for the purposes of providing funds in the amount of (a) \$10,000,000 to acquire, plan, design, construct and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land, (b) \$5,000,000 to acquire, plan, design, construct and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land, and (c) \$2,000,000 to renovate and improve existing parks and recreational facilities.

The Bonds are issued under the authority of and in full conformity with the Constitution and laws of the State of New Mexico (particularly Sections 3-30-1 through 3-30-9 NMSA 1978, the provisions of Sections 6-14-8 through 6-14-11 NMSA 1978, Sections 6-15-1 through 6-15-22 NMSA 1978, and acts amendatory and supplemental thereto), and pursuant to an ordinance of the Governing Body duly adopted and made a law of the City prior to the issuance of this bond (the "Bond Ordinance").

The Bonds maturing on or after August 1, 20__, are subject to prior redemption at the City's option on and after August 1, 20__, in whole or in part at any time, in one or more units of principal of \$5,000 in such order of maturities as the City may determine (and by lot if less than all of the Bonds of any maturity are called, such selection by lot to be made by the Registrar/Paying Agent in such manner as it shall consider appropriate and fair) The purchase price for Bonds selected for redemption will be equal to the principal amount of each bond (or portion thereof) so redeemed, plus accrued interest thereon to the redemption date.

The Registrar/Paying Agent will maintain the books of the City for the registration of ownership of the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment or reimbursement by the owner of any Bond requesting exchange or transfer of any transfer fee, tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each Interest Payment Date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each Interest Payment Date but such transfer will not include transfer of interest payable on such Interest Payment Date.

The person in whose name any Bond shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making

Agenda Item #7.4.

payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar/Paying Agent may pay such Bond in lieu of replacement.

For the punctual payment of the principal of and interest on this bond as aforesaid and for the levy and collection of taxes in accordance with the statutes authorizing the issuance of this bond, the full faith and credit of the City is hereby irrevocably pledged. The Governing Body has, by the Bond Ordinance, ordered the creation of an interest and sinking fund for the payment of the Bonds. Such fund is to be held in trust for the benefit of the owner or owners of the Bonds.

It is hereby certified, recited and warranted that all the requirements of law have been complied with by the proper officials of the City in the issuance of this bond; that the total indebtedness of the City, including that of this bond, does not exceed any limit of indebtedness prescribed by the Constitution or laws of the State of New Mexico; that provision has been made for the levy and collection of annual taxes sufficient to pay the principal of and the interest on this bond when the same become due. This bond shall not be valid or obligatory for any purpose until the Registrar/Paying Agent shall have manually signed the certificate of authentication hereon.

IN TESTIMONY WHEREOF, the Governing Body of the City of Las Cruces, in Doña Ana County, New Mexico, constituting the governing board of the City, has caused the seal of the City to be hereto affixed and this bond to be signed and executed with the facsimile or manual signature of the Mayor of the City and subscribed and attested with the facsimile or manual signature of the City Clerk, all as of the Series Date.

GOVERNING BODY OF THE
CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

By
Ken Miyagishima, Mayor

ATTEST:

By
Christine Rivera, City Clerk

[Form of Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

This bond is one of the Bonds described in the Bond Ordinance and has been duly registered on the registration books kept by the undersigned as Registrar/Paying Agent for the Bonds.

Date of Authentication and

Registration: _____, 2023

Las Cruces City Treasurer, as Registrar/Paying Agent

By _____
Erika Jaquez, City Treasurer

[End of Form of Certificate of Authentication]

[Form of Assignment]

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____ whose social security or tax identification number is _____ the within bond and irrevocably constitutes and appoints _____ attorney to transfer such bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

Signature Guaranteed:

NOTE: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

[End of Form of Assignment]
[End of Form of Bond]

Section 12. Delivery of Bonds. When the Bonds have been duly executed and authenticated, they shall be delivered to the lawful purchaser thereof named in the Award Certificate. The funds realized from the sale of the Bonds shall be applied solely to the specified purposes for the Bonds, but the purchaser of the Bonds shall in no manner be responsible for the application of or disposal by the City, or any of its officers, of any of the funds derived from the sale thereof.

Section 13. Levy of Taxes. In order to pay the principal of and interest on the Bonds as they become due and, at the option of the City, to reimburse the general fund or other funds for the payment of principal of or interest on the Bonds for which property taxes were not available, there shall be an annual assessment and levy upon all of the taxable property of the City subject to taxation which provides an amount sufficient to pay the principal of and the interest on the Bonds as they become due and payable. However, the City may, at its option, apply any other funds lawfully available for the purpose to the payment of principal or interest on the Bonds as they become due, and the levies required by this Section may be reduced to the extent other revenues are or

Agenda Item #7.4.

will be available and used for payment of the Bonds. To the extent property taxes are not available for that purpose, the principal of and interest accruing on the Bonds shall be paid from the City's general fund or from any other fund lawfully available for that purpose. The taxes shall be assessed, levied and collected annually at the time and in the manner as other City taxes are assessed, levied and collected. Annually, the Governing Body shall take all reasonable action to insure the levy and collection of taxes by the governmental authority charged with legal responsibility to levy and collect taxes in amounts sufficient at the time to pay the principal of and interest on the Bonds. The money produced by the levy of taxes provided in this Section to pay the principal of and interest on the Bonds is appropriated for that purpose and that amount shall be included in the annual budget adopted and passed by the Governing Body each year. The taxes collected shall be maintained in an interest and sinking fund, which is hereby created, and kept for and applied only to the payment of the principal of and interest on the Bonds when due and as otherwise required or permitted by law.

Section 14. Additional Action of Authorized Officers; Delegation of Authority to Determine Final Terms of the Bonds and Award Bonds to the Best Bidder.

A. The Mayor, City Clerk and other officers of the City be and they hereby are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including without limiting the generality of the foregoing, the deposit of \$17,000,000 of the proceeds of the Bonds, plus an allocable share of net premium, if any, into an acquisition fund for payment of the costs of the Improvement Projects and the costs of issuance allocable to the Improvement Projects, the execution and delivery of a continuing disclosure undertaking to enable the purchaser of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12(b)(5), the printing of the Bonds, the execution of an official statement of the City relating to the Bonds, and the execution of such certificates as may be required by the Bond purchasers relating to the signing of the Bonds, the tenure and identity of City officials, the receipt of the purchase price of the Bonds from the purchasers and the absence of litigation, pending or threatened, if in accordance with the facts, affecting the validity thereof and the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes.

B. Pursuant to Section 6-14-10.2, NMSA 1978, the City Manager or City Financial Services Director, each as Delegate, are hereby delegated authority to determine the method of sale of the Bonds in consultation with the City's Municipal Advisor, to accept one or more binding bids, and to select the Purchasers, to execute an Award Certificate and to determine any or all of the final terms of the Bonds, including, without limitation, the exact principal amounts, maturity dates, interest rates, prices, redemption features and other final terms of the Bonds subject to the parameters and conditions contained in this Bond Ordinance. The Delegate shall present the Award Certificate to the Governing Body in a timely manner, before or after delivery of the Bonds, at a regularly scheduled public meeting of the Governing Body.

Section 15. Covenants to Maintain Tax-Exempt Status of Bonds.

A. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The Mayor, City Clerk and any other officer of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

B. The City covenants that it (i) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (aa) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (bb) restrict the yield, as required, on investment property acquired with those proceeds, (cc) make timely rebate payments, if required, to the federal government, (dd) maintain books and records and make calculations and reports, and (ee) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor and City Clerk

Agenda Item #7.4.

and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

Section 16. Defeasance.

A. Any Bond and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Bond") hereunder when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity, upon redemption, or other) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption), or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to a qualified depository for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Government Obligations which mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment (as verified by a certified or registered public accountant), and when proper arrangements have been made by the City with a qualified depository for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of the ad valorem taxes herein levied and pledged as provided in this ordinance, and such principal and interest shall be payable solely from such money or Government Obligations.

B. Any moneys so deposited with the qualified depository may, at the written direction of the City, also be invested in Government Obligations, maturing in the amounts and times required to make payments when due on the Defeased Bonds, and all income from such Government Obligations received by the qualified depository which is not required for the payment of the Defeased Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City for deposit in the interest and sinking fund for payment of principal and interest on the Bonds. The term "Government Obligations" means direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America which may be United States Treasury Obligations such as its State and Local Government Series, which may be in book-entry form.

Section 17. Investment of Bond Proceeds. Moneys in any fund not immediately needed may be invested as provided by state law and applicable federal statutes and regulations, provided that the Governing Body and the City hereby covenant to the purchasers and the holders of the Bonds from time to time that the City will make no use of the proceeds of the Bonds or any funds reasonably expected to be used to pay the principal of or interest on the Bonds which will cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code, as amended, or which would adversely affect the tax status of interest on the Bonds under the Code. This covenant is for the benefit of the purchasers and the holders of the Bonds from time to time.

Section 18. Ordinance Irrepealable. After any of the Bonds have been issued, this ordinance shall constitute a contract between the City and the holder or holders of the Bonds and shall be and remain irrepealable and unalterable until the Bonds and the interest thereon shall have been fully paid, satisfied and discharged, defeased or until such payment has been duly provided for.

Section 19. Severability. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 20. Form of Notice of Adoption. The following notice shall be published one time in a newspaper having general circulation in the City as soon as is practicable following the adoption hereof and this ordinance shall be effective five days after such publication as provided by law.

[Form of Notice]

LEGAL NOTICE

City of Las Cruces, New Mexico
Notice of Adoption of Ordinance

NOTICE IS HEREBY GIVEN that the Governing Body of the City of Las Cruces, Doña Ana County, New Mexico did, on the 21st day of February, 2023, adopt an ordinance entitled:

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 CITY FINANCIAL SERVICES DIRECTOR TO AWARD THE BONDS TO THE PURCHASER; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

The Ordinance directs and authorizes the issuance of City of Las Cruces, General Obligation Bonds in the aggregate principal amount of \$17,000,000; provides that providing that Bond proceeds in the amount of (a) \$10,000,000 shall be used to acquire, plan, design, construct and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land, (b) \$5,000,000 shall be used to acquire, plan, design, construct and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land, and (c) \$2,000,000 shall be used to renovate and improve existing parks and recreational facilities; provides parameters for the Bonds; provides the form of the Bonds; delegates authority to the City Manager and City Financial Services Director to determine exact principal amounts, maturity dates, interest rates, prices, redemption features and other final terms of the Bonds within the parameters established in this Ordinance and to award the Bonds to the Purchaser pursuant to an Award Certificate; provides for the delivery of the Bonds; provides for levy of taxes to pay the principal of and interest on the bonds; makes certain covenants for the benefit of the owners of the Bonds; and provides other details concerning the bonds.

Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico. This notice constitutes compliance with Section 6-14-6 NMSA 1978.

DATED this 21st day of February, 2023

CITY OF LAS CRUCES

Christine Rivera, City Clerk

(End of Form of Notice for Publication)

Agenda Item #7.4.

Section 21.Repealer Clause. All acts and resolutions in conflict with this ordinance are hereby rescinded, annulled and repealed.

(II)

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

DONE AND APPROVED this day of

Agenda Item #7.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

New Modrall\45380\0263\GENERAL\W4648624.DOCX

NOTICE

\$17,000,000*
CITY OF LAS CRUCES, NEW MEXICO
General Obligation Improvement Bonds,
Series 2023

Preliminary Official Statement, subject to completion,
dated _____, 2023

The Preliminary Official Statement, dated _____, 2023 (the "Preliminary Official Statement"), relating to the above-described bonds (the "Bonds") of the City of Las Cruces, New Mexico (the "City"), has been posted as a matter of convenience. The posted version of the Preliminary Official Statement has been formatted in Adobe Portable Document Format (Adobe Acrobat 8.0). Although this format should replicate the Preliminary Official Statement available from the City, appearance may vary for a number of reasons, including electronic communication difficulties or particular user software or hardware. Using software other than Adobe Acrobat 8.0 or later may cause the Preliminary Official Statement that you view or print to differ in appearance from the Preliminary Official Statement.

The Preliminary Official Statement and the information contained therein are subject to completion or amendment or other change without notice. Under no circumstances shall the Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

For purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission, the Preliminary Official Statement alone, and no other document or information on the internet, constitutes the "Official Statement" that the City has deemed "final" as of its date in respect of the Bonds, except for certain information permitted to be omitted therefrom.

No person has been authorized to give any information or to make any representations other than those contained in the Preliminary Official Statement in connection with the offer and sale of the Bonds and, if given or made, such information or representations must not be relied upon as having been authorized. The information and expressions of opinion in the Preliminary Official Statement are subject to change without notice and neither the delivery of the Official Statement nor any sale made thereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date of the Preliminary Official Statement.

By choosing to proceed and view the electronic version of the Preliminary Official Statement, you acknowledge that you have read and understood this Notice.

Preliminary Official Statement dated _____, 2023.

* Preliminary; subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall the Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

PRELIMINARY OFFICIAL STATEMENT DATED _____, 2023

NEW ISSUE

RATING: Moody's: Applied For

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, under existing laws, regulations, rulings and judicial decisions, and assuming compliance with certain covenants described in "TAX EXEMPTION" herein, interest on the Bonds (including original issue discount treated as interest) (a) is excludable from the gross income of the recipients thereof for federal income tax purposes, under Section 103 of the Internal Revenue Code of 1986 (the "Code"), as amended, and (b) is not a specific item of tax preference for purposes of the federal alternative minimum tax under the Code; however, for tax years beginning after December 31, 2022, interest on the Bonds is included in the "adjusted financial statement income" of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. Bond Counsel is also of the opinion based on existing laws of the State of New Mexico as enacted and construed that interest on the Bonds is exempt from all taxation by the State of New Mexico or any political subdivision thereof. For a more complete description of such opinion of Bond Counsel and a description of certain provisions of the Internal Revenue Code of 1986, as amended, which may affect the federal tax treatment of interest on the Bonds for certain owners of such bonds, see "TAX EXEMPTION" herein.

\$17,000,000*
CITY OF LAS CRUCES, NEW MEXICO
GENERAL OBLIGATION IMPROVEMENT BONDS
SERIES 2023

Dated: Date of Delivery
Book-Entry Only

Due: August 1, as shown below

The City of Las Cruces, New Mexico General Obligation Improvement Bonds, Series 2023 (the "Bonds") are issuable as fully registered bonds and when initially purchased will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York ("DTC"). Purchases of the Bonds will be made in book-entry form only, in the principal amount of \$5,000 or any integral multiple thereof, through brokers and dealers who are, or who act through, DTC Participants. Beneficial owners of the Bonds will not be entitled to receive physical delivery of bond certificates so long as DTC or a successor securities depository acts as the securities depository with respect to the Bonds. Interest on the Bonds is payable on each February 1 and August 1, commencing August 1, 2023. As long as DTC or its nominee is the registered owner of the Bonds, reference in this Official Statement to the registered owner will mean Cede & Co., and payments of principal or interest on the Bonds will be made directly to DTC by the Paying Agent. Disbursement of such payments to DTC Participants is the responsibility of DTC. See "The Bonds – Book-Entry Only System" herein. The City Treasurer is the Registrar and Paying Agent for the Bonds.

The Bonds are issuable only as fully registered bonds in denominations of \$5,000 each or any integral multiple thereof. The Bonds will bear interest from the delivery date.

The Bonds are general obligations of the City of Las Cruces, New Mexico (the "City"), payable from general (*ad valorem*) taxes which shall be levied against all taxable property in the City without limitation as to rate or amount.

The City has undertaken, for the benefit of the owners of the Bonds, to provide certain annual and periodic disclosures described under the caption "CONTINUING DISCLOSURE INFORMATION" herein.

The Bonds are being issued pursuant to the powers of the City Council under Sections 3-30-1 through 3-30-9 and Sections 6-15-1 through 6-15-22 NMSA 1978, as amended and supplemented, the Constitution and other laws of the State for the purpose of providing funds for (1) acquiring, planning, designing, constructing and equipping a new fire station facility (2) acquiring, planning, designing, constructing and equipping a regional community recreation facility, (3) renovating and improving existing parks and recreation facilities, and (4) to pay costs of issuance of the Bonds. The Bonds are offered when, as and if issued by the City, subject to the approval of Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Bond Counsel and certain other conditions. It is expected that the Bonds will be available for delivery on or about March 30, 2023 through the facilities of the Depository Trust Company, New York, New York.

Electronic bids will be opened at 8:30 a.m, prevailing Mountain Time, February 28, 2023.

Dated: _____

* Preliminary, subject to change.

MATURITY SCHEDULE SERIES 2023 BONDS*

<u>Maturity (June 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Price</u>	<u>CUSIP Number**</u>
2023	\$ 2,190,000			
2024	1,775,000			
2025	1,135,000			
2026	1,080,000			
2027	1,080,000			
2028	1,080,000			
2029	1,080,000			
2030	1,080,000			
2031	1,080,000			
2032	1,080,000			
2033	1,080,000			
2034	1,080,000			
2035	1,080,000			
2036	1,100,000			

Electronic bids will be opened at 8:30 a.m, prevailing Mountain Time, February 28, 2023.

** CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services (CGS) is managed on behalf of the American Bankers Association by FactSet Research Systems Inc. Copyright(c) 2022 CUSIP Global Services. All rights reserved. CUSIP® data herein is provided by CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. None of the City, the Financial Advisor, the Underwriters, Bond Counsel and Disclosure Counsel, or their respective agents or counsel assume responsibility for the accuracy of such numbers.

* Preliminary, subject to change.

USE OF INFORMATION IN THIS OFFICIAL STATEMENT

No dealer, salesman or other person has been authorized by the City of Las Cruces, New Mexico (the "City") to give any information or to make any statements or representations, other than those contained in this Official Statement, and, if given or made, such other information, statements or representations must not be relied upon as having been authorized. This Official Statement does not constitute an offer to sell or solicitation of an offer to buy any of the Bonds in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The information set forth or included in this Official Statement has been provided by the City and from other sources believed by the City to be reliable. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall create any implication that there has been no change in the financial condition or operations of the City described herein since the date hereof. This Official Statement contains, in part, estimates and matters of opinion that are not intended as statements of fact, and no representation or warranty is made as to the correctness of such estimates and opinions or that they will be realized.

The Bonds have not been registered under the Securities Act of 1933, in reliance upon exemptions contained in such Act. The registration and qualification of the Bonds in accordance with applicable provisions of the securities law of the states in which the Bonds have registered or qualified and the exemption from registration or qualification in other states cannot be regarded as a recommendation thereof. Neither the Securities and Exchange Commission nor any other federal, state, municipal or other governmental entity, nor any agency or department thereof, has passed upon the merits of the Bonds or the accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense.

This Official Statement is "deemed final" by the City for purposes of Rule 15c2-12 of the Municipal Securities Rulemaking Board. The City has covenanted to provide such annual financial statements and other information in the manner as may be required by regulations of the Securities and Exchange Commission or other regulatory body.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE CITY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

This Official Statement contains statements that are "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995. When used in this Official Statement, the words "estimate," "project," "intend," "expect," and similar expressions are intended to identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof.

CITY OF LAS CRUCES, NEW MEXICO

City Hall, 700 North Main Street
P.O. Box 20000
Las Cruces, New Mexico 88001
(575) 541-2000

MAYOR

Ken Miyagishima

CITY COUNCIL

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

CITY ADMINISTRATION

Ifo Pili, City Manager
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Erika Jaquez, City Treasurer
Christine Rivera, City Clerk
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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY..... 1

THE ISSUER 1

AUTHORITY FOR ISSUANCE AND PURPOSE 1

THE BONDS 1

SECURITY 2

FINANCIAL STATEMENTS 2

SELECTED DEBT RATIOS 2

TAX MATTERS 2

AGENTS AND ADVISORS..... 3

ADDITIONAL INFORMATION..... 3

THE BONDS 3

DESCRIPTION..... 3

AUTHORIZATION 4

BOND REGISTRAR AND PAYING AGENT..... 4

PAYMENT OF PRINCIPAL AND INTEREST; RECORD DATE 4

OPTIONAL REDEMPTION OF BONDS 4

EXCHANGE OR TRANSFER OF BONDS 4

BOOK-ENTRY ONLY SYSTEM..... 5

SECURITY AND REMEDIES 6

GENERAL..... 6

LEGAL MATTERS..... 7

LIMITATIONS ON REMEDIES AVAILABLE TO OWNERS OF BONDS 7

PURPOSE AND PLAN OF FINANCING..... 9

SOURCES AND USES OF FUNDS 9

DEBT AND OTHER FINANCIAL OBLIGATIONS..... 10

GENERAL OBLIGATION DEBT 10

STATEMENT OF ESTIMATED DIRECT AND OVERLAPPING DEBT 12

ANALYSIS OF ASSESSED VALUATION 13

HISTORY OF ASSESSED VALUATION 14

RESIDENTIAL TAX RATES - PER \$1,000 ASSESSED VALUATION..... 15

WITHIN 20 MILL LIMIT FOR GENERAL PURPOSES 15

OVER 20 MILL LIMIT – INTEREST, PRINCIPAL, JUDGMENT, ETC..... 15

TOTAL LEVY 15

MAJOR TAXPAYERS 16

YIELD CONTROL LIMITATION 16

LIMITATIONS ON RESIDENTIAL PROPERTY TAX INCREASES 16

TAX COLLECTIONS ON LOCALLY ASSESSED AND CENTRALLY ASSESSED PROPERTY 17

INTEREST ON DELINQUENT TAXES 18

PENALTY FOR DELINQUENT TAXES 18

REMEDIES AVAILABLE FOR NON-PAYMENT OF TAXES..... 18

PROTEST 19

FINANCES OF THE CITY 19

BUDGET PROCESS 19

FINANCIAL STATEMENTS 20

THE CITY 23

 GENERAL..... 23

 GOVERNMENT 23

 ADMINISTRATIVE OFFICERS 23

 OTHER EMPLOYEES..... 24

 RETIREMENT PLAN..... 24

 CITY BUDGETS 25

 CITY STRATEGIC PLAN 25

 INDUSTRY 26

 EDUCATION 26

 NEW MEXICO STATE UNIVERSITY 26

 AGRICULTURE 27

 TRANSPORTATION..... 27

 LABOR FORCE AND PERCENT UNEMPLOYED..... 27

 COVERED WAGE AND SALARY EMPLOYMENT BY NAICS CODE CLASSIFICATION 28

 MAJOR EMPLOYERS 29

 PER CAPITA INCOME 29

EFFECTIVE BUYING INCOME..... 30

 AGE DISTRIBUTION 30

 POPULATION..... 30

TAX EXEMPTION 31

 GENERAL..... 31

 ORIGINAL ISSUE DISCOUNT 32

 ORIGINAL ISSUE PREMIUM..... 32

 INTERNAL REVENUE SERVICE AUDIT PROGRAM..... 32

CONTINUING DISCLOSURE INFORMATION 32

 COMPLIANCE WITH CONTINUING DISCLOSURE UNDERTAKINGS IN FUTURE YEARS 32

LITIGATION..... 33

RATINGS 33

MUNICIPAL ADVISOR..... 33

LEGAL MATTERS..... 33

TRANSCRIPT AND CLOSING DOCUMENTS..... 34

ADDITIONAL INFORMATION..... 34

OFFICIAL STATEMENT CERTIFICATION 35

APPENDIX A OPINION OF BOND COUNSEL A-1

APPENDIX B AUDITED FINANCIAL STATEMENTS – JUNE 30, 2022..... B-1

APPENDIX C FORM OF CONTINUING DISCLOSURE UNDERTAKING..... C-1

APPENDIX D OFFICIAL NOTICE OF BOND SALE D-1

OFFICIAL STATEMENT

\$17,000,000*

CITY OF LAS CRUCES, NEW MEXICO GENERAL OBLIGATION IMPROVEMENT BONDS SERIES 2023

INTRODUCTION AND SUMMARY

This Official Statement is furnished to prospective purchasers of the City of Las Cruces, New Mexico, General Obligation Improvement Bonds, Series 2023 (the "Bonds"), issued in the aggregate principal amount of \$17,000,000* by the City of Las Cruces, New Mexico (the "City"). The offering of the Bonds is made only by way of this Official Statement and the Official Notice of Bond Sale, authorized by Ordinance No. 3025 adopted by the City Council on February 21, 2023 (the "Bond Ordinance"). Additional information concerning the City, the Bonds and other aspects of this offering may be obtained either from the City or from RBC Capital Markets, LLC (the "Municipal Advisor") at the addresses set forth in the section entitled "ADDITIONAL INFORMATION."

The following material is qualified in its entirety by the more complete information contained throughout this Official Statement, and detachment or other use of this "INTRODUCTION AND SUMMARY" without the entire Official Statement, including the cover page and the appendices, is unauthorized.

All terms used in this Official Statement that are not defined herein shall have the meanings given such terms in the Bond Ordinance.

The Issuer

The City is a political subdivision of the State of New Mexico (the "State"), organized and existing under the Constitution, and general laws of the State. The City was incorporated in 1907 and is located in southern New Mexico. It is New Mexico's second largest city. It operates under a Council-Manager form of government with the Mayor elected at large. The City's Fiscal Year ends June 30 and is referred to in this Official Statement as the "Fiscal Year."

Authority for Issuance and Purpose

The Bonds are issued in accordance with the Constitution and laws of the State of New Mexico, in particular, Sections 3-30-1 through 3-30-9 and Sections 6-15-1 through 6-15-22 NMSA 1978, as amended and supplemented. \$17,000,000* in principal amount of the Bonds represents the first series of general obligation bonds approved in aggregate amount of \$23,000,000 by the qualified electors of the City at an election held on November 8, 2022 for the purpose of providing funds for (1) acquiring, planning, designing, constructing and equipping a new fire station facility (2) acquiring, planning, designing, constructing and equipping a regional community recreation facility, (3) renovating and improving existing parks and recreation facilities, and (4) to pay costs of issuance of the Bonds.

The Bonds

The Bonds will be registered as to principal and interest, issued in denominations of \$5,000 each, or integral multiples thereof, in conformance with the Constitution and laws of the State and pursuant to the Bond Ordinance. The Bonds shall mature in the principal amounts and on the dates shown on the cover

* Preliminary, subject to change.

page hereof. Interest shall be payable February 1 and August 1 of each year commencing August 1, 2023 to registered owners shown on the books of the Registrar on the 15th day of the month preceding each regularly scheduled interest payment date thereafter (“Record Date”). The Bonds will be issued only in fully registered form and will be initially registered and delivered to Cede & Co., the nominee of The Depository Trust Company pursuant to the book-entry only system described herein.

Security

The Bonds are secured by the City’s full faith and credit and are general obligations of the City payable from *ad valorem* taxes to be levied, without limitation as to rate or amount, against all taxable property within the City. See “SECURITY AND REMEDIES”

Financial Statements

The City’s audited financial statements as of and for the year ended June 30, 2022 including the opinions rendered thereon of certified public accountants, are attached as Appendix B.

Selected Debt Ratios

The following table sets forth details relating to the ratio of general debt and overlapping debt to population and assessed valuation:

2022 Assessed Valuation	\$2,810,356,108
2022 Estimated Actual Valuation ⁽¹⁾	\$9,254,399,721
City Debt as a % of	
Assessed Valuation	0.65%
Estimated Actual Valuation	0.20%
Direct and Overlapping Debt as a % of	
Assessed Valuation	4.82%
Estimated Actual Valuation	1.46%
City General Obligation Debt Outstanding	\$18,215,000
City General Obligation Debt ²⁽²⁾⁽³⁾	\$35,215,000
Estimated Direct & Overlapping G/O Debt ⁽²⁾	\$152,459,641
2022 Estimated Population	111,385
City Net Debt Per Capita	\$
Direct and Overlapping Debt Per Capita	\$1,368.76

(1) Actual valuation is computed by adding 2022 exemptions to the 2022 assessed valuation and multiplying by three.
(2) Figure includes proposed 2023 Bonds.
(3) Figure is not net of accumulated Debt Service Fund amounts.

See “DEBT AND OTHER FINANCIAL OBLIGATIONS – General Obligation Debt” herein.

Tax Matters

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A. (“Bond Counsel”), (a) the interest on the Bonds will be excludable from gross income for federal income tax purposes under existing law, and (b) is not a specific preference item for purposes of the federal alternative minimum tax on individuals,

subject to the matters described under the caption “TAX EXEMPTION” herein. Bond Counsel is also of the opinion, based on existing laws of the State of New Mexico as enacted and construed, that the Bonds and income from the Bonds are exempt from all taxation by the State of New Mexico or any political subdivision thereof.

Agents and Advisors

At the time of the issuance and sale of the Bonds, Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Bond Counsel, will deliver the bond opinion included in Appendix A hereto. See “LEGAL MATTERS” herein. Certain legal matters relating to the Bonds will be passed on for the City by Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Disclosure Counsel.

RBC Capital Markets, LLC (“RBC”) is employed as Municipal Advisor to the City in connection with the issuance of the Bonds. The Municipal Advisor’s fee for services rendered with respect to the sale of the Bonds is contingent upon the issuance and delivery of the Bonds. RBC, in its capacity as Municipal Advisor, has not verified and does not assume any responsibility for the possible impact of any present, pending or future actions taken by any legislative or judicial bodies. The Municipal Advisor is not obligated to undertake, and has not undertaken to make, an independent verification of, or assume responsibility for, the accuracy, completeness, or fairness of the information in this Official Statement.

Additional Information

This Official Statement is accurate only as of its date, and no representation is made that the information contained herein has not changed since that date. This Official Statement is intended to be made available to investors through the Municipal Advisor.

The quotations from, and summaries and explanations of, the statutes, regulations and documents contained herein do not purport to be complete, and reference is made to those statutes, regulations and documents for full and complete statements of their provisions. Copies, in a reasonable quantity, of those statutes, regulations and documents may be obtained upon request directed to the City, and upon payment to the City of a charge for copying, mailing and handling, at the City of Las Cruces, 700 North Main, Las Cruces, NM 88001, telephone number (575) 541-2000, Attention: City Manager.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract between the City and the purchasers or holders of any of the Bonds.

THE BONDS

Description

The Bonds are general obligation bonds to be issued by the City in the total principal amount of \$17,600,000* and will be dated the Date of Delivery, which is expected to be on or about _____, 2023. The Bonds will be issued as fully registered bonds in denominations of \$5,000 or integral multiples thereof, bearing interest from their date to maturity at the rates specified on the cover page of this Official Statement payable semiannually on February 1 and August 1 each year, commencing on [[August 1, 2023]], and maturing serially, as set forth on the cover page of this Official Statement.

The Bonds will be issued only in fully registered form and will be initially registered and delivered only to Cede & Co., the nominee of The Depository Trust Company (“DTC”), pursuant to the book-entry only system described herein. No physical delivery of the Bonds will be made to the owners hereof. Principal of, premium, if any, and interest on the Bonds will be payable by the Paying Agent/Registrar to

Agenda Item #7.4.

Cede & Co., which will make distribution of the amounts so paid to the beneficial owners of the Bonds. See “THE BONDS – Book-Entry Only System” herein.

Authorization

The Bonds are being issued pursuant to the City Council’s powers under Article IX, Section 10 of the Constitution of the State of New Mexico, and Sections 3-30-1 through 3-30-9 and 6-15-1 through 6-15-22 NMSA 1978, as amended and supplemented, the Bond Ordinance of the City Council delegating authority to the City Manager or delegate awarding the Bonds to the successful bidder for the Bonds in the public sale held on February 28, 2023 (together, the “Ordinance”). A copy of the Official Notice of Bond Sale is attached to this Official Statement as Appendix D.

Bond Registrar and Paying Agent

The City Treasurer will serve as the Bond Registrar (the “Registrar”) and Paying Agent (the “Paying Agent”) for the Bonds.

Payment of Principal and Interest; Record Date

The principal of the Bonds is payable to the registered owners of the Bonds at the principal office of the Paying Agent. Interest on the Bonds is payable by check or draft of the Paying Agent mailed on or before each interest payment date to the registered owners of the Bonds as of the close of business on the 15th day of the calendar month preceding the interest payment date (the “Regular Record Date”) at the addresses appearing in the registration books maintained by the Registrar; but any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the registered owner thereof at the close of business on the Regular Record Date and shall be payable to the person who is the registered owner thereof at the close of business on the date to be fixed by the Registrar whenever moneys become available for the payment of defaulted interest (the “Special Record Date”).

Optional Redemption of Bonds

The Bonds maturing on and after August 1, 20__, may be redeemed prior to their scheduled maturity on August 1, 20__, or on any date thereafter, in whole or in part, at the option of the City Council at par plus accrued interest to the date of redemption, if any.

Exchange or Transfer of Bonds

The Registrar/Paying Agent will maintain the books of the City for the registration of ownership of the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment by the owner of any Bond requesting exchange or transfer of any tax or other governmental charge required

to be paid with respect to such exchange or transfer. See “THE BONDS – Book-Entry Only System” herein for a description of the system to be utilized initially in regard to ownership and transferability of the Bonds.

Book-Entry Only System

The information in this section concerning DTC and DTC’s book-entry system has been obtained from sources that the City believes to be reliable, but neither the City, Municipal Advisor nor Bond Counsel take responsibility for the accuracy thereof.

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of Bonds of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s rating of AA+. The DTC Rules applicable to Direct Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtc.org. The City undertakes no responsibility for and makes no representations as to the accuracy or the completeness of the content of such material contained on that website as described in the preceding sentence including, but not limited to, updates of such information or links to other Internet sites accessed through the aforementioned website.

Purchases of the Bonds under the DTC system must be made by or through Direct or Indirect Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co. or such other name as may be requested

by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

While the Bonds are in the book-entry only system, redemption notices will be sent to DTC. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the City or agent on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, agent, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the City. Under such circumstances, in the event that a successor depository is not obtained, certificates representing the Bonds are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates representing the Bonds will be printed and delivered to DTC.

SECURITY AND REMEDIES

General

The Bonds are general obligations of the City payable from *ad valorem* taxes, which may be levied against all taxable property within the City without limitation as to rate or amount. The Bonds are secured by the obligation of the City to levy and collect upon all taxable property within the City a tax rate levy sufficient, together with other legally available revenues, to pay the debt service on the Bonds. Such annual levy for debt service creates a statutory tax lien that can be enforced personally against the owner of the

property or enforced by sale of the property. Neither the State nor any other political subdivision has any responsibility to pay the debt service on the Bonds.

Legal Matters

Various State laws and constitutional provisions apply to the assessment and collection of *ad valorem* property taxes. There is no assurance that there will not be any amendment, change in the interpretation of, or addition to the applicable laws, provisions and regulations that would have a material effect, directly or indirectly, on the affairs of the City.

Limitations on Remedies Available to Owners of Bonds

There is no provision for acceleration of maturity of the principal of the Bonds in the event of a default in the payment of principal of or interest on the Bonds. Consequently, remedies available to the owners of the Bonds may have to be enforced from year to year.

The enforceability of the rights and remedies of the owners of the Bonds, and the obligations incurred by the City in issuing the Bonds, are subject to the following: the Federal Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor's rights generally, now or hereafter in effect; usual equity principles, which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

*Special Factors Affecting the Payment of Debt Service on the Bonds and Available Remedies--
Public Health Pandemics or Outbreak Risks*

Cybersecurity

The City operates a large and complex information technology infrastructure to support internal and external operations. As is the case with any such environment, the threat of cybersecurity incidents is constant. Such incidents may arise from multiple sources, including unintentional events or actions, intentional insider threat, and deliberate malicious attacks from outside entities. The effect of such threats may include unauthorized access to City systems, data or resources, inappropriate exposure or use of City information, disruption of City services, and damage to City systems.

The City maintains a cybersecurity program that uses a multilayer, multi-vendor approach. Staffing for the program consists of a cyber security administrator who is CASP+ certified and an information security specialist. The City has an IT Governance program which provides a technology review, including the review of security standards, for new technology purchases. The City has a Protected Information Management Committee which sets standards for the use and security of protected information within the City. The City has cyber security insurance policy with coverage comparable to coverage carried by other U.S. municipalities of a similar size.

Security technology used by the City includes a unified threat management security system, end point security software on all computers, internal and external network traffic inspection, centralized event log correlation and alerting, and honey pot technologies. All computer operating system environments are updated with security updates as they are released. All updates are centrally managed. All City staff are

required to attend a cyber security awareness training annually. Security penetration testing is performed bi-annually using a third-party auditor.

Certain Risks Associated with COVID-19

The outbreak of COVID-19, (the “COVID-19”), a respiratory disease caused by a novel strain of coronavirus, which has spread to many countries, including the United States, has been declared a global pandemic by the World Health Organization. COVID-19 has affected travel, commerce, and financial markets globally, and has impacted economies worldwide. The federal government and state and local governments, including the City, have announced orders, recommendations and other measures intended to slow the spread of COVID-19, including limiting the size of public gatherings and regulating public spaces in order to minimize interpersonal contact. These COVID-19 measures are changing rapidly.

Beginning in March 2020, New Mexico Governor Michelle Lujan Grisham issued numerous public health orders pertaining to COVID-19. Certain material orders are described below.

On August 17, 2021, the New Mexico Health Secretary issued two Public Health Orders which (1) require that all workers at private, public and charter schools either be vaccinated against COVID-19 or otherwise submit to regular COVID-19 testing, (2) re-implement a statewide framework that facemasks be worn in all public indoor spaces, with only limited exceptions, and regardless of vaccination status, and (3) require all workers in certain medical close-contact congregate settings, including hospitals, nursing homes, juvenile justice facilities, rehabilitation facilities, and State correctional facilities, to be vaccinated against COVID-19. As of July 2022, according to the New Mexico Department of Health, 79.1% of State residents age 18 or older have completed the primary series of vaccinations for COVID-19, 91.7% of State residents age 18 and older have received at least one dose of the COVID-19 vaccine.

The City has taken, and is taking, several steps to protect the health of its employees, maintain continuity of its critical and essential business functions and avoid widespread impacts to its workforce from the COVID-19 outbreak. The following actions have been undertaken and are underway: implementation of policies and procedures to minimize COVID-19 exposure and spread, development of a continuity operations plan outlining essential operations to the community and organization, including resources required to continue essential operations during an emergency or disruption.

A portion of the City’s economy is dependent on tourism and the foregoing impacts of the spread of COVID-19 and its continued adverse effect on the level of tourism activity and commercial activity within the City will impact the City’s financial operations. The City relies on gross receipts tax collections as well as business and tourist travel to generate the State-Shared Gross Receipts Tax Revenues to pay debt service on the Series 2023 Bonds and other Parity Bonds and Subordinate Bonds. The full extent of the impact on such revenue streams is not known yet.

The degree of impact from COVID-19 to the City’s financial operations is difficult to predict due to the evolving nature of the COVID-19 transmission, including uncertainties relating to (i) the duration of the outbreak, (ii) the severity of the outbreak, and (iii) the ultimate geographic spread of the outbreak, as well as with regard to what additional actions may be taken by governmental authorities to contain or mitigate its impact. Notwithstanding the foregoing, the City does not believe that the impacts of the spread of COVID-19 will have a material adverse effect on its ability to pay debt service on the Series 2023 Bonds.

Additional information with respect to events surrounding the outbreak of COVID-19 and responses from State and local agencies can be found on the following website established by the State’s Department of Health at: <https://cv.nmhealth.org>. The City has not incorporated by reference the information on such website and the City does not assume any responsibility for the accuracy of the information on such website.

PURPOSE AND PLAN OF FINANCING

The Bonds will be issued in a principal amount of \$17,000,000*, which represents the first series of general obligation bonds approved by the qualified electors of the City at an election held on November 8, 2022 in a maximum aggregate amount of \$23,000,000. The Bonds will be issued for the purpose of providing funds for (1) acquiring, planning, designing, constructing and equipping a new fire station facility (2) acquiring, planning, designing, constructing and equipping a regional community recreation facility, (3) renovating and improving existing parks and recreation facilities, and (4) to pay costs of issuance of the Bonds.

SOURCES AND USES OF FUNDS

The sources and uses of funds relating to the Bonds, other than accrued interest, are set forth in the following table.

SOURCES OF FUNDS	
Bond proceeds	\$
[Net] Premium	
TOTAL SOURCES OF FUNDS	\$
USES OF FUNDS	
Deposit to Acquisition Fund	\$
Underwriter's Discount	
Costs of Issuance ⁽¹⁾	
TOTAL USES OF FUNDS	\$

(1) Includes Municipal Advisor fees, rating agency fees, legal fees, fees of the paying agent/registrar, and other miscellaneous costs and expenses related to the issuance of the Bonds.

* Preliminary, subject to change.

DEBT AND OTHER FINANCIAL OBLIGATIONS

General Obligation Debt

Article IX, Section 13, of the New Mexico Constitution prohibits municipalities, including the City, from incurring general obligation debt in an aggregate amount, including existing indebtedness, exceeding four percent of the value of the taxable property within such municipality, as shown by the last preceding general assessment. A test for maximum general obligation bonds outstanding of the City follows:

2022 Assessed Valuation ⁽¹⁾	\$2,810,356, 108
2022 Estimated Actual Valuation	\$9,254,399,721
 Bonded Debt Outstanding ⁽²⁾	 \$35,215,000
Minus Debt Service Fund Balance	(_____)
NET DEBT	<u>\$</u>
 Ratio of Estimated Debt to 2022 Assessed Valuation	 4.82%
Ratio of Estimated Debt to 2022 Estimated Actual Valuation	1.46%
Per Capital Bonded Debt	\$ 316.35
2022 Estimated Population	111,385

(1) New Mexico Assessed Values represent 33-1/3% (the maximum assessment ratio permitted by the New Mexico Constitution) of the actual property value after deduction of certain exemptions. Property tax levies are based upon the certified assessed valuation.

(2) Includes proposed Series 2023 Bonds.

As of the date of this Official Statement, the City has outstanding general obligation indebtedness consisting of principal of \$7,880,000 of its Series 2019 Bonds and principal of \$10,335,000 of its Series 2020 Bonds. The combined debt service requirements of the Series 2019 and Series 2020 Bonds, and the anticipated debt service requirements of the Series 2023 Bonds are shown in the following table.

	Current Requirements			Series 2023*			Total Requirements*		
Year	Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total
2023	\$2,015,000	\$686,250	\$2,701,250	\$ 2,190,000	\$ 425,000	\$ 2,615,000	\$ 4,205,000	\$1,111,250	\$ 5,316,250
2024	2,015,000	585,500	2,600,500	1,775,000	740,500	2,515,500	3,790,000	1,326,000	5,116,000
2025	2,015,000	484,750	2,499,750	1,135,000	651,750	1,788,750	3,150,000	1,136,500	4,286,500
2026	2,015,000	384,000	2,399,000	1,080,000	595,000	1,675,000	3,095,000	979,000	4,074,000
2027	2,015,000	283,250	2,298,250	1,080,000	541,000	1,621,000	3,095,000	824,250	3,919,250
2028	2,015,000	192,350	2,207,350	1,080,000	487,000	1,567,000	3,095,000	679,350	3,774,350
2029	2,015,000	142,200	2,157,200	1,080,000	433,000	1,513,000	3,095,000	575,200	3,670,200
2030	2,015,000	92,050	2,107,050	1,080,000	379,000	1,459,000	3,095,000	471,050	3,566,060
2031	1,030,000	41,900	1,071,900	1,080,000	325,000	1,405,000	2,110,000	366,900	2,476,900
2032	1,065,000	21,300	1,086,300	1,080,000	271,000	1,351,000	2,145,000	292,300	2,437,300
2033				1,080,000	217,000	1,297,000	1,080,000	217,000	1,297,000
2034				1,080,000	163,000	1,243,000	1,080,000	163,000	1,243,000
2035				1,080,000	109,000	1,189,000	1,080,000	109,000	1,189,000
2036				1,100,000	55,000	1,155,000	1,100,000	55,000	1,155,000
Total	<u>\$18,215,000</u>	<u>\$2,913,550</u>	<u>\$21,128,550</u>	<u>\$17,000,000</u>	<u>\$ 5,392,250</u>	<u>\$22,392,000</u>	<u>\$35,215,000</u>	<u>\$8,305,300</u>	<u>\$43,520,800</u>

*Preliminary, subject to change. Interest on Series 2023 Bonds computed at 5.000% per annum for illustration purposes only.

Statement of Estimated Direct and Overlapping Debt

The following calculation analyzes the debt load and per capita debt of the City payable from property taxes. In addition to outstanding debt of the City, the calculation takes into account debt attributable to taxing entities that is the responsibility of taxpayers within the boundaries of the City.

Taxing Entity	2022 Assessed Valuation	General Obligation Debt Outstanding	Percentage Applicable	Amount
State of New Mexico	\$70,390,642,337	\$414,365,000	3.99%	\$16,543,580
Dona Ana County	5,223,570,138	4,435,000	53.80%	2,386,094
Dona Ana Com. Col.	5,299,505,220	21,555,000	53.03%	11,430,732
City of Las Cruces	2,810,356,108	18,215,000	100.00%	18,215,000
Las Cruces Schools	4,071,874,269	125,885,000	69.02%	86,884,234
Total Direct and Overlapping Debt				\$135,459,641

Ratio of Estimated Direct & Overlapping Debt to 2022 Assessed Valuation:	4.82%
Ratio of Estimated Direct & Overlapping Debt to 2022 Estimated Actual Valuation:	1.46%
Per Capita Direct & Overlapping Debt:	\$1,319.54

Source: Doña Ana County Assessor's Office, State Assessed Property Tax Division and individual entities.

Analysis of Assessed Valuation

Assessed Valuation of property within the City is calculated as follows: Of the total assessed valuation of all taxable property in the City, 33 1/3% is legally subject to *ad valorem* taxes. After deduction of certain personal exemptions, the 2022 Assessed Valuation is \$2,810,356,108. The actual value of personal property within the City (see “Assessments” below) is determined by the Dona Ana County Assessor. The actual value of certain corporate property within the City (see “Centrally Assessed” below) is determined by the State of New Mexico, Taxation and Revenue Department, Property Tax Division.

The analysis of Assessed Valuation in the City of Las Cruces is as follows:

	2022	2021	2020	2019	2018
Assessments					
Value of Land	\$ 657,946,481	\$ 643,226,071	\$ 628,874,074	\$ 617,132,989	\$ 609,372,415
Improvements	2,261,910,366	2,098,853	2,028,024,992	1,929,579,112	1,852,847,205
Personal Property	74,520,534	64,245,761	65,230,658	71,440,024	69,318,831
Mobile Homes	25,333,289	24,594,089	23,835,529	23,336,016	23,648,568
Livestock	11,948	13,282	12,899	11,081	11,522
Assessor's Taxable Value	<u>\$3,019,722,618</u>	<u>\$2,830,932,638</u>	<u>\$2,745,978,152</u>	<u>\$2,641,499,222</u>	<u>\$2,555,198,541</u>
Less Exemptions					
Head of Family	\$ 25,133,106	\$ 25,741,064	\$ 26,069,893	\$ 26,649,447	\$ 26,614,246
Veterans	61,259,054	54,936,784	49,285,089	45,420,622	42,052,236
Other	188,051,630	180,315,108	177,902,715	173,610,313	180,449,786
Total Exemptions	<u>\$ 274,443,799</u>	<u>\$ 260,992,956</u>	<u>\$ 253,257,697</u>	<u>\$ 245,680,382</u>	<u>\$ 249,116,267</u>
Assessor's Net Taxable Value	<u>\$2,745,278,819</u>	<u>\$2,569,939,682</u>	<u>\$2,492,720,455</u>	<u>\$2,395,818,840</u>	<u>\$2,306,082,274</u>
Centrally Assessed	\$65,077,289	\$59,843,051	\$60,169,664	\$56,698,286	\$59,553,090
Total Assessed Valuation	<u>\$2,810,356,108</u>	<u>\$2,629,782,733</u>	<u>\$2,552,890,119</u>	<u>\$2,452,517,126</u>	<u>\$2,365,635,364</u>
Residential	\$2,051,707,930	\$1,894,030,170	\$1,801,660,043	\$1,715,172,485	\$1,644,080,108
Non-Residential	758,648,178	734,752,563	751,230,076	737,344,641	721,555,256
Total	<u>\$2,810,356,108</u>	<u>\$2,629,782,733</u>	<u>\$2,552,890,119</u>	<u>\$2,452,517,126</u>	<u>\$2,365,635,364</u>

Source: Dona Ana County Assessor's Office

History of Assessed Valuation

The following is a history of assessed valuation for the City and Dona Ana County.

Tax Year	City of Las Cruces	Dona Ana County
2022	\$2,810,356,108	\$5,223,570,138
2021	2,629,782,733	4,935,560,916
2020	2,552,890,119	4,783,117,888
2019	2,452,517,126	4,602,866,403
2018	2,365,635,364	\$4,450,597,884

Source: Dona Ana County Assessor's Office

Article VIII, Section 2, of the New Mexico Constitution limits the total *ad valorem* taxes for operational purposes levied by all overlapping governmental units within the City to \$20.00 per \$1,000 of assessed value. This limitation does not apply to levies for public debt and levies for additional taxes if authorized at an election by a majority of the qualified voters of the City voting on the question. The following table summarizes the tax rates on residential property located within the City for 2021-2022 Fiscal Year and the previous four fiscal years. The City expects no change in the level of its taxes in the foreseeable future but is unable to predict what overlapping entities might do. A high level of taxation may adversely impact the City’s ability to repay bonds.

RESIDENTIAL TAX RATES - Per \$1,000 Assessed Valuation

Within 20 Mill Limit for General Purposes

	2022	2021	2020	2019	2018
State of New Mexico	\$0.000	\$0.000	\$0.000	\$0.000	\$ 0.000
Dona Ana County	9.172	9.114	0.222	9.253	9.137
Dona Ana Comm. College	1.237	1.230	1.245	1.250	1.250
City of Las Cruces	4.787	4.774	4.805	4.841	4.776
Las Cruces Flood Control	1.977	1.972	1.985	2.000	1.988
Las Cruces Schools	0.343	0.339	0.342	0.344	0.340
Total	\$17.516	17.429	17.599	17.688	17.491

Over 20 Mill Limit – Interest, Principal, Judgment, etc.

	2022	2021	2020	2019	2018
State of New Mexico	\$ 1.350	\$ 1.360	\$ 1.360	\$ 1.360	\$ 1.360
Dona Ana County	0.091	0.096	0.099	0.098	0.108
Dona Ana Comm. College	0.750	0.750	0.750	0.750	0.750
City of Las Cruces	2.030	2.030	2.009	2.007	2.006
Las Cruces Schools	9.618	9.593	9.604	9.605	9.600
Total	\$ 13.849	\$13.829	\$13,822	\$13.820	\$13.824

Total Levy

	2022	2021	2020	2019	2018
State of New Mexico	\$ 1.360	\$ 1.360	\$ 1.360	\$ 1.360	\$ 1.360
Dona Ana County	9.263	9.210	9.321	9.351	9.245
Dona Ana Comm. College	1.987	1.980	1.995	2.000	2.000
City of Las Cruces	6.817	6.804	6.814	8.848	8.770
Las Cruces Flood Control	1.977	1.972	1.985	2.000	1.988
Las Cruces Schools	9.961	9.932	9.946	9.949	9.940
Total Residential*	\$31.365	\$31.248	\$31.421	\$31.508	\$31.315
Total Non-Residential*	\$34.569	\$34.573	\$34.554	\$34.540	\$34.546

*In City of Las Cruces

Source: State of New Mexico, Department of Finance & Administration

Major Taxpayers

Taxpayer	Type of Business	2022 Assessed Valuation	% of City ⁽¹⁾
El Paso Electric	Electric Utility	\$ 29,571,448	1.05%
Las Cruces Medical Center	Healthcare	20,401,880	0.73%
Memorial Medical Center	Healthcare	11,986,798	0.43%
Comcast of New Mexico	Cable Provider	11,707,396	0.42%
Las Cruces Hospital Bld LLC	Real Estate	10,884,823	0.39%
Saputo Cheese LLC	Dairy	9,310,934	0.33%
Copperstone LLC	Real Estate	6,062,296	0.22%
HTA Regional Medical	Medical	5,987,911	0.21%
Park Place Las Cruces LLC	Investments	5,851,337	0.21%
Clear Sky Capital Casas de Soledad Apartments	Apartments	5,847,155	0.21%
Total		<u>\$117,611,978</u>	<u>4.18%</u>

(1) Based on 2022 City Assessed Valuation of \$2,810,356,108

Source: Dona Ana County Assessor's Office

Yield Control Limitation

State law limits property tax increases from the prior property tax year. Specifically, no taxing entity may set a rate or impose a tax (excluding oil and gas production *ad valorem* and oil and gas production equipment *ad valorem* taxes) or assessment that will produce revenues that taxes exceed the prior year's tax revenues from residential and non-residential property multiplied by a "growth control factor." The growth control factor is the percentage equal to the sum of (a) "percent change I" plus (b) the prior property tax year's total taxable property value plus "net new value," as defined by statute, divided by such prior property tax year's total taxable property value; but if that percentage is less than 100 percent, then the growth control factor is (a) "percent change I" plus (b) 100%. "Percent change I" is based upon the annual implicit price deflator index for state and local government purchases of goods and services (as published in the United States Department of Commerce monthly publication entitled "Survey of Current Business," or any successor publication) and is a percent (not to exceed 5%) that is derived by dividing the increase in the prior calendar year's index over the index for the calendar year next preceding the prior calendar year (unless there was a decrease, in which case zero if used) by the index for such calendar year next preceding the prior calendar year. *The growth control factor applies to authorized operating levies and to any capital improvements levies, but does not apply to levies for paying principal and interest on public general obligation debt.*

Limitations on Residential Property Tax Increases

In an effort to limit large annual increases in residential property taxes in some areas of the State (particularly the Santa Fe and Taos areas which have experienced large increases in residential property values in recent years), an amendment to the uniformity clause (Article VIII, Section 1) of the New Mexico Constitution was approved by a wide margin by New Mexico voters on November 3, 1998.

The amendment directs the Legislature to provide for valuation of residential property in a manner that limits annual increases in valuation. The limitation may be applied to classes of residential property taxpayers based on occupancy, age or income. The limitations may be authorized statewide or at the option of a local jurisdiction and may include conditions for applying the limitations.

Section 7-36-21.2 NMSA 1978 establishes a statewide limitation on residential property valuation increases beginning in tax year 2001. Annual valuation increases will be limited to 3% over the prior year's

Agenda Item #7.4.

valuation or 6.1% over the valuation from two years prior. These limitations do not apply under the following exceptions:

1. When property is being valued for the first time;
2. When physical improvements are made to the property;
3. When a change of ownership outside the family occurs;
4. When a change in zoning or use of property occurs; and
5. To property that is subject to the valuation limitations under Section 7-36-21.3 NMSA 1978.

Section 7-36-21.3 NMSA 1978 places a limitation on the increase in value for property taxation purpose for single-family dwellings occupied by low-income owners who are sixty-five years of age or older or who are disabled. The statute fixes the valuation of the property to the valuation in the year that the owner turned 65 or became disabled. The Section 7-36-21.3 limitation does not apply:

1. To property that is being valued for the first time;
2. To a change in valuation resulting from physical improvements made to the property in the preceding year; and
3. To a change in valuation resulting from a change in the zoning or permitted use of the property in the preceding year.

Amendments to State laws affecting residential property taxes are proposed from time to time and may be proposed in the future by the Legislature. Such amendments, if enacted, could result in an increase to the tax rate imposed on residential property tax within the City in order to pay the principal of and interest on general obligation bonds issued by the City, including the Bonds.

The constitutionality of the property tax limitation has been challenged in a number of venues. On March 28, 2012, the New Mexico Court of Appeals upheld the statutory valuation cap and its application under Section 7-36-21.2 NMSA 1978, which ruling was affirmed by the New Mexico Supreme Court in June, 2014.

Tax Collections on Locally Assessed and Centrally Assessed Property

General (*ad valorem*) taxes for all units of government are collected by the Dona Ana County Treasurer and distributed monthly to the various political subdivisions to which they are due. Property taxes are due in two installments. The first half installment is due on November 10 and becomes delinquent on December 10. The second half installment is due on April 10 and becomes delinquent on May 10. Collection statistics for Dona Ana County are presented here:

Tax Year	Fiscal Year	Net Taxes Charged to Treasurer	Current Tax Collections ⁽¹⁾	Current Collections as of % of Net Levied	Current/ Delinquent Tax Collection ⁽²⁾	Current/ Delinquent Collections as a % of Net Levied
2021	20/22	\$151,208,269	\$146,033,493	96.58%	\$146,033,493	96.58%
2020	20/21	147,172,040	141,840,720	98.61%	145,124,398	98.61%
2019	19/20	142,236,599	135,927,911	95.56%	141,367,968	99.39%
2018	18/19	136,526,194	129,331,545	94.73%	135,834,583	99.49%
2017	17/18	126,154,140	120,921,863	95.85%	125,503,532	99.48%

Agenda Item #7.4.

Tax Year	Fiscal Year	Net Taxes Charged to Treasurer	Current Tax Collections ⁽¹⁾	Current Collections as of % of Net Levied	Current/Delinquent Tax Collection ⁽²⁾	Current/Delinquent Collections as a % of Net Levied
2016	16/17	123,965,163	118,564,408	95.64%	123,619,526	99.72%
2015	15/16	121,314,338	115,940,130	95.57%	121,029,411	99.77%
2014	14/15	117,385,073	112,086,171	95.49%	117,150,351	99.80%
2013	13/14	114,395,409	109,475,574	95.70%	114,199,734	99.83%
2012	12/13	111,609,202	106,152,876	95.11%	111,485,255	99.85%

(1) Current collections through June 30 of each year.

(2) As of June 30, 2022.

Source: Dona Ana County Treasurer's Office

Interest on Delinquent Taxes

Pursuant to Section 7-38-49 NMSA 1978, if property taxes are not paid for any reason within thirty days after the date they are due, interest on the unpaid taxes shall accrue from the thirtieth day after they are due until the date they are paid. Interest accrues at the rate of one percent (1%) per month or any fraction of a month.

Penalty for Delinquent Taxes

Pursuant to Section 7-38-50 NMSA 1978, if property taxes become delinquent, a penalty of one percent of the delinquent tax for each month, or any portion of a month, they remain unpaid shall be imposed, but the total penalty shall not exceed five percent (5%) of the delinquent taxes. The minimum penalty imposed is \$5.00. A City can suspend application of the minimum penalty requirement for any tax year.

If property taxes become delinquent because of intent to defraud by the property owner, 50% of the property taxes due or \$50.00, whichever is greater, shall be added as a penalty.

Remedies Available for Non-Payment of Taxes

Pursuant to Section 7-38-47 NMSA 1978, property taxes are the personal obligation of the person owning the property on the date on which the property was subject to valuation for property taxation purposes. A personal judgment may be rendered against the taxpayer for payment of taxes that are delinquent, together with any penalty and interest on the delinquent taxes.

Taxes on real property are a lien against the real property. A lien runs in favor of the State and secures the payment of property taxes and any penalty and interest until such payments are made. Such lien is a first lien and paramount to any other interest in the property, perfected or unperfected. Pursuant to Section 7-38-65 NMSA 1978, delinquent taxes on real property may be collected by selling the real property on which taxes are delinquent.

Pursuant to Section 7-38-53 NMSA 1978, delinquent property taxes on personal property may be collected by asserting a claim against the owner(s) of the personal property for which taxes are delinquent.

Protest

Pursuant to Section 7-38-39 NMSA 1978, after receiving his or her property tax bill and after making payment prior to the delinquency date of all property taxes due in accordance with the bill, a property owner may protest the value or classification determined for his or her property for property taxation purposes, the allocation of value of his or her property to a particular governmental unit, the application to his or her property of an administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978 or a denial of a claim for an exemption by filing a claim for refund in the district court. Pursuant to Section 7-38-41 NMSA 1978, the portion of any property taxes paid to the County Treasurer that is not admitted to be due and is the subject of a claim for refund will be deposited in a "property tax suspense fund." Moneys in the property tax suspense fund may not be used for the payment of debt service on the Bonds.

FINANCES OF THE CITY

Budget Process

Pursuant to the City Charter (the "Charter"), the City adheres to the following procedure in establishing its annual budget: At least sixty (60) days prior to the start of the fiscal year (July 1), the City Manager shall submit a budget and budget message to the council for the ensuing fiscal year. The City Manager's message shall explain the budget both in fiscal terms and in terms of work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year and describe the important features of the budget. It shall indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes. The budget message shall summarize the City's debt position and include any other material the City Manager deems desirable.

The budget itself shall provide a complete financial plan of all City funds and activities for the ensuing year. The budget shall show in detail all estimated income, indicating the estimated property tax levy, estimated tax revenues, and all proposed expenditures, and shall be arranged to show comparative figures for actual and estimated income and expenditures of the current fiscal year. It shall also show actual income and expenditures of the preceding fiscal year to date and estimated income and expenditures for the remaining months of the fiscal year. The budget shall include the following: (1) proposed expenditures for current operations during the ensuing fiscal year; (2) proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each capital expenditure; and (3) anticipated reserves for the ensuing fiscal year of each enterprise owned by the City and the proposed method of the disposition of those reserves. Subsidiary budgets for each enterprise giving detailed income and expenditure information shall be attached as appendices to the budget. The total of proposed expenditures for a year shall not exceed the total of estimated resources for that year.

Following a public hearing on the proposed budget, the City Council may adopt the budget, with or without amendment. The City Council may add or increase programs or amounts and may delete or decrease any programs or amounts, except for expenditures required by law, for debt service or for estimated cash deficit. No amendment to the budget or capital improvements program shall increase the authorized expenditures to an amount greater than the total of estimated resources available during the fiscal year. The council shall adopt the budget no later than thirty (30) days before the beginning of the fiscal year. If it fails to adopt the budget by the beginning of the fiscal year, the amounts appropriated for current operation for the current fiscal year are deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it prorated accordingly, until the City Council adopts a budget. Nothing in the Charter shall preclude the City from meeting its debt service when due. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated in the budget.

Agenda Item #7.4.

If during the fiscal year the City Manager certifies that resources are available for appropriation in excess of those estimated in the budget, the City Council may make supplemental appropriations for the year up to the amount of the excess. If at any time during the fiscal year, the City Manager believes that the resources available may be insufficient to meet the amount appropriated, the City Manager shall so report to the City Council, indicating the estimated amount of the deficit, any remedial action taken or to be taken by the City Manager, and recommendations as to any other steps to be taken. The City Council shall then take any action deemed necessary to prevent any deficit, and for that purpose it may reduce any appropriation. No appropriation for debt service may be reduced or transferred. No appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof.

As a management control device, the City employs formal budgetary integration at the line item level. Deficit financing is not permitted under New Mexico law.

The Government Finance Officers Association (“GFOA”) awarded to the City the Distinguished Budget Presentation Award in 2021, which is the 15th consecutive year the City has achieved this designation. The City also received the Certificate of Achievement of Excellence in Financial Reporting, for the 17th consecutive year for the City's 2021 Annual Certified Financial Report.

Financial Statements

The following General Fund Balance Sheet and Statement of Revenues, Expenditures and Changes in Fund Balances have been included herein for informational purposes only. Figures were taken from the audit reports prepared by the City. Audited figures are excerpts of the audit reports and do not purport to be complete. Reference is made to the complete audit reports which are available upon request.

**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES –
GENERAL FUND⁽¹⁾**

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
REVENUES					
Local Taxes:					
Gross receipts	\$85,229,365	\$84,786,667	\$90,340,739	\$97,593,897	\$122,059,903
Property	11,958,901	12,249,039	12,763,080	13,233,032	13,330,826
Utility franchise	1,190,900	-			
Total local taxes	<u>\$97,188,266</u>	<u>\$97,035,706</u>	<u>\$103,103,819</u>	<u>\$110,826,929</u>	<u>\$135,390,729</u>
State-shared taxes	531,630	637,637	472,300	541,319	643,066
Charges for services	2,854,738	3,290,364	2,522,487	766,399	1,239,652
Fees and fines	594,605	549,072	311,623	216,230	234,400
Investment income (loss)	(281,792)	1,989,566	1,613,241	35,135	(704,725)
Franchise fee	2,707,293	3,628,782	3,510,306	4,292,458	4,281,498
Licenses and permits	1,471,630	1,473,546	1,787,286	2,529,467	3,356,634
Operating grants and contributions		-			
Intergovernmental	40,418	15,973	16,267	14,901	15,568
Other	<u>4,741,366</u>	<u>4,507,388</u>	<u>4,174,595</u>	<u>3,732,914</u>	<u>7,430,412</u>
Total Revenues	<u>\$111,039,055</u>	<u>\$113,128,034</u>	<u>\$117,511,924</u>	<u>\$122,955,752</u>	<u>\$151,887,234</u>
EXPENDITURES					
Current:					
General government	17,958,367	18,791,042	19,032,925	18,588,324	26,428,977
Economic development	3,310,315	3,990,650		2,534,112	3,115,046
Police	23,823,819	25,536,609	25,185,636	22,712,126	25,553,304
Fire	14,521,364	16,282,527	16,221,513	15,793,885	18,247,544
Community development	3,609,846	4,450,169	3,801,890	3,960,914	4,216,866
Quality of Life	5,842,368	6,465,482	6,391,893	6,243,602	7,061,968
Public works	12,533,426	12,111,416	13,057,782	8,228,681	12,570,016
Information technology	-	-			
Transportation	-	-			
Parks and recreation	10,177,121	11,032,649	10,627,344	8,784,074	12,636,023
Capital Outlay	4,867,131	4,911,888	2,021,780	4,297,927	5,270,326
Debt service	-	-			
Interest	-	-			
Principal	-	-			
Total Expenditures	<u>\$96,643,757</u>	<u>\$103,572,432</u>	<u>\$99,295,123</u>	<u>\$91,143,645</u>	<u>\$115,100,070</u>
Revenues Over (Under) Expenditures	<u>\$14,395,298</u>	<u>\$9,555,602</u>	<u>\$18,216,801</u>	<u>\$31,812,107</u>	<u>\$36,787,164</u>
OTHER FINANCING SOURCES (USES)					
Issuance of debt	-	-			
Proceeds from sale of capital assets	127,905	260,372	130,344	-	-
Payment to agency	-	-			
Transfers in	3,075,574	6,293,917	5,702,555	3,304,119	5,287,856
Transfers out	<u>(25,214,573)</u>	<u>(17,459,534)</u>	<u>(27,184,709)</u>	<u>(27,626,489)</u>	<u>(31,178,295)</u>
Total other financing sources (uses)	<u>(22,011,094)</u>	<u>(10,905,245)</u>	<u>(21,351,810)</u>	<u>(24,322,370)</u>	<u>(25,890,439)</u>
Net Change in Fund Balances	<u>(7,615,796)</u>	<u>(1,349,643)</u>	<u>(3,135,009)</u>	<u>7,489,737</u>	<u>10,896,725</u>
Fund Balances - Beginning of Year	<u>55,992,243</u>	<u>48,376,447</u>	<u>47,026,804</u>	<u>43,891,795</u>	<u>51,381,532</u>
Fund Balances – End of Year	<u>\$48,376,447</u>	<u>\$47,026,804</u>	<u>\$43,891,795</u>	<u>\$51,381,532</u>	<u>\$62,278,257</u>

(1) Information appearing in the table is derived from the City's audited financial statements, but table is not audited.

Source: City of Las Cruces.

Agenda Item #7.4.

CITY OF LAS CRUCES, NEW MEXICO BALANCE SHEET – GENERAL FUND⁽¹⁾

	2018	2019	2020	2021	2022
ASSETS					
Pooled cash and investments	\$ 30,684,330	\$ 31,290,527	\$ 36,239,451	\$ 33,813,122	\$44,791,886
Restricted cash and investments					
Receivables, net	1,143,993	1,003,292	646,188	907,1953	796,359
Due from other funds	2,878,509	2,356,860	1,441,900	1,273,602	1,562,759
Due from other governmental units	15,952,603	15,978,747	15,813,191	18,860,630	21,501,563
Leases receivable					2,245,749
Inventories	1,561,385	1,702,416	1,711,370	1,760,958	1,645,743
Total Assets	<u>\$52,220,820</u>	<u>\$ 52,331,842</u>	<u>\$ 55,852,100</u>	<u>\$ 56,615,507</u>	<u>\$ 72,544,059</u>
DEFERRED OUTFLOWS OF RESOURCES					
Deferred amount from investment Earnings					
Total Deferred Outflow of Resources					
Total Assets and Deferred Outflow of Resources	\$ 52,220,820	\$ 52,331,842	\$ 55,852,100	\$ 56,615,507	\$ 72,544,059
LIABILITIES					
Accounts and Contracts Payable	\$ 1,297,228	\$ 2,531,580	\$ 1,759,098	\$ 2,058,322	\$ 4,000,510
Due to other funds					
Accrued Liabilities	1,818,586	1,878,065	9,267,941	2,254,842	3,392,283
Unearned Revenues	257,228	259,582	257,297	252,522	30,662
Total Liabilities	3,373,042	4,669,227	11,284,336	4,565,686	7,423,455
Deferred Inflows of Resources					
Deferred special assessment receipts					
Unavailable revenue	445,097	623,374	663,533	655,852	
Deferred inflows related to leases					2,245,749
Deferred amount from investment earnings	26,234	12,437	12,437	12,437	596,598
Total Deferred Inflows of Resources	3,844,373	635,811	675,970	668,289	2,842,347
Total Liabilities and Deferred Inflows of Resources		5,305,038	11,960,306	5,233,975	10,265,802
FUND BALANCES					
Non-spendable:					
Inventories	\$ 1,561,384	\$ 1,702,416	\$ 1,711,807	\$ 1,760,958	\$ 1,645,763
Restricted For:					
General Government	200,000				
Economic Development	50,317	404,793	547,794	769,085	912,362
Public safety programs	115,417	246,676	656,505	381,947	226,106
Housing and community development	70,466	64,157	65,387	269,104	58,830
Parks and recreation	298,239	723,102	383,351	269,465	889,613
Public works	18,220				78,245
Community and cultural services*	698,041	752,400	791,878	924,662	857,571
Debt service funds					
Health-related programs					
Transportation					
Committed for:					
Health related programs					
Debt service	8,122,444	9,007,794	9,380,532	10,679,581	10,463,998
Public safety programs	2,930,186	3,972,450	4,178,662	2,472,858	2,582,858
Public works				6,800,000	6,500,000
Transportation	4,258,445	5,391,042	3,500,000	2,511,854	2,511,054
Quality of Life	1,370,000	1,370,000	1,250,000	2,150,000	2,150,000
Economic Development	75,000		825,320	850,200	773,000
Assigned to:					
Economic development	1,977,234	2,083,962	1,347,523	1,716,968	1,519,399
Public works	231,355	308,349		563,487	
Culture and recreation					
Transportation	250,750	160,823			
Community development					
Vehicle acquisition	1,547,089	633,505	1,352,415	1,668,918	854,875
Unassigned:					
Unassigned:	24,601,860	20,205,335	17,900,621	17,592,445	30,254,603
Total fund balances	<u>\$ 48,376,447</u>	<u>\$ 47,026,804</u>	<u>\$ 43,891,795</u>	<u>\$ 51,381,532</u>	<u>\$ 62,278,257</u>
Total Liabilities, Deferred Inflows of Resources, and Fund Balances	<u>\$ 52,220,820</u>	<u>\$ 52,331,842</u>	<u>\$ 55,852,101</u>	<u>\$ 56,615,507</u>	<u>\$ 72,544,059</u>

⁽¹⁾ Information appearing in the table is derived from the City's audited financial statements, but table is not audited.
Source: City of Las Cruces

THE CITY

General

The Las Cruces/Doña Ana County area borders Texas and Mexico and has a rich and colorful history, ranging from 16th century Spanish explorations to the landing of the space shuttle. Las Cruces is the second largest city in the State and is the commercial service and cultural center of southern New Mexico. The City of Las Cruces is located approximately 45 miles north of El Paso, Texas and Ciudad Juárez, Mexico and 225 miles south of Albuquerque, New Mexico.

The economy of the Las Cruces MSA (Metropolitan Statistical Area) is diversified with the major employers being government which accounted for approximately 20,800 jobs as of November 2022. The remaining non-agricultural jobs are in education and health services (17,400), trade/ transportation/ utilities (11,400), leisure and hospitality (9,000), retail trade (7,300), professional and business services (7,200), natural resources, mining and construction (4,000), manufacturing (3,100), transportation and warehousing (2,600), financial activities (2,200), wholesale trade (1,500) information (600), and all other services (1,500).

Growth in the economy is demonstrated in the growth of gross receipts from retail trade, assessed valuation, building permits, housing prices, and median household income.

Government

The City was founded in 1849 and incorporated in 1907 and operates under a home rule charter with a Council-Manager form of government. Nonpartisan elections are held for members of the City Council of the City (the “Council”) for the election of councilors from six single-member districts and for a Mayor to be nominated and elected at large by the resident and qualified voters of the City.

Councilors and the Mayor are elected for staggered four year terms. The Mayor and the Council and the date of expiration of their current terms are as follows:

<u>Name</u>	<u>Office</u>	<u>Current Term Expires</u>
Ken Miyagishima	Mayor	December 31, 2023
Kasandra Gandara	Councilor – District 1	December 31, 2023
Tessa Abeyta	Councilor – District 2	December 31, 2023
Becki Graham	Councilor – District 3	December 31, 2025
Johana Bencomo	Councilor – District 4	December 31, 2023
Becky Corran	Councilor – District 5	December 31, 2025
Yvonne M. Flores	Councilor – District 6	December 31, 2025

Administrative Officers

City Manager Ifo Pili began his duties as Las Cruces City Manager in September 2020. Before coming to Las Cruces, Mr. Pili was the city administrator in Eagle Mountain City, Utah since 2012. He also served as Eagle Mountain City’s assistant city administrator and economic development coordinator for six years before becoming city administrator. He also was the district administrator for the Unified Fire Service Area, which served 11 Utah municipalities and unincorporated Salt Lake County. Mr. Pili was also an adjunct professor in the Master of Public Administration program at Brigham Young University, teaching local government management. He earned a Bachelor of Science degree in political science and a Master of Public Administration degree from BYU.

Agenda Item #7.4.

Finance Director of Financial Services Leeann DeMouche joined the City of Las Cruces in 2011 with an extensive analytical background in economics and project management. Ms. DeMouche spent ten years with New Mexico State University as the Water Resource Specialist. In 2011, she began her career with the City as the Water Conservation Coordinator. In 2013 she was promoted as the Rate and Economic Analyst Manager, 2015 Fleet Administrator, 2018 Chief Budget Officer, and 2021 Finance Director. Ms. DeMouche is a graduate of New Mexico State University with a BA and MA in Economics.

City Treasurer Erika Jaquez, MBA, as the Treasurer for the City of Las Cruces, has responsibility for management and direction of treasury operations including short-term investment portfolio management, long and short term debt issuance, operational budgeting, bank relationship management and credit card processing. She started with the City in October 2011 and has held various positions in finance, public works, and internal audit. Ms. Jaquez earned her Master of Business Administration and Master of Accountancy from New Mexico State University.

City Clerk Christine Rivera has been with the City of Las Cruces since 2012, was appointed interim city clerk in October of 2019, and became city clerk in August 2020. She received her Certified Municipal Clerk designation in 2016. She earned her Bachelors in Psychology from Louisiana College in 2001 and her Masters in Psychology from Capella University in 2016.

Acting City Attorney Jocelyn A. Garrison Ms. Garrison has been with the City of Las Cruces since 2018. She has served as an assistant city attorney and acting deputy city attorney while at the City of Las Cruces. Prior to joining the City, she was an attorney at the Law Office of the Public Defenders. She earned her law degree from the University of New Mexico of Law in 2009 and Bachelor of Arts degree in criminal justice and government from New Mexico State University.

Other Employees

As of June 30, 2022, the City had approximately 1,670 full time equivalent employees, 444 of which are represented by labor unions. The City believes that relations with its employees are good.

Retirement Plan

The City participates in a pension plan organized on a statewide basis and operated by the State of New Mexico. The Public Employees' Retirement Association of New Mexico (the Plan"), established by Chapter 167, Laws of 1947, New Mexico Statutes Annotated, 1978 Compilation, as amended, requires contributions, computed as a percentage of salary, from both employee and employer for all full-time employees. The majority of State and municipal employees in New Mexico participate in the Plan. The Plan requires contributions by the City and by employees at rates established by statute.

In addition to retirement benefits, the Plan provides disability benefits, surviving spouse and children's benefits, deferred benefits option and cost of living adjustments for all eligible participants. Employer contributions to the pension plan amounted to \$9,068,107 for the fiscal year ended June 30, 2022. The City's liability under the Plan is limited to the periodic employer contributions, that it is required to make for its participating employees. Future deficits of the Plan are expected to be financed by the State.

On June 25, 2012, the Governmental Accounting Standards Board approved Statement No. 68 which requires governments providing defined benefit pensions to recognize their long-term obligation for pension benefits as a liability for the first time, and to more comprehensively and comparably measure the annual costs of pension benefits. Statement No. 68 requires cost-sharing employers, such as the City, to record a liability and expense equal to their proportionate share of the collective net pension liability and expense for the cost-sharing plan. Statement No. 68 was effective for fiscal years beginning after June 15, 2014.

Agenda Item #7.4.

The City offers other post-employment benefits through the Retiree Health Care Fund, a cost-sharing multiple employer defined benefit plan administered by the New Mexico Retiree Healthcare Authority. This plan is used to provide post-employment health insurance benefits for eligible employees and their dependents. The contribution requirements are established by and may be amended by the statute. The City's contribution to the fund for Fiscal Year 2022 was \$1,625,695. For additional information regarding the post-employment benefit plan, please refer to Note 11 to the City's audited financial statements.

City Budgets

The City adheres to the following procedure in establishing its annual budget: the City Staff prepares a budget which is forwarded to the City Council prior to May 1 for the fiscal year commencing the following July 1; public input is sought by the City Council during the month of May through public hearings; the budget is approved by the City Council and forwarded for approval to the State of New Mexico, Local Government Division of the Department of Finance and Administration; the final budget is returned to the City with recommended changes and modifications; and the final budget is acknowledged by the City Council.

The operating budget includes proposed expenditures and the means of financing them.

The City Manager is authorized to transfer budgeted amounts that are within a designated organizational unit, are within the same fund and do not increase spending for any fund. The City Manager must obtain approval of the City Council and the State prior to making revisions that alter the total expenditures of any fund. As a management control device, the City employs formal budgetary integration at the line item level.

Deficit financing is not permitted under New Mexico law. The level of classification detail at which expenditure may not legally exceed appropriation for each budget item is the fund level (i.e., General, Water, Sewer, etc.).

City Strategic Plan

The City Council adopted a new strategic plan for 2021 through 2026. The strategic plan is a mid-term planning tool used by the City Council, City Management, and Staff to identify community priorities and budget accordingly.

The strategic plan is organized into six themes and related objectives:

- Community Prosperity
 - Expanded housing options for all income levels
 - Enhanced economic diversity and business strength
- Education and community services
 - Enhanced physical and mental resources
 - Improved access to healthy food options
- Environmental sustainability
 - Achieve the goals included in the climate action plan adopted in 2020
 - Promote balanced growth
- Capital improvements and infrastructure

Agenda Item #7.4.

- Quality infrastructure that meets the community's needs
 - Expanded transit access and options, including pedestrian and bicycle improved road and pavement conditions
- Communication, involvement, and follow-up
 - Robust communication channels with residents between City departments
 - Timely and consistent follow-up by City staff to residents and the public
- Public safety
 - A more humane criminal justice system
 - A safe and secure community

Each theme in the strategic plan contains several goals for a total of 55 goals. The majority of these goals were developed during the two-year planning for Elevate Las Cruces, the City's comprehensive plan. In addition to these, the City Council identified nine council goals, also to be prioritized in the short-to-mid-term planning horizon. Performance measures were developed by staff during the update of department strategic business plans.

Industry

A combination of a well-educated labor force, favorable tax rates and a high quality of living has attracted industry to Las Cruces. The blend of industries contributing to the diversification of the City's economy include: TMC Design (DOD contractor); Pony Carburetor (manufacturer); White Sands Missile Range (U.S. Army, private industry testing facility), Mountain View Medical Center (hospital), NASA LBJ Test Facility (rocket testing), Sapphire Energy (alternative energy production); Wal-Mart (retail); Tresco, Inc. (sheltered employment); VMC (technical support/communication); Saputo Inc. (cheese manufacturer); and NMSU Physical Science Laboratory.

Education

The Las Cruces School District No. 2 (the "District") is the second largest in the State, with an enrollment of approximately 23,711 students for school year 2022-2023. The district has 40 schools: 24 elementary schools (grades pre-K-5), one combined elementary and middle school (K-8), 8 middle schools (grades 6-8), 7 high schools (grades 9-12). Two of the seven high schools are early college high schools and are located on the campus of New Mexico State University. The District also has a virtual learning academy serving elementary through high school students.

New Mexico State University

New Mexico State University (the "University"), was originally founded in 1888, and in 1889 was established as a land grant college. The University consists of its main campus in the City, with branch campuses located in Alamogordo, Grants, Doña Ana and a satellite learning center in Albuquerque. The University had enrollment of 22,799 students across all campuses, and its Las Cruces Campus had a Fall 2022 enrollment (full-time equivalent) of 14,268 full time undergraduate and graduate students. 29 doctoral programs, 68 master's degree programs, and 97 undergraduate degree programs, 24 graduate certificate programs, and one education specialist program are available in the University's 6 colleges (Agriculture, Consumer and Environmental Sciences; Arts and Sciences; Business; Engineering; Health, Education and Social Transformation; and Honors) and the Graduate School.

The University's main campus encompasses approximately 900 acres and consists of more than 211 academic, research, and auxiliary buildings, and over 400 housing buildings. As of September 15, 2022 the University employed 1,581 faculty members (of which 1,041 are located on the Las Cruces campus) and 2,659 staff (of which 2,317 are located on campus in Las Cruces). The University's largest

single research operation is the Physical Science Laboratory. Research for engineering, space technology, and farm production and related industries are also conducted by various University departments. The University is classified as an R2 Doctoral/Research institution as rated by the Carnegie Foundation. The University anchors the southern end of New Mexico’s Rio Grande Research Corridor. The statewide Water Resources Research Institute is situated at the University and studies the State’s water supply and demands, conservation and use, as well as ecological and other aspects thereof.

The Doña Ana Community College, affiliated with the University and the area’s occupational training school, offers approximately 6,666 students a variety of programs designed to train students for meaningful employment. The program is designed to be flexible and can be programmed to meet the specific training needs of employers.

Agriculture

Many private and commercial farms are located in Doña Ana County. Principal crops include cotton, pecans, alfalfa, onions, lettuce, chile, barley, nursery stock, and feed grains. Water for the various agricultural operations is provided by surface water diverted from the Rio Grande River and approximately 900 irrigation wells. The area’s growing season averages about 200 days each year. The livestock, dairy cattle, Stahmann Farms (2,000 irrigated acres), and the poultry industry also provide a significant portion of agricultural income. Several chile processing plants are located in the area with seasonal employment growing to nearly 1,000.

Transportation

Historically a crossroads of the Southwest, Las Cruces is serviced by Interstate Highways I-10 (east-west) and I-25 (north-south). In addition, the City is served by five major U.S. highways and seven State highways. More than 20 interstate, regional, and local motor carriers serve Las Cruces; four of them operate terminals in the area.

Commuter air service and corporate and general aviation service is available at the City’s international airport. Major scheduled airline service is provided by El Paso International Airport, approximately 50 miles from Las Cruces.

Daily rail service, with piggyback and container service, is provided by the Santa Fe and Southern Pacific railroads.

Labor Force and Percent Unemployed

The following table, derived from information supplied by the New Mexico Department of Workforce Solutions, presents information on employment within the Las Cruces MSA (Doña Ana County), the State and the United States, for the periods indicated. Unless otherwise noted, the annual unemployment figures indicate average rates for the entire year and do not reflect monthly or seasonal trends.

Employment Information

	Las Cruces MSA (Doña Ana County)		State of New Mexico		United States
Year ⁽¹⁾	Labor Force	Percent Unemployed	Labor Force	Percent Unemployed	Percent Unemployed
2022 ⁽²⁾	100,078	5.30%	950,595	5.00%	3.60%
2021	98,170	6.60%	943,356	6.80%	5.40%
2020	97,153	8.30%	927,685	9.00%	8.90%
2019	99,907	5.20%	954,596	4.90%	3.70%
2018	96,769	5.70%	934,178	5.80%	4.40%
2017	94,943	6.20%	929,567	6.20%	4.40%
2016	95,001	7.20%	928,732	6.70%	4.90%
2015	93,179	7.40%	927,999	6.50%	5.30%
2014	92,462	6.50%	927,142	6.70%	6.20%
2013	92,219	6.90%	923,899	6.90%	7.40%

(1) Figures are annual averages.

(2) Data for June, 2022; figures are preliminary.

Source: U.S. Bureau of Labor Statistics, August 2022

Covered Wage and Salary Employment by NAICS Code Classification

The following is a history of wage and salary employment for Doña Ana County. The New Mexico Department of Workforce Solutions publishes quarterly reports of covered employment and wages. Beginning with 2001 data, employment was classified according to the new North American Industry Classification System (NAICS).

Average Annual Covered Wage and Salary Employment, By Major Industrial Sector Non-Agricultural Employment –Doña Ana County Annual Average⁽¹⁾

Sector	2018	2019	2020	2021	2022 ⁽²⁾
Grand Total	73,768	72,891	69,490	71,175	73,987
Total Private	55,878	55,850	52,657	54,325	56,185
Accommodation and Food Services	7,321	7,498	6,151	6,947	7,773
Administrative and Waste Services	4,669	3,760	2,960	3,236	3,292
Agriculture, Forestry, Fishing & Hunting	2,904	2,866	2,628	2,433	2,390
Arts, Entertainment, and Recreation	928	934	585	576	945
Construction	3,593	3,706	3,724	3,809	3,940
Educational Services	694	704	701	751	**
Finance and Insurance	1,685	1,657	1,429	1,339	1,429
Health Care and Social Assistance	14,567	14,812	14,860	15,205	16,429
Information	678	632	540	509	550
Management of Companies and Enterprises	43	72	85	86	86
Manufacturing	2,498	2,717	2,775	2,900	3,207
Mining	41	54	53	44	43
Other Services, Ex. Public Admin	1,218	1,208	1,086	1,162	1,308
Professional and Technical Services	3,408	3,672	3,616	3,390	3,417
Real Estate and Rental and Leasing	779	784	815	827	843
Retail Trade	7,542	7,242	6,993	7,282	7,522
Transportation and Warehousing	1,723	1,860	1,937	2,089	2,367
Utilities	406	355	297	305	1,223
Wholesale Trade	1,180	1,317	1,422	1,435	1,508
Total Government	17,890	17,041	16,833	16,850	17,803

(1) Figures are annual averages of quarterly data.

(2) Second quarter, 2022.

Source: New Mexico Department of Workforce Solutions

Agenda Item #7.4.

Major Employers

The following are the principal employers located in or near the City.

Las Cruces Metropolitan Statistical Area Principal Employers

1,000 - 4,999 Employees

City of Las Cruces
Gadsden ISD
Las Cruces Public School
Memorial Medical Center
New Mexico State University
White Sands Missile Range

500-999 Employees

Doña Ana Branch Community College
Doña Ana County
Mountain View Regional Medical Center
NASA
Albertsons
Trax International
Stampede Meat
Electronic Caregiver
Mesilla Valley Transportation

*Source: Mesilla Valley Economic Development Authority and New Mexico Department of
Workforce Solutions*

Per Capita Income

The following table sets forth annual per capita personal income levels for the Las Cruces Metropolitan Statistical Area (“MSA”), the State of New Mexico, and the United States. The Las Cruces MSA and the State’s per capita income level over this period have been lower than the national average.

Year	Las Cruces MSA	New Mexico	United States
2021	\$45,045	\$50,311	\$64,143
2020	41,597	46,760	59,765
2019	38,142	43,530	56,250
2018	36,063	41,218	54,098
2017	35,189	39,458	51,811
2016	34,544	38,775	49,571
2015	33,493	38,103	48,190
2014	32,011	37,219	46,464
2013	30,589	35,088	44,493
2012	31,374	35,749	44,282

Sources: Bureau of Economic Analysis, United States Department of Commerce.

Effective Buying Income

The following table reflects the percentage of households by Effective Buying Income (“EBI”) and a three-year comparison of the estimated median household income as reported by Claritas Inc. EBI is personal income less personal tax and non-tax payments. Personal income includes wages and salaries, other labor income, proprietors’ income, rental income, dividends, personal interest income, and transfer payments. Deductions are made for federal, state, and local taxes, non-tax payments such as fines and penalties, and personal contributions for social security insurance. The following chart depicts the median household EBI level for the Las Cruces MSA, the State of New Mexico and the United States.

Effective Buying Income Group	Las Cruces MSA	New Mexico	United States
Under \$25,000	31.58%	23.08%	16.38%
\$25,000 – 34,999	10.90%	10.17%	7.70%
\$35,000 – 49,999	12.56%	12.92%	11.36%
\$50,000 and over	16.53%	16.79%	16.21%
\$75,000 and over	28.43%	37.04%	48.35%
2022 Est. Median Household Income	\$45,534	\$55,028	\$72,191
2021 Est. Median Household Income	\$38,109	\$49,658	\$67,086
2020 Est. Median Household Income	\$39,705	\$49,384	\$65,228
2019 Est. Median Household Income	\$43,267	\$49,654	\$62,279
2018 Est. Median Household Income	\$40,551	\$48,044	\$60,133

Source: Spotlight, December 2022

Age Distribution

The following table sets forth a comparative age distribution profile for the City, the State of New Mexico and the United States.

Age Group	Las Cruces MSA	New Mexico	United States
0-17	24.14%	22.30%	22.00%
18-24	13.31%	9.42%	9.28%
25-34	14.01%	13.22%	13.48%
35-44	11.30%	12.45%	12.82%
45-54	9.95%	11.08%	12.18%
55 and Older	27.29%	31.53%	30.24%

Source: Spotlight, December 2022

Population

Based on information gained from the United States Census Bureau, the following table shows the historical and projected population data for the City of Las Cruces, Doña Ana County and the State of New Mexico.

Population

<u>Year</u>	<u>City of Las Cruces</u>	<u>Doña Ana County</u>	<u>State of New Mexico</u>
2022	108,591	224,886	2,126,179
2020	105,591	218,867	2,097,688
2019	103,432	218,523	2,096,829
2018	102,657	214,739	2,081,363
2010	97,618	218,523	2,112,957
2000	74,267	175,524	1,821,078
1990	62,648	136,523	1,519,933
1980	45,086	96,340	1,303,143
1970	37,857	69,773	1,017,055

Source: Spotlight, July 2022 and United States Census Bureau.

TAX EXEMPTION**General**

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, to be delivered at the time of original issuance of the Series 2023 Bonds, under existing laws, regulations rulings and judicial decisions, and assuming compliance with covenants described herein, is excludable from the gross income of the recipients thereof for federal income tax purposes, under Section 103 of the Internal Revenue Code of 1986 (the “Code”), as amended, and (b) is not a specific item of tax preference for purposes of the federal alternative minimum tax under the Code; however, for tax years beginning after December 31, 2022, interest on the Bonds is included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. Bond Counsel is also of the opinion, based on existing laws of the State of New Mexico as enacted and construed, that interest on the Bonds is excludable from net income for present State of New Mexico income tax purposes.

The Internal Revenue Code of 1986, as amended (the “Code”), imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal tax purposes of interest on obligations such as the Bonds. The City has made various representations and warranties with respect to, and has covenanted in the Ordinance and other documents, instruments and certificates to comply with the applicable provisions of the Code to assure that interest on the Bonds will not become includible in gross income. Failure to comply with these covenants or the inaccuracy of these representations and warranties may result in interest on the Bonds being included in gross income from the date of issue of the Bonds. The opinion of Bond Counsel assumes compliance with the covenants and the accuracy of such representations and warranties.

Although Bond Counsel has rendered an opinion that interest on the Bonds is excludable from gross income for federal income tax purposes, the accrual or receipt of interest on the Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient’s particular tax status or other items of income or deduction. Bond Counsel expresses no opinion regarding any such consequences. Before purchasing any of the Bonds, potential purchasers should consult their tax advisors as to the tax consequences of purchasing or owning the Bonds.

The opinions expressed by Bond Counsel are based upon existing law as of the date of issuance and delivery of the Bonds, and Bond Counsel expresses no opinion as of any date subsequent thereto or with respect to any pending legislation.

From time to time, there are legislative proposals in Congress that, if enacted, could alter or amend the federal tax matters referred to above or adversely affect the market value of the Bonds. It cannot be

predicted whether or in what form any such proposal might be enacted or whether if enacted, it would apply to Bonds issued prior to enactment. Each purchaser of the Bonds should consult his or her own tax advisor regarding any pending or proposed federal tax legislation. Bond Counsel expresses no opinion regarding any pending or proposed federal tax legislation.

Original Issue Discount

Certain maturities of the Bonds may be offered at a discount (“original issue discount”) equal generally to the difference between public offering price and principal amount. For federal income tax purposes, original issue discount on a bond accrues periodically over the term of the bond as interest with the same tax exemption and alternative minimum tax status as regular interest. The accrual of original issue discount increases the holder’s tax basis in the bond for determining taxable gain or loss from sale or from redemption prior to maturity. Holders of Bonds offered at an original issue discount should consult their tax advisors for an explanation of the accrual rules.

Original Issue Premium

Certain maturities of the Bonds may be offered at a premium (“original issue premium”) over their principal amount. For federal income tax purposes, original issue premium is amortizable periodically over the term of a bond through reductions in the holders’ tax basis in the bond for determining taxable gain or loss from sale or from redemption prior to maturity. Amortizable premium is accounted for as reducing the tax-exempt interest on the bond rather than creating a deductible expense or loss. Holders of Bonds offered at an original issue premium should consult their tax advisors for an explanation of the amortization rules.

Internal Revenue Service Audit Program

The Internal Revenue Service (the “Service”) has an ongoing program auditing tax-exempt obligations to determine whether, in the view of the Service, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. No assurances can be given as to whether the Service will commence an audit of the Bonds. If an audit is commenced, under current procedures the Service will treat the City as the taxpayer and the Bond owners may have no right to participate in such procedure. Neither the Municipal Advisor, the initial purchasers of the Bonds nor Bond Counsel is obligated to defend the tax-exempt status of the Bonds. The City has covenanted in the Bond Ordinance not to take any action that would cause the interest on the Bonds to become includable in gross income except to the extent described above for the owners thereof for federal income tax purposes. None of the City, the Municipal Advisor, the initial purchasers of the Bonds, or Bond Counsel is responsible to pay or reimburse the costs of any Bond owner with respect to any audit or litigation relating to the Bonds.

CONTINUING DISCLOSURE INFORMATION

The City will enter into an undertaking (the “Undertaking”), in the form attached as Appendix D, for the benefit of the holders of the Bonds to provide (i) certain financial information by no later than March 31st of each year, beginning March 31, 2024 until the Bonds are no longer outstanding, and (ii) operating data, and to provide notice of certain events, pursuant to the requirements of section (b)(5)(i) of Rule 15c2-12 of the Securities and Exchange Commission (17 C.F.R. § 240.15c2-12). A failure by the City to provide any information required thereunder shall not constitute an Event of Default under the Master Ordinance. The City has previously entered into continuing disclosure undertakings (each a “Prior Undertaking” and collectively, the “Prior Undertakings”) with respect to certain other obligations of the City in accordance with Section Rule 15c2-12 and, during the last five years, the City has complied in all material respects with those Prior Undertakings.

Compliance with Continuing Disclosure Undertakings in Future Years

Agenda Item #7.4.

The City intends to maintain compliance with its continuing disclosure undertakings in future years through the collective oversight and effort of current City finance staff and private consultants, all of whom have experience and knowledge related to the City's continuing disclosure obligations. Additionally, the City has Continuing Disclosure Procedures on file with the current City finance staff and the City's private consultants, which were adopted by the City Council on July 7, 2014.

LITIGATION

At the time of the original delivery of the Bonds, the City will deliver a no-litigation certificate to the effect that no litigation or administrative action or proceeding is pending or, to the knowledge of the appropriate City officials, threatened, restraining or enjoining, or seeking to restrain or enjoin, the issuance and delivery of the Bonds, effectiveness of the Bond Ordinance, or contesting or questioning the proceedings and authority under which the Bonds have been authorized and are to be issued, sold, executed or delivered, or the validity of the Bonds.

RATINGS

The City has applied for a rating on the Bonds from Moody's Investors Service ("Moody's"). An explanation of the significance of the ratings given by Moody's may be obtained from Moody's at 7 World Trade Center at 250 Greenwich Street, New York, NY 10007 or <https://www.moodys.com>.

Such rating reflects only the view of Moody's, and there is no assurance that such ratings will continue for any given period of time after obtained or that such ratings will not be revised downward or withdrawn entirely by the rating agencies if, in their judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Bonds. Neither the City nor the initial purchasers of the Bonds have undertaken any responsibility to bring to the attention of the owners of the Bonds any proposed change in or withdrawal of such ratings once received or to oppose any such proposed revision.

MUNICIPAL ADVISOR

RBC Capital Markets, LLC is employed as Municipal Advisor to the City in connection with the issuance of the Bonds. The Municipal Advisor's fee for services rendered with respect to the sale of the Bonds is contingent upon the issuance and delivery of the Bonds. RBC Capital Markets, LLC, in its capacity as Municipal Advisor, has relied on the opinion of Bond Counsel and does not assume any responsibility for the information, covenants and representations contained in any of the legal documents with respect to the federal income tax status of the Bonds, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

The Municipal Advisor to the City has provided the following sentence for inclusion in this Official Statement. The Municipal Advisor has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to the City and, as applicable, to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Municipal Advisor does not guarantee the accuracy or completeness of such information.

LEGAL MATTERS

The legality of the Bonds will be approved by Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico, Bond Counsel, whose unqualified opinion approving the legality of the Bonds will be furnished at the closing.

TRANSCRIPT AND CLOSING DOCUMENTS

A complete transcript of proceedings and a no-litigation certificate (described above under “LITIGATION”) will be delivered by the City when the Bonds are delivered. The City will at that time also provide a certificate relating to the accuracy and completeness of this Official Statement.

ADDITIONAL INFORMATION

All summaries of the statutes, resolutions, opinions, contracts, agreements, financial and statistical data and other related reports described in this Official Statement are subject to the actual provisions of such documents. The summaries do not purport to be complete statements of such provisions and reference is made to such documents, copies of which are either publicly available or available for inspection during normal business hours at the offices of the City located at 700 North Main, Las Cruces, New Mexico 88001 or at the offices of RBC Capital Markets, LLC, 6301 Uptown Boulevard, N.E., Suite 100, Albuquerque, New Mexico 87110.

OFFICIAL STATEMENT CERTIFICATION

As of the date hereof, this Official Statement is true to the best of my knowledge, complete and correct in all material respects, and does not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made herein, in light of the circumstances under which they are made, not misleading.

The preparation of this Official Statement and its distribution have been authorized by the City Council. The Official Statement is hereby duly approved by the City Council as of the date on the cover page hereof.

CITY OF LAS CRUCES, NEW MEXICO

By: _____
KEN MIYAGISHIMA, MAYOR

APPENDIX A
OPINION OF BOND COUNSEL

_____, 2023

City of Las Cruces
Las Cruces, New Mexico

\$ _____
City of Las Cruces, New Mexico
General Obligation Improvement Bonds
Series 2023

Ladies and Gentlemen:

We have acted as bond counsel to the City of Las Cruces (the “City”), Dona Ana County, State of New Mexico (the “State”), in connection with the issuance and sale of its \$ _____ General Obligation Improvement Bonds, Series 2023 (the “Bonds”), dated _____ 2023, with interest payable on August 1, 2023 and semi-annually thereafter on February 1 and August 1 in each year in which the Bonds are outstanding, being issued in registered form and maturing serially on August 1 in the years 2023 through 20__, inclusive. The Bonds are being issued pursuant to Ordinance No. 3025 by the City Council on February 21, 2023 as supplemented by the Award Certificate executed on _____, 2023 .

We have examined the transcript of proceedings (the “Transcript”) relating to the issuance of the Bonds and the law under authority of which the Bonds are issued. Based on our examination, we are of the opinion that, under the law existing on the date of this opinion, subject to the provisions of federal bankruptcy law and other laws affecting creditors’ rights and further subject to the exercise of judicial discretion in accordance with general principles of equity:

1. The Bonds constitute legal, valid and binding general obligation debt of the City and the principal of and interest on the Bonds, unless paid from other sources, are to be paid from the proceeds of the levy of ad valorem taxes on all property within the City subject to *ad valorem* taxes levied by the City, which taxes are unlimited as to rate or amount.
2. Under existing laws, regulations, rulings and judicial decisions, interest on the Bonds is excludable from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”), as amended, and is not a specific item of tax preference for purposes of the federal alternative minimum tax under the Code; however, for tax years beginning after December 31, 2022, interest on the Bonds is included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. Although we are of the opinion that interest on the Bonds is excludable from gross income for federal income tax purposes, the accrual or receipt of interest on the Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient’s particular tax status or other items of income or deduction. We express no opinion regarding any such consequences.
3. The Bonds and the income from the Bonds are exempt from all taxation by the State or any political subdivision of the State.

Agenda Item #7.4.

The opinions set forth above in paragraph 2 are subject to continuing compliance by the City with covenants regarding federal tax law contained in the proceedings and other documents relevant to the issuance by the City of the Bonds. Failure to comply with these covenants may result in interest on the Bonds being included in gross income retroactive to their date of issuance.

The opinions expressed herein are based upon existing laws as of the date of issuance and delivery of the Bonds. We express no opinion as of any date subsequent hereto, and our engagement with respect to the Bonds has concluded with their issuance. We disclaim any obligation to update this opinion.

The obligations of the City related to the Bonds are subject to the reasonable exercise in the future by the State and its governmental bodies of the police power inherent in the sovereignty of the State and to the exercise by the United States of the powers (including bankruptcy powers) delegated to it by the United States Constitution. The obligations of the City and the security provided therefor, as contained in the Bond Ordinance, may be subject to general principles of equity which permit the exercise of judicial discretion and are subject to the provisions of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect.

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of result. We express no opinion with respect to any pending legislation.

We are passing upon only those matters set forth in this opinion and are not passing upon the accuracy or completeness of any statement made in connection with any sale of the Bonds or upon any tax consequences arising from the receipt or accrual or interest on, or the ownership of, the Bonds except those specifically addressed in paragraphs 2 and 3 above.

Respectfully submitted,

APPENDIX B

AUDITED FINANCIAL STATEMENTS – JUNE 30, 2022

The City has not requested the consent of Pattillo, Brown & Hill, L.L.P., which performed the audit of the City's Financial Statements, to the inclusion of the audit report and excerpts thereof in this Official Statement, and the auditor has not conducted a post-audit review of those Financial Statements.

APPENDIX C

FORM OF CONTINUING DISCLOSURE UNDERTAKING

CONTINUING DISCLOSURE UNDERTAKING

Section 1. Recitals. This Continuing Disclosure Undertaking (the “Undertaking”) is executed and delivered by the City of Las Cruces, New Mexico (the “City”), in connection with the issuance of the City of Las Cruces, New Mexico General Obligation Improvement Bonds, Series 2023 (the “Bonds”). The Bonds are being issued pursuant to Ordinance No. 3025 adopted by the City Council on February 21, 2023, as supplemented by the Award Certificate executed on ____, 2023 (collectively, the “Bond Ordinance”). Pursuant to the Bond Ordinance, to allow the owners of the Bonds to comply with the Rule (defined below), the City is required to make certain continuing disclosure undertakings for the benefit of owners (including beneficial owners) of the Bonds (the “Owners”). This Undertaking is intended to satisfy the requirements of the Rule.

Section 2. Definitions.

(a) “Annual Financial Information” means the financial information (which will be based on financial statements prepared in accordance with generally accepted accounting principles, as in effect from time to time (“GAAP”), for governmental units as prescribed by the Governmental Accounting Standards Board (“GASB”)) and operating data with respect to the City, delivered at least annually pursuant to Sections 3(a) and 3(b) of this Undertaking, consisting of information of the type set forth under the captions “DEBT AND OTHER FINANCIAL OBLIGATIONS” and “FINANCES OF THE CITY” in the Official Statement.

(b) “Audited Financial Statements” means the City’s annual financial statements which financial statements have been audited as may then be required or permitted by the laws of the State.

(c) “EMMA” means the MSRB’s Electronic Municipal Market Access system located on its website at emma.msrb.org.

(d) “Event Information” means the information delivered pursuant to Section 3(d) of this Undertaking.

(e) “Financial Obligation” shall mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (iii) guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board in compliance with the Rule.

(f) “MSRB” means the Municipal Securities Rulemaking Board. The current address of the MSRB is 1900 Duke Street, Suite 600, Alexandria, Virginia 22314, telephone (703) 797-6600, fax (703) 797-6708.

(g) “Official Statement” means the Official Statement dated ____, 2023, delivered in connection with the original issue and sale of the Bonds.

(h) “Report Date” means March 31 of each year, beginning in 2024.

Agenda Item #7.4.

(i) “Rule” means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended (17 C.F.R. Part 240, Section 240.15c2-12), as the same may be amended from time to time.

(j) “SEC” means the Securities and Exchange Commission.

(k) “State” means the State of New Mexico.

Section 3. Provision of Annual Financial Information and Reporting of Event Information.

(a) The City, or its designated agent, will provide the Annual Financial Information for the preceding fiscal year to EMMA on or before each Report Date while the Bonds are outstanding.

(b) If Audited Financial Statements are not provided as a part of the Annual Financial Information, the City will provide Audited Financial Statements to EMMA when and if available.

(c) The City, or its designated agent, may provide Annual Financial Information by specific reference to other documents, including information reports and official statements relating to other debt issues of the City, which have been submitted to EMMA or filed with the SEC; provided, however, that if the document so referenced is a “final official statement” within the meaning of the Rule, such final official statement must also be available from the MSRB.

(d) At any time the Bonds are outstanding and the City obtains knowledge of the occurrence of any of the following events with respect to the Bonds, the City shall file, in a timely manner not in excess of ten (10) business days after the occurrence of the event, a notice of such occurrence with EMMA:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) modifications to rights of Bondholders, if material;
- (viii) bond calls, if material, or tender offers;
- (ix) defeasances;

Agenda Item #7.4.

(x) release, substitution or sale of property securing repayment of the Bond, if material;

(xi) rating changes;

(xii) bankruptcy, insolvency, receivership or a similar event with respect to the District or an obligated person;

(xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) appointment of a successor or additional trustee, or a change of name of a trustee, if material;

(xv) the incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

(xvi) a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

(e) The City or its designated agent, will provide, in a timely manner not in excess of ten (10) business days after the occurrence of the event, to EMMA, notice of any: (i) failure of the City to timely provide the Annual Financial Information and Audited Financial Statements as specified in Sections 3(a) and 3(b); (ii) changes in its fiscal year-end; and (iii) amendment of this Undertaking.

Section 4. Method of Transmission. Unless otherwise required by law and subject to technical and economic feasibility, the City, or its designated agent, will employ such methods of electronic or physical information transmission as is requested or recommended from time to time by EMMA, the MSRB and the SEC.

Section 5. Enforcement. The obligations of the City under this Undertaking are for the benefit of the Owners. Each Owner is authorized to take action to seek specific performance by court order to compel the City to comply with its obligations under this Undertaking, which action will be the exclusive remedy available to it or any other Owner. The City's breach of its obligations under this Undertaking will not constitute an event of default under the Bond Ordinance and none of the rights and remedies provided by the Bond Ordinance will be available to the Owners with respect to such a breach.

Section 6. Term. The City's obligations under this Undertaking will be in effect from and after the issuance and delivery of the Bonds and will extend to the earliest of (i) the date all principal and interest on the Bonds has been paid or legally defeased pursuant to the terms of the Ordinance; (ii) the date on which the City is no longer an "obligated person" with respect to the Bonds within the meaning of the Rule; or (iii) the date on which those portions of the Rule which require this Undertaking are determined to be invalid or unenforceable by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds. The City shall file a notice of any such termination with EMMA.

Agenda Item #7.4.

Section 7. Amendments. The City may amend this Undertaking from time to time, without the consent of any Owner, upon the City’s receipt of an opinion of independent counsel experienced in federal securities laws to the effect that such amendment:

- (a) is made in connection with a change in circumstances that arises from a change in legal requirements, a change in law, a change in the identity, nature or status of the City or a change in the availability or character of financial information for the City;
- (b) this Undertaking, as amended, would have complied with the Rule at the time of the initial issue and sale of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any changes in circumstances; and
- (c) the amendment does not materially impair the interests of the Owners.

Any Annual Financial Information containing amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided. If an amendment changes the accounting principles to be followed in preparing financial statements, the Annual Financial Information and Audited Financial Statements for the year in which the change is made will present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 8. Beneficiaries. This Undertaking binds and inures to the sole benefit of the City and the Owners and creates no rights in any other person or entity.

Section 9. Limited Obligation. This Undertaking is subject to the availability of necessary funds appropriated by the City.

Section 10. Governing Law. This Undertaking is governed by and is to be construed in accordance with the law of the State.

Date: March __, 2023.

CITY OF LAS CRUCES, NEW MEXICO

[CITY SEAL]

By: _____
Ken Miyagishima, Mayor

Attest:

By: _____
Christine Rivera, City Clerk

APPENDIX D

OFFICIAL NOTICE OF BOND SALE

\$17,000,000

**City of Las Cruces, New Mexico
General Obligation Improvement Bonds
Series 2023**

PUBLIC NOTICE IS HEREBY GIVEN that electronic bids will be received by the City Council (the “Council”) of the City of Las Cruces, New Mexico (the “City”), for the purchase of all of the City’s General Obligation Bonds, Series 2023 (the “2023 Bonds”), more particularly described below. The 2023 Bonds will be awarded to the winning bidder for the 2023 Bonds at 3:00 p.m., prevailing Mountain Time, February 28, 2023.

Bids for the purchase of the 2023 Bonds will be accepted through the Grant Street Group electronic bidding web site (“Grant Street Group”) at www.grantstreet.com. No other method of submitting bids will be accepted. The date and time for submitting bids will be as follows:

Bid Date: February 28, 2023

**Bid Time: Between 10:30 a.m. and 11:00 a.m. Eastern Time
(Between 8:30 a.m. and 9:00 a.m. Mountain Time)**

Submit Bid to: www.grantstreet.com

Information related to this auction can be obtained from Grant Street Group Auction Support at (412) 391-5555 (x370), attention John Carver.

To bid, bidders must have both (1) completed the registration form on the Grant Street Group website and (2) requested and received admission to the City’s auction, as described under “TERMS OF SALE - Submission of Bids” below. The use of Grant Street Group shall be at the bidder’s risk and expense, and the City shall have no liability with respect thereto.

Neither the City, Grant Street Group, the Municipal Advisor, nor Bond Counsel shall be responsible for, and each bidder expressly assumes the risk of, any incomplete, inaccurate, or untimely bid submitted by Internet transmission by such bidder, including, without limitation, by reason of garbled transmissions, mechanical failure, engaged telephone or telecommunications lines, or any other cause arising from delivery by Internet transmission. Additionally, the Grant Street Group time stamp will govern the receipt of all bids. The official bid clock does not automatically refresh. Bidders must refresh the auction page periodically to monitor the progression of the bid clock and to ensure that their bid will be submitted prior to the termination of the auction. All bids will be deemed to incorporate the provisions of this Official Notice of Bond Sale.

This Official Notice of Bond Sale, and the information set forth herein, are not to be treated as a complete disclosure of all relevant information with respect to the 2023 Bonds. The information set forth herein is subject, in all respects, to a more complete description of

the 2023 Bonds and the security therefore set forth in the Preliminary Official Statement dated February __, 2023 (the “Preliminary Official Statement”).

BOND DETAILS

The 2023 Bonds will be issued in the aggregate principal amount of \$17,000,000, exclusive of premium, if any. The 2023 Bonds and the interest thereon are general obligations of the City. The City has prepared the Preliminary Official Statement, relating to the 2023 Bonds which is deemed by the City to be final as of its date for purposes of allowing bidders to comply with Rule 15c2-12 of the Securities Exchange Commission (“the Rule”), except for the omission of certain information as permitted by the Rule. Details of the 2023 Bonds, including maturities, redemption provisions, payment dates and security for payment are contained in the Preliminary Official Statement. The Preliminary Official Statement is subject to revision, amendment and completion in a Final Official Statement.

The 2023 Bonds will be issued in the aggregate principal amount of \$17,000,000, will be dated the date of delivery, will be issued as fully registered bonds and will mature on August 1 of each year as follows:

Years	Amounts
<u>Maturing</u>	<u>Maturing</u>
2023	\$ 2,190,000
2024	1,775,000
2025	1,135,000
2026	1,080,000
2027	1,080,000
2028	1,080,000
2029	1,080,000
2030	1,080,000
2031	1,080,000
2032	1,080,000
2033	1,080,000
2034	1,080,000
2035	1,080,000
2036	1,100,000

Official Statement. The Preliminary Official Statement may be viewed and downloaded from www.grantstreet.com or a physical copy may be obtained by contacting the City or the Municipal Advisor, see “Information” below.

The City will make available to the winning bidder, within seven business days after the award of the sale of the 2023 Bonds, the Final Official Statement which is to be downloaded from www.grantstreet.com. One physical copy of the Final Official Statement also will be provided to the winning bidder at that time; provided, however, the winning bidder must cooperate in providing the information required to complete the Final Official Statement. Additional copies of the Final Official Statement may be provided at the expense of the winning bidder.

The winning bidder shall comply with the requirements of Rule 15c2-12 and the rules of the Municipal Securities Rulemaking Board.

TERMS OF SALE

Submission of Bids. All bids must be submitted only by electronic bidding on Grant Street Group at www.grantstreet.com. No other provider of bidding services and no other means of delivery (i.e. telephone, telefax or physical delivery) will be accepted. Bidding for the 2023 Bonds will begin at 10:30 a.m., Eastern Time (8:30 a.m. Mountain Time), as indicated above. The receipt of bids will end promptly at 11:00 a.m., Eastern Time (9:00 a.m. Mountain Time), unless extended in accordance with the two-minute rule described herein. If any bid becomes a leading bid two (2) minutes prior to the end of the auction, then the auction will be automatically extended by two (2) minutes from the time such new leading bid was received by Grant Street Group. The auction end time will continue to be extended, indefinitely, until a single leading bid remains the leading bid for at least two (2) minutes.

To bid, bidders must first visit the Grant Street Group website where, if they have never registered with Grant Street Group, they can register and then request admission to bid on the 2023 Bonds. Bidders will be notified prior to the scheduled bidding time of their eligibility to bid. Only NASD registered broker-dealers and dealer banks with DTC clearing arrangements will be eligible to bid. Bidders who have previously registered with Grant Street Group may call **(412) 391-5555, x 370, attention John Carver**, for their ID Number or password.

Rules of Grant Street Group. Bidders must comply with, and all bids must be made in accordance with, the Rules of Grant Street Group in addition to the requirements of this Official Notice of Bond Sale. The Rules of Grant Street Group can be viewed on the Grant Street Group website and are incorporated herein by reference. In the event the Rules of Grant Street Group conflict with this Official Notice of Bond Sale, this Official Notice of Bond Sale shall prevail.

Bidding Parameters. Bidders are required to submit unconditional all-or-none bids specifying the rate of interest at which the bidder will purchase all of the 2023 Bonds. Interest shall be bid in multiples of 1/20th or 1/8th percentum and only one interest rate may be bid for each maturity of the 2023 Bonds. The maximum interest rate may not exceed 5% and the maximum interest rate specified for any maturity of the 2023 Bonds may not exceed the minimum interest rate specified for any maturity of the 2023 Bonds by more than 3 percent (3%). The maximum net effective interest rate of the 2023 Bonds shall not exceed five percent (5%) per annum. The 2023 Bonds will not be sold for less than par.

Term Bonds. A bidder may elect to have all or a portion of the 2023 Bonds scheduled to mature in consecutive years issued as one or more term bonds (the “Term Bonds”) scheduled to mature in the latest of the consecutive years and subject to mandatory redemption requirements consistent with the schedule of serial maturities set forth in the Preliminary Official Statement, however, not less than all Bonds of the same serial maturity shall be converted to Term Bonds with mandatory redemption requirements.

Adjustment of principal amounts, modification or clarification prior to examination of bids. The City Manager, in consultation with the City's financial and bond advisors, in the City Manager's sole discretion and prior to the examination of bids, may (i) adjust the aggregate principal amount set forth herein or may adjust the principal amount of each series without increasing the aggregate principal amount of Bonds; (ii) adjust individual maturities, and/or (iii) modify or clarify any other term hereof, including the date on which bids for the 2023 Bonds will be received, by issuing a notification of the adjusted series, amounts, modification or clarification via Thomson Municipal News ("TM3") and/or Grant Street platform and/or Bloomberg Financial Services no later than 8:00 a.m., Mountain Time, on the Bid Date.

Adjustments to principal amounts after determination of best bid. The aggregate principal amount of the 2023 Bonds is subject to increase or reduction, and each scheduled maturity thereof is subject to increase or reduction, by the City Manager after the determination of the Best Bid (defined below). Such adjustments will be made within no more than two (2) hours after the end of the time of bid examination and will be in the sole discretion of the City. To cooperate with any adjustment in the principal amounts, the Purchaser is required to indicate by e-mail to Leeann DeMouche at ldemouche@las-cruces.org or such other address as may be indicated by the City Manager within one-half (1/2) hour after the end of the time of bid examination, the amount of any original issue discount or premium on any maturity of the 2023 Bonds, the initial offering price of each maturity, the cost of bond insurance, if any, and the amount received from the sale of the 2023 Bonds to the public that will be retained by the Purchaser as its compensation.

The City Manager in consultation with the City's financial and bond advisors, may change the dollar amount bid by the Purchaser if the aggregate principal amount of the 2023 Bonds is adjusted as described below, but the interest rates specified by the Purchaser for all maturities will not change. The City Manager in consultation with the City's financial and bond advisors, will make every effort to ensure that the percentage net compensation to the Purchaser (i.e., the percentage resulting from dividing (i) the aggregate difference between the offering price of the 2023 Bonds to the public and the price to be paid to the City, less any bond insurance premium to be paid by the bidder, by (ii) the principal amount of the 2023 Bonds) does not increase or decrease from what it would have been if no adjustment was made to principal amounts shown in the maturity schedule. The City will notify the Purchaser of the final principal amounts and the resulting adjusted prices no later than 12:00 p.m. Mountain Time on the day of the sale and award of the 2023 Bonds. THE PURCHASER MAY NOT WITHDRAW OR MODIFY ITS BID ONCE SUBMITTED TO THE CITY FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INCREASE OR DECREASE IN THE FINAL PRINCIPAL AMOUNTS AND THE AGGREGATE PURCHASE PRICE OF THE 2023 Bonds.

Information Regarding Bids. Bidders may change and submit bids as many times as they wish during the bidding, provided, however, that each bid submitted subsequent to a bidder's initial bid must result in a lower true interest cost ("TIC") with respect to a bid when compared to the immediately preceding bid of such bidder. During the bidding, no bidder will see any other bidder's bid, but each bidder will be able to see its own ranking (i.e., "Leader," "Cover," "3rd," etc.).

Bids Constitute an Irrevocable Offer. Each bid submitted through Grant Street Group shall be deemed an irrevocable offer to purchase the 2023 Bonds on the terms provided in this Official Notice of Bond Sale and shall be binding upon the bidder.

Basis of Award. The 2023 Bonds will be sold to the bidder or bidders offering to purchase the same at the lowest true interest cost. The actuarial yield on the 2023 Bonds using the true interest cost method will be computed at that yield which, if used to compute the present value of all payments of principal and interest on the 2023 Bonds as of March 30, 2023, produces an amount equal to the aggregate bid price. Such calculation will be made based upon a 360-day year and a semiannual interval for compounding.

The winning bid or bids will be indicated on Grant Street Group and the auction results, as posted on such website, will be subject to verification by the City. The City will verify the auction results immediately following the close of the bidding period and notice of confirmation by the City of the winning bidder or bidders will be made by a posting on Grant Street Group stating “Auction Results Verified and Confirmed”.

An award may be made by the City to any bidder in a principal amount less than the principal amount of the 2023 Bonds for which the bid is submitted. Further, in the event of an award by the City for a principal amount less than the principal amount the bidder submitted, any premium bid shall be ratably reduced. If two or more bids have the same true interest cost, the first bid submitted, as determined by reference to the time stamp displayed on Grant Street Group, shall be deemed to be the leading bid.

Sale Reservations. The City reserves the right (a) to reject any and all bids for any Bonds, (b) to reoffer any Bonds for public sale, and (c) to waive any irregularity or informality in any bid.

Good Faith Deposit Not Required to Bid. A good faith deposit will not be required in connection with the submission of any bid for the 2023 Bonds. The winning bidder will be required to submit a Bid Award Deposit (see “Bid Award Deposit” below).

Bid Award Deposit. Not later than 2:00 p.m., Mountain Time on February 28, 2023, the winning bidder is required to submit a Bid Award Deposit of \$340,000.00. All Bid Award Deposits must be made in good funds by wire transfer of the required amount to an account specified by the City Manager and provided to the winning bidder after the sale of the 2023 Bonds.

No interest will be paid by the City on the amount of the Bid Award Deposit. The proceeds of the Bid Award Deposit of the winning bidder will be applied to the purchase price of the 2023 Bonds, or in the event of the failure of a winning bidder to take up and pay for the 2023 Bonds in compliance with the terms of the bid, at the option of the City, its Bid Award Deposit may be retained as liquidated damages, as partial payment of actual damages or as security for any other remedy available to the City.

Manner and Time of Delivery. The 2023 Bonds will be delivered to DTC for the account of the winning bidder or bidders at the expense of the City on March 30, 2023, or such later date

as the City and the winning bidder may agree. Payment of the purchase price due at delivery must be made in Federal Reserve funds for immediate and unconditional credit to the City.

Continuing Disclosure Undertaking. The City has covenanted to provide, in a timely manner, on the Electronic Municipal Market Access (EMMA) Website maintained by the Municipal Securities Rulemaking Board notice of the occurrence of specified, material events. The City has not failed to comply with any of its previous undertakings under Rule 15c2-12, except as may be disclosed in the Preliminary Official Statement.

State Securities Laws. The City has taken no action to qualify the offer or sale of the 2023 Bonds under the securities laws of any state. Should any such qualification be necessary, the City agrees to cooperate with the winning bidder in such matters, provided that the City reserves the right not to consent to service of process outside its boundaries and expenses related to any such qualification shall be the responsibility of the winning bidder.

CUSIP Numbers. CUSIP numbers will be issued and printed on the 2023 Bonds at the expense of the City. The City's Municipal Advisor will apply for CUSIP numbers prior to the sale date of the 2023 Bonds. Any error or omission in printing such numbers on the 2023 Bonds will not constitute cause for any winning bidder to refuse delivery of any Bond.

Legal Opinion, Certificates and Transcript. The validity and enforceability of the 2023 Bonds will be approved by the City's Bond Counsel. A copy of the form of the opinion of Bond Counsel is attached as an exhibit to the Preliminary Official Statement.

The purchaser of the 2023 Bonds will receive a certified transcript of legal proceedings which will include, among other items:

(a) a certificate of the City to the effect that, as of its date, the Preliminary Official Statement was deemed final within the meaning of Rule 15c2-12, except for the omissions permitted under Rule 15c2-12;

(b) a certificate of the City to the effect that there is no litigation pending or, to its knowledge, threatened affecting the validity of the 2023 Bonds as of the date of their delivery; and

(c) a certificate of the City to the effect that, as of the date of the Official Statement and at all times to and including the date of delivery of the 2023 Bonds, the Official Statement did not contain any untrue statement of a material fact or omit any statement of a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Establishment of Issue Price (Hold-the-Offering Price Rule May Apply if Competitive Sale Requirements are Not Satisfied): The winning bidder shall assist the City in establishing the issue price of the 2023 Bonds and shall execute and deliver to the City at closing an "issue price" or similar certificate in substantially the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the winning bidder, the City, and Bond Counsel. All actions to be taken by the City to establish the issue price of the 2023

Bonds may be taken on behalf of the City by the City's municipal advisor identified herein and any notice or report to be provided to the City may be provided to the City's municipal advisor.

(a) The City intends that the provisions of Treasury Regulation Section 1.148-1(f)(3)(i) (defining "competitive sale" for purposes of establishing the issue price of the 2023 Bonds) will apply to the initial sale of the 2023 Bonds (the "competitive sale requirements") because:

(i) the City shall disseminate a Notice of Sale to potential underwriters in a manner that is reasonably designed to reach potential underwriters;

(ii) all bidders shall have an equal opportunity to bid;

(iii) the City may receive bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and

(iv) the City anticipates awarding the sale of the 2023 Bonds to the bidder who submits a firm offer to purchase the 2023 Bonds at the highest price (or lowest interest cost), as set forth in this Notice of Sale.

Any bid submitted pursuant to the Notice of Sale shall be considered a firm offer for the purchase of the 2023 Bonds, as specified in the bid.

In the event that the competitive sale requirements described above in subparagraph (a) are not satisfied, the City shall so advise the winning bidder. The City may determine to treat (i) the first price at which 10% of each maturity of the 2023 Bonds is sold to the public as the issue price of that maturity and/or (ii) the initial offering price to the public as of the sale date of any maturity of the 2023 Bonds as the issue price of that maturity (the "hold-the-offering-price rule"), in each case applied on a maturity-by-maturity basis. The winning bidder shall advise the City if any maturity of the 2023 Bonds satisfies the 10% test as of the date and time of the award of the 2023 Bonds. The City shall promptly advise the winning bidder, at or before the time of award of the 2023 Bonds, which maturities of the 2023 Bonds shall be subject to the 10% test or shall be subject to the hold-the-offering-price rule during the Holding Period, as defined in subparagraph (d)(i) below. Bids will not be subject to cancellation in the event that the City determines to apply the hold-the-offering-price rule to any maturity of the 2023 Bonds. Bidders should prepare their bids on the assumption that all of the maturities of the 2023 Bonds will be subject to the 10% test in order to establish the issue price of the 2023 Bonds.

(b) The City acknowledges that, in making the representation set forth above, the winning bidder will rely on (i) the agreement of each underwriter to comply with the hold-the-offering-price rule, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the 2023 Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an underwriter is a party to a retail distribution agreement that was employed in connection with the initial sale of the 2023 Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price

rule, as set forth in the retail distribution agreement and the related pricing wires. The City further acknowledges that each underwriter shall be solely liable for its failure to comply with its agreement regarding the hold-the-offering-price rule and that no underwriter shall be liable for the failure of any other underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the 2023 Bonds.

(c) By submitting a bid, each bidder confirms that:

(i) any agreement among underwriters, any selling group agreement, and each retail distribution agreement (to which the bidder is a party) relating to the initial sale of the 2023 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A) report the prices at which it sells to the public the unsold 2023 Bonds of each maturity allotted to it until it is notified by the winning bidder that either the 10% test has been satisfied as to the 2023 Bonds of that maturity or all 2023 Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the winning bidder and as set forth in the related pricing wires, and

(ii) any agreement among underwriters relating to the initial sale of the 2023 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the 2023 Bonds to the public to require each broker-dealer that is a party to such retail distribution agreement to (A) report the prices at which it sells to the public the unsold 2023 Bonds of each maturity allotted to it until it is notified by the winning bidder or such underwriter that either the 10% test has been satisfied as to the 2023 Bonds of that maturity or all 2023 Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the winning bidder or such underwriter and as set forth in the related pricing wires.

(d) The following terms are defined below:

(i) Hold-the-Offering-Price Maturity means a maturity of the 2023 Bonds of which less than 10% has been sold to the Public on the Sale Date.

(ii) Holding Period means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (a) the close of the fifth business day after the Sale Date, or (b) the date on which the winning bidder sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(iii) Maturity means 2023 Bonds with the same credit and payment terms. Bond with different maturity dates, or 2023 Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(iv) Public means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(v) Sale Date means the first day on which there is a binding contract in writing for the sale of a Maturity of the 2023 Bonds. The Sale Date of the 2023 Bonds is expected to be February 28, 2023.

(vi) Underwriter means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the 2023 Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the 2023 Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the 2023 Bonds to the to the Public).

Postponement of Sale. The City reserves the right to postpone the date and time established for the receipt of bids. Any such postponement will be announced by posting on Grant Street Group prior to commencement of the bidding. If any date and time fixed for the receipt of bids and the sale of the 2023 Bonds is postponed, an alternative sale date and time will be announced at least one business day prior to such alternative sale date. On any such alternative sale date and time, any bidder may submit bids electronically as described above for the purchase of the 2023 Bonds in conformity in all respects with the provision of this Official Notice of Bond Sale, except for the date and time of sale and except for any changes announced by posting on Grant Street Group at the time the sale date and time are announced.

Ratings. A rating of “__” has been received by Moody’s Investors Service.

Information. Copies (in reasonable quantities) of this Official Notice of Bond Sale, the Preliminary Official Statement, and other information concerning the City and the 2023 Bonds may be obtained from:

Erik Harrigan, Director
RBC Capital Markets
6301 Uptown Blvd., Ste. 110
Albuquerque, NM 87110
Phone: (505) 872-5999

The date of this Official Notice of Bond Sale is February __, 2023.

CITY OF LAS CRUCES, NEW MEXICO

EXHIBIT A

FORM OF CERTIFICATE REGARDING ISSUE PRICE

(For use where three or more bids for the 2023 Bonds were received by the City.)

The undersigned hereby certifies as follows with respect to the \$17,000,000 principal amount of City of Las Cruces, New Mexico, General Obligation Improvement Bonds, Series 2023 (the "Bonds").

1. *Reasonably Expected Initial Offering Price.*

- (a) As of the Sale Date, the reasonably expected initial offering prices of the 2023 Bonds to the Public by the Underwriter are the prices listed in Schedule A (the "Expected Offering Prices"). The Expected Offering Prices are the prices for the Maturities of the 2023 Bonds used by the Underwriter in formulating its bid to purchase the 2023 Bonds. Attached as Schedule B is a true and correct copy of the bid provided by the Underwriter to purchase the 2023 Bonds.
- (b) The Underwriter was not given the opportunity to review other bids prior to submitting its bid.
- (c) The bid submitted by the Underwriter constituted a firm offer to purchase the 2023 Bonds.

2. *Defined Terms.*

- (a) *Maturity* means 2023 Bonds with the same credit and payment terms. 2023 Bonds with different maturity dates, or 2023 Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.
- (b) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term "related party" for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.
- (c) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the 2023 Bonds. The Sale Date of the 2023 Bonds is February 28, 2023.
- (d) *Underwriter* means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the 2023 Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the

2023 Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the 2023 Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the City with respect to certain of the representations set forth in the Tax Compliance Certificate and with respect to compliance with the federal income tax rules affecting the 2023 Bonds, and by Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Bond Counsel in connection with rendering its opinion that the interest on the 2023 Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the City from time to time relating to the 2023 Bonds.

By: _____
Name: _____
Dated: _____

(For use where the City did not receive three or more bids for the 2023 Bonds.)

CERTIFICATE REGARDING ISSUE PRICE

The undersigned hereby certifies as follows with respect to the \$17,000,000 principal amount of City of Las Cruces, New Mexico, General Obligation Improvement Bonds, Series 2023 (the "2023 Bonds").

1. *Hold-the-Price.*

- (a) Other than the 2023 Bonds maturing in ____ ("Hold-the-Price Maturities"), if any, the first prices at which at least ten percent ("Substantial Amount") of the principal amount of each Maturity was sold on the Sale Date to the Public are their respective initial offering prices ("Initial Offering Prices"), as listed in the pricing wire or equivalent communication for the 2023 Bonds that is attached to this Certificate as Schedule A.
- (b) On or before the Sale Date, the Purchaser offered to the Public each Maturity of the Hold-the-Price Maturities at their respective Initial Offering Prices, as set forth in Schedule A hereto.
- (c) As set forth in the Notice of Sale, the Purchaser agreed in writing to neither offer nor sell any of the Hold-the-Price Maturities to any person at any higher price than the Initial Offering Price for such Hold-the-Price Maturity until the earlier of the close of the fifth business day after the Sale Date or the date on which the Purchaser sells a Substantial Amount of a Hold-the-Price Maturity of the 2023 Bonds to the Public at no higher price than the Initial Offering Price for such Hold-the-Price Maturity.

2. *Defined Terms.*

- (a) *Maturity* means 2023 Bonds with the same credit and payment terms. 2023 Bonds with different maturity dates, or 2023 Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.
- (b) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term "related party" for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.
- (c) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the 2023 Bonds. The Sale Date of the 2023 Bonds is February 28, 2023.

(d) *Underwriter* means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the 2023 Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the 2023 Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the 2023 Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the City with respect to certain of the representations set forth in the Tax Compliance Certificate and with respect to compliance with the federal income tax rules affecting the 2023 Bonds, and by Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Bond Counsel in connection with rendering its opinion that the interest on the 2023 Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the City from time to time relating to the 2023 Bonds.

By: _____
Name: _____
Dated: _____

To: Members of the City Council of the City of Las Cruces

From: Ifo Pili, City Manager

Date: February 10, 2023

Re: \$17,000,000* City of Las Cruces General Obligation Improvement Bonds, Series 2023

*Preliminary and subject to change.

The attached Preliminary Official Statement (the "POS") has been prepared in connection with the offering and sale of the \$17,000,000* City of Las Cruces General Obligation Improvement Bonds, Series 2023 (the "Bonds"). The POS makes various disclosures about the City, the Bond Ordinance and the Bonds. The POS will be reviewed by bidders for the Bonds and a final Official Statement will be provided to investors after the best bid is accepted by the City.

The attached POS is similar to the one used in connection with the City's issuance of its \$17,600,000 General Obligation Improvement Bonds, Series 2020, and includes information specifically related to the City's *ad valorem* property tax base and the property taxes imposed by the City, Doña Ana County, Las Cruces Schools and the State on the taxpayers of the City. The information has been updated by City staff. Katherine McKinney and Peter Franklin of the Modrall Sperling Law Firm, the City's Bond and Disclosure Counsel, and Erik Harrigan and Kaeley Weimerskirch of RBC Capital Markets, the City's Financial Advisor, assisted in the disclosure process by assembling the information, attending disclosure conferences and reviewing the financial and economic data in the POS. In connection with the preparation of the POS, we have participated in due diligence meetings and conference calls. During those meetings and calls we discussed, confirmed and updated information contained in the POS, examined information for materiality, and identified additional information for inclusion. If you have any questions relating to the disclosure process and preparation of the POS, please contact me.

Under regulations imposed by the U.S. Securities and Exchange Commission (the "SEC"), the Preliminary Official Statement must not contain any untrue statement of a material fact, or omit to state a material fact. A material fact is one that could influence an investor in making a decision to purchase the Bonds. The SEC recently increased emphasis on the quality of disclosures made in municipal bond offerings. The SEC has stated that responsibility for disclosures lies with the members of the governing body approving the issuance of municipal bonds, following this guiding principal:

"Public entities that issue securities are primarily liable for the content of their disclosure documents.... In addition to the government entity issuing municipal securities, public officials of the issuer who have ultimate authority to approve the issuance of securities and related disclosure documents have responsibilities under the federal securities laws as well. In authorizing the issuance of the securities and related disclosure documents, a public official may not authorize disclosure that the official knows to be false; nor may the public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading."

Although City staff and the finance team collaborated in preparing the POS, each Councilor should review it carefully. The POS is a City Council document, and the City and its Council are responsible for its accuracy. Please use extra care in reviewing the sections labeled "INTRODUCTION AND SUMMARY", "SECURITY AND REMEDIES", "FINANCES OF THE CITY", "THE CITY" and

Agenda Item #7.4.

Appendix A to the POS. In conducting your review, focus on whether the POS contains misleading statements of material facts or omits to state material facts. A material fact is one that could influence an investor in making a decision to purchase the Bonds.

After reviewing the POS, please contact me if you have any reason to believe that the POS contains any inaccurate information or if you know of anything that might make any of the statements made in the POS incomplete or misleading. Thank you for your attention to this important matter.

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 CITY FINANCIAL SERVICES DIRECTOR TO AWARD THE BONDS TO THE PURCHASER; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

The City Council is informed that:

WHEREAS, at the general obligation bond election held for the City of Las Cruces (the "City"), State of New Mexico, on the 8th day of November, 2022, the electors of the City authorized the City Council, the governing body of the City (the "Governing Body") to contract bonded indebtedness on behalf of the City and upon the credit thereof by issuing general obligation bonds of the City (the "Bonds") to secure funds for the following purposes in the following amounts:

<u>Purpose</u>	Amount Authorized By Election	Amount Previously Issued	Amount to Be Issued
Acquire, plan, design, construct and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land	\$10,000,000	\$0	\$10,000,000
Acquire, plan, design, construct and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land	\$5,000,000	\$0	\$5,000,000

Renovate and improve existing parks and recreational facilities	\$2,000,000	\$0	\$2,000,000

WHEREAS, the Governing Body has determined, and does hereby determine, that it is necessary and in the best interest of the City and the inhabitants thereof that the \$17,000,000 of the general obligation bonds authorized at the election (the "Bonds"), be authorized for issuance at this time; provided, however, that a satisfactory price for the Bonds be obtained upon a competitive sale; and

WHEREAS, the Governing Body expects to sell the Bonds in a competitive sale to the best bidder therefor (the "Purchaser"), as determined pursuant to the Award Certificate supplementing this Bond Ordinance, and to delegate authority to the City Manager or City Financial Services Director (collectively, the "Delegate") to execute and deliver an award certificate establishing the final terms of the Bonds (the "Award Certificate" (as here, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Bonds set forth in the Award Certificate be within the parameters set forth in this Ordinance; and

WHEREAS, the Governing Body intends that the specific details of and requirements for bidding for the Bonds shall be provided in an official notice of sale (the "Notice of Sale") to be approved on behalf of the City by the City Financial Services Director or Treasurer or her designee; and

WHEREAS, the Governing Body desires to delegate to the Delegate the authority to determine the specific principal amounts, interest rates, maturity dates, prices, redemption features, and other final terms and other features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy (if any), to be set forth in a final terms and award certificate to be executed by the Delegate, and to award the Bonds to the best bidder therefor (the "Award Certificate").

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

(I)

Section 1. Ratification. All actions heretofore taken by the Governing Body and the officers and employees of the City directed toward the issuance and sale of the Bonds to secure funds for the Improvement Projects be, and the same hereby are, ratified, approved and confirmed.

Section 2. Improvement Projects Authorization.

A. Proceeds of the Bonds derived from \$10,000,000 in aggregate principal amount of the Bonds are hereby authorized to be applied to acquire, plan, design, construct and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land (the "Fire Station Project").

B. Proceeds of the Bonds derived from \$5,000,000 in aggregate principal amount of the Bonds are hereby authorized to be applied to acquire, plan, design, construct and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land (the “East Mesa Recreation Complex Project”).

C. Proceeds of the Bonds derived from \$2,000,000 in aggregate principal amount of the Bonds are hereby authorized to be applied to renovate and improve existing parks and recreational facilities (the “Parks and Recreation Project” and, together with the Fire Station Project and the East Mesa Recreation Complex Project, the “Improvement Projects”).

Section 3. Findings.

A. The issuance of the Bonds under the home rule powers of the City granted by the City Charter, this Bond Ordinance, Sections 6-14-8 through 6-14-11 NMSA 1978, and Sections 6-15-1 through 6-15-22 NMSA 1978, for the purpose of providing funds to finance the costs of the Improvement Projects, is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

B. The Bonds shall be authorized by an affirmative vote of a three-fourths of all the members of the Council.

C. The City will finance the costs of the Improvement Projects, in whole or in part, with the proceeds of the Bonds.

E. The Net Effective Interest Rate on the Bonds shall not exceed the statutory maximum of 10% per annum.

Section 4. Bonds are General Obligations. The Bonds shall constitute the general obligation debt of the City, payable from general ad valorem taxes which shall be levied without limitation as to the rate or amount. The full faith and credit of the City shall be, and hereby is, irrevocably pledged to the payment of the principal of and interest on the Bonds.

Section 5. Authorization, Parameters and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of three-fourths of all of the members of the Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, general obligation bonds in one or more series in the total aggregate principal amount not to exceed \$17,000,000 to be designated in the Award Certificate as the “City of Las Cruces, New Mexico General Obligation Improvement Bonds, Series 2023” and the issuance, sale and delivery of the Bonds is hereby authorized.

The forms of the Continuing Disclosure Undertaking and Preliminary Official Statement as presented to the Governing Body, with the adoption of this Ordinance, and the sale of the Bonds to the Purchaser within the parameters set forth in this Ordinance are hereby approved by the Governing Body with the approval of the final terms of the Bonds to be accepted in the Award Certificate and approval of the final forms of the Preliminary Official Statement and Continuing Disclosure Undertaking delegated to the Delegate or designee as permitted by Section 6-14-10.2 NMSA 1978. The use and distribution of the Preliminary Official Statement and Official Statement by the Purchaser in connection with the sale of the bonds to the public are hereby ratified, authorized, approved and acknowledged.

B. Parameters Authorized. The Bonds shall be issued subject to the following parameters:

(1) The Bonds shall be issued in an aggregate principal amount not to exceed \$17,000,000 for the Improvement Projects.

(2) The net effective interest rate on the Bonds shall not exceed 10% per annum.

(3) The final maturity of the Bonds shall not be later than August 1, 2036.

(4) The Bonds shall be sold pursuant to a competitive public sale.

(5) The underwriter's discount shall be the discount included in the bid which provides the lowest interest cost to the City while maximizing net bond proceeds to the City.

(6) The Bonds shall be in substantially the form set forth in this Ordinance.

(7) The Bonds shall not be sold for less than \$17,000,000.

C. Details of Bonds.

(1) The forms, terms, and provisions of the Bonds in the form set forth in Section 11 are hereby approved with only such changes therein as are not inconsistent with this Bond Ordinance and as shall be approved in the Award Certificate.

(2) The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of \$5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on August 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for,

from their date, payable semi-annually on February 1 and August 1 in each year commencing on August 1, 2023, or such other date specified in the Award Certificate, until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Award Certificate.

D. Notice of Sale. The Bonds shall be sold pursuant to the terms of the Official Notice of Sale appended to the form of preliminary official statement presented to the Governing Body in connection with this Ordinance (the "Preliminary Official Statement"). The City Financial Services Director is hereby authorized and directed to have published once, at least one week prior to the date of sale, a notice of sale of the Bonds in a newspaper of general circulation in the City, and the City Financial Services Director is hereby authorized and directed to give such other notice of the bond sale as she shall determine, including the publication of the notice in financial papers and periodicals and the distribution among investment bankers and others of the Preliminary Official Statement.

E. Final Terms; Award of Bonds. The exact principal amounts, maturity dates, interest rates, prices, redemption features and other final terms of the Bonds shall be as set forth in the Award Certificate. The Bonds shall be awarded to the Purchaser as provided in the Award Certificate.

F. Series Date; Numbering; Interest Payment Dates. The Bonds shall be dated the date of delivery (herein the "Series Date"), will be issued in one or more series and shall consist of bonds numbered consecutively from R-1 upward, issuable in the denomination of \$5,000 each or integral multiples thereof (provided that no individual bond will be issued for more than one maturity); shall bear interest from the Series Date to maturity at the rates set forth in the Award Certificate, payable to the registered owner thereof, or registered assigns, on August 1, 2023, and semiannually thereafter on August 1 and February 1 in each year in which the Bonds are outstanding and shall mature on August 1 of each year as set forth in the Award Certificate.

Section 6. Redemption of Bonds Prior to Maturity.

A. Optional Redemption. Redemption of the Bonds prior to maturity at the option of the City shall be as provided in the Award Certificate.

B. Notice of Redemption. Notice of redemption shall be given by the Registrar/Paying Agent by sending a copy of such notice by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar/Paying Agent on the fifth day prior to the mailing of notice on the registration books kept by the Registrar/Paying Agent. The City shall give notice of redemption of the Bonds to the Registrar/Paying Agent at least forty-five (45) days prior to the redemption date. The Registrar/Paying Agent's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of

redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Registrar/Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Such notice may be a conditional notice of redemption – the money required to pay the principal of and interest on the Bonds to be called for redemption need not be on deposit with the Registrar/Paying Agent at the time of mailing the conditional notice of redemption. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Registrar/Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Registrar/Paying Agent, the Registrar/Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Registrar/Paying Agent by the City.

Section 7. Execution of Bonds.

A. The Bonds shall bear the facsimile or manual signature of the Mayor of the City and shall be attested by the facsimile or manual signature of the City Clerk and shall bear the facsimile or original seal of the City. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar/Paying Agent. The Bonds bearing the signatures or facsimile signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the City, notwithstanding that before the delivery of the Bonds and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose signatures appear on the Bonds shall have ceased to fill their respective offices. The Mayor and City Clerk shall, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their respective signatures the facsimiles thereof appearing on the Bonds; and, at the time of the execution of the signature certificate, the Mayor and City Clerk may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Bonds. If facsimile signatures are to appear on the Bonds, the Mayor and City Clerk, pursuant to Sections 6-9-1 through 6-9-6, inclusive, NMSA 1978, shall each forthwith file his or her manual signature, certified by him or her under oath, with the Secretary of State of New Mexico, provided that such filing shall not be necessary for any officer where any previous filing shall have application to the Bonds.

B. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly executed by the Registrar/Paying Agent. The Registrar/Paying Agent's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the Registrar/Paying Agent, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 8. Registration of Bonds.

A. Books for the registration and transfer of the Bonds shall be kept by the City Treasurer, as Registrar/Paying Agent, which is hereby appointed by the City as registrar and as paying agent for the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment or reimbursement by the owner of any Bond requesting exchange or transfer of any transfer fee, tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each interest payment date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each interest payment date but such transfer will not include transfer of interest payable on such interest payment date.

B. The person in whose name any Bond shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided in this ordinance with respect to payment of interest; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

C. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar/Paying Agent may pay such Bond in lieu of replacement.

D. Bonds which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent interest payment date to which interest has been fully paid or provided for in full or, if no interest has been paid, from the Series Date.

E. The officers of the City are authorized to deliver to the Registrar/Paying Agent fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar/Paying Agent pending use as herein provided.

F. Whenever any Bond shall be surrendered to the Registrar/Paying Agent upon payment thereof, or to the Registrar/Paying Agent for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled by the Registrar/Paying Agent, and counterparts of a certificate of such cancellation shall be furnished by the Registrar/Paying Agent to the City.

G. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the depository, registered in the name of the depository or its nominee. Principal, premium, if any, and interest will be paid to the depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the depository, Participants or Indirect Participants.

(1) If (i) the Bonds are not eligible for the services of the depository, (ii) the depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

(2) Authorized Officers of the City are authorized to sign agreements with the depository relating to the matters set forth in this Section.

(3) Notwithstanding any other provision of this ordinance, so long as all of the Bonds are registered in the name of the depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Registrar/Paying Agent or the City to the depository as provided in this ordinance and by the depository to its Participants or Indirect Participants and to the Beneficial Owners of the Bonds.

Section 9. Successor Registrar/Paying Agent. If the Registrar/Paying Agent initially appointed hereunder shall resign, or if the City shall reasonably determine that such Registrar/Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor registrar/paying agent. Every such successor registrar/paying agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, of not less than \$10,000,000.

Section 10. Bonds Negotiable. Subject to the registration provisions hereof, the Bonds hereby authorized shall be fully negotiable and shall have all the qualities of negotiable paper, and the registered owner or owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 11. Form of Bonds. The Bonds shall be in substantially the following form:

[Form of Bond]

REGISTERED	REGISTERED
NO. R-_____	\$

UNITED STATES OF AMERICA
STATE OF NEW MEXICO
CITY OF LAS CRUCES
DOÑA ANA COUNTY, NEW MEXICO
GENERAL OBLIGATION IMPROVEMENT BONDS
SERIES 2023

Registered Owner:

Principal Amount: _____ DOLLARS

Interest Rate	Maturity Date	Series Date	CUSIP

_____% per annum August 1, _____, 2023 XXXXX

The City Council of the City of Las Cruces (the "Governing Body "), on the faith, credit and behalf of the City of Las Cruces, Doña Ana County, New Mexico (the "City"), for value received, hereby promises to pay to the registered owner named above, or registered assigns, the principal amount hereof on the Maturity Date and to pay interest on the principal amount at the Interest Rate on _____ 1, 2023, and thereafter on February 1 and August 1 of each year (the "Interest Payment Date") from the Series Date to its maturity. The principal of the bonds of the series of which this is one (the "Bonds") and interest due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by the City Treasurer, as "registrar/paying agent" (such registrar/paying agent and any successor thereto, the "Registrar/Paying Agent") for the Bonds, upon maturity and upon presentation and surrender thereof at the principal office of the Registrar/Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by said Bond until the principal thereof is paid in full. Payment of interest on the Bonds (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each Interest Payment Date (or, if such Interest Payment Date is not a business day, on or before the next succeeding business day), to the registered owner thereof as of the close of business on the Record Date (defined below) at his address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any Interest Payment Date shall mean the 15th day of the month preceding the Interest Payment Date. The person in whose name any Bond is registered at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable thereon on such Interest Payment Date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date; but interest on any Bond which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name such Bond is registered at the close of business on a special record date (the "Special Record Date") fixed by the Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Bonds as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

The Bonds are fully registered and are issuable in denominations of \$5,000 and any integral multiple thereof (provided that no individual bond may be issued for more than one maturity).

The series of Bonds of which this bond is one is limited to the total principal amount of \$17,000,000 of like tenor except as to number, denomination, maturity date, and interest rate, issued by the City of Las Cruces, Doña Ana County, New Mexico, for the

purposes of providing funds in the amount of (a) \$10,000,000 to acquire, plan, design, construct and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land, (b) \$5,000,000 to acquire, plan, design, construct and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land, and (c) \$2,000,000 to renovate and improve existing parks and recreational facilities.

The Bonds are issued under the authority of and in full conformity with the Constitution and laws of the State of New Mexico (particularly Sections 3-30-1 through 3-30-9 NMSA 1978, the provisions of Sections 6-14-8 through 6-14-11 NMSA 1978, Sections 6-15-1 through 6-15-22 NMSA 1978, and acts amendatory and supplemental thereto), and pursuant to an ordinance of the Governing Body duly adopted and made a law of the City prior to the issuance of this bond (the "Bond Ordinance").

The Bonds maturing on or after August 1, 20__, are subject to prior redemption at the City's option on and after August 1, 20__, in whole or in part at any time, in one or more units of principal of \$5,000 in such order of maturities as the City may determine (and by lot if less than all of the Bonds of any maturity are called, such selection by lot to be made by the Registrar/Paying Agent in such manner as it shall consider appropriate and fair) The purchase price for Bonds selected for redemption will be equal to the principal amount of each bond (or portion thereof) so redeemed, plus accrued interest thereon to the redemption date.

The Registrar/Paying Agent will maintain the books of the City for the registration of ownership of the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment or reimbursement by the owner of any Bond requesting exchange or transfer of any transfer fee, tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each Interest Payment Date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each Interest Payment Date but such transfer will not include transfer of interest payable on such Interest Payment Date.

The person in whose name any Bond shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar/Paying Agent may pay such Bond in lieu of replacement.

For the punctual payment of the principal of and interest on this bond as aforesaid and for the levy and collection of taxes in accordance with the statutes authorizing the issuance of this bond, the full faith and credit of the City is hereby irrevocably pledged. The Governing Body has, by the Bond Ordinance, ordered the creation of an interest and sinking fund for the payment of the Bonds. Such fund is to be held in trust for the benefit of the owner or owners of the Bonds.

It is hereby certified, recited and warranted that all the requirements of law have been complied with by the proper officials of the City in the issuance of this bond; that the total indebtedness of the City, including that of this bond, does not exceed any limit of indebtedness prescribed by the Constitution or laws of the State of New Mexico; that provision has been made for the levy and collection of annual taxes sufficient to pay the principal of and the interest on this bond when the same become due. This bond shall not be valid or obligatory for any purpose until the Registrar/Paying Agent shall have manually signed the certificate of authentication hereon.

IN TESTIMONY WHEREOF, the Governing Body of the City of Las Cruces, in Doña Ana County, New Mexico, constituting the governing board of the City, has caused the seal of the City to be hereto affixed and this bond to be signed and executed with the facsimile or manual signature of the Mayor of the City and subscribed and attested with the facsimile or manual signature of the City Clerk, all as of the Series Date.

GOVERNING BODY OF THE
CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

By _____
Ken Miyagishima, Mayor

ATTEST:

By _____
Christine Rivera, City Clerk

[Form of Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

This bond is one of the Bonds described in the Bond Ordinance and has been duly registered on the registration books kept by the undersigned as Registrar/Paying Agent for the Bonds.

Date of Authentication and

Registration: _____, 2023

Las Cruces City Treasurer, as Registrar/Paying Agent

By _____
Erika Jaquez, City Treasurer

[End of Form of Certificate of Authentication]

[Form of Assignment]

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____ whose social security or tax identification number is _____ the within bond and irrevocably constitutes and appoints _____ attorney to transfer such bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTE: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

[End of Form of Assignment]

[End of Form of Bond]

Section 12. Delivery of Bonds. When the Bonds have been duly executed and authenticated, they shall be delivered to the lawful purchaser thereof named in the Award Certificate. The funds realized from the sale of the Bonds shall be applied solely to the specified purposes for the Bonds, but the purchaser of the Bonds shall in no manner be responsible for the application of or disposal by the City, or any of its officers, of any of the funds derived from the sale thereof.

Section 13. Levy of Taxes. In order to pay the principal of and interest on the Bonds as they become due and, at the option of the City, to reimburse the general fund or other funds for the payment of principal of or interest on the Bonds for which property taxes were not available, there shall be an annual assessment and levy upon all of the taxable property of the City subject to taxation which provides an amount sufficient to pay the principal of and the interest on the Bonds as they become due and payable. However, the City may, at its option, apply any other funds lawfully available for the purpose to the payment of principal or interest on the Bonds as they become due, and the levies required by this Section may be reduced to the extent other revenues are or will be available and used for payment of the Bonds. To the extent property taxes are not available for that purpose, the principal of and interest accruing on the Bonds shall be paid from the City's general fund or from any other fund lawfully available for that purpose. The taxes shall be assessed, levied and collected annually at the time and in the manner as other City taxes are assessed, levied and collected. Annually, the Governing Body shall take all reasonable action to insure the levy and collection of taxes by the governmental authority charged with legal responsibility to levy and collect taxes in amounts sufficient at the time to pay the principal of and interest on the Bonds. The money produced by the levy of taxes provided in this Section to pay the principal of and interest on the Bonds is appropriated for that purpose and that amount shall be included in the annual budget adopted and passed by the Governing Body each year. The taxes collected shall be maintained in an interest and sinking fund, which is hereby created, and kept for and applied only to the payment of the principal of and interest on the Bonds when due and as otherwise required or permitted by law.

Section 14. Additional Action of Authorized Officers; Delegation of Authority to Determine Final Terms of the Bonds and Award Bonds to the Best Bidder.

A. The Mayor, City Clerk and other officers of the City be and they hereby are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including without limiting the generality of the foregoing, the deposit of \$17,000,000 of the proceeds of the Bonds, plus an allocable share of net premium, if any, into an acquisition fund for payment of the costs of the Improvement Projects and the costs of issuance allocable to the Improvement Projects, the execution and delivery of a continuing disclosure undertaking to enable the purchaser of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12(b)(5), the printing of the Bonds, the execution of an official statement of the City relating to the Bonds, and the execution of such certificates as may be required by the Bond purchasers relating to the signing of the Bonds, the tenure and identity of City

officials, the receipt of the purchase price of the Bonds from the purchasers and the absence of litigation, pending or threatened, if in accordance with the facts, affecting the validity thereof and the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes.

B. Pursuant to Section 6-14-10.2, NMSA 1978, the City Manager or City Financial Services Director, each as Delegate, are hereby delegated authority to determine the method of sale of the Bonds in consultation with the City's Municipal Advisor, to accept one or more binding bids, and to select the Purchasers, to execute an Award Certificate and to determine any or all of the final terms of the Bonds, including, without limitation, the exact principal amounts, maturity dates, interest rates, prices, redemption features and other final terms of the Bonds subject to the parameters and conditions contained in this Bond Ordinance. The Delegate shall present the Award Certificate to the Governing Body in a timely manner, before or after delivery of the Bonds, at a regularly scheduled public meeting of the Governing Body.

Section 15. Covenants to Maintain Tax-Exempt Status of Bonds.

A. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The Mayor, City Clerk and any other officer of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

B. The City covenants that it (i) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (aa) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (bb) restrict the yield, as required, on investment property acquired with those proceeds, (cc) make timely rebate payments, if required, to the federal government, (dd) maintain books and records and make calculations and reports, and (ee) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor and City Clerk and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

Section 16. Defeasance.

A. Any Bond and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Bond") hereunder when payment of the

principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity, upon redemption, or other) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption), or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to a qualified depository for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Government Obligations which mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment (as verified by a certified or registered public accountant), and when proper arrangements have been made by the City with a qualified depository for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of the ad valorem taxes herein levied and pledged as provided in this ordinance, and such principal and interest shall be payable solely from such money or Government Obligations.

B. Any moneys so deposited with the qualified depository may, at the written direction of the City, also be invested in Government Obligations, maturing in the amounts and times required to make payments when due on the Defeased Bonds, and all income from such Government Obligations received by the qualified depository which is not required for the payment of the Defeased Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City for deposit in the interest and sinking fund for payment of principal and interest on the Bonds. The term "Government Obligations" means direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America which may be United States Treasury Obligations such as its State and Local Government Series, which may be in book-entry form.

Section 17. Investment of Bond Proceeds. Moneys in any fund not immediately needed may be invested as provided by state law and applicable federal statutes and regulations, provided that the Governing Body and the City hereby covenant to the purchasers and the holders of the Bonds from time to time that the City will make no use of the proceeds of the Bonds or any funds reasonably expected to be used to pay the principal of or interest on the Bonds which will cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code, as amended, or which would adversely affect the tax status of interest on the Bonds under the Code. This covenant is for the benefit of the purchasers and the holders of the Bonds from time to time.

Section 18. Ordinance Irrepealable. After any of the Bonds have been issued, this ordinance shall constitute a contract between the City and the holder or holders of the Bonds and shall be and remain irrepealable and unalterable until the Bonds and the interest thereon shall have been fully paid, satisfied and discharged, defeased or until such payment has been duly provided for.

Section 19. Severability. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or

unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 20. Form of Notice of Adoption. The following notice shall be published one time in a newspaper having general circulation in the City as soon as is practicable following the adoption hereof and this ordinance shall be effective five days after such publication as provided by law.

[Form of Notice]

LEGAL NOTICE

City of Las Cruces, New Mexico
Notice of Adoption of Ordinance

NOTICE IS HEREBY GIVEN that the Governing Body of the City of Las Cruces, Doña Ana County, New Mexico did, on the 21st day of February, 2023, adopt an ordinance entitled:

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 CITY FINANCIAL SERVICES DIRECTOR TO AWARD THE BONDS TO THE PURCHASER; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

The Ordinance directs and authorizes the issuance of City of Las Cruces, General Obligation Bonds in the aggregate principal amount of \$17,000,000; provides that providing that Bond proceeds in the amount of (a) \$10,000,000 shall be used to acquire, plan, design, construct and equip a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land, (b) \$5,000,000 shall be used to acquire, plan, design, construct and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land, and (c) \$2,000,000 shall be used to renovate and improve existing parks and recreational facilities; provides parameters for the Bonds; provides the form of the Bonds; delegates authority to the City Manager and City Financial Services

Director to determine exact principal amounts, maturity dates, interest rates, prices, redemption features and other final terms of the Bonds within the parameters established in this Ordinance and to award the Bonds to the Purchaser pursuant to an Award Certificate; provides for the delivery of the Bonds; provides for levy of taxes to pay the principal of and interest on the bonds; makes certain covenants for the benefit of the owners of the Bonds; and provides other details concerning the bonds.

Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico. This notice constitutes compliance with Section 6-14-6 NMSA 1978.

DATED this 21st day of February, 2023.

CITY OF LAS CRUCES

Christine Rivera, City Clerk

(End of Form of Notice for Publication)

Section 21. Repealer Clause. All acts and resolutions in conflict with this ordinance are hereby rescinded, annulled and repealed.

(II)

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

DONE AND APPROVED this 21st day of February, 2023.

APPROVED:

ATTEST:

Ken Miyagishima, Mayor

Christine Rivera, City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councilor Gandara:	_____
Councilor Abeyta:	_____
Councilor Graham:	_____
Councilor Bencomo:	_____
Councilor Corran:	_____
Councilor Flores:	_____

APPROVED AS TO FORM

Jocelyn Garrison, Acting City Attorney



City of Las Cruces

City Council Action and Executive Summary

23-099

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

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

1st Reading: **Adopted:** February 21, 2023

Drafter: Jacqueline Rubalcava **Department:** Financial Services

Program: Budget **Line of Business:** Fiscal Management

Title: 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).

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

PURPOSE(S) OF ACTION:

To request second-quarter budget adjustments for compliance and operational needs of the City.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

City staff has prepared the second-quarter budget adjustments for the fiscal year starting July 1, 2022, through June 30, 2023. Adjustments include funding for supplies, services, equipment, and projects to meet the demands of a growing community and to align budgets for effective and efficient City of Las Cruces operations.

The FY 2022 Annual Comprehensive Financial Report (ACFR) was adopted on February 6, 2023, by Resolution with audited information. Exhibit "A", All Funds Summary, documents the audited beginning balances for FY2023. Exhibit "B" is the fund summary for various funds and departments.

The budget adjustments proposed within this Resolution will not deplete the City's 2/12ths reserve requirement for the General Fund.

SUPPORT INFORMATION:

[Exhibit "A" All Funds Summary](#)

[Exhibit "B" Fund Summaries](#)

[Exhibit "C" CIP](#)

[Attachment "A" Budget Adjustment Summaries](#)

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Area Transit Advisory Board

DOES THIS AMEND THE BUDGET?:

☒ Yes

Agenda Item #8.1.

☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Various

AVAILABLE AMOUNT: Various

EXPENDITURE AMOUNT:
Various

Funding Source(s):

Various

Overall Budget Impact:

Please refer to Exhibit "A" and "B" Fiscal Year 2022-23 Budget Adjustments

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

☒ Yes

☐ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and accept the second-quarter budget adjustments as presented and will adjust the City's FY2023 budget and Capital Improvement Plan (CIP).
2. Vote "No"; this will not approve the Resolution nor accept the second quarter budget adjustments as presented and will not adjust the City's FY2023 budget and Capital Improvement Plan.
3. Vote to "Amend"; this may delay the process of spending the funds within the predetermined funding schedule and requires direction to staff.
4. Vote to "Table"; this will impact the City's ability to utilize funds and may impact programs and services.

REFERENCE INFORMATION:

Attachment "A" Budget Adjustment Summary

RESOLUTION 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).

The City Council is informed that:

WHEREAS, City staff members have prepared the second quarter budget adjustment for the fiscal year starting July 1, 2022 through June 30, 2023; and

WHEREAS, the second quarter budget adjustments include audited beginning balances as approved by the FY2022 Comprehensive Annual Financial Report and various budget adjustments for supplies, services, equipment, and projects to meet the demands of a growing community and to align budgets for effective and efficient City of Las Cruces operations; and

WHEREAS, these adjustments will not deplete the General Fund 2/12ths reserve requirement.

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

(I)

THAT the All Fund Summary with audited beginning balance adjustments as indicated in Exhibit "A", attached hereto and made a part of this Resolution, are hereby approved.

(II)

THAT the second quarter budget adjustments as indicated in Exhibit "B", attached hereto and made a part of this Resolution, are hereby approved.

(III)

THAT the Capital Improvement Plan as indicated in Exhibit "C", attached hereto and made a part of this Resolution, is hereby approved.

(IV)

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

DONE AND APPROVED this day of

APPROVED

Mayor

ATTEST:

City Clerk

Moved by:

Seconded by:

AYES

NAYS

ALL FUNDS SUMMARY

FISCAL YEAR 2023 MIDYEAR ADJUSTMENT

February 21, 2023

FUND #	Fund Name	Adopted Beginning Balance	Beginning Balance Adjustments	New Beginning Balance	Revenues	Expenditures	Net Transfers	Ending Balance	Reserve	Available Balance	Mid Year Adjustments	Adjusted Budget
GENERAL FUNDS												
1000	GENERAL FUND	\$50,734,183	\$1,410,103	\$52,144,286	\$122,935,295	(\$133,527,582)	(\$13,380,669)	\$28,171,330	(\$11,127,299)	\$17,044,031	\$15,117,679	\$21,034,411
1001	PAYROLL CLEARING	\$1,903	\$1	\$1,904	\$0	\$0	\$0	\$1,904		\$1,904		\$1,904
1005	ENGINEERING SERVICES	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
1010	AIRPORT OPERATIONS	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
1030	ECONOMIC DEVELOPMENT	\$1,551,317	(\$29,989)	\$1,521,328	\$0	(\$778,487)	\$0	\$742,841		\$742,841	(\$135,000)	\$607,841
1200	VEHICLE ACQUISITION	\$882,911	(\$28,036)	\$854,875	\$0	(\$2,532,068)	\$1,649,157	(\$28,036)		(\$28,036)	\$28,036	(\$0)
1400	FACILITIES MAINTENANCE	\$1,675,455	(\$24,573)	\$1,650,882	\$1,785	(\$1,770,484)	\$96,123	(\$21,694)		(\$21,694)	\$21,694	(\$0)
1500	HHR CONTINGENCY	\$7,329,615	\$0	\$7,329,615	\$10,941,798	(\$2,537,227)	(\$9,869,635)	\$5,864,551		\$5,864,551	\$1,500,000	\$7,364,551
GENERAL FUNDS Total		\$62,175,384	\$1,327,505	\$63,502,889	\$133,878,878	(\$141,145,849)	(\$21,505,024)	\$34,730,894	(\$11,127,299)	\$23,603,595	\$16,532,409	\$29,008,705
SPECIAL REVENUE FUNDS												
2000	HUD COMMUNITY DEVELOPMENT	\$143,500	(\$109,253)	\$34,247	\$6,509,604	(\$6,509,604)	\$0	\$34,247		\$34,247	\$129,715	\$163,962
2010	HUD SPECIAL PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2012	NEIGHBORHOOD STABILIZATION	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2013	AFFORDABLE HOUSING TRUST	\$2,088,384	(\$0)	\$2,088,384	\$0	(\$792,907)	\$0	\$1,295,477		\$1,295,477		\$1,295,477
2020	CDBG AARA	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2100	SPECIAL REVENUE REIMB GRANTS	\$0	\$24,280	\$24,280	\$26,871,598	(\$26,871,598)	\$0	\$24,280		\$24,280	(\$1,040)	\$23,240
2130	RECREATION PROJECTS	\$94,633	(\$1,747)	\$92,886	\$10,000	(\$50,000)	\$0	\$52,886		\$52,886		\$52,886
2171	OLDER AMERICANS ACT PROGRAMS	\$0	(\$0)	(\$0)	\$0	\$0	\$0	(\$0)		(\$0)		(\$0)
2300	FIRE FUND	\$318,110	(\$1,835)	\$316,275	\$1,538,706	(\$1,538,706)	\$0	\$316,275		\$316,275		\$316,275
2303	EMERGENCY MEDICAL SERVICES	\$161	\$3	\$164	\$20,000	(\$20,000)	\$0	\$164		\$164		\$164
2401	POLICE PROTECTION FUND	\$17,234	\$74	\$17,308	\$224,000	(\$224,000)	\$0	\$17,308		\$17,308	(\$17,308)	(\$0)
2402	COURT AWARDED FUNDS	\$11	(\$11)	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2403	SEIZED ASSETS - TREASURY	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2404	SEIZED ASSETS - STATE	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2410	KEEP LAS CRUCES BEAUTIFUL	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2421	DWI PREVENTION	\$13,020	(\$228)	\$12,792	\$10,000	(\$10,000)	\$0	\$12,792		\$12,792		\$12,792
2423	TRAFFIC SAFETY EDUCATION	\$35,876	(\$935)	\$34,941	\$30,316	(\$30,316)	\$0	\$34,941		\$34,941		\$34,941
2430	SAFE TRAFFIC OPERATIONS PROG	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2440	PRISONER CARE	\$1,293,636	\$384,433	\$1,678,069	\$0	(\$500,000)	(\$500,000)	\$678,069		\$678,069		\$678,069
2450	PUBLIC SAFETY IMPACT FEE	\$563,463	(\$10,363)	\$553,100	\$550,000	\$0	(\$749,618)	\$353,482		\$353,482		\$353,482
2470	DEPT OF JUSTICE PROGRAMS	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2472	VEHICLE FORFEITURE	\$111,896	(\$1,952)	\$109,944	\$0	(\$5,200)	\$0	\$104,744		\$104,744		\$104,744
2490	JUDICIAL EDUCATION	\$3,323	(\$60)	\$3,263	\$20,000	(\$20,000)	\$0	\$3,263		\$3,263		\$3,263
2491	COURT AUTOMATION	\$482,654	(\$9,118)	\$473,536	\$57,200	(\$113,100)	\$0	\$417,636		\$417,636		\$417,636
2600	STREET MAINTENANCE OPERATIONS	\$3,605,304	(\$2,490)	\$3,602,814	\$0	\$0	(\$3,605,304)	(\$2,490)		(\$2,490)	\$2,490	(\$0)
2605	STREET MAINTENANCE TRANS	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2650	FLOOD CONTROL OPERATIONS	\$1,793,077	(\$33,073)	\$1,760,004	\$5,151,053	(\$2,831,609)	(\$3,807,226)	\$272,222		\$272,222	(\$93,000)	\$179,222
2655	FLOOD CONTROL TRANSPORTATION	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0		\$0
2700	HEALTH CARE SERVICES MMC LEASE	\$7,961,185	(\$124,065)	\$7,837,120	\$0	(\$5,160,000)	(\$1,999,111)	\$678,009		\$678,009	(\$8,000)	\$670,009
2705	TELSHOR FACILITY	\$33,855,988	\$14,436,885	\$48,292,873	\$0	\$0	(\$1,182,001)	\$47,110,872		\$47,110,872		\$47,110,872

Exhibit "A"

2710	CONVENTION & VISITORS BUREAU	\$3,604,649	(\$48,906)	\$3,555,743	\$3,063,973	(\$2,829,574)	\$0	\$3,790,142	\$3,790,142	\$0	\$3,790,142	
2715	DOWNTOWN REVITALIZATION	\$50,593	(\$950)	\$49,643	\$0	\$0	\$0	\$49,643	\$49,643		\$49,643	
2750	NORTHRISE MORNINGSTAR SPL PRJ	\$13,841	(\$13,841)	(\$0)	\$0	\$0	\$0	(\$0)	(\$0)		(\$0)	
2751	SONOMA RANCH SPECIAL PROJECT	\$14,204	(\$14,204)	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
2755	STATE SPECIAL PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
2770	VALLEY VIEW HESKE GARDEN	\$168,498	(\$3,252)	\$165,246	\$0	(\$5,000)	\$0	\$160,246	\$160,246		\$160,246	
2780	GRIGGS WALNUT PLUME REMED	\$6,024,376	(\$34,462)	\$5,989,914	\$218,324	(\$1,332,751)	\$400,000	\$5,275,487	\$5,275,487		\$5,275,487	
2781	GRIGGS WALNUT PLUME GRANTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
2790	ALARM FEES AND FINES	\$1,556	(\$16)	\$1,540	\$0	\$0	\$0	\$1,540	\$1,540		\$1,540	
2800	ENVIRONMENTAL GROSS REC TAX	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
2805	ENVIRONMENTAL GROSS REC TAX	\$0	\$2,774,067	\$2,774,067	\$200,000	(\$247,000)	\$136,538	\$2,863,605	\$2,863,605		\$2,863,605	
2810	GAS TAX	\$2,807,709	(\$33,642)	\$2,774,067	\$1,702,135	(\$2,166,428)	(\$444,262)	\$1,865,512	\$1,865,512		\$1,865,512	
2815	TIDD DEDICATED REVENUES	\$7,231,442	(\$63,095)	\$7,168,347	\$5,330,200	(\$118,500)	(\$1,600,000)	\$10,780,047	\$10,780,047	(\$1,500,000)	\$9,280,047	
2825	LAS CRUCES CONVENTION CTR FEES	\$615,520	(\$2,960)	\$612,560	\$1,532,005	(\$625,000)	(\$1,109,806)	\$409,759	\$409,759		\$409,759	
SPECIAL REVENUE FUNDS Total		\$72,913,843	\$17,109,284	\$90,023,127	\$53,039,114	(\$52,001,293)	(\$14,460,790)	\$76,600,158	\$0	\$76,600,158	(\$1,487,143)	\$75,113,015

Debt Funds												
3200	COMPLETED DEBT SERVICE	(\$2)	\$2	\$0	\$0	\$0	\$0	\$0	\$0		\$0	\$0
3225	2016 FLOOD CONTROL	\$64,026	(\$4,169)	\$59,857	\$0	(\$336,200)	\$335,034	\$58,691	\$58,691		\$58,691	\$58,691
3226	2017 SSGRT FAC & STREETS DS	\$109,724	(\$9,004)	\$100,720	\$0	(\$832,050)	\$829,363	\$98,033	\$98,033		\$98,033	\$98,033
3275	2010A MGRT STREET DS	\$16,310	(\$500)	\$15,810	\$0	\$0	\$0	\$15,810	\$15,810		\$15,810	\$15,810
3277	2010B MGRT FLOOD CTL DS	\$5,922	(\$190)	\$5,732	\$0	\$0	\$0	\$5,732	\$5,732		\$5,732	\$5,732
3280	2010 SSGRT CONVENTION CTR DS	\$440,154	(\$19,361)	\$420,793	\$0	(\$1,109,656)	\$1,109,806	\$420,943	\$420,943		\$420,943	\$420,943
3281	2010 SSGRT CONV CENTER RESERVE	\$45	\$3,325	\$3,370	\$0	\$0	\$0	\$3,370	\$3,370		\$3,370	\$3,370
3282	2011 GRT FAC DEBT SERVICE	\$139,922	(\$13,519)	\$126,403	\$0	(\$1,137,125)	\$1,042,365	\$31,643	\$31,643		\$31,643	\$31,643
3284	2011 GRT FAC DEBT SERVICE	\$184	(\$34)	\$150	\$0	\$0	\$0	\$150	\$150		\$150	\$150
3286	2014 SSGRT E. MESA FACILITY DS	\$130,367	(\$10,941)	\$119,426	\$0	(\$995,850)	\$993,600	\$117,176	\$117,176		\$117,176	\$117,176
3288	2014 MGRT STREETS DS	\$75,244	(\$6,331)	\$68,913	\$0	(\$534,719)	\$551,219	\$85,413	\$85,413		\$85,413	\$85,413
3290	2014 MGRT FLOOD PROJECTS	\$16,815	(\$1,909)	\$14,906	\$0	(\$127,200)	\$126,900	\$14,606	\$14,606		\$14,606	\$14,606
3292	2015 GRT BOND REFUNDING	\$132,034	(\$11,554)	\$120,480	\$0	(\$1,200,288)	\$1,200,396	\$120,588	\$120,588		\$120,588	\$120,588
3293	2015A HOLD HARMLESS DS	\$171,773	(\$15,092)	\$156,681	\$0	(\$1,598,025)	\$1,598,380	\$157,036	\$157,036		\$157,036	\$157,036
3294	2015B HOLD HARMLESS DS	\$35,953	(\$2,835)	\$33,118	\$0	(\$298,379)	\$298,179	\$32,918	\$32,918		\$32,918	\$32,918
3295	2016 VAD BONDS	\$1,558,527	(\$308,233)	\$1,250,294	\$1,071,352	(\$1,549,528)	\$0	\$772,118	\$772,118		\$772,118	\$772,118
3510	2019 GO BOND DS	\$7,041,064	(\$77,526)	\$6,963,538	\$5,278,457	(\$5,142,625)	\$0	\$7,099,370	\$7,099,370		\$7,099,370	\$7,099,370
3612	2007 NMFA STR AND FIRE DS	\$1,913	(\$3,817)	(\$1,904)	\$0	\$0	\$0	(\$1,904)	(\$1,904)	\$1,904	\$0	\$0
3616	2022 NMFA FIRE DS	\$0	\$0	\$0	\$0	(\$361,878)	\$405,964	\$44,086	\$44,086		\$44,086	\$44,086
3617	NMFA LOANS DSF	\$25,527	(\$5,889)	\$19,638	\$0	(\$544,415)	\$534,206	\$9,429	\$9,429		\$9,429	\$9,429
3618	2008 NMFA GRIGGS WLNT PLUME DS	\$581,430	(\$11,876)	\$569,554	\$2,243	(\$92,645)	\$92,645	\$571,797	\$571,797		\$571,797	\$571,797
3619	2018 HHGRT DS	\$122,285	(\$13,934)	\$108,351	\$0	(\$1,249,629)	\$1,249,808	\$108,530	\$108,530		\$108,530	\$108,530
3620	2020A NMFA FACILITY SSGRT	\$53,246	\$768	\$54,014	\$0	(\$634,750)	\$670,605	\$89,869	\$89,869		\$89,869	\$89,869
3621	2020B NMFA FACILITIES ESP	\$35,064	\$495	\$35,559	\$0	(\$418,250)	\$419,396	\$36,705	\$36,705		\$36,705	\$36,705
3623	2008 NMFA PARKING DECK DS	\$10,512	(\$293)	\$10,219	\$0	\$0	\$0	\$10,219	\$10,219		\$10,219	\$10,219
3624	2018 GAS DSF	\$61,702	(\$640)	\$61,062	\$0	(\$399,330)	\$399,348	\$61,080	\$61,080		\$61,080	\$61,080
3625	2010 NMFA FIRE APPARATUS	\$5,581	(\$59)	\$5,522	\$0	\$0	\$0	\$5,522	\$5,522		\$5,522	\$5,522
3626	2011 NMFA FIRE APPARATUS	\$2,699	(\$51)	\$2,648	\$0	\$0	\$0	\$2,648	\$2,648		\$2,648	\$2,648
3628	2012 NMFA REFUNDING	\$4,132	(\$78)	\$4,054	\$0	\$0	\$0	\$4,054	\$4,054		\$4,054	\$4,054
3630	2014 NMFA SCSWA REFUNDING DS	\$428,460	(\$4,105)	\$424,355	\$0	(\$184,432)	\$0	\$239,923	\$239,923		\$239,923	\$239,923
3631	2014 NMFA FIRE APPARATUS DS	\$7,482	(\$821)	\$6,661	\$0	\$0	\$0	\$6,661	\$6,661		\$6,661	\$6,661
3632	2017 NMFA STREETS DS	\$122,962	(\$4,829)	\$118,133	\$0	(\$294,660)	\$294,708	\$118,181	\$118,181		\$118,181	\$118,181
3633	18 NMFA FIRE	\$43,862	\$5,901	\$49,763	\$0	(\$224,173)	\$224,173	\$49,763	\$49,763		\$49,763	\$49,763
3634	2020 NMFA STREETS	\$100,755	\$1,693	\$102,448	\$0	(\$1,210,076)	\$1,130,583	\$22,955	\$22,955		\$22,955	\$22,955
3635	2020 NMFA FLOOD	\$73,248	\$1,176	\$74,424	\$0	(\$879,930)	\$822,835	\$17,329	\$17,329		\$17,329	\$17,329
3810	HUD SECTION 108 LOAN-MONAS	\$12,243	(\$0)	\$12,243	\$0	(\$151,361)	\$151,361	\$12,243	\$12,243		\$12,243	\$12,243
Debt Funds Total		\$11,631,165	(\$514,229)	\$11,116,936	\$6,352,052	(\$21,507,174)	\$14,480,874	\$10,442,688	\$0	\$10,442,688	\$1,904	\$10,444,592

Capital Funds

4005	COMMUNITY INVESTMENT PROJECTS	\$2,589,858	(\$53,652)	\$2,536,206	\$4,700	(\$2,469,386)	\$0	\$71,520	\$71,520	\$71,520
4010	HUD FACILITIES PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4023	2005 GRT PUBLIC IMPROVEMENTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4024	2008 CONVENTION CENTER	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4028	2011 GRT FACILITIES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4029	2014 SSGRT FACILITIES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4030	2016 FLOOD PROJECT	\$241,034	(\$5,293)	\$235,741	\$1,225	\$0	\$0	\$236,966	\$236,966	\$236,966
4031	2017 FACILITIES PROJECT	\$5,495,853	(\$68,368)	\$5,427,485	\$4,100	(\$5,284,989)	\$0	\$146,596	\$146,596	\$146,596
4032	2018 HHGRT PUBLIC WORKS	\$3,068,125	\$21,931	\$3,090,056	\$10,700	(\$2,739,976)	\$0	\$360,780	\$360,780	\$360,780
4100	CAPITAL PROJECTS REIMB GRANTS	\$0	(\$0)	(\$0)	\$27,189,258	(\$27,189,258)	\$0	(\$0)	(\$0)	\$4,825
4106	PUBLIC PARK DEVELOPMENT	\$6,149,399	(\$118,546)	\$6,030,853	\$1,500,000	(\$3,447,167)	\$0	\$4,083,686	\$4,083,686	\$4,083,686
4110	PUBLIC PARK PROJECTS	\$38,534	(\$724)	\$37,810	\$0	\$0	\$0	\$37,810	\$37,810	\$37,810
4200	COMPLETED DEBT PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4201	CAPITAL CONTRIBUTIONS	\$257,309	(\$3,977)	\$253,332	\$360	\$0	\$0	\$253,692	\$253,692	\$253,692
4202	GRT STREET MAINTENANCE	\$7,236,817	(\$117,980)	\$7,118,837	\$307,150	(\$12,332,108)	\$6,500,000	\$1,593,879	\$1,593,879	\$1,593,879
4205	SPECIAL STREET PROJECTS	\$842,763	(\$17,223)	\$825,540	\$1,550	(\$46,852)	\$0	\$780,238	\$780,238	\$780,238
4223	2003 GRT STREET LIGHTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4226	2014 GRT STREET PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4227	VAD STREET PROJECTS	\$7,772,386	(\$2,255)	\$7,770,131	\$10,200	(\$7,782,331)	\$0	(\$2,000)	(\$2,000)	\$2,000
4228	2015A HHS	\$359,398	(\$11,642)	\$347,756	\$1,125	(\$258,857)	\$0	\$90,024	\$90,024	\$90,024
4230	GO BOND PROJECT 2019	\$8,584,119	(\$285,708)	\$8,298,411	\$20,925	(\$8,588,048)	\$0	(\$268,712)	(\$268,712)	\$268,712
4270	TIDD PROJECTS	\$1,699,135	(\$26,375)	\$1,672,760	\$1,550	(\$3,224,239)	\$1,600,000	\$50,071	\$50,071	\$50,071
4271	TIDD STR BOND PROJECT	\$721,490	(\$11,640)	\$709,850	\$0	(\$200,000)	\$0	\$509,850	\$509,850	\$509,850
4400	FLOOD CONTROL	\$4,945,754	(\$65,537)	\$4,880,217	\$29,100	(\$6,285,931)	\$2,500,000	\$1,123,386	\$1,123,386	\$1,123,386
4415	2014 GRT FLOOD CTL PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4505	2015B HHS	\$3,337,965	(\$22,357)	\$3,315,608	\$0	(\$3,254,231)	\$0	\$61,377	\$61,377	\$61,377
4613	NMFA EQUIPMENT	\$0	\$0	\$0	\$5,000,000	(\$5,000,000)	\$0	\$0	\$0	\$0
4620	2020A NMFA FACILITY PROJECTS	\$8,984,742	\$182	\$8,984,924	\$9,800	(\$8,877,411)	\$0	\$117,313	\$117,313	\$117,313
4621	2020B NMFA ESP PROJECT	\$2,120,480	\$23,623	\$2,144,103	\$3,375	(\$2,114,082)	\$0	\$33,396	\$33,396	\$33,396
4624	2018 GAS TAX LOAN	\$0	\$195	\$195	\$0	\$0	\$0	\$195	\$195	\$195
4632	2017 NMFA STREETS PROJ	\$50,785	\$14,319	\$65,104	\$0	\$0	\$0	\$65,104	\$65,104	\$65,104
4634	2020 NMFA MGRT	\$6,160,234	\$13,040	\$6,173,274	\$8,275	(\$6,030,125)	\$0	\$151,424	\$151,424	\$151,424
Capital Funds Total		\$70,656,180	(\$737,986)	\$69,918,194	\$34,103,393	(\$105,124,991)	\$10,600,000	\$9,496,596	\$0	\$9,496,596

Enterprise Funds

5010	AIRPORT	\$596,880	\$277,288	\$874,168	\$7,121,196	(\$8,787,364)	\$1,123,000	\$331,000	\$331,000	(\$103,955)
5100	UTILITIES SHARED SERVICES	\$223,229	(\$223,229)	\$0	\$17,928,373	(\$17,160,591)	(\$875,000)	(\$107,218)	(\$107,218)	\$376,650
5150	SHARED SERVICES CAPITAL FUND	\$0	(\$0)	(\$0)	\$0	\$0	\$0	(\$0)	(\$0)	(\$0)
5160	SHARED SVCS EQUIP REPL RESERVE	\$13,878	(\$13,878)	\$0	\$1,073	(\$889,951)	\$875,000	(\$13,878)	(\$13,878)	\$20,000
5200	GAS OPERATIONS	\$6,731,633	(\$80,979)	\$6,650,654	\$26,617,517	(\$30,542,837)	(\$1,615,272)	\$1,110,062	\$1,110,062	(\$135,391)
5205	GAS CONTINGENCY FUND	\$498,248	(\$10,085)	\$488,163	\$5,490	(\$100,000)	\$0	\$393,653	\$393,653	(\$125,946)
5250	GAS CAPITAL IMPROVEMENTS	\$3,239,955	(\$24,154)	\$3,215,801	\$8,451	(\$2,958,127)	\$0	\$266,125	\$266,125	\$266,125
5260	GAS EQUIPMENT REPLACE RESERVE	\$873,437	(\$17,768)	\$855,669	\$7,915	(\$649,486)	\$200,000	\$414,098	\$414,098	\$414,098
5270	GAS15A BOND PROJECTS	(\$44,650)	(\$1)	(\$44,651)	\$0	\$0	\$0	(\$44,651)	(\$44,651)	\$44,651
5271	2018 JU PROJECT	(\$84,014)	\$2,719	(\$81,295)	\$0	\$0	\$0	(\$81,295)	(\$81,295)	\$81,295
5280	GAS15A DEBT SERVICE	\$24,329	(\$2,735)	\$21,594	\$347	\$0	\$0	\$21,941	\$21,941	\$21,941
5281	2018 JU DEBT SERVICE FUND	\$192,848	(\$6,266)	\$186,582	\$821	\$0	\$0	\$187,403	\$187,403	\$187,403
5300	WATER OPERATIONS	\$7,067,014	(\$708,994)	\$6,358,020	\$21,377,743	(\$22,547,754)	(\$2,656,241)	\$2,531,768	\$2,531,768	(\$2,483,846)
5301	WATER DEVELOPMENT	\$748,980	(\$501,681)	\$247,299	\$1,114,509	(\$1,258,809)	(\$100,000)	\$2,999	\$2,999	\$2,882
5305	WATER CONTINGENCY FUND	\$360,776	(\$6,614)	\$354,162	\$182	(\$50,000)	\$0	\$304,344	\$304,344	\$304,344
5320	WATER ACQUISITION	\$1,842,404	(\$36,091)	\$1,806,313	\$910,406	(\$1,807,700)	\$0	\$909,019	\$909,019	\$909,019
5321	WATER MGT ADJUDICATION	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5331	WATER09 DEBT SERVICE	\$13,987	(\$1,685)	\$12,302	\$209	\$0	\$0	\$12,511	\$12,511	\$12,511
5332	WATER10 DEBT SERVICE	\$455,011	(\$20,634)	\$434,377	\$2,440	\$0	\$29,324	\$466,141	\$466,141	\$466,141

5335	WATER15 DEBT SERVICE	\$34,970	(\$3,148)	\$31,822	\$371	\$0	\$0	\$32,193	\$32,193	\$32,193
5336	WATER15A DEBT SERVICE	\$52,058	(\$6,002)	\$46,056	\$777	\$0	\$0	\$46,833	\$46,833	\$46,833
5337	WATER16 DEBT SERVICE	\$90,323	(\$10,769)	\$79,554	\$1,351	\$0	\$0	\$80,905	\$80,905	\$80,905
5339	2018 JU DEBT SERVICE FUND	\$569,096	(\$18,492)	\$550,604	\$2,424	\$0	\$0	\$553,028	\$553,028	\$553,028
5341	WATER09 DEBT SERVICE RESERVE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5342	WATER10 DEBT SERVICE RESERVE	\$29,323	(\$1)	\$29,323	\$89	\$0	(\$29,323)	\$89	\$89	\$89
5345	WATER15 BOND PROJECTS	\$5,454	\$185	\$5,639	\$155	(\$1,200)	\$0	\$4,594	\$4,594	\$1,200 \$5,794
5346	WATER15A BOND PROJECTS	\$45,777	(\$975)	\$44,802	\$899	(\$4,004)	\$0	\$41,697	\$41,697	\$4,004 \$45,701
5347	WATER16 BOND PROJECTS	\$2,493	(\$20)	\$2,473	\$34	(\$400)	\$0	\$2,107	\$2,107	\$400 \$2,507
5348	2017 JU IMPROVEMENT REV BOND	\$30,201	\$873	\$31,074	\$2,422	(\$7,034)	\$0	\$26,462	\$26,462	\$26,462
5349	2018 JU IMPROVEMENT REV BOND	\$238,748	(\$2,470)	\$236,278	\$1,002	\$0	\$0	\$237,280	\$237,280	\$237,280
5350	WATER CAPITAL IMPROVEMENTS	\$1,974,969	(\$26,263)	\$1,948,706	\$1,000	(\$2,658,447)	\$1,445,944	\$737,203	\$737,203	(\$696,586) \$40,617
5360	WATER EQUIPMENT REPL RESERVE	\$1,097,829	(\$22,835)	\$1,074,994	\$8,027	(\$2,257,823)	\$1,210,297	\$35,495	\$35,495	\$35,495
5370	COMPLETED WATER PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5374	WATER05A BOND PROJECTS	\$5,308	(\$0)	\$5,308	\$0	\$0	\$0	\$5,308	\$5,308	\$5,308
5375	WATER06 BOND PROJECTS	\$64,099	\$533	\$64,632	\$20	(\$13,061)	\$0	\$51,591	\$51,591	\$13,061 \$64,652
5376	WATER GRANT PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5377	WATER NMFA LOAN PROJECTS	\$9,724	(\$0)	\$9,724	\$0	\$0	(\$1)	\$9,723	\$9,723	\$9,723
5378	WATER07 NMFA PROJECTS	\$141,103	\$3,030	\$144,133	\$32	(\$108,614)	\$0	\$35,551	\$35,551	\$35,551
5379	WATER14 BOND PROJECTS	\$60,403	\$1,219	\$61,622	\$0	(\$18,772)	\$0	\$42,850	\$42,850	\$42,850
5380	COMPLETED WATER DEBT SERVICE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5384	WATER05A DEBT SERVICE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5385	WATER20A DEBT SERVICE	\$26,837	\$720	\$27,557	\$100	\$0	\$0	\$27,657	\$27,657	\$27,657
5389	WATER14 DEBT SERVICE	\$128,539	(\$10,927)	\$117,612	\$1,330	\$0	\$887,441	\$1,006,383	\$1,006,383	\$1,006,383
5390	COMPLETED WATER DS RESERVE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5394	WATER05A DEBT SERVICE RESERVE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5395	WATER20A PROJECT	\$7,715,455	(\$1,296)	\$7,714,159	\$50,000	(\$6,132,615)	\$0	\$1,631,544	\$1,631,544	(\$1,556,387) \$75,157
5396	WATER14 BOND PROJECTS	\$887,441	(\$0)	\$887,441	\$2,692	\$0	(\$887,441)	\$2,692	\$2,692	\$2,692
5400	WASTEWATER OPERATIONS	\$4,885,605	(\$579,908)	\$4,305,697	\$15,751,137	(\$16,250,515)	(\$1,663,000)	\$2,143,319	\$2,143,319	(\$1,423,758) \$719,561
5401	WASTEWATER DEVELOPMENT	\$5,861,797	(\$964,690)	\$4,897,107	\$1,696,299	(\$1,140,018)	\$100,000	\$5,553,388	\$5,553,388	\$5,553,388
5405	WW CONTINGENCY FUND	\$274,021	(\$6,519)	\$267,502	\$1,105	(\$100,000)	\$0	\$168,607	\$168,607	\$168,607
5420	WW WATER RECLAMATION PROJECT	\$701,474	(\$52,916)	\$648,558	\$1,092	(\$916,947)	\$1,185,000	\$917,703	\$917,703	\$917,703
5431	WW09 DEBT SERVICE	\$13,987	(\$1,685)	\$12,302	\$209	\$0	\$0	\$12,511	\$12,511	\$12,511
5432	WW10 DEBT SERVICE	\$333,408	(\$13,656)	\$319,752	\$1,492	\$0	\$0	\$321,244	\$321,244	\$321,244
5435	WW15 DEBT SERVICE	\$176,943	(\$15,063)	\$161,880	\$1,871	\$0	\$14	\$163,765	\$163,765	\$163,765
5436	WW15A DEBT SERVICE	\$29,680	(\$3,429)	\$26,251	\$444	\$0	\$0	\$26,695	\$26,695	\$26,695
5441	WW20B DEBT SERVICE	\$15,095	(\$3,079)	\$12,016	\$200	\$0	\$9,442	\$21,658	\$21,658	\$21,658
5442	WW10 DEBT SERVICE RESERVE	\$9,442	(\$0)	\$9,442	\$29	\$0	(\$9,442)	\$29	\$29	\$29
5445	WW15 BOND PROJECTS	\$599,161	\$2,990	\$602,151	\$0	(\$143,274)	\$0	\$458,877	\$458,877	\$458,877
5446	WW15A BOND PROJECTS	\$47,034	(\$1,404)	\$45,630	\$945	(\$45,060)	\$0	\$1,515	\$1,515	\$1,515
5447	2017 JU IMPROVEMENT REV BOND	\$12,635	\$3,419	\$16,054	\$3,648	(\$16,283)	\$0	\$3,419	\$3,419	\$3,419
5450	WASTEWATER CAPITAL IMPROVEMENT	\$1,338,119	(\$28,636)	\$1,309,483	\$1,891,800	(\$4,358,526)	\$1,450,000	\$292,757	\$292,757	(\$288,970) \$3,787
5451	WW20B PROJECTS	\$1,799,872	\$23,670	\$1,823,542	\$50,000	(\$643,578)	\$0	\$1,229,964	\$1,229,964	(\$1,035,462) \$194,502
5460	WASTEWATER EQUIP REPL RESERVE	\$676,377	(\$12,941)	\$663,436	\$7,940	(\$746,266)	\$213,000	\$138,110	\$138,110	(\$118,500) \$19,610
5470	COMPLETED WW PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5475	WW06 BOND REHAB PROJECTS	\$14	(\$0)	\$14	\$0	\$0	(\$14)	(\$0)	(\$0)	(\$0)
5479	WW14 BOND PROJECTS	\$47	\$86	\$133	\$62	\$0	\$0	\$195	\$195	\$195
5480	COMPLETED WW DEBT SERVICE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5481	WW14 DEBT SERVICE	\$11,930	(\$1,203)	\$10,727	\$154	\$0	\$139,787	\$150,668	\$150,668	\$150,668
5485	WW20A DEBT SERVICE	\$8,378	\$224	\$8,602	\$0	\$0	\$0	\$8,602	\$8,602	\$8,602
5490	COMPLETED WW DEBT SERVICE RES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5491	WW14 BOND PROJECTS	\$139,787	\$0	\$139,787	\$424	\$0	(\$139,787)	\$424	\$424	\$424
5495	WW20A PROJECT	\$1,216,934	\$18,584	\$1,235,518	\$10,000	(\$488,408)	\$0	\$757,110	\$757,110	(\$696,087) \$61,023
5500	SOLID WASTE OPERATIONS	\$5,159,782	(\$17,812)	\$5,141,970	\$18,213,128	(\$17,367,320)	(\$3,485,356)	\$2,502,422	\$2,502,422	(\$573,048) \$1,929,374
5505	SOLID WASTE CONTINGENCY FUND	\$200,000	\$0	\$200,000	\$0	(\$150,000)	\$900,628	\$950,628	\$950,628	\$950,628
5510	SOLID WASTE LANDFILL CLOSURE	\$4,238,753	(\$83,354)	\$4,155,399	\$7,953	(\$965,938)	\$0	\$3,197,414	\$3,197,414	\$3,197,414

Exhibit "A"

5560	SOLID WASTE EQUIP REPL RESERVE	\$2,275,760	(\$57,792)	\$2,217,968	\$6,855	(\$4,656,757)	\$4,000,000	\$1,568,066	\$1,568,066	\$1,568,066
5577	SW NMFA PROJECTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5587	SW NMFA LOAN DEBT SERVICE	\$439,535	(\$13,516)	\$426,019	\$1,935	\$0	\$0	\$427,954	\$427,954	\$427,954
5750	RIO GRANDE THEATRE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5920	TRANSIT OPERATING	\$23,562	\$1	\$23,563	\$8,549,902	(\$8,216,600)	\$0	\$356,865	\$356,865	\$356,865
5921	TRANSIT GRANTS	\$0	\$2	\$2	\$0	\$0	\$0	\$2	\$2	\$2
5923	TRANSIT CAPITAL	\$1,036,068	\$0	\$1,036,068	\$24,193,809	(\$27,196,224)	\$3,381,672	\$1,415,326	\$1,415,326	(\$509,497)
5930	ALTERNATIVE FUELS	\$5,000	\$0	\$5,000	\$0	\$0	\$0	\$5,000	\$5,000	\$5,000
Enterprise Funds Total		\$67,494,295	(\$3,280,054)	\$64,214,241	\$145,561,830	(\$181,356,303)	\$5,689,672	\$34,109,440	\$0	\$34,109,440
INTERNAL SERVICE FUNDS										
6150	FLEET SERVICES	\$1,971,551	(\$26,327)	\$1,945,224	\$9,795,000	(\$9,314,190)	\$0	\$2,426,034	\$2,426,034	\$2,426,034
6310	UNEMPLOYMENT RESERVE	\$1,305,072	(\$25,245)	\$1,279,827	\$0	\$0	\$0	\$1,279,827	\$1,279,827	\$1,279,827
6320	EMPLOYEE HEALTH	\$439,525	(\$24,221)	\$415,304	\$0	\$0	\$0	\$415,304	\$415,304	(\$141,000)
6325	HEATH INS RESERVE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6330	WORKERS COMPENSATION	\$2,627,990	(\$72,134)	\$2,555,856	\$0	(\$1,968,853)	\$890,000	\$1,477,003	\$1,477,003	\$1,477,003
6340	LIABILITY CLAIMS	\$3,936,455	(\$94,918)	\$3,841,537	\$0	(\$7,152,369)	\$4,300,000	\$989,168	\$989,168	\$989,168
INTERNAL SERVICE FUNDS Total		\$10,280,593	(\$242,846)	\$10,037,747	\$9,795,000	(\$18,435,412)	\$5,190,000	\$6,587,336	\$6,587,336	(\$141,000)
AGENCY FUNDS										
7410	MV REGIONAL DISPATCH AUTHORITY	\$2,483,585	(\$19,404)	\$2,464,181	\$4,905,560	(\$6,209,874)	\$0	\$1,159,867	\$1,159,867	\$1,159,867
7420	METRO NARCOTICS AGENCY	\$610,442	(\$10,158)	\$600,284	\$681,086	(\$731,086)	\$0	\$550,284	\$550,284	\$550,284
7421	METRO SEIZED ASSETS - DOJ	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7422	METRO NARCOTICS HIDTA GRANTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7423	METRO SEIZED ASSETS - TREASURY	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7424	METRO SEIZED ASSETS - STATE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7440	ANIMAL SERVICES CENTER	\$442,829	(\$26,592)	\$416,237	\$4,181,375	(\$4,317,850)	(\$21,000)	\$258,761	\$258,761	\$258,761
7441	ASCMV CAPITAL	\$733,000	(\$0)	\$733,000	\$0	(\$726,000)	\$21,000	\$28,000	\$28,000	\$28,000
7470	BRANIGAN ESTATE	\$1,123,903	(\$22,477)	\$1,101,426	\$0	(\$260,000)	\$0	\$841,426	\$841,426	\$841,426
7480	GIFTS AND MEMORIALS	\$700,725	(\$13,145)	\$687,580	\$18,855	(\$594,999)	\$0	\$111,436	\$111,436	\$111,436
7481	VETERANS MEMORIAL WALL	\$24,811	(\$463)	\$24,348	\$1,000	(\$1,000)	\$0	\$24,348	\$24,348	\$24,348
7492	HIDTA-CLC	(\$6,268)	\$1,000	(\$5,268)	\$1,384,559	(\$1,384,559)	\$5,268	(\$0)	(\$0)	(\$0)
AGENCY FUNDS Total		\$6,113,027	(\$91,240)	\$6,021,788	\$11,172,435	(\$14,225,369)	\$5,268	\$2,974,122	\$0	\$2,974,122
SOUTH CENTRAL SOLID WASTE AUTHORITY										
8100	SC SOLID WASTE AUTHORITY	\$0	\$0	(\$379,342)	\$11,305,948	(\$8,977,308)	\$530,539	\$2,479,837	\$2,479,837	\$2,479,837
8110	SCSWA CLOSURE/POST CLOSURE	\$368,184	(\$47,413)	\$320,771	\$0	\$0	(\$305,198)	\$15,573	\$15,573	\$15,573
8115	SCSWA ENVIRONMENTAL IMP FEES	\$0	\$320,771	\$320,771	\$294,450	(\$131,000)	\$0	\$484,221	\$484,221	\$484,221
8120	SCSWA DEBT CAPITAL PROJECTS	\$2,144,498	(\$31,279)	\$2,113,219	\$0	\$0	(\$212,214)	\$1,901,005	\$1,901,005	\$1,901,005
8150	SCSWA CAPITAL IMPROVEMENTS	\$17,931	(\$0)	\$17,931	\$0	\$0	(\$17,931)	(\$0)	(\$0)	(\$0)
8160	SCSWA EQUIPMENT REPLACEMENT	\$751	\$0	\$751	\$0	\$0	(\$751)	\$0	\$0	\$0
8170	SCSWA RECYCLING	(\$774,059)	\$1,083,029	\$308,970	\$4,751,775	(\$2,555,197)	\$0	\$2,505,548	\$2,505,548	\$2,505,548
8180	COMMUNITY COLLECTION CTRS	\$400,509	(\$19,701)	\$380,808	\$1,517,922	(\$1,460,927)	\$0	\$437,802	\$437,802	\$437,802
8190	SUNLAND PARK SOLID WASTE	\$52,324	\$216,502	\$268,826	\$1,272,510	(\$963,115)	\$5,555	\$583,776	\$583,776	\$583,776
SOUTH CENTRAL SOLID WASTE AUTHORITY Total		\$2,210,138	\$1,521,909	\$3,352,705	\$19,142,605	(\$14,087,547)	\$0	\$8,407,763	\$0	\$8,407,763

TREASURY FUNDS

9410	MVRDA GENERAL CAPITAL ASSETS	\$0	(\$427,059)	(\$427,059)	\$0	\$0	(\$427,059)	(\$427,059)	(\$427,059)
9420	METRO NARC GEN CAPITAL ASSETS	\$0	\$190,318	\$190,318	\$0	\$0	\$190,318	\$190,318	\$190,318
9440	ASCMV GENERAL CAPITAL ASSETS	\$0	\$154,712	\$154,712	\$0	\$0	\$154,712	\$154,712	\$154,712
9800	RIO GRANDE NATURAL GAS ASSOC	\$0	\$394,796	\$394,796	\$0	\$0	\$394,796	\$394,796	\$394,796
9900	GENERAL CAPITAL ASSETS-CITY	\$669,170	(\$458,701,957)	(\$458,032,787)	\$0	\$0	(\$458,032,787)	(\$458,032,787)	(\$458,032,787)
9910	GENERAL LONG-TERM LIABILITIES	\$248,835,514	(\$192,098,020)	\$56,737,494	\$0	\$0	\$56,737,494	\$56,737,494	\$56,737,494
9995	UNREALIZED FMV ADJUSTMENT	\$8,307,844	\$394,796	\$8,702,640	\$0	\$0	\$8,702,640	\$8,702,640	\$8,702,640
9999	CASH & INVESTMENT POOL	(\$3,621,561)	\$394,796	(\$3,226,765)	\$0	\$0	(\$3,226,765)	(\$3,226,765)	(\$3,226,765)
TREASURY FUNDS Total		\$254,190,967	(\$649,697,617)	(\$395,506,650)	\$0	\$0	(\$395,506,650)	\$0	(\$395,506,650)

ALL FUNDS ENDING BALANCE		\$557,665,592	(\$634,605,272)	(\$77,319,022)	\$413,045,307	(\$547,883,938)	\$0	(\$212,157,653)	(\$11,127,299)	(\$223,284,952)	\$5,978,417	(\$228,433,835)

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	1000 GENERAL FUND			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 52,144,286	52,144,286	0	52,144,286
Revenues				
Municipal Gross Receipts Tax	47,475,528	47,475,528	7,159,846	54,635,374
Public Safety Gross Receipts Tax	4,263,256	4,263,256	793,722	5,056,978
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	42,196,909	42,196,909	7,360,103	49,557,012
Environmental Gross Receipts Tax	2,131,627	2,131,627	0	2,131,627
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	500,000	500,000	0	500,000
Lodgers Tax	0	0	0	0
Property Taxes	12,648,613	12,648,613	0	12,648,613
Payment In Lieu of Property Tax	842,304	842,304	0	842,304
Franchise Fees	2,771,546	2,771,546	0	2,771,546
Payment In Lieu of Franchise Fees	1,200,000	1,200,000	0	1,200,000
Licenses, Fees & Permits	3,089,711	3,089,711	0	3,089,711
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	321,800	321,800	0	321,800
Charges For Services	2,622,941	2,622,941	0	2,622,941
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	2,681,000	2,681,000	(150,000)	2,531,000
Investment Income	100,000	100,000	0	100,000
Miscellaneous Revenues	90,060	90,060	0	90,060
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	122,935,295	122,935,295	15,163,671	138,098,966
TOTAL RESOURCES	\$ 175,079,581	175,079,581	15,163,671	190,243,252
Expenditures				
General Government	5,332,858	6,498,658	0	6,498,658
Legislative	599,338	699,338	0	699,338
Municipal Court	1,643,979	1,728,979	0	1,728,979
Chief Administrative Officer	2,184,078	1,360,632	0	1,360,632
City Manager	2,514,654	4,389,428	198,500	4,587,928
Legal	3,400,663	3,400,663	0	3,400,663
Las Cruces Police Department	27,537,727	27,574,310	28,572	27,602,882
Las Cruces Fire Department	19,484,637	20,288,111	0	20,288,111
Utilities	0	0	0	0
Economic Development	5,130,498	5,279,481	0	5,279,481
Internal Audit	0	0	0	0
Assistant City Manager-400	5,719,983	5,889,683	0	5,889,683
Human Resources	2,076,550	2,278,880	(141,000)	2,137,880
Financial Services	6,278,149	6,310,149	0	6,310,149
Information Technology	6,130,713	6,130,713	0	6,130,713
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	17,674,006	18,034,109	73,228	18,107,337
Community Development	5,781,600	4,987,587	0	4,987,587
Quality of Life	8,313,229	8,391,243	0	8,391,243
Public Works	10,285,620	10,285,620	0	10,285,620
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 130,088,282	133,527,584	159,300	133,686,884
Other Resources				
Operating Transfers In	9,302,703	6,915,798	169,798	7,085,596
Operating Transfers Out	(19,039,540)	(20,296,467)	(29,940)	(20,326,407)
Total Other Resources	\$ (9,736,837)	(13,380,669)	139,858	(13,240,811)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 35,254,462	28,171,328	15,144,229	43,315,557
Required Reserve:				
State Required 1/12th	10,840,691	11,127,299	13,275	11,140,574
Local CLC 1/12th	10,840,691	11,127,299	13,275	11,140,574
AVAILABLE BALANCE	\$ 13,573,080	5,916,730	15,117,679	21,034,411

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	1030 ECONOMIC DEVELOPMENT			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,521,328	1,521,328	0	1,521,328
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	0	0	0
TOTAL RESOURCES	\$ 1,521,328	1,521,328	0	1,521,328
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	693,487	778,487	135,000	913,487
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 693,487	778,487	135,000	913,487
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 827,841	742,841	(135,000)	607,841

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	1200 VEHICLE ACQUISITION			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 854,875	854,875	0	854,875
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	0	0	0
TOTAL RESOURCES	\$ 854,875	854,875	0	854,875
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	1,363,486	1,428,134	0	1,428,134
Las Cruces Fire Department	82,119	82,119	0	82,119
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	491,000	675,055	0	675,055
Community Development	174,760	174,760	0	174,760
Quality of Life	112,000	112,000	0	112,000
Public Works	60,000	60,000	0	60,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 2,283,365	2,532,068	0	2,532,068
Other Resources				
Operating Transfers In	1,484,915	1,694,072	28,036	1,722,108
Operating Transfers Out	(44,915)	(44,915)	0	(44,915)
Total Other Resources	\$ 1,440,000	1,649,157	28,036	1,677,193
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 11,510	(28,036)	28,036	(0)

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	1400 FACILITIES MAINTENANCE			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,650,882	1,650,882	0	1,650,882
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	1,785	1,785	0	1,785
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	1,785	1,785	0	1,785
TOTAL RESOURCES	\$ 1,652,667	1,652,667	0	1,652,667
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	1,011,350	1,011,350	(21,694)	989,656
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	759,134	759,134	0	759,134
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 1,770,484	1,770,484	(21,694)	1,748,790
Other Resources				
Operating Transfers In	96,123	96,123	0	96,123
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 96,123	96,123	0	96,123
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (21,694)	(21,694)	21,694	(0)

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	1500 HHR CONTINGENCY			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 7,329,615	7,329,615	0	7,329,615
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	10,941,798	10,941,798	0	10,941,798
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	10,941,798	10,941,798	0	10,941,798
TOTAL RESOURCES	\$ 18,271,413	18,271,413	0	18,271,413
Expenditures				
General Government	0	0	0	0
Legislative	2,887,227	2,537,227	0	2,537,227
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 2,887,227	2,537,227	0	2,537,227
Other Resources				
Operating Transfers In	0	0	1,500,000	1,500,000
Operating Transfers Out	(9,519,635)	(9,869,635)	0	(9,869,635)
Total Other Resources	\$ (9,519,635)	(9,869,635)	1,500,000	(8,369,635)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 5,864,551	5,864,551	1,500,000	7,364,551

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
 BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	2000			
	HUD COMMUNITY DEVELOPMENT			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 34,247	34,247	0	34,247
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	5,101,232	6,509,604	0	6,509,604
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	5,101,232	6,509,604	0	6,509,604
TOTAL RESOURCES	\$ 5,135,479	6,543,851	0	6,543,851
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	5,101,232	6,509,605	(129,715)	6,379,890
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 5,101,232	6,509,605	(129,715)	6,379,890
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 34,247	34,246	129,715	163,962

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	2100 SPECIAL REVENUE REIMB GRANTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 24,280	24,280	0	24,280
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	259	0	259
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	182,000	182,000	65,000	247,000
Federal Grants	5,358,203	16,550,586	305,179	16,855,765
State Grants	1,120,000	10,094,930	0	10,094,930
Local Grants	46,440	43,826	0	43,826
Debt Service	0	0	0	0
Total Revenues	6,706,643	26,871,601	370,179	27,241,780
TOTAL RESOURCES	\$ 6,730,923	26,895,881	370,179	27,266,060
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	629,444	6,209,304	(148,424)	6,060,880
Las Cruces Fire Department	85,478	1,378,031	0	1,378,031
Utilities	0	875,000	425,000	1,300,000
Economic Development	2,798,662	13,511,171	0	13,511,171
Internal Audit	0	0	0	0
Assistant City Manager-400	468,870	1,229,604	0	1,229,604
Human Resources	0	0	0	0
Financial Services	0	0	29,643	29,643
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	11,030	459,981	0	459,981
Community Development	337,981	791,666	0	791,666
Quality of Life	2,375,183	2,051,845	65,000	2,116,845
Public Works	0	365,000	0	365,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 6,706,648	26,871,602	371,219	27,242,821
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 24,275	24,279	(1,040)	23,240

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	2401 POLICE PROTECTION FUND			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 17,308	17,308	0	17,308
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	186,000	224,000	0	224,000
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	186,000	224,000	0	224,000
TOTAL RESOURCES	\$ 203,308	241,308	0	241,308
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	186,000	224,000	0	224,000
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 186,000	224,000	0	224,000
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	(17,308)	(17,308)
Total Other Resources	\$ 0	0	(17,308)	(17,308)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 17,308	17,308	(17,308)	(0)

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	2600 STREET MAINTENANCE OPERATIONS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 3,602,814	3,602,814	0	3,602,814
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	0	0	0
TOTAL RESOURCES	\$ 3,602,814	3,602,814	0	3,602,814
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 0	0	0	0
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(3,610,119)	(3,605,304)	2,490	(3,602,814)
Total Other Resources	\$ (3,610,119)	(3,605,304)	2,490	(3,602,814)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (7,305)	(2,490)	2,490	(0)

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
 BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	2650 FLOOD CONTROL OPERATIONS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,760,004	1,760,004	0	1,760,004
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	5,147,483	5,147,483	0	5,147,483
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	3,570	3,570	0	3,570
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	5,151,053	5,151,053	0	5,151,053
TOTAL RESOURCES	\$ 6,911,057	6,911,057	0	6,911,057
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	50,000	50,000	0	50,000
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	2,751,609	2,781,609	93,000	2,874,609
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 2,801,609	2,831,609	93,000	2,924,609
Other Resources				
Operating Transfers In	224,000	0	0	0
Operating Transfers Out	(3,807,226)	(3,807,226)	0	(3,807,226)
Total Other Resources	\$ (3,583,226)	(3,807,226)	0	(3,807,226)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 526,222	272,222	(93,000)	179,222

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	2700 HEALTH CARE SERVICES MMC LEASE			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 7,837,120	7,837,120	0	7,837,120
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	0	0	0
TOTAL RESOURCES	\$ 7,837,120	7,837,120	0	7,837,120
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	4,950,000	5,043,000	8,000	5,051,000
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	117,000	117,000	0	117,000
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 5,067,000	5,160,000	8,000	5,168,000
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	(1,999,111)	0	(1,999,111)
Total Other Resources	\$ 0	(1,999,111)	0	(1,999,111)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 2,770,120	678,009	(8,000)	670,009

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	2710 CONVENTION & VISITORS BUREAU			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 3,555,743	3,555,743	0	3,555,743
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	2,032,473	3,058,973	0	3,058,973
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	3,000	3,000	0	3,000
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	2,000	2,000	0	2,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	2,037,473	3,063,973	0	3,063,973
TOTAL RESOURCES	\$ 5,593,216	6,619,716	0	6,619,716
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	2,829,574	2,829,574	(150,000)	2,679,574
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 2,829,574	2,829,574	(150,000)	2,679,574
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	(150,000)	(150,000)
Total Other Resources	\$ 0	0	(150,000)	(150,000)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 2,763,642	3,790,142	0	3,790,142

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	2815 TIDD DEDICATED REVENUES			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 7,168,347	7,168,347	0	7,168,347
Revenues				
Municipal Gross Receipts Tax	0	2,425,000	0	2,425,000
Public Safety Gross Receipts Tax	0	175,000	0	175,000
Hold Harmless Replacement GRT	0	400,000	0	400,000
State-Shared Gross Receipts Tax	0	1,500,000	0	1,500,000
Environmental Gross Receipts Tax	0	100,000	0	100,000
County Environmental Gross Receipts Tax	0	600,000	0	600,000
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	60,000	0	60,000
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	200	0	200
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	70,000	0	70,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	5,330,200	0	5,330,200
TOTAL RESOURCES	\$ 7,168,347	12,498,547	0	12,498,547
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	60,000	118,500	0	118,500
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 60,000	118,500	0	118,500
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(1,600,000)	(1,600,000)	(1,500,000)	(3,100,000)
Total Other Resources	\$ (1,600,000)	(1,600,000)	(1,500,000)	(3,100,000)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 5,508,347	10,780,047	(1,500,000)	9,280,047

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	3612 2007 NMFA STR AND FIRE DS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ (1,904)	(1,904)	0	(1,904)
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	0	0	0
TOTAL RESOURCES	\$ (1,904)	(1,904)	0	(1,904)
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 0	0	0	0
Other Resources				
Operating Transfers In	0	0	1,904	1,904
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	1,904	1,904
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (1,904)	(1,904)	1,904	0

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	4100 CAPITAL PROJECTS REIMB GRANTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ (0)	(0)	0	(0)
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	5,508,937	7,877,371	0	7,877,371
State Grants	16,541,864	18,450,623	0	18,450,623
Local Grants	350,000	861,264	0	861,264
Debt Service	0	0	0	0
Total Revenues	22,400,801	27,189,258	0	27,189,258
TOTAL RESOURCES	\$ 22,400,801	27,189,258	0	27,189,258
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	47,000	160,000	0	160,000
Las Cruces Fire Department	74,798	332,731	0	332,731
Utilities	0	0	0	0
Economic Development	2,631,838	1,734,242	0	1,734,242
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	370,000	370,000	0	370,000
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	3,816,025	4,659,192	(4,825)	4,654,367
Community Development	0	0	0	0
Quality of Life	742,500	742,500	0	742,500
Public Works	14,718,640	19,190,593	0	19,190,593
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 22,400,801	27,189,258	(4,825)	27,184,433
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (0)	(0)	4,825	4,825

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	4230 GO BOND PROJECT 2019			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 8,298,411	8,298,411	0	8,298,411
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	20,925	20,925	0	20,925
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	20,925	20,925	0	20,925
TOTAL RESOURCES	\$ 8,319,336	8,319,336	0	8,319,336
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	15,823,491	8,588,048	(268,712)	8,319,336
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 15,823,491	8,588,048	(268,712)	8,319,336
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (7,504,155)	(268,712)	268,712	(0)

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	4227 VAD STREET PROJECTS 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 7,770,131	7,770,131	0	7,770,131
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	10,200	10,200	2,000	12,200
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	10,200	10,200	2,000	12,200
TOTAL RESOURCES	\$ 7,780,331	7,780,331	2,000	7,782,331
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	7,907,541	7,782,331	0	7,782,331
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 7,907,541	7,782,331	0	7,782,331
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (127,210)	(2,000)	2,000	0

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5010 AIRPORT			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 874,168	874,168	0	874,168
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	25,000	25,000	0	25,000
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	190,000	190,000	0	190,000
Federal Grants	59,000	45,168	(62,673)	(17,505)
State Grants	1,967,032	6,861,028	(902,057)	5,958,971
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	2,241,032	7,121,196	(964,730)	6,156,466
TOTAL RESOURCES	\$ 3,115,200	7,995,364	(964,730)	7,030,634
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	3,462,338	8,787,364	(860,775)	7,926,589
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 3,462,338	8,787,364	(860,775)	7,926,589
Other Resources				
Operating Transfers In	773,000	1,123,000	0	1,123,000
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 773,000	1,123,000	0	1,123,000
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 425,862	331,000	(103,955)	227,045

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
 BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5100 UTILITIES SHARED SERVICES			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 0	0	0	0
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	17,604,377	17,604,377	700,000	18,304,377
Investment Income	13,996	23,996	0	23,996
Miscellaneous Revenues	300,000	300,000	0	300,000
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	17,918,373	17,928,373	700,000	18,628,373
TOTAL RESOURCES	\$ 17,918,373	17,928,373	700,000	18,628,373
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	15,503,387	15,705,735	173,350	15,879,085
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	1,454,856	1,454,856	0	1,454,856
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 16,958,243	17,160,591	173,350	17,333,941
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(800,000)	(875,000)	(150,000)	(1,025,000)
Total Other Resources	\$ (800,000)	(875,000)	(150,000)	(1,025,000)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 160,130	(107,218)	376,650	269,432

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
 BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5160 SHARED SVCS EQUIP REPL RESERVE			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 0	0	0	0
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	1,073	1,073	0	1,073
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	1,073	1,073	0	1,073
TOTAL RESOURCES	\$ 1,073	1,073	0	1,073
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	796,574	889,951	130,000	1,019,951
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 796,574	889,951	130,000	1,019,951
Other Resources				
Operating Transfers In	800,000	875,000	150,000	1,025,000
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 800,000	875,000	150,000	1,025,000
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 4,499	(13,878)	20,000	6,122

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5200 GAS OPERATIONS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 6,650,654	6,650,654	0	6,650,654
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	415,460	415,460	0	415,460
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	11,315,399	11,315,399	684,867	12,000,266
Natural Gas Sales - Commodity	14,847,554	14,847,554	0	14,847,554
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	9,104	39,104	0	39,104
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	26,587,517	26,617,517	684,867	27,302,384
TOTAL RESOURCES	\$ 33,238,171	33,268,171	684,867	33,953,038
Expenditures				
General Government	4,890,496	4,890,496	184,488	5,074,984
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	25,567,112	25,652,341	635,770	26,288,111
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 30,457,608	30,542,837	820,258	31,363,095
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(1,415,272)	(1,615,272)	0	(1,615,272)
Total Other Resources	\$ (1,415,272)	(1,615,272)	0	(1,615,272)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 1,365,291	1,110,062	(135,391)	974,671

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5205 GAS CONTINGENCY FUND			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 488,163	488,163	0	488,163
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	5,490	5,490	0	5,490
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	5,490	5,490	0	5,490
TOTAL RESOURCES	\$ 493,653	493,653	0	493,653
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	100,000	100,000	0	100,000
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 100,000	100,000	0	100,000
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	(125,946)	(125,946)
Total Other Resources	\$ 0	0	(125,946)	(125,946)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 393,653	393,653	(125,946)	267,707

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5270 GAS15A BOND PROJECTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ (44,651)	(44,651)	0	(44,651)
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	0	0	0
TOTAL RESOURCES	\$ (44,651)	(44,651)	0	(44,651)
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 0	0	0	0
Other Resources				
Operating Transfers In	0	0	44,651	44,651
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	44,651	44,651
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (44,651)	(44,651)	44,651	0

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5271 2018 JU PROJECT 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ (81,295)	(81,295)	0	(81,295)
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	0	0	0
TOTAL RESOURCES	\$ (81,295)	(81,295)	0	(81,295)
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 0	0	0	0
Other Resources				
Operating Transfers In	0	0	81,295	81,295
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	81,295	81,295
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (81,295)	(81,295)	81,295	(0)

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5300 WATER OPERATIONS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 6,358,020	6,358,020	0	6,358,020
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	289,930	289,930	0	289,930
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	21,002,023	21,002,023	0	21,002,023
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	60,000	60,000	0	60,000
Investment Income	5,790	25,790	0	25,790
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	21,357,743	21,377,743	0	21,377,743
TOTAL RESOURCES	\$ 27,715,763	27,735,763	0	27,735,763
Expenditures				
General Government	4,323,635	4,323,635	193,976	4,517,611
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	17,953,937	18,224,119	489,870	18,713,989
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 22,277,572	22,547,754	683,846	23,231,600
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(2,621,241)	(2,656,241)	(1,800,000)	(4,456,241)
Total Other Resources	\$ (2,621,241)	(2,656,241)	(1,800,000)	(4,456,241)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 2,816,950	2,531,768	(2,483,846)	47,922

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5301 WATER DEVELOPMENT			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 247,299	247,299	0	247,299
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	1,098,437	1,098,437	0	1,098,437
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	1,072	1,072	0	1,072
Miscellaneous Revenues	15,000	15,000	0	15,000
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	1,114,509	1,114,509	0	1,114,509
TOTAL RESOURCES	\$ 1,361,808	1,361,808	0	1,361,808
Expenditures				
General Government	55,050	55,050	0	55,050
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	1,203,759	1,203,759	297,118	1,500,877
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 1,258,809	1,258,809	297,118	1,555,927
Other Resources				
Operating Transfers In	0	0	300,000	300,000
Operating Transfers Out	(100,000)	(100,000)	0	(100,000)
Total Other Resources	\$ (100,000)	(100,000)	300,000	200,000
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 2,999	2,999	2,882	5,881

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5345 WATER15 BOND PROJECTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 5,639	5,639	0	5,639
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	155	155	0	155
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	155	155	0	155
TOTAL RESOURCES	\$ 5,794	5,794	0	5,794
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	1,200	1,200	(1,200)	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 1,200	1,200	(1,200)	0
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 4,594	4,594	1,200	5,794

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5346 WATER15A BOND PROJECTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 44,802	44,802	0	44,802
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	899	899	0	899
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	899	899	0	899
TOTAL RESOURCES	\$ 45,701	45,701	0	45,701
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	4,004	4,004	(4,004)	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 4,004	4,004	(4,004)	0
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 41,697	41,697	4,004	45,701

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5347 WATER16 BOND PROJECTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 2,473	2,473	0	2,473
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	34	34	0	34
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	34	34	0	34
TOTAL RESOURCES	\$ 2,507	2,507	0	2,507
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	400	400	(400)	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 400	400	(400)	0
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 2,107	2,107	400	2,507

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5350 WATER CAPITAL IMPROVEMENTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,948,706	1,948,706	0	1,948,706
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	1,000	1,000	0	1,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	1,000	1,000	0	1,000
TOTAL RESOURCES	\$ 1,949,706	1,949,706	0	1,949,706
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	2,633,447	2,658,447	2,196,586	4,855,033
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 2,633,447	2,658,447	2,196,586	4,855,033
Other Resources				
Operating Transfers In	1,445,944	1,445,944	1,500,000	2,945,944
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 1,445,944	1,445,944	1,500,000	2,945,944
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 762,203	737,203	(696,586)	40,617

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5375 WATER06 BOND PROJECTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 64,632	64,632	0	64,632
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	20	20	0	20
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	20	20	0	20
TOTAL RESOURCES	\$ 64,652	64,652	0	64,652
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	13,061	13,061	(13,061)	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 13,061	13,061	(13,061)	0
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 51,591	51,591	13,061	64,652

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
 BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5395 WATER06 DEBT SERVICE RESERVE			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 7,714,159	7,714,159	0	7,714,159
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	50,000	50,000	0	50,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	50,000	50,000	0	50,000
TOTAL RESOURCES	\$ 7,764,159	7,764,159	0	7,764,159
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	6,132,615	6,132,615	1,556,387	7,689,002
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 6,132,615	6,132,615	1,556,387	7,689,002
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 1,631,544	1,631,544	(1,556,387)	75,157

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5400 WASTEWATER OPERATIONS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 4,305,697	4,305,697	0	4,305,697
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	226,728	226,728	0	226,728
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	15,516,044	15,516,044	0	15,516,044
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	2,365	2,365	0	2,365
Miscellaneous Revenues	6,000	6,000	0	6,000
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	15,751,137	15,751,137	0	15,751,137
TOTAL RESOURCES	\$ 20,056,834	20,056,834	0	20,056,834
Expenditures				
General Government	4,144,070	4,144,070	184,488	4,328,558
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	12,085,592	12,106,445	739,270	12,845,715
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 16,229,662	16,250,515	923,758	17,174,273
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(1,510,000)	(1,663,000)	(500,000)	(2,163,000)
Total Other Resources	\$ (1,510,000)	(1,663,000)	(500,000)	(2,163,000)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 2,317,172	2,143,319	(1,423,758)	719,561

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5450 WASTEWATER CAPITAL IMPROVEMENT			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,309,483	1,309,483	0	1,309,483
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	2,214	2,214	0	2,214
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	1,482,712	1,889,586	0	1,889,586
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	1,484,926	1,891,800	0	1,891,800
TOTAL RESOURCES	\$ 2,794,409	3,201,283	0	3,201,283
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	3,951,652	4,358,526	788,970	5,147,496
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 3,951,652	4,358,526	788,970	5,147,496
Other Resources				
Operating Transfers In	1,450,000	1,450,000	500,000	1,950,000
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 1,450,000	1,450,000	500,000	1,950,000
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 292,757	292,757	(288,970)	3,787

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5451 WW20B PROJECTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,823,542	1,823,542	0	1,823,542
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	50,000	50,000	0	50,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	50,000	50,000	0	50,000
TOTAL RESOURCES	\$ 1,873,542	1,873,542	0	1,873,542
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	643,578	643,578	1,035,462	1,679,040
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 643,578	643,578	1,035,462	1,679,040
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 1,229,964	1,229,964	(1,035,462)	194,502

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
 BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5460 WASTEWATER EQUIP REPL RESERVE			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 663,436	663,436	0	663,436
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	2,940	2,940	0	2,940
Miscellaneous Revenues	5,000	5,000	0	5,000
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	7,940	7,940	0	7,940
TOTAL RESOURCES	\$ 671,376	671,376	0	671,376
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	587,458	746,266	118,500	864,766
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 587,458	746,266	118,500	864,766
Other Resources				
Operating Transfers In	60,000	213,000	0	213,000
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 60,000	213,000	0	213,000
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 143,918	138,110	(118,500)	19,610

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5495 WW06 DEBT SERVICE RESERVE			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,235,518	1,235,518	0	1,235,518
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	10,000	10,000	0	10,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	10,000	10,000	0	10,000
TOTAL RESOURCES	\$ 1,245,518	1,245,518	0	1,245,518
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	488,408	488,408	696,087	1,184,495
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 488,408	488,408	696,087	1,184,495
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 757,110	757,110	(696,087)	61,023

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5500 SOLID WASTE OPERATIONS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 5,141,970	5,141,970	0	5,141,970
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	233,400	233,400	0	233,400
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	17,972,497	17,972,497	0	17,972,497
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	2,231	2,231	0	2,231
Miscellaneous Revenues	5,000	5,000	0	5,000
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	18,213,128	18,213,128	0	18,213,128
TOTAL RESOURCES	\$ 23,355,098	23,355,098	0	23,355,098
Expenditures				
General Government	4,246,176	4,246,176	137,048	4,383,224
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	12,468,335	13,121,144	436,000	13,557,144
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 16,714,511	17,367,320	573,048	17,940,368
Other Resources				
Operating Transfers In	514,644	514,644	0	514,644
Operating Transfers Out	(4,000,000)	(4,000,000)	0	(4,000,000)
Total Other Resources	\$ (3,485,356)	(3,485,356)	0	(3,485,356)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 3,155,231	2,502,422	(573,048)	1,929,374

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	5923 TRANSIT CAPITAL			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,036,068	1,036,068	0	1,036,068
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	21,665,589	24,151,876	0	24,151,876
State Grants	41,933	41,933	0	41,933
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	21,707,522	24,193,809	0	24,193,809
TOTAL RESOURCES	\$ 22,743,590	25,229,877	0	25,229,877
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	21,730,710	24,436,279	509,497	24,945,776
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	2,759,945	2,759,945	0	2,759,945
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 24,490,655	27,196,224	509,497	27,705,721
Other Resources				
Operating Transfers In	1,248,618	3,381,672	0	3,381,672
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 1,248,618	3,381,672	0	3,381,672
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (498,447)	1,415,325	(509,497)	905,828

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "B"

	6320 EMPLOYEE HEALTH			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 415,304	415,304	0	415,304
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	0	0	0	0
TOTAL RESOURCES	\$ 415,304	415,304	0	415,304
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	141,000	141,000
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 0	0	141,000	141,000
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 415,304	415,304	(141,000)	274,304

**City of Las Cruces
Capital Improvements Program
FY 2023-2028**

Exhibit C

Amended as of 02/21/23

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded)					Funding Source(s)
		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
ECONOMIC DEVELOPMENT							
Economic Development - Newly Funded Projects							
Downtown Callecitas Shade Structure	100,000						TIDD
Downtown Parking Lots Renovation 1 - Parking Lot 9/10 2 - Parking Lot at Campo & Hadley	500,000	350,000	255,000	255,000	255,000	255,000	Grants, TIDD
Economic Development - Total Newly Funded Projects	\$ 600,000	\$ 350,000	\$ 255,000	\$ 255,000	\$ 255,000	\$ 255,000	
Economic Development - Carryover Projects							
Cinematic Infrastructure & Soundstage	2,933,085						Bonds, Grants, Taxes
Downtown Plaza Shade Structures	160,014						Bonds
Gateway Entry Points Signage	250,000						Bonds
Parking Lot 7 and Bathrooms	417,921						TIDD
Economic Development - Total Carryover Projects	\$ 3,761,020	\$ -	\$ -	\$ -	\$ -	\$ -	
Economic Development - Future Projects							
LCIIP Infrastructure Improvements		16,000,000					Bonds, Grants
Santa Teresa to LCIIP Bypass		16,000,000					Bonds, Grants
MV Community of Hope - Campus Extension		5,000,000					Grants
MV Community of Hope - Master Plan Implementation		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
Paseos Verdes		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
Transit Loop Road		1,661,000	7,800,000	7,800,000			Grants, Taxes
Rocket Drive Expansion		820,000	7,173,000				Grants, Taxes
LCIIP Gateway Signage & Pocket Park		480,000	25,000	25,000	25,000	25,000	Grants, Taxes
Downtown Video Security		100,000					Grants, Taxes, TIDD
Economic Development - Total Future Projects	\$ -	\$ 44,061,000	\$ 18,998,000	\$ 11,825,000	\$ 4,025,000	\$ 4,025,000	
Total Economic Development	\$ 4,361,020	\$ 44,411,000	\$ 19,253,000	\$ 12,080,000	\$ 4,280,000	\$ 4,280,000	
FACILITIES MANAGEMENT							
Facilities Management - Newly Funded Projects							
Facility Parking Lot Program 1 - Munson Center 2 - Henry R Benavidez Community Center 3 - Train Depot	138,906	250,000	250,000	250,000	250,000	250,000	Taxes
Police Evidence Building	15,000						Taxes
Facilities Management - Total Newly Funded Projects	\$ 138,906	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	
Facilities Management - Carryover Projects							
Energy Efficiency Program - IGA	2,377,347						Bonds, Taxes
Gateway Entry Points Signage Maintenance	50,000		50,000	50,000	50,000	50,000	Taxes
Facilities Management - Total Carryover Projects	\$ 2,427,347	\$ -	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	

Agenda Item #8.1.

**City of Las Cruces
Capital Improvements Program
FY 2023-2028**

Amended as of 02/21/23

Agenda Item #8.1.

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded)					Funding Source(s)
		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
Facilities Management - Annual Projects							
General Facilities Improvements	95,900	500,000	500,000	500,000	500,000	500,000	Taxes
1 - La Casa Maintenance							
2 - Jardin de Espernazas							
3 - WIA Rehabilitation							
4 - Arc Flash Plan							
5 - City Hall Furnishings							
6 - Surveillance Camera Upgrades							
7 - Records Center Improvements							
8 - Branigan Library Exterior Re-Stucco							
9 - Frank O'Brien Papen Community Center							
10 - City Hall Building Operations Storage							
11 - Library Sump Pump							
Roof Replacement Program	180,752	375,000	375,000	375,000	375,000	375,000	Taxes
1 - Police Department Main Building							
2 - Roof Inspections							
3 - WIA Building							
4 - Police Department Academy							
5 - Municipal Court							
Safety, Health, Environmental & Emergency	46,585						Taxes
1 - City Hall Security Upgrades							
2 - Parks Sidewalk Replacement							
3 - Pool Hoist							
4 - Fire Alarm & Security Upgrades							
5 - Pigeon Abatement							
Facilities Management - Total Annual Projects	\$ 323,237	\$ 875,000	\$ 875,000	\$ 875,000	\$ 875,000	\$ 875,000	
Facilities Management - Future Projects							
Generator Buffer Program	-	50,000	50,000	50,000	50,000	50,000	Taxes
Fire Stations							
Refuse & Recycling Buffer Program	-	50,000	50,000	50,000	50,000	50,000	Taxes
Henry R Benavidez Community Center							
HVAC Upgrade Program		200,000	200,000	200,000	200,000	200,000	Taxes
Generator Replacement Program		35,000	35,000	35,000	35,000	35,000	Taxes
ADA Compliance		25,000	25,000	2,500	25,000	25,000	Taxes
Facilities Management - Total Future Projects	\$ -	\$ 360,000	\$ 360,000	\$ 337,500	\$ 360,000	\$ 360,000	
Total Facilities Management	\$ 2,904,490	\$ 1,485,000	\$ 1,535,000	\$ 1,512,500	\$ 1,535,000	\$ 1,535,000	
LAS CRUCES AIRPORT							
Las Cruces Airport - Newly Funded Projects							
LRU Pavement Maintenance Program	120,000	125,000	125,000	125,000	125,000	125,000	Taxes, Other
Las Cruces Airport - Total Newly Funded Projects	\$ 120,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	
Las Cruces Airport - Carryover Projects							
LRU Airport Infrastructure Improvements	1,523,764						Grants, Taxes, Other
LRU Passenger Terminal	285,406		12,500,000		1,850,000	3,500,000	Grants, Taxes, Other
LRU Runway 8/26 Extension	226,617	4,200,000	8,400,000				Grants, Taxes, Other
1 - Environmental Assessment							
2 - Design							
3 - Construction							
LRU Runway 12/30 Extension	330,372			13,500,000			Grants, Taxes, Other
1 - Environmental Assessment							
2 - Design							
3 - Construction							
LRU Taxilane Improvements	120,120						Grants, Taxes, Other
Las Cruces Airport - Total Carryover Projects	\$ 2,486,279	\$ 4,200,000	\$ 20,900,000	\$ 13,500,000	\$ 1,850,000	\$ 3,500,000	

**City of Las Cruces
Capital Improvements Program
FY 2023-2028**

Amended as of 02/21/23

Agenda Item #8.1.

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded)					Funding Source(s)
		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
Las Cruces Airport - Annual Projects							
LRU Striping and Marking Maintenance Program	136,000	75,000	75,000	75,000	75,000	75,000	Taxes, Other
Las Cruces Airport - Total Annual Projects	\$ 136,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	
Las Cruces Airport - Future Projects							
LRU Passenger Air Service Infrastructure Revitalization		37,500,000					Grants, Taxes, Other
LRU Runway 4/22 Rehabilitation		1,800,000					Grants, Taxes, Other
LRU Maintenance Facility Design-Construct		1,700,000					Grants, Taxes, Other
LRU ARFF Index B Equipment Upgrades		1,600,000					Grants, Taxes, Other
LRU Passenger Terminal Parking		1,000,000					Grants, Taxes, Other
LRU Airport Maintenance Equipment		850,000					Bonds, Grants, Taxes, Other
LRU Utility Infrastructure Improvements			4,500,000				Bonds, Grants, Taxes, Other
LRU Airline Ground Support Equipment Facilities			750,000				Grants, Taxes, Other
LRU Fuel Farm Relocation and Expansion				1,900,000			Grants, Taxes, Other
LRU Taxilane Extensions					3,400,000		Grants, Taxes, Other
LRU Commercial Hangar Design and Construct					2,800,000		Grants, Taxes, Other
LRU Multi-Modal Public Passenger Transit Facility					2,500,000		Grants, Taxes, Other
LRU East Perimeter Road						11,200,000	Grants, Taxes, Other
LRU Apron West Hangar Rehabilitation						70,000	Grants, Taxes, Other
LRU Apron West Rehabilitation						70,000	Grants, Taxes, Other
Las Cruces Airport - Total Future Projects	\$ -	\$ 44,450,000	\$ 5,250,000	\$ 1,900,000	\$ 8,700,000	\$ 11,340,000	
Total Las Cruces Airport	\$ 2,742,279	\$ 48,850,000	\$ 26,350,000	\$ 15,600,000	\$ 10,750,000	\$ 15,040,000	
NON-PROFIT ORGANIZATIONS							
Non-Profit Organizations - Carryover Projects							
Arts and Cultural District Improvements	1,734,241						Grants
Children's Museum Facility	742,500	100,000	400,000	5,500,000			Bonds, Grants
La Clínica de Familia - Behavioral Health Facility	922,349						Grants
MV Community of Hope - Casa de Peregrinos Food Rescue Warehouse	5,925,691	1,847,000					Grants, Other
MV Community of Hope - Flooring	10,317						Grants
MV Community of Hope - Health Facility Improvements	2,192,073						Grants
Non-Profit Organizations - Total Carryover Projects	\$ 11,527,171	\$ 1,947,000	\$ 400,000	\$ 5,500,000	\$ -	\$ -	
Non-Profit Organizations - Future Projects							
MV Community of Hope - Cocina de Peregrinos		1,500,000	7,500,000	2,700,000			Grants
MV Community of Hope - Jardin de los Niños Re-Roof			250,000				Grants
MV Community of Hope - El Caldito Upgrade			150,000				Grants
MV Community of Hope - Building 1, Solar Project				600,000			Grants
MV Community of Hope - Expansion Remodel				250,000			Grants
MV Community of Hope - Jardin de los Niños Security Improvements				200,000			Grants
MV Community of Hope - Patio to Office Remodel				200,000			Grants
Non-Profit Organizations - Total Future Projects	\$ -	\$ 1,500,000	\$ 7,900,000	\$ 3,950,000	\$ -	\$ -	
Total Non-Profit Organizations	\$ 11,527,171	\$ 3,447,000	\$ 8,300,000	\$ 9,450,000	\$ -	\$ -	

**City of Las Cruces
Capital Improvements Program
FY 2023-2028**

Amended as of 02/21/23

Agenda Item #8.1.

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded)						
		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)	
PARKS & RECREATION								
Parks & Recreation - Newly Funded Projects								
East Mesa Bataan Memorial Pool - Shade Structure	12,790	182,210					Grants, Taxes	
JCP Learning Center Exterior Repairs	292,800						Grants, Taxes	
Las Cruces Regional Aquatic Center HVAC & Dehumidifier	75,000						Taxes	
Meerscheidt Recreation Center Improvements	85,000	110,000					Grants, Taxes	
Parks & Recreation - Total Newly Funded Projects	\$ 465,590	\$ 292,210	\$ -	\$ -	\$ -	\$ -		
Parks & Recreation - Carryover Projects								
A. Fielder Memorial Safe Haven Renovations	328,382		F				Taxes	
Albert Johnson Park Master Plan	23,509						Taxes	
Apodaca Park Aquatic Playground and Multi-Use Path	750,000	509,479	240,521				PIF	
Aquatic Center Solar	180,312						Grants	
Ballfield/Soccer Field Renovations & Upgrades	856,000	834,600	144,000	3,200,000			Grants	
Burn Lake/Esslinger Community Park Improvements	228,800			3,200,000			Bonds, Grants, Taxes	
Butterfield Shooting Range ADA Improvements	78,469		200,000	2,000,000			Bonds, Grants, Taxes	
Chandler Tank Park	612,976						Bonds, Taxes	
Dona Ana Move Trail	690,000						Grants, Taxes	
East Mesa Public Safety Area Park	100,000	100,000		100,000		100,000	Grants, PIF	
Gallagher Park Improvements	150,000						Taxes	
Highland Park	1,000,000	510,850					Grants,PIF, Taxes	
Las Cruces Lateral RTP Trail	555,836						Grants	
Median Landscaping	1,343,283	200,000	200,000	200,000	200,000	200,000	Grants, Loans, Taxes	
Metro Verde Neighborhood Parks	619,814	500,000	500,000	500,000	500,000	500,000	PIF	
New Skate Park - Plan & Design	550,000	550,000		250,000			Grants	
Parks Parking Lots	2,676,773						Bonds, Grants, Taxes	
BMX Track Parking Lot & ADA Improvements								
Paz Ball Field Parking Lot Improvements								
Tony Gomez Park Parking Lot Improvements								
Veterans' Park Parking Lot								
Parks Security and Lighting	51,694	82,637					Grants	
Parks Shade Structures	24,000						Taxes	
Parks Smart Controllers & Pumps	92,954						Grants, Taxes	
Pioneer Women's Park Gazebo Improvements	175,669	600,000	600,000	600,000	600,000	600,000	Grants	
Regional Rec & Aquatic Cntr - Ph II - Competitive Pool Construction	6,418,602						Bonds, PIF, Taxes	
Regional Rec & Aquatic Cntr - Ph II - Competitive Pool Enclosure	2,739,976						Bonds, Taxes	
Skate Park Renovation & Improvements	1,095,000		836,500	1,650,000	500,000		Grants, PIF	
Tony Gomez Park Master Plan	40,000						Taxes	
Tortugas Trail	75,000						Grants	
Wayfinding Signage	214,979						Grants, PIF	
Parks & Recreation - Total Carryover Projects	\$ 21,672,028	\$ 3,887,566	\$ 2,721,021	\$ 11,700,000	\$ 1,800,000	\$ 1,400,000		
Parks & Recreation - Annual Projects								
Land Acquisition, Planning, and Design for Parks	100,000	500,000	500,000	500,000	500,000	500,000	PIF	
Neighborhood Parks	546,600	600,000	500,000	500,000	500,000	500,000	PIF	
Parks & Recreation - Total Annual Projects	\$ 646,600	\$ 1,100,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000		

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Capital Improvements Program
FY 2023-2028**

Amended as of 02/21/23

Agenda Item #8.1.

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded)					Funding Source(s)
		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
Parks & Recreation - Future Projects							
Parks Parking Lot Program: Apodaca Park East Mesa Recreation Center Maag Ball Park Skate Park		907,500	252,500	272,700	272,700	272,700	Bonds, Grants
Veterans' Memorial Park Enhancements		662,500	662,500	662,500	662,500		Bonds, Grants
Trail Renovations		580,000	500,000	500,000	500,000	500,000	Bonds, Grants
Various Park Restroom Replacement/Repairs & Upgrades		360,000					Grants
Meerscheidt Recreation Center - Remodel/Expansion		200,000	1,800,000				Grants, Taxes
Indoor/Outdoor Aquatic Amenities		195,000					Grants, Taxes
Klein Park Improvements		126,750					Grants, Taxes
East Mesa Bataan Memorial Pool - HVAC Replacement		100,000	700,000				Grants
Albert Johnson Park Electrical Improvements		78,000					Grants, Taxes
Park Drinking Fountains		70,000					Grants, PIF, Taxes
Parks and Recreational Facilities Structural Renovations		55,000					Grants, Taxes
Benavidez Park			685,000	125,000			Grants
Veterans' Memorial Park Restroom Plumbing Repairs and Upgrades			500,000				Grants, PIF
Valley View Park - Heske Garden Lighting Replacement			134,000				Grants, Taxes
Laabs Pool - HVAC Replacement			80,000				Grants, Taxes
Hadley Complex Recreation Rehabilitation			78,000				Grants, Taxes
Multi-Use Recreation Center			31,500	318,500			Bonds, Grants
Four Field Baseball/Softball Complex				10,000,000			Bonds, Grants, PIF
Laabs Pool - Shade Structures				97,500			Bonds, Grants, PIF
New Sand Volleyball Courts					40,000		Grants, PIF
Waterfalls Park						1,200,000	Grants, PIF
Parks & Recreation - Total Future Projects	\$ -	\$ 3,334,750	\$ 5,423,500	\$ 11,976,200	\$ 1,475,200	\$ 1,972,700	
Total Parks & Recreation	\$ 22,784,218	\$ 8,614,526	\$ 9,144,521	\$ 24,676,200	\$ 4,275,200	\$ 4,372,700	
PUBLIC SAFETY							
Public Safety - Newly Funded Projects							
Fire Dept. Administration Building Lobby Remodel	200,000	350,000		193,400			Grants, Other
Fire Department CIT and MIH Building	365,000	3,420,315					ARPA, Grants, Taxes, Other
Police Department Equipment - Mobile Data Terminals	160,000						Grants
Public Safety - Total Newly Funded Projects	\$ 565,000	\$ 3,770,315	\$ -	\$ 193,400	\$ -	\$ -	
Public Safety - Carryover Projects							
Fire Station 2 Replacement 1 - Land Acquisition 2 - Plan, Design, Construct, and FF&E 3 - Demolition	85,000				5,165,000		Taxes, Grants
Fire Department Equipment	332,731	720,000		500,000	500,000		Grants
Police Department Building Renovations	63,696	150,000					Grants, Taxes
Police Department Evidence Building	66,682						Taxes
Public Safety Regional Radio Communication System	468,000						Grants, Taxes
Public Safety Smart Technology	200,000						ARPA
Public Safety - Total Carryover Projects	\$ 1,216,109	\$ 870,000	\$ -	\$ 500,000	\$ 5,665,000	\$ -	

**City of Las Cruces
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FY 2023-2028**

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Agenda Item #8.1.

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		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
Public Safety - Future Projects							
Downtown Public Safety Complex		57,000,000					Bonds, Grants
Fire Department Station 9		5,165,000					Bonds, Grants, Taxes, Other
Police Department Mobile Operations Command Vehicle		500,000					Grants
Public Safety Vehicles - Bearcat		400,000					Grants
Public Safety Vehicles - Rook		400,000					Grants
Fire Station 5 North/South Aprons and Parking Lot Replacement		314,000	230,000				Bonds, Grants, Taxes, Other
Police Parking Lot Resurfacing		276,000					Grants, Taxes
Fire Department Training tower		200,000	19,000				Grants, Taxes
Fire Stations 4 & 5 Security Fencing and Gates		130,000					Grants, Taxes
Public Safety Vehicles - Critical Incident Command Vehicle		100,000					Grants
Fire Station 4 Restroom Remodel		90,000					Grants, Taxes, Other
Fire Station 2 Bay Remodel		45,000					Grants
Police Department Equipment - Axon Body Cameras		40,000					Grants
Police North Parking Lot Fencing		20,000					Grants
Fire Station 6 Repairs			70,000				Grants
Fire-Energy Efficiency and Sustainability				334,000	330,000	270,000	Grants
Police/Fire Training Facility - Design & Construct						6,900,000	Grants
Police/Fire Training Facility - Furniture, Fixtures, & Equipment						2,100,000	Grants
Public Safety - Total Future Projects	\$ -	\$ 64,680,000	\$ 319,000	\$ 334,000	\$ 330,000	\$ 9,270,000	
Total Public Safety	\$ 1,941,109	\$ 69,320,315	\$ 319,000	\$ 1,027,400	\$ 5,995,000	\$ 9,270,000	
PUBLIC WORKS							
Public Works - Newly Funded Projects							
Del Rey Blvd Signal Improvements	150,000						Grants, Taxes
Telshor ADA Improvements Phase VI	237,494						Grants, Taxes
Telshor Spruce Intersection Improvements	650,000	850,000					Grants
Public Works - Total Newly Funded Projects	\$ 387,494	\$ -	\$ -	\$ -	\$ -	\$ -	
Public Works - Carryover Projects							
Amador Hotel	2,344,425		2,950,000	2,950,000	2,950,000		Grants, TIDD
Casa Linda Acres Reconstruction	2,650,000			1,000,000			ARPA, Taxes
Bellamah Drive - Lees Drive to Luna Street	1,900,000						Bonds, Taxes
Campo Street Design and Reconstruct	406,318	2,600,000					TIDD
Drainage Infrastructure Improvements	3,105,601						Bonds, Taxes
EBID Drains & Laterals							
Land Acquisition							
Other Improvements							
East Mesa Recreation Complex Roads	1,205,604						Bonds, Taxes
East Mesa Roads and Drainage	1,719,831	900,000					Grants, Taxes
GO Bonds - ARPA Funding	3,831,368						ARPA
GO Bond Q1 - Park & Sport Field Improvements & Additions	6,114,230						GO Bonds, PIF
GO Bond Q2 - New Animal Shelter Facility	2,452,897						GO Bonds
GO Bond Q3 - New Fire Station No. 3 Building	119,266						GO Bonds
GO Bond Q4 - Walking, Jogging, Biking Trails Improvements & Additions	41,192						GO Bonds
Madrid Ave Extension - Martha Dr to N Triviz Dr	1,864,997						Grants, Taxes
Magdalena Drive Storm Repairs	78,070						Taxes, Other
McFie - Valley to First	170,445						Grants, Taxes
Midway Ave - Gas Line Rd to Mesa Dr	600,000	240,000					Taxes, Grants
North Fork Las Cruces Arroyo L.O.M.R. Drainage Study	3,214	39,833					Other
Pacheco Ave HAWK System	240,868						Grants, Taxes

**City of Las Cruces
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		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
South Main St - Avenida de Mesilla to Boutz	1,442,440	1,900,000					Bonds
Storm Water System Mapping	100,000						Taxes
Traffic Signals	1,017,789						Bonds
Hoagland Rd & N Alameda Blvd							
Roadrunner Parkway & Sonora Springs							
Sonoma Ranch Blvd & Northrise							
Voluntary Assessment District Phase I	94,746						Bonds
Sanitary Sewer Infrastructure							
Sonoma Ranch Blvd Mile 2: Peachtree to Arroyo							
Red Hawk Golf Rd: N.Bound Metro Verde S.P1E to Arroyo Rd							
Regional Drainage Phase 1							
Voluntary Assessment District Phase II	7,687,585						Bonds
Peachtree Hills Rd. East & West							
Regional Drainage							
Sonoma Ranch Blvd to Engler, Mile 1, Mile 2, Mile 3, & Roundabout							
Sonoma Ranch Blvd Landscaping to Engler, Mile 1, Mile 2, & Mile 3							
Villa Mora Dam Park Study	623,000						Grants, Taxes
Walnut-Madrid TAP Bike/Pedestrian Improvements	1,323,617						Bonds, Grants
Public Works - Total Carryover Projects	\$ 41,137,503	\$ 5,679,833	\$ 2,950,000	\$ 3,950,000	\$ 2,950,000	\$ -	
Public Works - Annual Projects							
Active Transportation Plan - Sidewalk Gaps	244,637	200,000	200,000	200,000	200,000	200,000	Bonds, Taxes
ADA Sidewalk Program	110,000	150,000	150,000	150,000	150,000	150,000	Taxes
Chip Seal Program	238,750	200,000	200,000	200,000	200,000	200,000	Taxes
CO-OP Match	80,000	75,000	75,000	75,000	75,000	75,000	Taxes
Land Acquisition - Public Works	200,000	250,000	250,000	250,000	250,000	250,000	Taxes
Flood Control							
Rights of Way							
East Mesa							
Other							
M.A.P. Match	165,000	150,000	150,000	150,000	150,000	150,000	Taxes
Materials Testing	240,000	250,000	250,000	250,000	250,000	250,000	Taxes
Neighborhood Traffic Calming Program	60,000	60,000	60,000	60,000	60,000	60,000	Taxes
Pavement Condition Index Improvements	9,634,703	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000	Bonds, Taxes
Pavement Overlays							
Pavement Replacement							
Pavement Treatment							
Pavement Marking Program	169,000	500,000	250,000	500,000	250,000	500,000	Taxes
Roadway Maintenance Program	863,819	700,000	700,000	700,000	700,000	700,000	Taxes
Street Lighting & Traffic Signal Maintenance Program	996,291	500,000	500,000	500,000	500,000	500,000	Taxes
Traffic Signal Program	714,334	500,000	500,000	500,000	500,000	500,000	Taxes
Transportation System Modernization ITS	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	Taxes
Unpaved Roads	250,000	250,000	250,000	250,000	250,000	250,000	Taxes
Weed Control & Maintenance Program	188,000	100,000	100,000	100,000	100,000	100,000	Taxes
City Rights of Way							
Las Cruces Dam							
Ponds							
Public Works - Total Annual Projects	\$ 15,154,534	\$ 11,185,000	\$ 10,935,000	\$ 11,185,000	\$ 10,935,000	\$ 11,185,000	

**City of Las Cruces
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		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
Public Works - Future Projects							
HWY 70 and Elks/Triviz Intersection Improvements		25,000,000					Grants
Flood Control Infrastructure		1,500,000					Bonds
Municipal Services Center		1,400,000	7,000,000	7,000,000	11,200,000		Bonds
South Main/Valley Drainage Pond		1,000,000					Bonds
Municipal Court		700,000	6,000,000				Bonds
Melendres Ave - Hadley to Picacho			750,000				Bonds
Evelyn St - Madrid Ave to Ash Ave			655,000				Taxes
Johnson St - Rouault Ave to Topley Dr			625,000				Bonds
Ethel Ave - Alameda Blvd to Miranda, and Houma			550,000				Taxes
South Valley Dr Reconstruction - Avenida de Mesilla to Boutz				2,920,000			Bonds
Lohman at Walnut and Walton Signal Improvements				1,000,000			Bonds, Grants
Mountain Ave - Melendres St to Armijo St				475,000			Bonds
Med Park Ave - Idaho to Perkins Ave				390,000			Bonds
Armijo St - Picacho Ave to Parker Rd				260,000			Bonds
Armijo St - Organ Ave to Mountain Ave					675,000		Bonds
Kilmer St - Spruce Ave to Ash Ave					500,000		Bonds
Street Lighting Management System					500,000		Taxes
Rigsby Rd - Barker to Valley Dr					295,000		Taxes
Poplar Ave - Mesquite St to Santa Fe St					260,000		Bonds
Sammy Burke Youth Boxing Center - Rehab Design					250,000		Grants, Taxes
Willow St - Palomas Ave to San Juan					250,000		Bonds
Sweet St - Hadley Ave to Hayner St					207,000		Taxes
Guthrie Place- Thomas Dr to Cul de Sac					200,000		Bonds
Pavement Management System Road Condition Survey					200,000		Taxes
Pittsburg Ave - Melendres to Cul de Sac					120,000		Bonds
Sequoia Ave - Valley Dr to E.O.P.					100,000		Bonds
Spruce Road Diet - N Main to Triviz						500,000	Bonds
Miranda Ave - Picacho Ave to Court Ave						450,000	Bonds
Amis Ave - Madrid Ave to Hoagland Road						330,000	Bonds
Sacramento St - Ash Ave to Oasis Ave						315,000	Taxes
Westgate St - Amador Ave to Cul de Sac						240,000	Bonds
Amador Ave - Archuleta Road to E.O.P.						210,000	Bonds
La Fonda Dr - Idaho Ave to E.O.P.						200,000	Bonds
Oasis Ave - Mesquite St to Solano Dr						185,000	Bonds
Parkview Dr - Espina St to E.O.P.						175,000	Bonds
6th Street - Hayner Ave to Hadley Ave						150,000	Bonds
Mountain Ave - Water St to Alameda Blvd						130,000	Bonds
Conway Road Maintenance - Design						50,000	Bonds
Engler Road - Design						50,000	Bonds
Hacienda Acres Infrastructure Improvements - Design						50,000	Bonds
Sand Hill Trail - Design						50,000	Taxes
Targeted Road and Lighting Improvements - Design						50,000	Taxes
West Mesa Fiber Optics Improvements - Design						50,000	Taxes
Public Works - Total Future Projects	\$ -	\$ 29,600,000	\$ 15,580,000	\$ 12,045,000	\$ 14,757,000	\$ 3,185,000	
Total Public Works	\$ 57,329,531	\$ 47,314,833	\$ 29,465,000	\$ 27,180,000	\$ 28,642,000	\$ 14,370,000	

**City of Las Cruces
Capital Improvements Program
FY 2023-2028**

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		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
QUALITY OF LIFE							
Quality of Life - Carryover Projects							
Branigan Cultural Center Improvements	148,119		93,000	2,000,000	1,200,000		Grants, Taxes
Branigan Library - Expansion Phase II/Branch	150,000	2,000,000	1,500,000				Bonds, Grants, Other
Munson Center Renovations	964,260		1,629,525				Grants
<i>2022 Legislative Appropriation</i>		666,199					
Sage Café Expansion	920,700	2,145,550					Grants
Senior Programs Kitchen Equipment	122,228						Taxes
Eastside Senior Center							
Henry R Benavidez Center							
Munson Senior Center							
Quality of Life - Total Carryover Projects	\$ 2,305,307	\$ 4,811,749	\$ 3,222,525	\$ 2,000,000	\$ 1,200,000	\$ -	
Quality of Life - Annual Projects							
Public Art Program	108,506	100,000	100,000	100,000	100,000	100,000	Taxes
Quality of Life - Total Annual Projects	\$ 108,506	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	
Quality of Life - Future Projects							
Sage Café Backup Generator		325,000					Bonds, Grants, Taxes
Senior Programs Existing Kitchen Expansion Assessment		200,000					Taxes
Museum System On-site Server		115,000					Bonds, Grants, Taxes
Senior Programs Vehicles			110,000	300,000			Grants
<i>2022 Legislative Appropriation</i>		110,000					
Munson Center Bathrooms		106,900					Bonds, Grants, Taxes
Frank O'Brien Papen Center - Dining Room Floor			12,800				Grants
<i>2022 Legislative Appropriation</i>		35,000					
Museum of Art Improvements		35,000	95,000	200,000	170,000		Bonds, Grants, Taxes
Museum of Art - Gallery Flooring		15,000	20,000	65,000			Bonds, Grants, Taxes
Railroad Museum Reinterpretation		15,000	60,000	150,000	75,000		Bonds, Grants, Taxes
Benavidez Kitchen Expansion			170,000	2,196,000			Bonds, Grants, Taxes
Munson Center Kitchen Expansion			170,000	2,287,000			Bonds, Grants, Taxes
Munson Center Floor			147,150				Bonds, Grants, Taxes
Benavidez Kitchen Floor			52,400				Bonds, Grants, Taxes
Railroad Museum - Exterior Improvements			35,000	50,000	15,000		Bonds, Grants, Taxes
Branigan Library Renovation				200,000	3,500,000		Bonds, Grants, Taxes
Branigan Library - Security System Upgrade				135,000	155,000		Grants, Taxes
Railroad Museum - Reroof				35,000	65,000		Grants, Taxes
Museums Collection Storage Facility					9,500,000		Grants, Taxes
Museum of Nature and Science - Atrium Redesign					10,000	30,000	Grants, Taxes
Museum of Art Relocation/Remodel						5,000,000	Bonds, Grants, Taxes
Quality of Life - Total Future Projects	\$ -	\$ 956,900	\$ 872,350	\$ 5,618,000	\$ 13,490,000	\$ 5,030,000	
Total Quality of Life	\$ 2,413,813	\$ 5,868,649	\$ 4,194,875	\$ 7,718,000	\$ 14,790,000	\$ 5,130,000	
ROADRUNNER TRANSIT							
RoadRUNNER Transit - Carryover Projects							
Municipal Services Center - Transit	26,933,834	8,383,338					ARPA, Bonds, Grants, Taxes
RoadRUNNER Transit - Total Carryover Projects	\$ 26,933,834	\$ 8,383,338	\$ -	\$ -	\$ -	\$ -	
RoadRUNNER Transit - Annual Projects							
Transit Facilities Improvement Program	40,000	75,000	75,000	75,000	80,000	185,000	Grants, Taxes
RoadRUNNER Transit - Total Annual Projects	\$ 40,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 80,000	\$ 185,000	
Total RoadRUNNER Transit	\$ 26,973,834	\$ 8,458,338	\$ 75,000	\$ 75,000	\$ 80,000	\$ 185,000	

Agenda Item #8.1.

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Agenda Item #8.1.

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded)					Funding Source(s)
		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
SUSTAINABILITY							
Sustainability - Newly Funded Projects							
Fleet Electric Vehicle Chargers	410,000	32,436					Grants, Bonds, Taxes
Sustainability - Total Newly Funded Projects	\$ 410,000	\$ 32,436	\$ -	\$ -	\$ -	\$ -	
Sustainability - Carryover Projects							
Solar Energy Photo Voltaic Projects	499,796						Taxes
Sustainability - Total Carryover Projects	\$ 499,796	\$ -	\$ -	\$ -	\$ -	\$ -	
Sustainability - Future Projects							
DC Fast Chargers for Electric Vehicles		200,000	200,000				Grants, Bonds, Taxes
Public Electric Vehicle Chargers		200,000	200,000				Grants, Bonds, Taxes
Sustainability - Total Future Projects	\$ -	\$ 400,000	\$ 400,000	\$ -	\$ -	\$ -	
Total Sustainability	\$ 909,796	\$ 432,436	\$ 400,000	\$ -	\$ -	\$ -	
UTILITIES							
Utilities - Carryover Projects							
East Lohman Landfill - Waste Area 1	1,000,000						Taxes
JHWWTF East Primary Clarifier	143,274						Bonds
Wastewater Bond Projects - 2015A Bonds	45,060						Bonds
Wastewater Development	3,023	100,000					Other
Wastewater Development New Interceptors	472,619						WWIF
Wastewater NMFA Loan	21,352	360,000					Bonds
Wastewater Septic Systems - NMED Grant	1,889,047	1,972,100	1,619,000				Grants
Wastewater Utilities Bond Projects 2020A	1,184,495	375,000					Bonds
Water NMFA Loan	7,034	100,000					Bonds
Water Rehabilitation - NMFA	108,614	1,551,091					Bonds
Water Street Improvement Projects - 2015 Bond	18,772						Bonds
Water Utilities Bond Projects 2020A	7,689,002	4,939,151					Bonds
Utilities - Total Carryover Projects	\$ 12,582,292	\$ 9,397,342	\$ 1,619,000	\$ -	\$ -	\$ -	
Utilities - Annual Projects							
Gas Admin Building Improvements	421,417	321,667	125,000	125,000	125,000	125,000	Other
Fiber optic Cable Replacement from Roundtree to JU							
Gas Development - Low & High Pressure	1,647,695	17,152,621	1,700,000	1,500,000	300,000	300,000	Other
Gas Rehabilitation - Low & High Pressure	119,966	3,063,189	110,000	110,000	110,000		Other
Gas Rehabilitation - Street Utility Rehabilitation	494,049	1,767,576	1,725,000	1,725,000	1,725,000	1,725,000	Other
Gas SCADA	200,000	50,000	50,000	50,000	50,000	50,000	Other
Solid Waste Building Improvements	421,417	321,667	125,000	125,000	125,000	125,000	Other
Fiber optic Cable Replacement from Roundtree to JU							
Wastewater Building Improvements	276,940	75,000	75,000	75,000	75,000	75,000	Other
Fiber optic Cable Replacement from Roundtree to JU							
Wastewater Jacob Hands Wastewater Treatment Facility	502,168	3,859,161	5,950,000				Other
Wastewater JHWWTF	100,000	100,000	100,000	100,000	100,000	100,000	Other
Wastewater Lift Station Renovations	100,000	50,000	100,000	50,000	100,000	50,000	Other
Wastewater Rehabilitation - East Mesa Water Reclamation Facility	500,000		400,000				Other
Wastewater Street Utility Rehabilitation	1,832,085	1,738,248	166,650				Other
Wastewater East Mesa Water Reclamation	25,000	25,000	25,000	25,000	25,000	25,000	Other
Water Building Improvements	300,838	321,667	125,000	125,000	125,000	125,000	Other
Fiber optic Cable Replacement from Roundtree to JU							
Water Rehabilitation - Line Extension	852,350	1,387,542					Other
Water Rehabilitation - Reservoir Rehabilitation	200,000	7,972,500					Other
Water Rehabilitation - Street Utility Rehabilitation	2,488,159	8,051,257	650,000	550,000	650,000	5,550,000	Other
Water SCADA	200,000	539,596	589,596	539,596	50,000	30,000	Other
Utilities - Total Annual Projects	\$ 10,682,085	\$ 46,796,691	\$ 12,016,246	\$ 5,099,596	\$ 3,560,000	\$ 8,280,000	

**City of Las Cruces
Capital Improvements Program
FY 2023-2028**

Amended as of 02/21/23

Agenda Item #8.1.

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded)					Funding Source(s)
		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	
Utilities - Future Projects							
Gas Rehabilitation - Regulator Stations		600,000					Fees
Wastewater SCADA		279,854	30,000	30,000	30,000	30,000	Fees
Water Rehabilitation - Pump PRV		235,000					Fees
Water Rehabilitation - Pump Station Rehabilitation		175,000	100,000	100,000	100,000	100,000	Fees
Wastewater Development		143,023					Fees
Water NMFA Loan		100,000					Bonds
Wastewater East Mesa Water Reclamation		25,000	25,000	25,000	25,000	25,000	Fees
Gas Rehabilitation Phase I AMR Implementation			250,000	250,000	250,000	250,000	Fees
Utilities - Total Future Projects	\$ -	\$ 1,557,877	\$ 405,000	\$ 405,000	\$ 405,000	\$ 405,000	
Total Utilities	\$ 23,264,377	\$ 57,751,910	\$ 14,040,246	\$ 5,504,596	\$ 3,965,000	\$ 8,685,000	
VISIT LAS CRUCES							
Visit Las Cruces - Carryover Projects							
Convention Center FF&E	150,000						Taxes
Visit Las Cruces - Total Carryover Projects	\$ 150,000	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Visit Las Cruces	\$ 150,000	\$ -	\$ -	\$ -	\$ -	\$ -	
ALL DEPARTMENTS							
Total Newly Funded Projects	\$ 3,511,990	\$ 5,669,961	\$ 630,000	\$ 823,400	\$ 630,000	\$ 630,000	
Total Carryover Projects	\$ 126,698,686	\$ 39,176,828	\$ 31,862,546	\$ 37,200,000	\$ 13,515,000	\$ 4,950,000	
Total Annual Projects	\$ 27,090,962	\$ 60,206,691	\$ 25,076,246	\$ 18,409,596	\$ 16,625,000	\$ 21,700,000	
Total Future Projects	\$ -	\$ 190,900,527	\$ 55,507,850	\$ 48,390,700	\$ 43,542,200	\$ 35,587,700	
GRAND TOTAL	\$ 157,301,638	\$ 295,954,007	\$ 113,076,642	\$ 104,823,696	\$ 74,312,200	\$ 62,867,700	

Abbreviations and Notes:

- Indicates a Change
Pending Legislative Appropriations noted in italic
Current funding sources noted in bold

ARPA - American Rescue Plan Act
Bonds - Includes Bonds and Loans
Grants - Includes Local, State, Federal,
or private entity

Other - Includes Fees, State Entitlements, Leases,
Developer Contributions, and Donations
PIF - Park Impact Fees
PSIF - Public Safety Impact Fees

TIDD - Tax Increment Development
District
WIF - Water Impact Fees
WWIF - Wastewater Impact Fees

BUDGET ADJUSTMENT SUMMARY

FUND NO.	1000
FUND TITLE:	General Fund
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Parks & Recreation
PROGRAM:	Construction Maintenance
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$13,003
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenditures due to increase in price of trailer from FY21 purchase order.	

FUND NO.	1000
FUND TITLE:	General Fund
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Parks & Recreation
PROGRAM:	Parks, Sports Flds & Comm Fores
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$73,228
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust the budgeted grant expenses to actuals - RTP University Loop	

FUND NO.	1000
FUND TITLE:	General Fund
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$139,858
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: \$17,307.87: Police Protection Fund 2401 should be zero. Transfer out to general fund. Transfer to Gen \$150,000: Should have been transfer from 2710, not adjustment. The transfer is part of a correcting entry to complete transfer and reverse adjustment. \$28,036 transfer to 1200 due to negative fund balance. This will bring fund balance to 0. \$2,490 transfer from 2600 to reduce fund balance to 0 to close out fund. Transfer to 3612 due to negative fund balance. This will make fund balance 0	

FUND NO.	1000
FUND TITLE:	General Fund
TYPE OF ADJUSTMENT:	Revenue
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$15,163,670.94
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Various adjustments to adjust revenues for FY22 based on actuals and \$150,000 to correct an adjustment that should have been a transfer and is now being corrected.	

FUND NO.	1000
FUND TITLE:	General Fund
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	City Manager
PROGRAM:	Council Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$35,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To increase expenditures to budget for Citizens Survey. This survey is done every 2 years. It was missed in 2021 due to Covid and employee retiring. Need to get back on schedule.	

FUND NO.	1000
FUND TITLE:	General Fund
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	City Manager
PROGRAM:	Communications
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$163,500
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenditures for the Communications office construction of new offices.	

FUND NO.	1000
FUND TITLE:	General Fund
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Human Resources
PROGRAM:	Benefits Program
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$141,000)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Adjustment request was approved 11/2022 for remaining invoices for self-insured liability from medical, prescription drug and dental plans with Blue Cross Blue Shield of NM, Rx Benefits and Delta Dental of NM. AON provided an estimated incurred but not paid liability, requested amount is based on possible remaining invoices through 12/2022.	

FUND NO.	1000
FUND TITLE:	General Fund
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Police
PROGRAM:	Administration-PD
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$28,572
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenditures for surveillance equipment for evidence building. This was not initially included in the original build budgeting.	

FUND NO.	1030
FUND TITLE:	Economic Development
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Economic Development
PROGRAM:	Business Attraction
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$135,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Invoice deadline needed to be met or late fees would be charged for WagePlus Program-ECG. A BAR (budget adjustment request) to 10235002-721080 was completed to meet the deadline and now a budget adjustment is needed to increase expenditures in the following LEDA (Local Economic Development Act) accounts: 10235002-790220-11811 and 10235002-790220-11921.	

FUND NO.	1200
FUND TITLE:	Vehicle Acquisition
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$28,036
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Fund balance was negative so a transfer from the general fund is needed.	

FUND NO.	1400
FUND TITLE:	Facilities Maintenance
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Assistant City Manager's Office
PROGRAM:	Facilities Management
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$21,694)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: The fund balance was negative, need to reduce expenses by \$21,694 to take the fund out of the negative.	

FUND NO.	1500
FUND TITLE:	HHR Contingency
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$1,500,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer from TIDD (Tax Increment Development Districts) to HHGRT (Hold Harmless Replacement Gross Receipts Tax) per Res 1/27/20	

FUND NO.	2000
FUND TITLE:	HUD Community Development
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Economic Development
PROGRAM:	Housing Neighborhood Services
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$129,715.33)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Grant has been fully expended - Revised amount will be what was actually spent.	

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Financial Services
PROGRAM:	Grants
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$29,643
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenditures to correct amount from Tranche 1 and Tranche 2 totals when reconciled by Accounting.	

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Revenue
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$454,643
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase revenue account for ARPAM (American Rescue Plan Act) revenue to match recon.	

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Revenue, Expense
DEPARTMENT:	Police
PROGRAM:	Administration-PD
REVENUE ADJ AMOUNT	\$149,464
EXPENDITURE ADJ AMOUNT	\$148,424
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Close out grants to actuals: EndDWI, BLKUP,STEP, VOCA	

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Revenue, Expense
DEPARTMENT:	Quality of Life
PROGRAM:	Senior Nutrition
REVENUE ADJ AMOUNT	\$65,000
EXPENDITURE ADJ AMOUNT	\$65,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Home Delivered Meals contributions are projected to increase due to the increase in people utilizing the Home Delivered Meals program. The corresponding expense account is an increase in Classified Salaries for Cooks in the Nutrition program.	

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Wastewater Administration
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$425,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenditures for the FY22 carryover amount for the sewer connect program that wasn't initially budgeted.	

FUND NO.	2401
FUND TITLE:	Police Protection Fund
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	No Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	(\$17,307.87)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Bring down Police Protection fund 2401 beginning balance (already adjusted in DFA need to adjust now in Munis) Fund balance should be zero. Transfer out to Gen fund	

FUND NO.	2600
FUND TITLE:	Street Maintenance Operations
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$2,490.34
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer to 1000 to bring fund balance to 0. Fund will be closed.	

FUND NO.	2650
FUND TITLE:	Flood Control Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Street Management
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$93,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: \$44,000-Increase expenditure to cover increased costs of weed control services \$49,000-Increase expenditure to cover increased cost for retention pond maintenance	

FUND NO.	2700
FUND TITLE:	Health Care Services MMC Lease
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Economic Development
PROGRAM:	Housing Neighborhood Services
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$7,999.55
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenditures for 3 FY22 invoices that were not carried over. The invoices were received and paid in FY23.	

FUND NO.	2710
FUND TITLE:	Convention & Visitors Bureau
TYPE OF ADJUSTMENT:	Transfer & Expense
DEPARTMENT:	Assistant City Manager's Office
PROGRAM:	Visit Las Cruces
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$150,000)
TRANSFER ADJ AMOUNT	(\$150,000)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Initially budgeted as expense. Reducing expense. Should be a transfer.	

FUND NO.	2815
FUND TITLE:	TIDD Dedicated Revenues
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$1,500,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer from TIDD (Tax Increment Development Districts) to HHGRT (Hold Harmless Replacement Gross Receipts Tax) per Res 1/27/20 (catches up from COVID)	

FUND NO.	3612
FUND TITLE:	2007 NMFA STR AND FIRE DS
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$1,904
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer to 3612 due to negative fund balance. This will make fund balance 0.	

FUND NO.	4100
FUND TITLE:	Capital Projects Reimbursement Grants
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Parks & Recreation
PROGRAM:	Parks, Sports Flds & Comm Fores
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$4,824.90)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	(\$4,824.90)
REASON FOR ADJUSTMENT: To adjust grants to actuals \$4,803.78-RTP University Loop and \$21.12-RTP Wayfinding	

FUND NO.	4227
FUND TITLE:	VAD STREET PROJECTS
TYPE OF ADJUSTMENT:	Revenue
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$2,000
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase 570100 by \$2,000 due to negative fund balance	

FUND NO.	4230
FUND TITLE:	Go Bond Project 2019
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering And Architecture
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$268,712)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Reducing expenditure amount to bring the fund out of a negative standing.	

FUND NO.	5010
FUND TITLE:	Airport
TYPE OF ADJUSTMENT:	Expense and Revenue
DEPARTMENT:	Assistant City Manager's Office
PROGRAM:	Las Cruces Airport
REVENUE ADJ AMOUNT	(\$964,729.81)
EXPENDITURE ADJ AMOUNT	(\$860,774.59)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	\$55,934 and (\$740,502.85)
REASON FOR ADJUSTMENT: Various adjustments	

FUND NO.	5100
FUND TITLE:	Utilities Shared Services
TYPE OF ADJUSTMENT:	Expenses
DEPARTMENT:	Utilities
PROGRAM:	Customer Central
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$28,350
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: \$27,000 to cover temp position salaries, \$1,350 to cover all future invoices for SOTO armored car service for remaining months of FY23. The cost of this service increased.	

FUND NO.	5100
FUND TITLE:	Utilities Shared Services
TYPE OF ADJUSTMENT:	Transfer, Revenue
DEPARTMENT:	Non Department
PROGRAM:	No Subsection
REVENUE ADJ AMOUNT	\$700,000
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$150,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer of Funds to cover increase in Fund 5160. Increase revenue budget due to transfers into Shared Services.	

FUND NO.	5100
FUND TITLE:	Utilities Shared Services
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	SCADA
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$20,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses to cover the rise in shipping costs of inventory and taxes.	

FUND NO.	5100
FUND TITLE:	Utilities Shared Services
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Utilities Billing & Receivable
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$120,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: \$50,000 to cover end of the year Postal Pro charges for invoices to Utility customers. \$70,000 to cover end of year PaymentUs invoices and to cover Treasury Charges for customers who pay at the cashier counter.	

FUND NO.	5100
FUND TITLE:	Utilities Shared Services
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Utilities Dispatch
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$5,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses needed for temp agency services due to need for a full-time temp instead of budgeted part-time as well as temp services rate increase.	

FUND NO.	5160
FUND TITLE:	Shared Services Equip Repl Reserve
TYPE OF ADJUSTMENT:	Transfer, Expense
DEPARTMENT:	Utilities
PROGRAM:	Mgmt of Information Services
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$130,000
TRANSFER ADJ AMOUNT	\$150,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer to cover increase in Fund 5160. Increase in expense to fund new work order system.	

FUND NO.	5200
FUND TITLE:	Gas Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Energy Management
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$441,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: \$56,000 for Energy Management Program Engineer through temp services for remainder of FY23. Funding for this should be coming from the Decarbonization Rider monies. Currently this account is not strung in this program as there was no funding for FY23. \$385,000 to fund energy transition plan and EUMP (Electric Utility Management Program).	

FUND NO.	5200
FUND TITLE:	Gas Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Nat Gas & Enrg-Pressure & Serv
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$30,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Funds to support additional temps due to high number of vacancies and difficulty in filling those positions.	

FUND NO.	5200
FUND TITLE:	Gas Operations
TYPE OF ADJUSTMENT:	Expense, Revenue
DEPARTMENT:	Utilities
PROGRAM:	Natural Gas & Energy Admin
REVENUE ADJ AMOUNT	\$684,866.89
EXPENDITURE ADJ AMOUNT	\$164,769.78
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: \$80k for cybersecurity (regulatory requirement) and Continuation of MAOP verification as required by 49 CFR part 192 (PHEMSA Grant) requires that that we have some type of cybersecurity in place to prevent a compromise to our gas system. \$84,769.78 to fund LCU (Las Cruces Utilities) Masterplan (PO#22202803) -Revenue: Increase revenues for new rate implementation	

FUND NO.	5200
FUND TITLE:	Gas Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$184,488
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increased in expenses needed due to increase in Solid Waste soil processing cost share and administrative charges.	

FUND NO.	5205
FUND TITLE:	Gas Contingency Fund
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non-Department
PROGRAM:	Non-Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	(\$125,946)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Two transfers out to fund 5270 and fund 5271 to bring both of those funds out of a negative standing.	

FUND NO.	5270
FUND TITLE:	Gas15a Bond Projects
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$44,651
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer in from fund 5205 to bring the account out of a negative standing.	

FUND NO.	5271
FUND TITLE:	2018 Ju Project
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$81,295
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer in from fund 5205 to bring the account out of a negative standing.	

FUND NO.	5300
FUND TITLE:	Water Operations
TYPE OF ADJUSTMENT:	Expense, Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$193,976
TRANSFER ADJ AMOUNT	\$1,800,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: \$300k transfer to 5301 to repay interfund loan due at end of FY23., \$1.5m transfer to 5350 to repay interfund loan due at end of FY23. Expense: SW (Solid Waste) soil processing cost share and administrative charges	

FUND NO.	5300
FUND TITLE:	Water Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Water Administration
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$84,769.78
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses to fund LCU (Las Cruces Utilities) Masterplan, PO 22202803	

FUND NO.	5300
FUND TITLE:	Water Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Water Line Maintenance
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$78,100
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenses by \$60k for 6 month hire for 2 temp water resource workers, \$18,100 for travel for 4 employees Barricade Training and 2 employees CGA (Compressed Gas Association) Conference	

FUND NO.	5300
FUND TITLE:	Water Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Water Production
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$327,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenses by \$122k for FY23 Ameresco (LC Solar) payments. \$55k-Increase in expenses to pay for outside services for Wells. \$150k-Increase in expenses to pay lease agreements for land.	

FUND NO.	5301
FUND TITLE:	Water Development
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$300,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer from 5300 to repay interfund loan due at end of FY23.	

FUND NO.	5301
FUND TITLE:	Water Development
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Water Administration
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$300,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increased expenses to repay 5401 for deferred loan	

FUND NO.	5301
FUND TITLE:	Water Development
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$2,882)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	(\$2,882)
REASON FOR ADJUSTMENT: Reduce expenditures to bring to \$0 to release funds budgeted in the account.	

FUND NO.	5345
FUND TITLE:	Water15 Bond Projects
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$1,200)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	(\$1,200)
REASON FOR ADJUSTMENT: Release funds to close fund, bring to \$0	

FUND NO.	5346
FUND TITLE:	Water15A Bond Projects
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$4,004)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	(\$4,004)
REASON FOR ADJUSTMENT: Release funds to close fund, bring to \$0	

FUND NO.	5347
FUND TITLE:	Water16 Bond Projects
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$400)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Release funds to close fund, bring to \$0	

FUND NO.	5350
FUND TITLE:	Water Capital Improvements
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$1,500,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer from 5300 to cover fund deficit	

FUND NO.	5350
FUND TITLE:	Water Capital Improvements
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$2,196,586.10
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	\$2,196,586.10
REASON FOR ADJUSTMENT: Increase expenses to pay various carryover expenses such as Estados Serenos Construction, Re-encumber PO#22205163, Southfork utilities relocation, Midway Ave recons, 2022-23 Pavement Replacement Phase B and Bellamah Rd. reconstruction.	

FUND NO.	5375
FUND TITLE:	Water06 Bond Projects
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	(\$13,061)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	(\$13,061)
REASON FOR ADJUSTMENT: Release funds to close fund, bring to \$0	

FUND NO.	5395
FUND TITLE:	Water20A Project
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$1,556,386.83
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	\$1,556,386.83
REASON FOR ADJUSTMENT: To bring the budget to its balance based on actuals, including NMDOT (New Mexico Dept. of Transportation) N. MAIN St	

FUND NO.	5400
FUND TITLE:	Wastewater Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Jacob Hands WW Treatment Facil
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$476,500
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Various expenses including El Paso Electric bill for JHWWTF (Jacob A. Hands Wastewater Treatment Facility), unbudgeted carryover invoices from FY22, and to replenish emergency funding previously moved to cover expenses.	

FUND NO.	5400
FUND TITLE:	Wastewater Operations
TYPE OF ADJUSTMENT:	Expense, Transfer
DEPARTMENT:	Non Department
PROGRAM:	Non Subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$184,488
TRANSFER ADJ AMOUNT	\$500,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenses for Solid Waste soil processing cost share and administrative charges Transfer: transfer to 5450 to fund projects and maintain a fund balance.	

FUND NO.	5400
FUND TITLE:	Wastewater Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Wastewater Administration
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$238,769.79
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Various expenses such as office furniture for remodel of old lab in JHWWTF (Jacob A. Hands Wastewater Treatment Facility), funding for LCU (Las Cruces Utilities) Masterplan (PO#22202803), replenish emergency funding, and building maintenance and repairs to JHWWTF admin building lockers.	

FUND NO.	5400
FUND TITLE:	Wastewater Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Wastewater Line Maintenance
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$24,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To hire temp employee to assist in the daily operations of the WWLM (Wastewater Land Management) due to vacancies and employees on light duty due to injuries.	

FUND NO.	5450
FUND TITLE:	Wastewater Capital Improvement
FTYPE OF ADJUSTMENT:	Transfer, Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$788,970
TRANSFER ADJ AMOUNT	\$500,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer: From 5400 to cover deficit, Expenses: Bellamah, Southfork, Pavement Replacement Phase B, NMDOT (New Mexico Dept. of Transportation) N Main, Re-encumber PO#21204812, JHWWTF (Jacob A. Hands Wastewater Treatment Facility) Primary Clarifier	

FUND NO.	5451
FUND TITLE:	WW20B Projects
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$1,035,462
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: PO#21201524, Las Cruces Utilities Energy Performance Contract	

FUND NO.	5460
FUND TITLE:	Wastewater Equip Repl Reserve
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Wastewater Administration
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$43,500
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenses to carryforward PO 21203627. Unable to open at 1st Quarter.	

FUND NO.	5460
FUND TITLE:	Wastewater Equip Repl Reserve
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Water Quality Laboratory
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$75,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To purchase SEAL Analytical Autoanalyzer (AA500) for wastewater process control and support.	

FUND NO.	5495
FUND TITLE:	WW20A Project
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$696,087.18
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	\$696,087.18
REASON FOR ADJUSTMENT: Re-encumber PO 21204812, JHWWTF (Jacob A. Hands Wastewater Treatment Facility) primary clarifier; PO 21204364 and JHWWTF UV Disinfectant Equipment.	

FUND NO.	5500
FUND TITLE:	Solid Waste Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Non Department
PROGRAM:	Non Subsections
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$137,048
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenses for Solid Waste soil processing cost share and administrative charges.	

FUND NO.	5500
FUND TITLE:	Solid Waste Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Solid Waste Administration
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$16,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenses due to increase of scope of work for transfer station.	

FUND NO.	5500
FUND TITLE:	Solid Waste Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Solid Waste Commercial Collect
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$245,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenses to purchase of dumpsters, launder uniforms, increased rate at SCSWA (South Central Solid Waste Authority), increase in vehicle repair cost, cost of fuel, increase cost of dumpster refurbishing	

FUND NO.	5500
FUND TITLE:	Solid Waste Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Solid Waste Residential Collec
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$50,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses due to increase in the cost of fuel.	

FUND NO.	5500
FUND TITLE:	Solid Waste Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	SW Fleet
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$17,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses due to increase in the price of plasma cutter and welder (each under \$5k) and tools for new shop staff.	

FUND NO.	5500
FUND TITLE:	Solid Waste Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	SW Green Wste, Cmpst & Cleanfill
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$108,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses for purchase of exhaust fans and cameras for scale house, proper allocation of Nextraq, scale calibrations, and soil testing, increase in vehicle repair cost, cost of fuel, repairs to the scales and heavy equipment rental.	

FUND NO.	5923
FUND TITLE:	Transit Capital
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Assistant City Manager's Office
PROGRAM:	Fixed Route
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$509,497
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	\$509,497
REASON FOR ADJUSTMENT: Increase expenses to true up grant to actuals.	

FUND NO.	6320
FUND TITLE:	Employee Health
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Human Resources
PROGRAM:	Benefits Program
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$141,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT: Adjustment request for remaining invoices for self-insured liability from medical, prescription drug and dental plans with Blue Cross Blue Shield of NM, Rx Benefits and Delta Dental of NM. AON provided an estimated incurred but not paid liability, requested amount is based on possible remaining invoices through December 2022. Finance requires budget be transferred to fund 6320 instead of general fund 1000.	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	

FUND NO.	
FUND TITLE:	
TYPE OF ADJUSTMENT:	
DEPARTMENT:	
PROGRAM:	
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	
REASON FOR ADJUSTMENT:	



City of Las Cruces

City Council Action and Executive Summary

3024; Council
Bill 23-018

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A						
1st Reading:	January 17, 2023			Adopted:	February 21, 2023		
Drafter:	Erika Jaquez			Department:	Financial Services		
Program:	Treasury			Line of Business:	Revenue Management		
Title:	AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO 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.						

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

PURPOSE(S) OF ACTION:
Issue debt.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City Charter authorizes City Council to borrow money by ordinance and the City is authorized by State Statute Section 3-31-6 (C) NMSA 1978 to issue revenue bonds. The City intends to use the proceeds of up to \$12,150,000 State Shared Gross Receipts Tax (SSGRT) Revenue Bonds issue, Series 2023 for the construction, purchase, acquisition, and improvement of roadways and public facilities projects. Issuing the bonds at this time allows the City to maintain the current bond cycling schedule which is designed to provide infrastructure financing with a stable and predictable debt service level. These bonds will be payable from one and two hundred twenty-five one-thousandths percent (1.225%) of distribution from the state-shared gross receipts tax.

SUPPORT INFORMATION:
[Exhibit "A" Preliminary Official Statement](#)
[Exhibit "B" Disclosure Responsibility Memo - SSGRT Cycling Bonds Series 2023](#)
[Attachment "A" Bond Ordinance - State Shared Gross Receipts Tax Cycling Bonds](#)
[Attachment "B" Red-lined Bond Ordinance - State Shared Gross Receipts Tax Cycling Bonds](#)

PLAN(S):

Agenda Item #8.2.

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance authorizing the issuance of up to \$12,150,000 SSGRT, Series 2023 bonds for streets and facilities projects.
2. Vote "No"; this will not approve the Ordinance, thus not authorizing the issuance of up to \$12,150,000 SSGRT, Series 2023 bonds for streets and facilities projects.
3. Vote to "Amend"; this could delay the issuance of the bonds.
4. Vote to "Table"; this could delay the issuance of the bonds.

ORDINANCE 3024; COUNCIL BILL 23-018

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.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Bond Ordinance unless the context requires otherwise.

The City Council is informed that:

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico and is operating as a home rule City pursuant to Article X, Section 6 of the Constitution of the State and the Charter of the City; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, the City now receives monthly from the Revenue Division of the New Mexico Taxation and Revenue Department from the statewide gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e. the total gross receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the City and other places designated in Section 7-1-6.4 NMSA 1978 (such distributions to the City as further defined herein the ("Pledged Revenues"); and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides as follows:

C.Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor; and

WHEREAS, except for the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2016 Subordinate Lien Bonds, 2017 Bonds, the 2017 NMFA Loan, the 2019 Subordinate Lien Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2020B Subordinate Lien Bonds, and the 2022 Subordinate Lien Bonds, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council hereby determines that issuance of the Series 2023 Bonds for the purpose of providing funds for (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways will provide for the public health, peace and safety of the City and its citizens; and

Agenda Item #8.2.

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Series 2023 Bonds be issued with a first lien, but not an exclusive first lien, on the Pledged State Shared Gross Receipts Tax Revenues on parity with the lien thereon of outstanding Parity Bonds and senior to the lien thereon of the outstanding Parity Subordinate Obligations; and

WHEREAS, the proposed form of this Bond Ordinance has been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Series 2023 Bonds in a competitive public sale to the bidder submitting the best bid therefore (the "Purchaser") pursuant to a Pricing Certificate supplementing this Bond Ordinance to be executed by the City Manager or City Financial Services Director as the Delegates, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Series 2023 Bonds set forth in the Pricing Certificate be within the parameters set forth in this Bond Ordinance; and

WHEREAS, the City Council intends that the specific details of and requirements for bidding for the bonds in the public sale of the Series 2023 Bonds shall be provided in an official notice of sale (the "Notice of Sale") to be approved on behalf of the City by the City Financial Services Director or Treasurer or her designee; and

WHEREAS, the specific principal amounts, interest rates, maturity dates, prices and other final terms and other features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy and a Reserve Fund Insurance Policy (if any) will be established in the Pricing Certificate; and

WHEREAS, the City Council has determined that it is in the best interests of the City to authorize the issuance of the Bonds pursuant to this Bond Ordinance.

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

(I)

Section 1. Definitions. As used in this Bond Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

"Bond Insurance Policy" means the financial guaranty insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Bond Ordinance" means this City Ordinance No. 3024 adopted on February 21, 2023, as supplemented by the Pricing Certificate.

"Bondholder," "holder," "owner" or "Owner" means the registered owner of any Bond as shown on the registration books of the City for the Bonds, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the Bondholders shall mean the Holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of all Bonds then outstanding.

"Bonds" or "Series 2023 Bonds" or "2023 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

Agenda Item #8.2.

“City” means the City of Las Cruces, in the County of Doña Ana and State of New Mexico.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

“Continuing Disclosure Undertaking” means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser.

“Depository” means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

“Event of Default” means any of the events stated in Section 25 of this Bond Ordinance.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including, to the extent applicable, the fees, compensation, costs and expenses paid or to be paid to the Paying Agent and Registrar, the Insurer and legal fees, financial advisor fees, expenses and applicable gross receipts taxes, costs of printing and distributing the Preliminary Official Statement and the Official Statement, rating fees and accounting fees and expenses.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the City as its fiscal year.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the entire Bond Ordinance and not solely to the particular section or paragraph of this Bond Ordinance in which such word is used.

“Hold Harmless Distribution” means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year beginning on July 1, 2015 until the distribution is eliminated after July 1, 2029.

“Independent Accountant” means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City who (i) is, in fact, independent and not under the domination of the City, (ii) does not have any substantial interest, direct or indirect, with the City, and (iii) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

“Insured Bank” means a bank or savings and loan association insured by an agency of the United States.

“Interest Payment Date” means each June 1 and December 1, commencing December 1, 2023 (or such other date specified in the Pricing Certificate).

“Moody's” means Moody's Investor Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

Agenda Item #8.2.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Notice of Sale” means the official notice of sale of the Bonds.

“Official Statement” means the final disclosure document relating to the issuance and sale of the Bonds.

“Outstanding” or “outstanding” when used in reference to bonds means, on any particular date, the aggregate of all Bonds delivered under this Bond Ordinance except:

A.those cancelled at or prior to such date or delivered or acquired by the City at or prior to such date for cancellation;

B.those otherwise deemed to be paid in accordance with Section 28 or Section 31 of this Bond Ordinance;

C.those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the City and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course.

“Parity Bonds” or “Parity Obligations” means the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2017 Bonds, the 2017 NMFA Loan, the 2020 Refunding Bonds, the 2020A Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues on parity with the Bonds, as provided in Section 20 of this Bond Ordinance.

“Parity Subordinate Obligations” means the 2016 Subordinate Bonds, the 2019 Subordinate Bonds, the 2020B Bonds, the 2022 Subordinate Lien Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

“Paying Agent” means the City Treasurer, as agent for the City for the payment of the Bonds or any other entity at the time appointed Paying Agent by resolution of the City Council.

“Permitted Investments” means, but only to the extent permitted by applicable laws of the State or ordinances of the City, the following:

A.Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B.Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1.U.S. Export-Import Bank (Eximbank)

Direct obligations or fully guaranteed certificates of beneficial ownership.

2.Farmers Home Administration (FmHA)

Certificates of beneficial ownership

3.Federal Financing Bank

4.Federal Housing Administration Debentures (FHA)

5.General Services Administration

Participation certificates

6.Government National Mortgage Association (GNMA or “Ginnie Mae”)

GNMA - guaranteed mortgage-backed bonds

Agenda Item #8.2.

GNMA - guaranteed pass-through obligations

7.U.S. Maritime Administration

Guaranteed Title XI financing

8.U.S. Department of Housing and Urban Development (HUD)

Project Notes

Local Authority Bonds

New Communities Debentures - U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C.Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1.Federal Home Loan Bank System

Senior debt obligations

2.Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")

Participation Certificates

Senior debt obligations

3.Federal National Mortgage Association (FNMA or "Fannie Mae")

Mortgage-backed securities and senior debt obligations

4.Student Loan Marketing Association (SLMA or "Sallie Mae")

Senior debt obligations

5.Resolution Funding Corp. (REFCORP) obligations

6.Farm Credit System

Consolidated system wide bonds and notes

D.Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAM-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

E.Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F.Certificates of deposit, savings accounts, deposits accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

G.Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements.

H.Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.

I.Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

J.Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P.

K.Repurchase Agreements for 30 days or less must follow the following criteria.

Agenda Item #8.2.

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the City and a dealer bank or securities firm
 - a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's, or
 - b. Banks rated "A" or above by S&P and Moody's.
2. The written repo contract must include the following:
 - a. Securities which are acceptable for transfer are:
 - (1) Direct U.S. governments, or
 - (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
 - b. The term of the repo may be up to 30 days
 - c. The collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).
 - d. Valuation of Collateral
 - (1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.
 - (a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.
3. Legal opinion which must be delivered to the City:
 - a. Repo meets guidelines under state law for legal investment of public funds.

L. The State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the State Treasurer.

"Pledged Revenue Fund" means the State Shared Gross Receipts Tax Revenue Fund, continued in Section 16 of this Bond Ordinance.

"Pledged State Shared Gross Receipts Tax Revenues" or "Pledged Revenues" means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution to the extent the City receives any Hold Harmless Distribution; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

"Preliminary Official Statement" means the initial disclosure document relating to the issuance and sale of the Bonds.

Agenda Item #8.2.

"Pricing Certificate" means one or more certificates executed by the City Manager or City Financial Services Director, dated on or before the date of delivery of the Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the amount of the Reserve Requirement, if any, and whether such Reserve Fund shall be funded with proceeds of the Bonds or through the deposit of a Reserve Fund Insurance Policy; and (x) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Ordinance.

"Purchaser" means the best bidder for the Bonds.

"Rating Category" means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

"Registrar" means the City Treasurer, as agent for the City for transfer and exchange of the Bonds or any other entity at the time appointed by resolution of the City Council.

"Reserve Fund Insurance Policy" means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund as provided in the Pricing Certificate in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"State" means the State of New Mexico.

"2011A Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2011A" issued in the original aggregate principal amount of \$9,640,000 by City Ordinance No. 2618 adopted by the City Council on June 8, 2011.

"2014 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014 issued in an original aggregate principal amount of \$10,000,000 by City Ordinance No. 2718 adopted by the City Council on June 24, 2014.

"2015 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015 issued in an original aggregate principal amount of \$19,195,000 by City Ordinance No. 2739 adopted by the City Council on December 1, 2014 and Resolution No. 15-140 adopted by the City Council on February 3, 2015.

"2016 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016" authorized in the original aggregate principal amount of \$8,585,000 by City Ordinance No. 2774 adopted by the City Council on February 16, 2016 and Resolution No. 16-18 adopted by the City Council on March 9, 2016.

"2017 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017" issued in an original aggregate principal amount of \$10,570,000 by City Ordinance No. 2808 adopted by the City Council on May 1, 2017 and Resolution No. 17-187 adopted by the City Council on May 10, 2017.

Agenda Item #8.2.

“2017 NMFA Loan” means the loan agreement between the City and the New Mexico Finance Authority executed on February 24, 2017 in the original aggregate principal amount of \$3,203,527 by City Ordinance No. 2801 adopted by the City Council on January 17, 2017.

“2019 Subordinate Bonds” means the “City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019 authorized in the original aggregate principal amount of \$8,870,000 by City Council Ordinance No. 2894 adopted on August 5, 2019.

“2020 Refunding Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020” authorized in the original aggregate principal amount of \$15,435,000 by City Council Ordinance No. 2912 adopted on February 18, 2020, as supplemented by the Pricing Certificate executed on February 26, 2020.

“2020A Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A” authorized in the original aggregate principal amount of \$7,190,000 by City Council Ordinance No. 2925 adopted on May 18, 2020, as supplemented by the Pricing Certificate executed on June 17, 2020.

“2020B Subordinate Bonds” means the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B” authorized in the original aggregate principal amount of \$6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020, as supplemented by the Pricing Certificate executed on June 17, 2020.

“2022 Subordinate Lien Bonds” means the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022” authorized in the original aggregate principal amount of \$5,000,000 by City council Ordinance No. 3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate executed on August 18, 2022.

“2023 Acquisition Fund” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Improvement Project Acquisition Fund” established by Section 16 of the Bond Ordinance.

“2023 Debt Service Fund” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Debt Service Fund” established in Section 16 of this Bond Ordinance.

“2023 Improvement Project” means (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying Expenses related to the issuance of the Bonds.

“2023 Minimum Reserve” means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2023 Bonds, (ii) the maximum annual debt service on the outstanding Series 2023 Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2023 Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

“2023 Reserve Fund” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Reserve Fund” established by Section 16 of this Bond Ordinance.

Section 2.Ratification. All action heretofore taken (not inconsistent with the provisions of this Bond Ordinance) by the City Council and the officers of the City, directed toward the Improvement Project, the issuance of the Bonds for the Improvement Project and the sale of the Bonds to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Agenda Item #8.2.

Section 3.Authorization of the 2023 Improvement Project. The 2023 Improvement Project and the method of financing the 2023 Improvement Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the 2023 Improvement Project as set forth in the Pricing Certificate and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

Section 4.Findings; Declaration. The City Council hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A.The 2023 Improvement Project is needed to meet the needs of the City and its inhabitants.

B.Moneys available for the 2023 Improvement Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the 2023 Improvement Project.

C.The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D.It is economically feasible to defray, in part, the cost of the 2023 Improvement Project by the issuance of the Bonds.

E.The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2023 Improvement Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F.The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds, if any, for the outstanding Parity Bonds and the Parity Subordinate Obligations.

Section 5.Bonds – Authorization, Parameters and Detail.

A.Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, revenue bonds to be designated as 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, and the issuance, sale and delivery of the Bonds is hereby authorized.

B.Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023. The Series 2023 Bonds shall be issued subject to the following parameters:

(i)The Series 2023 Bonds shall be issued in an aggregate principal amount not to exceed \$12,150,000 for the 2023 Improvement Project.

(ii)The net effective interest rate on the Series 2023 Bonds shall not exceed 10% per annum.

(iii)The final maturity of the Series 2023 Bonds shall not be later than June 1, 2038.

(iv) The Series 2023 Bonds shall be payable solely from, and shall constitute a first lien, but not an exclusive first lien, upon the Pledged Revenues, on parity with the lien thereon of other outstanding Parity Obligations.

(v) The Series 2023 Bonds shall be sold to the Purchaser pursuant to a competitive public sale.

(vi)The maximum sale price of the Series 2023 Bonds shall be not more than \$12,150,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii) The underwriter’s discount shall be the discount included in the bid which provides the lowest interest cost to the City while maximizing net bond proceeds to the City.

(viii) The Series 2023 Bonds shall be in substantially the form set forth in this Ordinance.

Agenda Item #8.2.

C.The City Manager or City Financial Services Director are hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Pricing Certificate.

D.The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of \$5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on December 1, 2023 (or such other date as specified in the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

E.Notice of Sale. The sale of the Bonds shall be pursuant to a Notice of Sale, the details and publication of which shall be consistent with this Ordinance and approved by the City Treasurer or her designee, which action is hereby authorized.

F.Award of Bonds. The Bonds shall be awarded to the Purchaser as provided in the Award Resolution.

Section 6.Redemption of Bonds.

A.Notice of Redemption. In the event that the Bonds are subject to redemption prior to maturity, as may be established in the Pricing Certificate, notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. The City shall give notice of optional redemption of the Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the City.

B.Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not

Agenda Item #8.2.

received and the information required by paragraph A of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Section 7. Filing of Manual Signatures. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Mayor or Mayor Pro Tem and City Clerk may each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8. Execution and Authentication of Bonds.

A. Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor or Mayor Pro Tem and shall be attested with the facsimile or manual signature of the City Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor or Mayor Pro Tem and City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

B. Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and inscribed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10. Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 11. Registration, Transfer, Exchange and Ownership of Bonds.

A. Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption as herein provided, or (ii) after the mailing to registered owners of notice calling such Bonds or portion thereof for redemption as herein provided. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C. Owner of the Bonds. The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Lost Bonds. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

E. Additional Bonds. Executed but unauthenticated Bonds are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F. Charges. For each new Bond issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Bond requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than \$50,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

H. Book Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will

Agenda Item #8.2.

be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another Depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Officers of the City are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of this Bond Ordinance, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent, Registrar or the City to the Depository as provided in the Bond Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the City to the Depository.

Section 12. Special Limited Obligations. All of the Bonds and all payments of principal, premium, if any, and interest thereon whether at maturity or on a redemption date, together with any interest accruing thereon, shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues, which revenues are so pledged and are payable as set forth in Section 17 of this Bond Ordinance. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and each of the Bonds shall recite that it is payable and collectible solely out of the Pledged Revenues, pledged as set forth in this Bond Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to the payment of the Bonds, in its sole discretion.

Section 13. Form of Bonds. The forms, terms and provisions of the Bonds shall be substantially in the form set forth below, with such changes therein as are not inconsistent with the Bond Ordinance.

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF NEW MEXICO

COUNTY OF DOÑA ANA

CITY OF LAS CRUCES, NEW MEXICO

STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS,
SERIES 2023

Bonds No. _____ \$ _____

INTEREST RATE	MATURITY DATE	DATE OF BOND	CUSIP
% per annum	June 1, _____	_____, 2023	

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

The City of Las Cruces (the “City”), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the “Paying Agent”), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on _____ 1, _____ and on June 1 and December 1 of each year (each an “Interest Payment Date”) thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the “Registrar”) at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the “Record Date”). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of \$_____ issued in denominations of \$5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the “Series 2023 Bonds”) issued under and pursuant to City Ordinance No. 3024, as supplemented by a Pricing Certificate dated _____, 2023 (as supplemented, the “Bond Ordinance”).

The Series 2023 Bonds maturing on and after June 1, _____, are subject to prior redemption at the City's option in one or more units of principal of \$5,000 on and after June 1, _____ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Series 2023 Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each \$5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Agenda Item #8.2.

Redemption shall be made upon prior notice mailed to each registered owner of each Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or owner a new Bond or Bonds in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar shall not be required (i) to transfer or exchange any Bond during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption, or (ii) to transfer or exchange any Bond or part thereof called for redemption. The Registrar will close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name any Bond is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest in the Bond Ordinance; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Series 2023 Bonds on the Pledged Revenues is an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with, or subordinate and junior to, the lien on the Pledged Revenues of the Series 2023 Bonds. Amounts and securities held in the 2023

Agenda Item #8.2.

Debt Service Fund and 2023 Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Bonds.

The Bonds are issued to provide funds to defray in part the costs of (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; and (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying expenses and costs of issuance related to the issuance of the Bonds.

The City covenants and agrees with the owner of this Bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law, and that the Bonds do not exceed or violate any constitutional or statutory limitation of or pertaining to the City.

This Bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the Certificate of Authentication.

IN WITNESS WHEREOF, the City of Las Cruces, New Mexico has caused this bond to be signed and executed on the City's behalf with the facsimile or manual signature of the Mayor or Mayor Pro Tem and the facsimile or manual signature of the City Clerk and has caused the corporate seal of the City or a facsimile thereof to be affixed hereon, all as of the Date of Bond.

CITY OF LAS CRUCES, NEW MEXICO

By _____

Mayor or Mayor Pro Tem

By _____

City Clerk

(SEAL)

(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

This is one of the Bonds described in the Bond Ordinance, and this bond has been registered on the registration books kept by the undersigned as Registrar for the Bonds.

Date of Authentication:

City Treasurer of the City of Las Cruces,
New Mexico, as Registrar

By _____
Authorized Officer

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

For value received, _____ hereby sells, assigns and transfer unto
_____ the within bond and hereby irrevocably constitutes and appoints
_____ attorney, to transfer the same on the books of the Registrar, with
full power of substitution in the premises.

Social Security or Tax Identification No. of Assignee _____

Dated: _____

Signature Guarantee:

NOTE: The assignor's signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

(End of Form of Assignment)

(End of Form of Bond)

Section 14.Period of 2023 Improvement Project's Usefulness. It is hereby determined and recited that the period of usefulness of the 2023 Improvement Project financed with the proceeds of the Series 2023 Bonds will not expire prior to the final maturity date of the Series 2023 Bonds.

Section 15.Use of Bond Proceeds and Other Funds; Completion of 2023 Improvement Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2023 Improvement Project.

A.Expenses. An amount necessary, together with other legally available funds of the City, shall be used to pay Expenses.

B.2023 Acquisition Fund. Proceeds derived from the sale of the Series 2023 Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2023 Acquisition Fund. Until the completion of the 2023 Improvement Project, the money in the 2023 Acquisition Fund shall be used and paid out solely for the purpose of the 2023 Improvement Project in compliance with applicable law.

C.2023 Reserve Fund. No deposit of proceeds of the Bonds, Pledged State Shared Gross Receipts Tax Revenues or other City moneys into the 2023 Reserve Fund shall be required on the date of issuance of the

Agenda Item #8.2.

Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D.2023 Improvement Project Completion. As soon as practicable after completion of the 2023 Improvement Project, and in any event not more than 60 days after completion of the 2023 Improvement Project, any proceeds remaining unspent (other than any amount retained by the City for any 2023 Improvement Project costs not then due and payable) shall be transferred and deposited in the 2023 Debt Service Fund and used by the City to pay principal and interest on the Series 2023 Bonds as same become due.

E.Purchaser Not Responsible. The Purchaser of the Bonds shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

F.Bond Insurance Policy and/or Reserve Fund Insurance Policy. A Bond Insurance Policy and/or Reserve Fund Insurance Policy may be obtained in connection with the issuance of each of the Series 2023 Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the issuer of the Bond Insurance Policy and/or Reserve Fund Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy and/or Reserve Fund Insurance Policy shall be included in the Pricing Certificate.

Section 16.Funds and Accounts. The City hereby creates and continues the following special and separate funds and accounts:

A.2023 Acquisition Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Improvement Project Acquisition Fund" to be maintained by the City.

B.Pledged Revenue Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Revenue Fund" (the "State Shared Gross Receipts Tax Revenue Fund") to be maintained by the City, into which the City shall deposit the Pledged State Shared Gross Receipts Tax Revenues.

C.2023 Debt Service Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Debt Service Fund" (the "2023 Debt Service Fund") to be maintained by the City.

D.2023 Reserve Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Reserve Fund" (the "2023 Reserve Fund") to be maintained by the City.

Section 17.Deposit of Pledged Revenues and Flow of Funds.

A. Administration of Pledged Revenue Funds. So long as any of the Series 2023 Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

B.Debt Service Fund Payments. The following amounts shall be withdrawn from the State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Bonds), and shall be concurrently credited to the 2023 Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(1)Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2023 Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2023 Bonds then outstanding.

Agenda Item #8.2.

(2)Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Series 2023 Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2023 Bonds then outstanding.

C.Credit. In making the deposits required to be made into the 2023 Debt Service Fund, if there are any amounts then on deposit in the 2023 Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph B above shall be reduced by the amount available in such fund for such purpose.

D.Transfer of Money out of 2023 Debt Service Fund. Each payment of principal and interest becoming due on the Series 2023 Bonds shall be transferred from the 2023 Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

E.2023 Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2023 Reserve Fund upon the issuance of the Series 2023 Bonds or any time thereafter so long as the Pledged State Shared Gross Receipts Tax Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds. If the Pledged State Shared Gross Receipts Tax Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2023 Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months, an amount equal to the 2023 Minimum Reserve will be held in the 2023 Reserve Fund.

After funding the 2023 Reserve Fund in an amount equal to the 2023 Minimum Reserve, no additional payments need be made into the 2023 Reserve Fund so long as the moneys therein shall equal not less than the 2023 Minimum Reserve. The moneys (if any) in the 2023 Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in paragraph (F) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023 Bonds resulting from failure to deposit into the 2023 Debt Service Fund sufficient funds to pay the principal and interest as the same accrue. In the event that the funding of the 2023 Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount to the 2023 Minimum Reserve.

F.Defraying Delinquencies in the 2023 Debt Service Fund and 2023 Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2023 Debt Service Fund is insufficient to pay principal of and interest on the Series 2023 Bonds then due, then an amount shall be paid into the 2023 Debt Service Fund on such date from the 2023 Reserve Fund (if moneys are then on deposit in the 2023 Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2023 Debt Service Fund from the 2023 Reserve Fund, if any, shall be replaced in the 2023 Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2023 Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by paragraph B of this Section 17. If, in any month, the City shall, for any reason, fail to pay into the 2023 Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2023 Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the 2023 Bonds; provided, however, that any moneys at any time in excess of the 2023 Minimum Reserve in the 2023 Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2023 Reserve Fund shall not be invested in a manner which could cause the Series 2023 Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2023 Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2023 Reserve Fund exceeds the 2023 Minimum Reserve, all amounts in excess of the 2023 Minimum Reserve shall be transferred to the 2023 Debt Service Fund and used to pay principal of and interest on the Series 2023 Bonds.

G.Payment of Parity Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by paragraphs B, E and F of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Bonds payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the 2023 Bonds and any other outstanding Parity Bonds, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Bonds, for the payment of principal of and interest on all series of outstanding Parity Bonds and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Bonds, for the required debt service reserve fund deposits for all series of outstanding Parity Bonds.

H.Termination Upon Deposits to Maturity. No payment shall be made into the 2023 Debt Service Fund or the 2023 Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2023 Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2023 Debt Service Fund and the 2023 Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2023 Debt Service Fund and the 2023 Reserve Fund may be used as provided below.

I. Payment of Parity Subordinate Obligations. Subsequent to the payments required by paragraphs B, E, F and G of this Section, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided shall be used by the City for the payment of interest on and the principal of the Parity Subordinate Obligations now outstanding or hereafter authorized having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Series 2023 Bonds, issued and payable from the Pledged Revenues, as the same become due. Payments with respect to principal, interest and reserve funds for any such Parity Subordinate Obligations may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional Parity Subordinate Obligations.

(J)Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 18.General Administration of Funds. The funds designated in Section 16 shall be administered and invested as follows:

A.Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be invested by the City in Permitted Investments or deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B.Investment of Moneys. Moneys in the 2023 Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any

Agenda Item #8.2.

loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the 2023 Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2023 Reserve Fund, value the 2023 Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2023 Reserve Fund. If, upon any valuation, the value of the 2023 Reserve Fund exceeds the 2023 Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2023 Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Series 2023 Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2023 Reserve Fund may be used to pay the final installments of principal and interest on the Series 2023 Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Series 2023 Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Series 2023 Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the 2023 Reserve Fund and deposited into the 2023 Debt Service Fund to prevent a default on the Series 2023 Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2023 Reserve Fund to the 2023 Minimum Reserve. Such repayment shall be made as required by paragraph F Section 17 of this Bond Ordinance.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2023 Debt Service Fund and the 2023 Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Series 2023 Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Series 2023 Bonds constitute an irrevocable and first lien, but not an exclusive first lien on the Pledged Revenues on parity with the lien thereon of the outstanding Parity Bonds and additional Parity Bonds, if any, hereafter authorized to be issued and payable from the Pledged Revenues, and senior to the lien of Parity Subordinate Obligations on the Pledged Revenues.

Section 20. Additional Parity Bonds Payable from Pledged Revenues.

A. Parity Bonds Test. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Series 2023 Bonds. Before any additional Parity Bonds are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in the 2023 Debt Service Fund and the 2023 the Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2) The Pledged State Shared Gross Receipts Tax Revenues (not including the Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 200% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Bonds, (2) other outstanding Parity Bonds payable from and constituting a lien upon the Pledged Revenues, and (3) the Parity Bonds proposed to be issued.

Agenda Item #8.2.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Bonds, (a) any amount of the reserve fund requirement for the additional Parity Bonds is immediately deposited in or credited to the reserve fund for the additional Parity Bonds or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Bonds is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Bonds, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Bonds or any issue of outstanding Parity Bonds for which such reserve fund was created.

So long as the Build America Mutual Assurance Company ("BAM") municipal bond insurance policy for the 2016 Subordinate Bonds shall be in force and effect or any amounts are owed to BAM related to the 2016 Subordinate Bonds, and in addition to requirements set forth above, before any additional Parity Bonds are issued, it must be determined that the Pledged State Shared Gross Receipts Tax Revenues (not including the Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Bonds, (2) the outstanding 2016 Subordinate Bonds, (3) other outstanding Parity Subordinate Bonds, and (4) the Parity Bonds proposed to be issued. Compliance with the foregoing requirement shall be evidenced by a certificate delivered in accordance with Section 20(B) of this Ordinance.

B.Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or Financial Services Director, that the Pledged Revenues (not including the Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity Bonds. The Independent Accountant, City Treasurer or Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C.Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Bonds and on a parity with the Parity Subordinate Obligations in accordance with the requirements set forth in the ordinances authorizing the outstanding Parity Subordinate Obligations.

D.Superior Obligations Prohibited. The City shall not issue any obligation having a lien on any of the Pledged Revenues pledged by this Bond Ordinance which is prior and superior to the Bonds.

Section 21.Refunding Bonds. The provisions of Section 20 of this Bond Ordinance are subject to the following exceptions:

A.Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding obligations constituting a lien upon the Pledged Revenues, the Bonds or other obligations, or any part thereof, such obligations may be refunded, but only with the consent of the holders, unless the obligations shall then mature or be callable for redemption, or the plan of refunding calls for payment of the obligations at maturity or at a redemption date, regardless of whether the lien priority is changed by the refunding except that superior obligations are prohibited as provided in paragraph D of Section 20 of this Bond Ordinance and except as provided in paragraphs B and C of this Section.

B.Limitation Upon Issuance of Parity Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Series 2023 Bonds, unless:

(1)The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Series 2023 Bonds; or

(2)The refunding obligations are issued in compliance Section 20 of this Bond Ordinance.

Agenda Item #8.2.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

(1) The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded; or

(3) The refunding bonds or other refunding obligations are issued in compliance with Section 20 of this Bond Ordinance.

D. Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph C of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Series 2023 Bonds.

Section 22. Equality of Parity Bonds. The Parity Bonds from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Bonds regardless of whether they are actually issued and delivered or incurred at different times.

Section 23. Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

A. Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds as set forth in Section 15 of this Bond Ordinance.

B. Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2023 Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

C. City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any owner of the Bonds.

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

E. Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F. Audits and Budgets. The City will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

Agenda Item #8.2.

G.Other Liens. Other than as described and identified by this Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

H.Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 30 of this Bond Ordinance.

I.Debt Service Fund and Reserve Fund. The 2023 Debt Service Fund and the 2023 Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

J.Surety Bonds. Each municipal official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of such funds.

K.Performing Duties. The City will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds.

L.Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, other facts and circumstances relevant to the tax treatment of interest on the Bonds, and making related covenants.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds, and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Agenda Item #8.2.

Section 24.Preliminary Official Statement and Continuing Disclosure Undertaking.

A.Preliminary Official Statement. The preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds.

B.Continuing Disclosure Undertaking. The officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 25 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 25.Events of Default. Each of the following events is hereby declared an "event of default":

A.Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise.

B.Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C.Incapable of Performing. If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

D.Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs A and B of this Section), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

E.Bankruptcy. The City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Section 26.Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 25 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and

Agenda Item #8.2.

cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 27.Duties Upon Default. Upon the happening of any of the events of default provided in Section 25 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 28.Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 29.Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and final Official Statement, and the execution of the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 30.Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

A.An extension of the maturity of any Bond; or

B.A reduction of the principal amount or interest rate of any Bond; or

C.The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or

D.A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or

E.The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or

F.The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Agenda Item #8.2.

Section 31.Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 32.Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 33.Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 34.Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 35.Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 36 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 36.General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on February 21, 2023, relating to the authorization and issuance of the 2023. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO 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

Agenda Item #8.2.

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 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.

A general summary of the Ordinance is:

The Ordinance authorizes the issuance and sale of (1) 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 purpose of constructing, purchasing, acquiring, and improving roadways and public facilities; provides that the Bonds will be payable and collectible from the revenues derived from the 1.225% pledged state shared gross receipts tax distributed to the City; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or City Financial Services Director to execute and deliver the Pricing Certificate; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds, including the Preliminary Official Statement and Continuing Disclosure Undertaking; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.

(End of Form of Summary for Publication)

(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

NOTICE**CITY OF LAS CRUCES, NEW MEXICO****\$12,000,000*****State Shared Gross Receipts Tax Improvement Revenue Bonds
Series 2023****Preliminary Official Statement, subject to completion,
dated February __, 2023**

The Preliminary Official Statement, dated February __, 2023 (the "Preliminary Official Statement"), relating to the above-described bonds (the "Bonds") of the City of Las Cruces, New Mexico (the "City"), has been posted as a matter of convenience. The posted version of the Preliminary Official Statement has been formatted in Adobe Portable Document Format (Adobe Acrobat 8.0). Although this format should replicate the Preliminary Official Statement available from the City, appearance may vary for a number of reasons, including electronic communication difficulties or particular user software or hardware. Using software other than Adobe Acrobat 8.0 may cause the Preliminary Official Statement that you view or print to differ in appearance from the Preliminary Official Statement.

The Preliminary Official Statement and the information contained therein are subject to completion or amendment or other change without notice. Under no circumstances shall the Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

For purposes of Rule 15c2-12 promulgated by the United States Securities and Exchange Commission, the Preliminary Official Statement alone, and no other document or information on the internet, constitutes the "Official Statement" that the City has "deemed final" as of its date in respect of the Bonds, except for certain information permitted by Rule 15c2-12 to be omitted therefrom.

No person has been authorized to give any information or to make any representations other than those contained in the Preliminary Official Statement in connection with the offer and sale of the Bonds and, if given or made, such information or representations must not be relied upon as having been authorized. The information and expressions of opinion in the Preliminary Official Statement are subject to change without notice and neither the delivery of the Official Statement nor any sale made thereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date of the Preliminary Official Statement.

By choosing to proceed and view the electronic version of the Preliminary Official Statement, you acknowledge that you have read and understood this Notice.

* Preliminary, subject to change.

Preliminary Official Statement dated February __, 2023

NEW ISSUE

MOODY'S RATING: Applied For
See "RATING" herein.

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, under existing laws, regulations, rulings and judicial decisions, and assuming compliance with certain covenants described in "TAX EXEMPTION" herein, interest on the Bonds (including original issue discount treated as interest) (a) is excludable from the gross income of the recipients thereof for federal income tax purposes, under Section 103 of the Internal Revenue Code of 1986 (the "Code"), as amended, and (b) is not a specific item of tax preference for purposes of the federal alternative minimum tax under the Code; however, for tax years beginning after December 31, 2022, interest on the Bonds is included in the "adjusted financial statement income" of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. Bond Counsel is also of the opinion based on existing laws of the State of New Mexico as enacted and construed that interest on the Bonds is exempt from all taxation by the State of New Mexico or any political subdivision thereof. For a more complete description of such opinion of Bond Counsel and a description of certain provisions of the Internal Revenue Code of 1986, as amended, which may affect the federal tax treatment of interest on the Bonds for certain owners of such bonds, see "TAX EXEMPTION" herein.

\$12,000,000*

**CITY OF LAS CRUCES, NEW MEXICO
STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS
SERIES 2023**

Book-Entry Only
Dated: Date of Delivery

Due: June 1, as shown on inside cover

The City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the "Series 2023 Bonds" or the "Bonds") are being issued by the City of Las Cruces, Doña Ana County, New Mexico (the "City") to provide funds to pay the costs of (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying expenses and costs of issuance related to the issuance of the Series 2023 Bonds. See "PURPOSE AND PLAN OF FINANCING" herein. The Series 2023 Bonds are being issued pursuant to the general laws of the State, including Sections 3-31-1 through 3-31-12 NMSA 1978, as amended (the "Act"), and enactments of the City Council relating to the issuance of the Series 2023 Bonds, including the Bond Ordinance (as defined herein).

The Series 2023 Bonds are issuable only as fully registered bonds in denominations of \$5,000 each or any integral multiple thereof. The Series 2023 Bonds will bear interest from the delivery date and interest is payable on June 1 and December 1 of each year commencing December 1, 2023, as more fully described herein. The Paying Agent and Registrar is the City Treasurer, Las Cruces, New Mexico.

SEE MATURITY SCHEDULE SET FORTH ON THE INSIDE COVER OF THIS OFFICIAL STATEMENT.

The Series 2023 Bonds will be issued pursuant to a book-entry-only system and will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Underwriters of the Series 2023 Bonds ("Beneficial Owners") will not receive physical delivery of bond certificates representing their beneficial ownership interests. So long as DTC or its nominee is the owner of the Series 2023 Bonds, disbursement of payments of principal and interest to DTC is the responsibility of the Paying Agent, disbursement of such payments to DTC Participants (as defined herein) is the responsibility of DTC and disbursement of such payments to Beneficial Owners is the responsibility of DTC Participants, as more fully described herein. See "DESCRIPTION OF THE BONDS – Book-Entry Only System" herein.

The Series 2023 Bonds maturing on and after June 1, 202__ are subject to optional redemption on and after June 1, 202__, in whole or in part at any time. See "DESCRIPTION OF THE BONDS – REDEMPTION OF BONDS" herein.

The Bonds are special limited obligations of the City, payable solely from and secured by an irrevocable and first lien (but not necessarily an exclusive first lien) on the Pledged State Shared Gross Receipts Tax Revenues (the "Pledged Revenues"), as more fully defined herein. The registered owners of the Bonds may not look to any general or other fund for the payment of the principal of, or interest on such obligations except for the Pledged Revenues. The Bonds do not constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor will they be considered or held to be general obligations of the City. Neither the full faith and credit of the City nor the ad valorem taxing power or general resources of the City, the State of New Mexico or any political subdivision thereof are pledged to the payment of the Bonds. See "SECURITY FOR THE BONDS" and "PLEDGED REVENUES" herein.

The Series 2023 Bonds are offered when, as and if issued by the City, subject to the approval of validity by Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico, Bond Counsel, and certain other conditions. Certain legal matters will be passed on for the City by Jocelyn Garrison, Acting City Attorney. Modrall, Sperling, Roehl, Harris & Sisk, P.A., has also acted as special counsel to the City in connection with the preparation of this Official Statement and the sale of the Series 2023 Bonds. It is anticipated that the Series 2023 Bonds will be available for delivery on or about April 11, 2023 through the facilities of DTC, New York, New York.

Electronic bids will be opened at 8:30 a.m, prevailing Mountain Time, March 7, 2023.

Dated: February __, 2023

* Preliminary, subject to change.

MATURITY SCHEDULE SERIES 2023 BONDS*

<u>Maturity (June 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Price</u>	<u>CUSIP Number**</u>
2024	\$1,275,000			
2025	1,385,000			
2026	1,795,000			
2027	840,000			
2028	840,000			
2029	840,000			
2030	840,000			
2031	840,000			
2032	840,000			
2033	840,000			
2034	840,000			
2035	825,000			

Electronic bids will be opened at 8:30 a.m, prevailing Mountain Time, March 7, 2023.

**CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services (“CGS”) is managed on behalf of the American Bankers Association by FactSet Research Systems, Inc. CUSIP® data herein is provided by CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. None of the City, the Financial Advisor, Underwriters, Bond Counsel, Disclosure Counsel, or their agents or counsel assumes responsibility for the accuracy of such numbers.

* Preliminary, subject to change.

CITY OF LAS CRUCES, NEW MEXICO

City Hall, 700 North Main Street
P.O. Box 20000
Las Cruces, New Mexico 88001
(575) 541-2000

MAYOR

Ken Miyagishima

CITY COUNCIL

Kasandra Gandara, Councilor
Tessa Abeyta, Councilor
Becki Graham, Councilor
Johana Bencomo, Councilor
Becky Corran, Councilor
Yvonne M. Flores, Councilor

CITY ADMINISTRATION

Ifo Pili, City Manager
Leeann DeMouche, Financial Services Director
Erika Jaquez, City Treasurer
Christine Rivera, City Clerk
Jocelyn Garrison, Acting City Attorney

FINANCIAL ADVISOR

RBC Capital Markets, LLC
6301 Uptown Boulevard, N.E., Suite 110
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BOND COUNSEL & DISCLOSURE COUNSEL

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(505) 848-1800

PAYING AGENT AND REGISTRAR

City Treasurer, City of Las Cruces
City Hall, 700 North Main Street
P.O. Box 20000
Las Cruces, New Mexico 88001
(575) 541-2000

USE OF INFORMATION IN THIS OFFICIAL STATEMENT

No dealer, salesman or other person has been authorized by the City of Las Cruces, New Mexico (the "City") to give any information or to make any statements or representations, other than those contained in this Official Statement, and, if given or made, such other information, statements or representations must not be relied upon as having been authorized by the City. This Official Statement does not constitute an offer to sell or solicitation of an offer to buy any of the Bonds in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The information set forth or included in this Official Statement has been provided by the City and from other sources believed by the City to be reliable. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall create any implication that there has been no change in the financial condition or operations of the City described herein since the date hereof. This Official Statement contains, in part, estimates and matters of opinion that are not intended as statements of fact, and no representation or warranty is made as to the correctness of such estimates and opinions or that they will be realized.

The Bonds have not been registered under the Securities Act of 1933 in reliance upon exemptions contained in such Act. The registration and qualification of the Bonds in accordance with applicable provisions of the securities law of the states in which the Bonds have registered or qualified and the exemption from registration or qualification in other states cannot be regarded as a recommendation thereof. Neither the United States Securities and Exchange Commission nor any other federal, state, municipal or other governmental entity, nor any agency or department thereof, has passed upon the merits of the Bonds or the accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense.

This Official Statement is "deemed final" by the City for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission. The City has covenanted to provide such annual financial statements and other information in the manner as may be required by regulations of the Securities and Exchange Commission or other regulatory body.

This Official Statement contains statements that are "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995. When used in this Official Statement, the words "estimate," "project," "intend," "expect" and similar expressions are intended to identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE CITY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Copies of the Bond Ordinance authorizing the issuance of the Bonds are available upon request at the office of the City Clerk, City Hall, 700 North Main Street, Las Cruces, New Mexico 88001, (575) 541-2000.

TABLE OF CONTENTS

INTRODUCTION 1

SECURITY FOR THE BONDS - PLEDGED STATE SHARED GROSS RECEIPTS TAX REVENUES 1

THE PROJECT 2

SPECIAL FACTORS RELATING TO THE BONDS.....2

PLEDGED REVENUE COLLECTIONS ARE SUBJECT TO FLUCTUATION..... 2

BANKRUPTCY AND FORECLOSURE..... 3

LIMITED OBLIGATIONS 3

ADDITIONAL PARITY OBLIGATIONS AND SUBORDINATE LIEN OBLIGATIONS 3

CYBERSECURITY 4

SECONDARY MARKET 4

STATE LEGISLATION 4

GROSS RECEIPTS TAX HOLD HARMLESS DISTRIBUTIONS 5

CITY CANNOT INCREASE DISTRIBUTION OF TAXES..... 6

CERTAIN RISKS ASSOCIATED WITH COVID-19..... 6

BOND RATING 7

DESCRIPTION OF THE BONDS.....7

GENERAL..... 7

PAYMENT - REGULAR RECORD DATE 7

OPTIONAL REDEMPTION 8

REDEMPTION PROCEDURES..... 8

CONDITIONAL REDEMPTION 8

REGISTRATION, TRANSFER AND EXCHANGE OF BONDS 9

BOOK-ENTRY ONLY SYSTEM..... 9

SOURCE OF PAYMENT 12

FUNDS AND ACCOUNTS..... 12

DISPOSITION OF BOND PROCEEDS 12

DEPOSIT OF PLEDGED REVENUES AND FLOW OF FUNDS. 12

GENERAL ADMINISTRATION OF FUNDS 15

DEFAULT, REMEDIES AND CITY DUTIES..... 16

DEFEASANCE..... 17

AMENDMENT..... 17

SECURITY FOR THE BONDS.....18

PLEDGE AND SECURITY 18

SPECIAL LIMITED OBLIGATIONS..... 18

PURPOSE AND PLAN OF FINANCING 18

PURPOSE..... 18

SOURCES AND USES OF FUNDS 19

ANNUAL DEBT SERVICE SUMMARY 20

SERIES 2023 BONDS DEBT SERVICE/COVERAGE 20

PLEDGED REVENUES 21

OTHER GROSS RECEIPTS TAXES (NOT PLEDGED) 24

GROSS RECEIPTS REPORTED BY STANDARD INDUSTRIAL CLASSIFICATION 25

HISTORICAL TOTAL GROSS RECEIPTS REPORTED FOR THE CITY..... 26

HISTORICAL TAXABLE GROSS RECEIPTS REPORTED FOR THE CITY 26

ADDITIONAL OBLIGATIONS PAYABLE FROM PLEDGED REVENUES.....26

 PARITY OBLIGATIONS 26

 REFUNDING BONDS..... 27

CITY COVENANTS IN THE BOND ORDINANCE 28

THE CITY 30

 GENERAL..... 30

 GOVERNMENT 30

 ADMINISTRATIVE OFFICERS 30

 OTHER EMPLOYEES..... 31

 RETIREMENT PLAN..... 31

 CITY BUDGETS 32

 CITY STRATEGIC PLAN 32

 INDUSTRY..... 33

 EDUCATION 33

 NEW MEXICO STATE UNIVERSITY 33

 AGRICULTURE 34

 TRANSPORTATION..... 34

 LABOR FORCE AND PERCENT UNEMPLOYED..... 34

 COVERED WAGE AND SALARY EMPLOYMENT BY NAICS CODE CLASSIFICATION 36

 PER CAPITA INCOME 37

 EFFECTIVE BUYING INCOME 38

 AGE DISTRIBUTION 38

 POPULATION..... 38

 BUILDING PERMITS AND ASSESSED VALUATIONS..... 39

 FINANCIAL STATEMENTS 40

 OTHER CITY OBLIGATIONS 43

LITIGATION AND INSURANCE 45

FINANCIAL ADVISOR.....45

TRANSCRIPT AND CLOSING STATEMENTS 46

TAX EXEMPTION.....46

 GENERAL..... 46

 INTERNAL REVENUE SERVICE AUDIT PROGRAM..... 47

 ORIGINAL ISSUE DISCOUNT 47

 ORIGINAL ISSUE PREMIUM..... 47

FINANCIAL STATEMENTS 47

LEGAL MATTERS 47

RATING 48

CONTINUING DISCLOSURE.....48

 COMPLIANCE WITH PRIOR CONTINUING DISCLOSURE UNDERTAKINGS 48

 COMPLIANCE WITH CONTINUING DISCLOSURE UNDERTAKINGS IN FUTURE YEARS 48

ADDITIONAL INFORMATION 48

OFFICIAL STATEMENT CERTIFICATION.....50

**APPENDIX A EXCERPTS FROM AUDITED FINANCIAL STATEMENTS OF THE CITY OF LAS CRUCES,
NEW MEXICO FOR FISCAL YEAR ENDING JUNE 30, 2022 A-1**

APPENDIX B FORM OF BOND COUNSEL OPINION.....B-1

APPENDIX C FORM OF CONTINUING DISCLOSURE UNDERTAKING..... C-1

APPENDIX D OFFICIAL NOTICE OF BOND SALE D-1

CITY OF LAS CRUCES, NEW MEXICO

\$12,000,000*

**State Shared Gross Receipts Tax Improvement Revenue Bonds
Series 2023**

SUMMARY OF INFORMATION

There follows a summary of certain provisions discussed in this Official Statement. SUCH SUMMARY DOES NOT PURPORT TO BE COMPREHENSIVE OR DEFINITIVE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE COMPLETE OFFICIAL STATEMENT. This Summary is only a brief statement and a full review of the entire Official Statement should be made by potential investors.

Issuer:	The City of Las Cruces, New Mexico (the “City”) operates under a home rule charter pursuant to Article X, Section 6 of the New Mexico Constitution (the “Charter”), with a Council-Manager form of government. The City is located near the Texas and Mexico borders. Las Cruces is the second largest city in the State of New Mexico and is the commercial, service and cultural center of Southern New Mexico. See “THE CITY.”
Dated:	Date of Delivery.
Principal Payment:	The Bonds are registered bonds maturing on June 1 of the years set forth on the inside cover page of this Official Statement.
Interest Payment:	Interest will be payable semiannually on June 1 and December 1, commencing December 1, 2023.
Purpose:	The City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the “Series 2023 Bonds” or the “Bonds”) are being issued by the City of Las Cruces, Doña Ana County, New Mexico (the “City”) to provide funds to pay the costs of (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying expenses and costs of issuance related to the issuance of the Series 2023 Bonds. See “PURPOSE AND PLAN OF FINANCING” herein.
Authorization:	The Bonds are being issued pursuant to the general laws of the State, including Sections 3-31-1 through 3-31-12 NMSA 1978, as amended (the “Act”), the Charter and enactments of the City Council relating to the issuance of the Bonds, including the Bond Ordinance (defined herein).
Security:	The Bonds are special limited obligations. The Bonds are payable solely from and secured by an irrevocable and first lien (but not necessarily an exclusive first lien) upon the revenues of the 1.225% state shared gross receipts tax (the

* Preliminary, subject to change.

“Pledged SSGRT Revenues”), as herein defined. See “SECURITY FOR THE BONDS” herein.

Special Obligations: THE PRINCIPAL OF AND INTEREST ON THE BONDS WILL BE PAYABLE SOLELY FROM PLEDGED SSGRT REVENUES, AND WILL NOT BE PAYABLE FROM ANY FUNDS OF THE CITY EXCEPT THE DESIGNATED SPECIAL FUNDS PLEDGED TO THE PAYMENT OF THE BONDS. THE BONDS WILL NOT CONSTITUTE AN INDEBTEDNESS NOR A DEBT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION NOR WILL THEY BE CONSIDERED OR HELD TO BE GENERAL OBLIGATIONS OF THE CITY. NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL TAXING POWER OF THE CITY IS PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS, AND NO OWNER HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE CITY OR THE FORFEITURE OF ANY OF ITS PROPERTY IN CONNECTION WITH ANY DEFAULT UNDER THE BOND ORDINANCE.

Reserve Fund: No deposit to the Reserve Fund will be made from the proceeds of the Series 2023 Bonds. No deposit shall be required in the Reserve Fund so long as the Pledged SSGRT Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity SSGRT Bonds. If the Pledged Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the Reserve Fund from the first legally available Pledged Revenues so that after 24 months an amount equal to the Minimum Reserve will be held in the Reserve Fund. After funding the Reserve Fund in an amount equal to the Minimum Reserve, no additional payments need be made into the Reserve Fund so long as the moneys therein shall equal not less than the Minimum Reserve. Alternatively, the City may deposit a Reserve Fund Insurance Policy with coverage equal to the Minimum Reserve.

Minimum Reserve: The Minimum Reserve (if required) shall be an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2023 Bonds, (ii) the maximum annual debt service on the outstanding Series 2023 Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2023 Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

Optional Prior Redemption: The Bonds maturing on and after June 1, 20__ are subject to prior redemption at par at the option of the City, in one or more units of principal of \$5,000 on and after June 1, 20__. If the Bonds are optionally redeemed in part, the Bonds to be so redeemed shall be selected by lot by the Registrar in such manner as the Registrar shall consider appropriate and fair. The redemption price will be the principal amount of each \$5,000 unit so redeemed, accrued interest thereon to the redemption date.

Parity Obligations:

The City has the following outstanding obligations with a parity lien on the Pledged SSGRT Revenues: (i) the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2011A” in the original aggregate principal amount of \$9,640,000, authorized by City Ordinance No. 2618 adopted by the City Council on June 8, 2011 and currently outstanding in the aggregate principal amount of \$1,100,000; (ii) the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014” in the original aggregate principal amount of \$10,000,000, authorized by City Ordinance No. 2718 adopted by the City Council on June 24, 2014 and currently outstanding in the aggregate principal amount of \$3,345,000; (iii) the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015” in the original aggregate principal amount of \$19,195,000, authorized by City Ordinance No. 2739 adopted on December 1, 2014, as supplemented and amended by Resolution No. 15-140 adopted on February 3, 2015 and currently outstanding in the aggregate principal amount of \$12,745,000; (iv) the 2017 NMFA Loan for public safety vehicles and heavy equipment in the original aggregate principal amount of \$3,203,527, authorized by City Ordinance No. 2801 adopted by the City Council on January 17, 2017 and currently outstanding in the aggregate principal amount of \$533,478; (v) the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017” in the original aggregate principal amount of \$10,570,000, authorized by City Ordinance No. 2801 adopted by the City Council on May 10, 2017 and currently outstanding in the aggregate principal amount of \$4,515,000; (vi) the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020” authorized in the original aggregate principal amount of \$15,435,000 by City Council Ordinance No. 2912 adopted on February 18, 2020, as supplemented by the Pricing Certificate executed on February 26, 2020, currently outstanding in the aggregate principal amount of \$13,750,000 (also secured by pledges of the City’s Lodgers’ Tax and Convention Center Fee Revenues); and (vii) the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A” authorized in the original aggregate principal amount of \$7,190,000 by City Council Ordinance No. 2925 adopted on May 18, 2020, as supplemented by the Pricing Certificate executed on June 17, 2020, and currently outstanding in the aggregate principal amount of \$6,795,000.

Subordinate Obligations:

The City has the following outstanding obligations with a subordinate lien on the Pledged SSGRT Revenues: (i) the “City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016” in the original aggregate principal amount of \$8,585,000, authorized by City Ordinance No. 2774 adopted on February 16, 2016 and Resolution No. 16-18 adopted on March 9, 2016 and currently outstanding in the aggregate principal amount of \$5,970,000; (ii) the “City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019” authorized in the original aggregate principal amount of \$8,870,000 and authorized by City Council Ordinance No. 2894 adopted on August 5, 2019 and currently outstanding in the aggregate principal amount of \$8,330,000; (iii) the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B” authorized in the original

aggregate principal amount of \$6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020, as supplemented by the Pricing Certificate executed on June 17, 2020, and currently outstanding in the aggregate principal amount of \$6,645,000; and (iv) the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022” authorized in the original aggregate principal amount of \$5,000,000 by City Council Ordinance No. 3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate executed on August 18, 2022, and currently outstanding the aggregate principal amount of \$5,000,000.

Additional Bonds: In addition to the Series 2023 Bonds, additional bonds may hereafter be issued and secured by and paid from the Pledged Revenues on parity with the Series 2023 Bonds. The City will not issue additional bonds payable from the Pledged Revenues with a lien prior and superior to the lien of the Series 2023 Bonds thereon. Nothing contained in the Bond Ordinance will be construed in such a manner as to prevent the issuance by the City of additional bonds payable from the Pledged Revenues with a lien thereon subordinate and junior to the lien of the Series 2023 Bonds thereon, nor to prevent the issuance of bonds or other obligations refunding all or part of the Series 2023 Bonds as permitted by the Bond Ordinance. See “ADDITIONAL OBLIGATIONS PAYABLE FROM PLEDGED REVENUES” herein.

Tax Exemption: In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, interest on the Series 2023 Bonds (including original issue discount treated as interest) (a) is excludable from the gross income of the recipients thereof for federal income tax purposes, (b) is not a specific item of tax preference for purposes of the federal alternative minimum tax under the Code; however, for tax years beginning after December 31, 2022, interest on the Bonds is included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code, and (c) is exempt from all taxation by the State of New Mexico or any political subdivision thereof. See “TAX EXEMPTION” herein.

Secondary Market Disclosure: The City has entered into an undertaking (the “Undertaking”) for the benefit of the holders of the Bonds to send certain financial information and operating data to certain information repositories annually and to provide notice to the Municipal Securities Rulemaking Board of certain events, pursuant to the requirements of Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240, 240.15c2-12). See “CONTINUING DISCLOSURE” herein.

Delivery: The delivery of the Bonds is expected on or about April 11, 2023.

Bond Counsel: Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico

Paying Agent/Registrar: City Treasurer, Las Cruces, New Mexico.

OFFICIAL STATEMENT

CITY OF LAS CRUCES, NEW MEXICO

\$12,000,000*

**State Shared Gross Receipts Tax Improvement Revenue Bonds
Series 2023**

INTRODUCTION

This Official Statement, which includes the cover page and the appendices hereto, sets forth certain information in connection with the offering of \$12,000,000* aggregate principal amount of State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the “Bonds”), to be issued by the City of Las Cruces, Doña Ana County, New Mexico, pursuant to Ordinance No. 3024, adopted on February 21, 2023, as supplemented and amended by a Pricing Certificate to be delivered by an authorized officer of the City on March 7, 2023 (together, the “Bond Ordinance”).

The descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and reference is made to each document for the complete details of all terms and conditions. All statements herein are qualified in their entirety by reference to each document. All capitalized terms used in this Official Statement and not otherwise defined herein have the same meanings as in the Bond Ordinance.

Security for the Bonds - Pledged State Shared Gross Receipts Tax Revenues

The Bonds are payable and collectible solely from the Pledged State Shared Gross Receipts Tax Revenues (the “Pledged SSGRT Revenues” or “Pledged Revenues”).

Pledged SSGRT Revenues means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Bond Ordinance; and provided further that the amount of revenues pledged pursuant to the Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978 (the “Hold Harmless Distribution”); and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance (the term “Pledged State Shared Gross Receipts Tax Revenues” does not include any local option gross receipts tax income received by the City or any hold harmless distributions associated with the municipal local option gross receipts taxes).

The Series 2023 Bonds will be secured by an irrevocable and first lien (but not necessarily an exclusive first lien) on the Pledged SSGRT Revenues. See “SECURITY FOR THE BONDS” herein.

* Preliminary, subject to change.

Pursuant to the Bond Ordinance, the City has covenanted not to repeal or amend any law, ordinance, or resolution in a manner that impairs any of the outstanding Bonds.

Additional bonds may hereafter be issued and secured by the Pledged Revenues having a lien on the Pledged Revenues on a parity with, or subordinate and junior to, the lien on the Pledged Revenues securing the Series 2023 Bonds. Additional Obligations may not be issued with a lien superior to the lien on the Pledged Revenues securing the 2023 Bonds. See “ADDITIONAL OBLIGATIONS PAYABLE FROM PLEDGED REVENUES -- Parity Obligations.”

THE PROJECT

The proceeds of the Series 2023 Bonds will be used for the purpose of (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying expenses and costs of issuance related to the issuance of the Series 2023 Bonds. See “SOURCES AND USES OF PROCEEDS OF THE BONDS” herein.

SPECIAL FACTORS RELATING TO THE BONDS

The purchase of the Bonds involves special risks and the Bonds may not be appropriate investments for all types of investors. Each prospective investor is encouraged to read this Official Statement in its entirety and to give particular attention to the factors described below, which, among other factors discussed herein, could affect the payment of debt service on the Bonds and could affect the market price of the Bonds to an extent that cannot be determined at this time. The Bonds may not be suitable investments for all persons, and prospective Underwriters should evaluate the risks and merits of an investment in the Bonds, and should confer with their own legal and financial advisors before deciding to purchase the Bonds.

Pledged Revenue Collections are Subject to Fluctuation

Gross receipts tax collections are subject to the fluctuations in spending related, in part, to national and local economic conditions, which influence the amount of gross receipts taxes collected. This causes gross receipts tax revenues to increase along with the increasing prices brought about by inflation, but also causes collections to be vulnerable to adverse economic conditions and reduced spending. The City's economic base and the future collections of Pledged SSGRT Revenues are directly affected by economic activities in the City. The City's retail sales are affected by general economic circumstances.

The Pledged SSGRT Revenues are based on the total gross receipts of the City. Various circumstances and developments, most of which are beyond the control of the City, may have an adverse effect on the future level of Pledged Revenues. Such circumstances may include, among others, adverse changes in national and local economic and financial conditions generally, reductions in the rates of employment and economic growth in the City, the State and the region, a decrease in rates of population growth and rates of residential and commercial development in the City, the County, the State and the region and various other factors. For the Fiscal Year ended June 30, 2022, total Pledged SSGRT Revenues (including the Hold Harmless Distribution of \$3,515,419) were \$45,895,493, approximately 14.34% higher than for the previous fiscal year. See table under “PLEDGED REVENUES” for historical collections. There can be no assurance that Pledged SSGRT Revenues will continue to increase.

While it is difficult to determine all of the factors contributing to the higher growth in Pledged SSGRT Revenues for fiscal year 2022, the City attributes a portion of the increase to (1) the settlement of a 2018 lawsuit brought by over 40 cities and counties, including the City of Las Cruces, against the State

of New Mexico regarding the distribution of gross receipts tax revenues and (2) the change in sourcing rules for the imposition of gross receipts tax that became effective July 1, 2021. In 2021, the State of New Mexico settled a lawsuit brought by multiple cities and counties in the State regarding the distribution of gross receipts tax revenues. The City of Las Cruces was among the plaintiffs in the lawsuit and received \$3.08 million from the settlement (a portion of which constituted Pledged SSGRT Revenues). Additionally, effective July 1, 2021, New Mexico changed its sourcing rules for determining the imposition of gross receipts tax to destination sourcing based on the rate of gross receipts tax in effect where the goods or products are delivered. See “PLEDGED REVENUES – Taxed Activities” herein.

Bankruptcy and Foreclosure

The ability and willingness of an owner or operator of a business to pay gross receipts taxes may be adversely affected by the filing of a bankruptcy proceeding by the owner. The ability to collect delinquent gross receipts taxes using foreclosure and sale for non-payment of taxes may be forestalled or delayed by bankruptcy, reorganization, insolvency or other similar proceedings affecting the owner or operator of a business. The Federal bankruptcy laws provide for an automatic stay of foreclosure and sale proceedings, thereby delaying such proceedings, perhaps for an extended period. Delays in the exercise of remedies could result in gross receipts tax collections that may be insufficient to pay debt service on Bonds when due.

Limited Obligations

The Series 2023 Bonds constitute a lien only on the Pledged SSGRT Revenues. Therefore, the security for the punctual payment of the principal of and interest on the Bonds is dependent on the City’s receipt of the Pledged SSGRT Revenues in amounts sufficient to meet the debt service requirements of the Bonds. See “SECURITY FOR THE BONDS” and “PLEDGED REVENUES” herein. The Bonds and the interest thereon do not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or laws of the State and do not give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Further, the Bonds are not obligations of the State, and the owners of the Bonds may not look to the State for payment of the principal of or interest on the Bonds.

Additional Parity Obligations and Subordinate Lien Obligations

Pursuant to the Bond Ordinance, the City may issue additional Parity Obligations without Bondholder consent, upon meeting coverage or other financial tests. See “ADDITIONAL OBLIGATIONS PAYABLE FROM PLEDGED STATE SHARED GROSS RECEIPTS TAX REVENUES – Parity Obligations” herein. Parity Obligations would have a lien on the Pledged SSGRT Revenues on parity with the lien of the Bonds and other outstanding Parity Obligations. As a result, if Pledged SSGRT Revenues are insufficient to pay debt service on the Bonds and any outstanding Parity Obligations in any year, debt service will be paid on a proportionate basis.

The City is permitted to issue additional obligations with a lien on the Pledged SSGRT Revenues subordinate to the lien thereon of the Series 2023 Bonds (“Subordinate Lien Obligations”). The City has the following four Subordinate Lien Obligations outstanding: (i) Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016, which are currently outstanding in an aggregate principal amount of \$5,970,000, (ii) Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019, which are currently outstanding in an aggregate principal amount of \$8,330,000, (iii) Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B, which are currently outstanding in an aggregate principal amount of \$6,645,000, and (iv) Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, which are currently outstanding in the aggregate principal amount of \$5,000,000.

Cybersecurity

The City operates a large and complex information technology infrastructure to support internal and external operations. As is the case with any such environment, the threat of cybersecurity incidents is constant. Such incidents may arise from multiple sources, including unintentional events or actions, intentional insider threat, and deliberate malicious attacks from outside entities. The effect of such threats may include unauthorized access to City systems, data or resources, inappropriate exposure or use of City information, disruption of City services, and damage to City systems.

The City maintains a cybersecurity program that uses a multilayer, multi-vendor approach. Staffing for the program consists of a cybersecurity administrator who is CASP+ certified and an information security specialist. The City has an IT Governance program which provides a technology review, including the review of security standards, for new technology purchases. The City has a Protected Information Management Committee which sets standards for the use and security of protected information within the City. The City has cyber security insurance policy with coverage comparable to coverage carried by other U.S. municipalities of a similar size.

Security technology used by the City includes a unified threat management security system, end point security software on all computers, internal and external network traffic inspection, centralized event log correlation and alerting, and honey pot technologies. All computer operating system environments are updated with security updates as they are released. All updates are centrally managed. All City staff are required to attend a cybersecurity awareness training annually. Security penetration testing is performed bi-annually using a third-party auditor.

Secondary Market

Although the Purchaser expects to maintain a secondary market in the Bonds, at this time no guarantee can be made that a secondary market for the Bonds will be maintained by the Underwriter or others. Owners of the Bonds should be prepared to hold their Bonds to maturity or prior redemption.

State Legislation

The State Legislature of the State of New Mexico (the “Legislature”) may amend the laws relating to the levy, calculation and/or the distribution of or otherwise impacting the City’s gross receipts tax revenues. In some cases, the Legislature has made amendments which negatively impacted the amount of gross receipts tax revenues received by local government.

In 2004, the Legislature adopted legislation creating a deduction from gross receipts tax for receipts from retail sales of food (not including restaurant sales and certain sales of prepared foods) as defined for federal food stamp program purposes. Retailers are required to report receipts from sales of such groceries and then claim the deduction. The statute provides for payments to be made from the State general fund to reimburse local governments for revenues lost as a result of the new deduction (the “Hold Harmless Distributions”). Those distributions are included within Pledged Revenues. In the same year the Legislature created a deduction from gross receipts tax for receipts of licensed medical care providers from Medicare Part C and managed health plans that by contract do not reimburse providers for gross receipts tax. This legislation includes provision for payments from the State general fund to reimburse local governments for revenues lost as a result of this deduction. Those distributions are included within Pledged Revenues but, as described below, will be phased out over a 15-year period that began July 1, 2015. See “SPECIAL FACTORS RELATING TO THE BONDS-- Gross Receipts Tax Hold Harmless Distributions”,

“PLEDGED REVENUES” and “ADDITIONAL OBLIGATIONS PAYABLE FROM PLEDGED REVENUES” herein.

Other amendments to State laws affecting taxed activities and distribution of gross receipts tax revenues have been proposed from time to time. The extent and likelihood of passage of tax reform cannot be determined at this time. Such changes or amendments could be proposed in the future by the Legislature. There is no assurance that any future amendments will not adversely affect activities now subject to the gross receipts tax or distribution of gross receipts tax revenues to the City. Notwithstanding the foregoing, the provisions of State law authorizing the issuance of revenue bonds (including gross receipts tax bonds such as the Bonds) include a provision stating that any law which authorizes the pledge of revenues to the payment of revenue bonds, or which affects the pledged revenue “shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds.”

Gross Receipts Tax Hold Harmless Distributions

In 2013 the New Mexico Legislature enacted House Bill 641 which amended several provisions of New Mexico’s tax code, including a phased reduction in the Hold Harmless Distributions to certain municipalities and counties over 15 years starting in the Fiscal Year beginning July 1, 2015. In order to offset the reduced Hold Harmless Distributions, the law allows municipalities and counties to impose a local option gross receipts tax up to 3/8th of a percent (the “Hold Harmless Gross Receipts Tax”).

The law as currently enacted will result in annual reductions and ultimately the elimination of the Hold Harmless Distributions to the City beginning on July 1 2015, as follows:

<u>Fiscal year beginning July 1</u>	<u>% of Total Hold Harmless Distribution*</u>
2015	94%
2016	88%
2017	82%
2018	76%
2019	70%
2020	63%
2021	56%
2022	49%
2023	42%
2024	35%
2025	28%
2026	21%
2027	14%
2028	7%
2029	-0-

*Based on percentage of total deductions from gross receipts claimed for sale of food at retail food stores and services provided by health care practitioners.

It is possible that the New Mexico Legislature will further amend the recently enacted law and provide for additional decreases in Hold Harmless Distributions in the event that a municipality or county imposes any increment of the Hold Harmless Gross Receipts Tax. The City enacted a three-eighths of one percent Hold Harmless Gross Receipts Tax in 2013, but is not pledging the revenues derived therefrom to the payment of the Series 2023 Bonds. SEE “PLEDGED REVENUES” herein.

City Cannot Increase Distribution of Taxes

The City has no control over the rate at which the Pledged Revenues are distributed to the City; the rate of distribution can be increased only by action of the Legislature. Although it is possible that the Legislature will increase the rate of distribution to the City, there is currently no legislation proposed or pending to increase the rate of distribution to the City.

Certain Risks Associated with COVID-19

The outbreak of COVID-19, (the “COVID-19”), a respiratory disease caused by a novel strain of coronavirus, which has spread to many countries, including the United States, has been declared a global pandemic by the World Health Organization. COVID-19 has affected travel, commerce, and financial markets globally, and has impacted economies worldwide. The federal government and state and local governments, including the City, have announced orders, recommendations and other measures intended to slow the spread of COVID-19, including limiting the size of public gatherings and regulating public spaces in order to minimize interpersonal contact. These COVID-19 measures are changing rapidly.

Beginning in March 2020, New Mexico Governor Michelle Lujan Grisham issued numerous public health orders pertaining to COVID-19. Certain material orders are described below.

On August 17, 2021, the New Mexico Health Secretary issued two Public Health Orders which (1) require that all workers at private, public and charter schools either be vaccinated against COVID-19 or otherwise submit to regular COVID-19 testing, (2) re-implement a statewide framework that facemasks be worn in all public indoor spaces, with only limited exceptions, and regardless of vaccination status, and (3) require all workers in certain medical close-contact congregate settings, including hospitals, nursing homes, juvenile justice facilities, rehabilitation facilities, and State correctional facilities, to be vaccinated against COVID-19. As of July 2022, according to the New Mexico Department of Health, 79.1% of State residents age 18 or older have completed the primary series of vaccinations for COVID-19, 91.7% of State residents age 18 and older have received at least one dose of the COVID-19 vaccine.

The City has taken, and is taking, several steps to protect the health of its employees, maintain continuity of its critical and essential business functions and avoid widespread impacts to its workforce from the COVID-19 outbreak. The following actions have been undertaken and are underway: implementation of policies and procedures to minimize COVID-19 exposure and spread, development of a continuity operations plan outlining essential operations to the community and organization, including resources required to continue essential operations during an emergency or disruption.

A portion of the City’s economy is dependent on tourism and the foregoing impacts of the spread of COVID-19 and its continued adverse effect on the level of tourism activity and commercial activity within the City will impact the City’s financial operations. The City relies on gross receipts tax collections as well as business and tourist travel to generate the State-Shared Gross Receipts Tax Revenues to pay debt service on the Series 2023 Bonds and other Parity Bonds and Subordinate Bonds. The full extent of the impact on such revenue streams is not known yet.

The degree of impact from COVID-19 to the City’s financial operations is difficult to predict due to the evolving nature of the COVID-19 transmission, including uncertainties relating to (i) the duration of the outbreak, (ii) the severity of the outbreak, and (iii) the ultimate geographic spread of the outbreak, as well as with regard to what additional actions may be taken by governmental authorities to contain or mitigate its impact. Notwithstanding the foregoing, the City does not believe that the impacts of the spread of COVID-19 will have a material adverse effect on its ability to pay debt service on the Series 2023 Bonds.

Additional information with respect to events surrounding the outbreak of COVID-19 and responses from State and local agencies can be found on the following website established by the State's Department of Health at: <https://cv.nmhealth.org>. The City has not incorporated by reference the information on such website and the City does not assume any responsibility for the accuracy of the information on such website.

Bond Rating

There is no assurance that the rating assigned to the Bonds will not be lowered or withdrawn at any time, the effect of which could adversely affect the market price or the marketability of the Bonds. See the information herein under the caption "RATING."

DESCRIPTION OF THE BONDS

General

The Series 2023 Bonds are being issued in the aggregate principal amount of \$12,000,000* to provide funds for the Project. See "PURPOSE AND PLAN OF FINANCING" herein.

The Bonds will be dated the date of delivery. The Bonds will bear interest from their dated date at the rates, and will mature in the amounts and on the dates set forth on the inside cover page of this Official Statement. Interest on the Bonds will be payable semi-annually on June 1 and December 1 of each year, commencing December 1, 2023. The Bonds will bear interest from the most recent interest payment date to which interest has been fully paid or duly provided for or, if no interest has been paid, from the date of issuance. The Bonds will be issued as fully registered bonds without coupons in denominations of \$5,000 or any integral multiple thereof.

Payment - Regular Record Date

Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been

* Preliminary, subject to change

deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Optional Redemption

The Series 2023 Bonds maturing on or after June 1, 20__ are subject to prior redemption at the City's option in whole or in part at any time on and after June 1, 20__ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all Series 2023 Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner as considered appropriate and fair) for the principal amount so redeemed plus accrued interest to the redemption date. Redemption shall be made upon prior notice mailed to each registered owner of each Series 2023 Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Redemption Procedures

Notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Series 2023 Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. The City shall give notice of optional redemption of the Series 2023 Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to give such notice to the registered owner of any Series 2023 Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Series 2023 Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Series 2023 Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Series 2023 Bond is to be redeemed, the amount of such Series 2023 Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Series 2023 Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Series 2023 Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Series 2023 Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Series 2023 Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Series 2023 Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Series 2023 Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the City.

Conditional Redemption

If money or Defeasance Obligations (as defined in the Bond Ordinance) sufficient to pay the optional redemption price of the Series 2023 Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption referred to above, such notice shall state such Series 2023 Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Series 2023 Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Series 2023 Bonds called for optional redemption cannot be redeemed, the Series 2023 Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which

the original notice of optional redemption was given, that such money was not received. In that event, the Registrar shall promptly return to the Owners thereof the Series 2023 Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Registration, Transfer and Exchange of Bonds

The City shall cause books for registration, transfer, and exchange of the Bonds to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Series 2023 Bonds for redemption, or (ii) after the mailing to registered owners of notice calling such Series 2023 Bonds or portion thereof for redemption. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated in the Bond Ordinance, but such registration may be changed as provided in the Bond Ordinance. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bonds shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

Book-Entry Only System

Unless otherwise noted, the information contained under the caption "General" below has been provided by DTC. The City makes no representations as to the accuracy or the completeness of such information. The Beneficial Owners of the Bonds should confirm the following information with DTC, the Direct Participants or the Indirect Participants.

NEITHER THE CITY NOR THE FISCAL AGENT WILL HAVE RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (A) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (B) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE BONDS UNDER THE BOND ORDINANCE, (C) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE

EVENT OF A PARTIAL REDEMPTION OF THE BONDS; (D) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR INTEREST DUE WITH RESPECT TO THE OWNER OF THE BONDS; (E) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNERS OF BONDS; OR (F) ANY OTHER MATTER REGARDING DTC.

General

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for the Bonds, in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to Direct Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. The City undertakes no responsibility for and makes no representations as to the accuracy or the completeness of the content of such material contained on that website as described in the preceding sentence including, but not limited to, updates of such information or links to other Internet sites accessed through the aforementioned website.

Purchases of the Bonds under the DTC system must be made by or through Direct or Indirect Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual Underwriter of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested

Agenda Item #8.2.

by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

While the Bonds are in the book-entry only system, redemption notices will be sent to DTC. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the City or agent on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, agent, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the City. Under such circumstances, in the event that a successor depository is not obtained, certificates representing the Bonds are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates representing the Bonds will be printed and delivered to DTC.

The information in this Official Statement concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but neither the City nor the Underwriter takes any responsibility for the accuracy thereof.

Source of Payment

The Series 2023 Bonds are payable and collectible solely from an irrevocable and first lien (but not necessarily an exclusive first lien) on the Pledged SSGRT Revenues. See “PLEDGED REVENUES” herein.

All of the Bonds, together with the interest accruing thereon, shall be payable and collectible solely out of the Pledged SSGRT Revenues, which are irrevocably so pledged by the Bond Ordinance. The registered owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City.

Funds and Accounts

The Bond Ordinance creates or continues the following funds and accounts for the Bonds: (i) a Series 2023 Acquisition Fund, (ii) a Pledged State Shared Gross Receipts Tax Income Fund, (iii) a Series 2023 Debt Service Fund, and (iv) a Series 2023 Reserve Fund.

Disposition of Bond Proceeds

The proceeds from the sale of the Bonds shall be applied by the City simultaneously with the delivery of the Bonds to the Purchaser in the following manner and priority:

Expenses. An amount necessary, together with other legally available funds of the City, shall be used to pay costs of issuance of the Bonds.

Series 2023 Acquisition Fund. Proceeds derived from the sale of the Series 2023 Bonds shall be deposited promptly upon the receipt thereof in the Series 2023 Acquisition Fund. Until the Completion date, the money in the Series 2023 Acquisition Fund shall be used and paid out solely for the purpose of the Series 2023 Improvement Project in compliance with applicable law.

Series 2023 Reserve Fund or Reserve Fund Insurance Policy. No deposit of proceeds of the Bonds or other City moneys shall be required in the Series 2023 Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in the Bond Ordinance.

Project Completion. As soon as practicable, after the completion of the Project, and in any event not more than 60 days after the completion of the Project, any balance remaining in the Series 2023 Acquisition Fund (other than any amount retained by the City for any Project costs not then due and payable) shall be transferred from the Series 2023 Acquisition Fund and deposited in the Series 2023 Debt Service Fund and used by the City to pay principal and interest on the Series 2023 Bonds as same become due.

Deposit of Pledged Revenues and Flow of Funds.

A. Administration of Pledged Revenue Funds. So long as any of the Series 2023 Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

B. Debt Service Fund Payments. The following amounts shall be withdrawn from the

Agenda Item #8.2.

State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Bonds), and shall be concurrently credited to the 2023 Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2023 Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2023 Bonds then outstanding.

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Series 2023 Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2023 Bonds then outstanding.

C. Credit. In making the deposits required to be made into the 2023 Debt Service Fund, if there are any amounts then on deposit in the 2023 Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph B above shall be reduced by the amount available in such fund for such purpose.

D. Transfer of Money out of 2023 Debt Service Fund. Each payment of principal and interest becoming due on the Series 2023 Bonds shall be transferred from the 2023 Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

E. 2023 Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2023 Reserve Fund upon the issuance of the Series 2023 Bonds or anytime thereafter so long as the Pledged State Shared Gross Receipts Tax Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds. If the Pledged State Shared Gross Receipts Tax Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2023 Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months, an amount equal to the 2023 Minimum Reserve will be held in the 2023 Reserve Fund.

After funding the 2023 Reserve Fund in an amount equal to the 2023 Minimum Reserve, no additional payments need be made into the 2023 Reserve Fund so long as the moneys therein shall equal not less than the 2023 Minimum Reserve. The moneys (if any) in the 2023 Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in Paragraph F of this Section, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023 Bonds resulting from failure to deposit into the 2023 Debt Service Fund sufficient funds to pay the principal and interest as the same accrue. In the event that the funding of the 2023 Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount of the 2023 Minimum Reserve.

F. Defraying Delinquencies in the 2023 Debt Service Fund and 2023 Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2023 Debt Service Fund is insufficient to pay principal of and interest on the Series 2023 Bonds then due, then an amount shall be paid into the 2023 Debt Service Fund on such date from the 2023 Reserve Fund (if moneys are then on deposit in the 2023

Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2023 Debt Service Fund from the 2023 Reserve Fund, if any, shall be replaced in the 2023 Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2023 Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by paragraph B of this Section. If, in any month, the City shall, for any reason, fail to pay into the 2023 Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2023 Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the 2023 Bonds; provided, however, that any moneys at any time in excess of the 2023 Minimum Reserve in the 2023 Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2023 Reserve Fund shall not be invested in a manner which could cause the Series 2023 Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2023 Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2023 Reserve Fund exceeds the 2023 Minimum Reserve, all amounts in excess of the 2023 Minimum Reserve shall be transferred to the 2023 Debt Service Fund and used to pay principal of and interest on the Series 2023 Bonds.

G. Payment of Parity Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by paragraphs B, E and F of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Bonds payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the 2023 Bonds and any other outstanding Parity Bonds, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Bonds, for the payment of principal of and interest on all series of outstanding Parity Bonds and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Bonds, for the required debt service reserve fund deposits for all series of outstanding Parity Bonds.

H. Termination Upon Deposits to Maturity. No payment shall be made into the 2023 Debt Service Fund or the 2023 Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2023 Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2023 Debt Service Fund and the 2023 Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2023 Debt Service Fund and the 2023 Reserve Fund may be used as provided below.

I. Payment of Parity Subordinate Obligations. Subsequent to the payments required by paragraphs B, E, F and G of this Section, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided shall be used by the City for the payment of interest on and the principal of the Parity Subordinate Obligations now outstanding or hereafter authorized having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Series 2023 Bonds, issued and payable from the Pledged Revenues, as the same become due. Payments with respect to principal, interest and reserve funds for any such Parity Subordinate Obligations may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional Parity Subordinate Obligations.

J. Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the

City may from time to time determine.

General Administration of Funds

The funds designated above shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be invested by the City in Permitted Investments or deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in the Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by the Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys, if any, in the Series 2023 Reserve Fund shall be invested in accordance with the Bond Ordinance, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Series 2023 Reserve Fund. Moneys, if any, in the Series 2023 Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years.

(1) The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the Series 2023 Reserve Fund, value the Series 2023 Reserve Fund on the basis of the current fair market value of deposits and investments credited to the Series 2023 Reserve Fund.

(2) If, upon any valuation, the value of the Series 2023 Reserve Fund exceeds the Series 2023 Minimum Reserve, the excess amount shall be withdrawn and deposited into the Series 2023 Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged SSGRT Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

(3) At such time as the Series 2023 Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the Series 2023 Reserve Fund may be used to pay the final installments of principal and interest on the Series 2023 Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose.

(4) If the amounts described in subparagraph (3) above are used for a purpose other than payment of the Series 2023 Bonds, there shall be delivered an opinion of nationally recognized

bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State and that such use shall not result in the inclusion of interest on any Bonds in gross income of the recipient thereof for federal income tax purposes.

(5) If moneys have been withdrawn from the Series 2023 Reserve Fund and deposited into the Series 2023 Debt Service Fund to prevent a default on the Series 2023 Bonds, then the City will pay, from Pledged SSGRT Revenues, or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the Series 2023 Reserve Fund, to the Series 2023 Minimum Reserve. Such repayment shall be made as required by the Bond Ordinance.

Default, Remedies and City Duties

Each of the following events is declared in the Bond Ordinance to be an “event of default”:

(a) failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise; or

(b) failure to pay any installment of interest when the same becomes due and payable;
or

(c) if the City shall for any reason be rendered incapable of fulfilling its obligations under the Bond Ordinance; or

(d) default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in the Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs (a) and (b) above), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Series 2023 Bonds then outstanding; or

(e) the City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Upon the happening and continuance of any of the events of default described above, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Series 2023 Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under the Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Series 2023 Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of

any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Defeasance

When all principal, interest and prior redemption premium, if any, in connection with the Series 2023 Bonds have been duly paid, the pledge and lien for the payment of the Series 2023 Bonds shall be discharged and the Series 2023 Bonds shall no longer be deemed to be outstanding within the meaning of the Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations) to meet all requirements of principal, interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Amendment

The Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained in the Bond Ordinance. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of the Bond Ordinance may be amended with the written consent of the Purchaser with respect to any changes which are not inconsistent with the substantive provisions of the Bond Ordinance. In addition, the Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Series 2023 Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Series 2023 Bonds shall have the effect of permitting:

- (a) An extension of the maturity of any Bond; or
- (b) A reduction of the principal amount or interest rate of any Bond; or
- (c) The creation of a lien upon the Pledged SSGRT Revenues ranking prior to the lien or pledge created by the Bond Ordinance; or
- (d) A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or
- (e) The establishment of priorities as between Bonds issued and outstanding under the provisions of the Bond Ordinance; or
- (f) The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

SECURITY FOR THE BONDS

Pledge and Security

Subject to the uses permitted by, and the priorities set forth in the Bond Ordinance, the City will pledge and grant a security interest in the Pledged SSGRT Revenues and the amounts and securities on deposit in the Series 2023 Debt Service Fund and the Series 2023 Reserve Fund and the proceeds thereof, for the payment of principal of and interest on the Series 2023 Bonds. The Series 2023 Bonds constitute an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged SSGRT Revenues, as set forth in the Bond Ordinance.

Special Limited Obligations

All of the Bonds and all payments of principal, premium, if any, and interest thereon whether at maturity or on a redemption date, together with any interest accruing thereon, shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged SSGRT Revenues. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City. Each of the Series 2023 Bonds shall recite that it is payable and collectible solely out of the Pledged SSGRT Revenues, as set forth in the Bond Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing in the Bond Ordinance shall prevent the City from applying other funds of the City legally available therefor to the payment of the Bonds, in its sole discretion.

PURPOSE AND PLAN OF FINANCING

Purpose

The net proceeds received by the City from the sale of the Series 2023 Bonds, together with other available funds of the City, will be used to provide funds for the construction of Road/Facility Improvements. See "THE PROJECT" herein.

Sources and Uses of Funds

The sources and uses for the Series 2023 Bonds are as follows:

SOURCES OF FUNDS	
Par Amount of Series 2023 Bonds	\$
[Net] Premium	
TOTAL SOURCES	\$
USES OF FUNDS	
Deposit to Series 2023 Acquisition Fund	\$
Costs of Issuance for Series 2023 Bonds ⁽¹⁾	
Underwriter's Discount	
TOTAL USES	\$

(1) Includes financial advisor fees, legal fees, and other miscellaneous costs and contingencies.

ANNUAL DEBT SERVICE SUMMARY

The following table sets forth for each fiscal year from 2023 through 2040 the amounts required in each such fiscal year to pay scheduled annual debt service on the Series 2023 Bonds, outstanding Parity SSGRT Obligations, outstanding Subordinate Bonds, as well as the debt service coverage ratio, based on fiscal year 2022 Pledged SSGRT Revenues of \$42,380,074 and the Hold Harmless Distributions associated with the Pledged SSGRT Revenues of \$3,515,419.

Series 2023 Bonds Debt Service/Coverage*

Fiscal Year Ending June 30	Debt Service on Outstanding Parity Obligations	Debt Service on Outstanding Subordinate Lien Obligations	Estimated Debt Service on 2023 Bonds*	Total Debt Service*	Estimated Pledged SSGRT Revenues ⁽¹⁾	Debt Service Coverage ^{*(1)}	Combined Senior and Subordinate Bonds Coverage ^{*(1)}	% of Estimated FY 2022 Hold Harmless Distribution
2023	\$6,454,133	\$2,331,722		\$8,785,855	\$44,102,629	6.83	5.02	49%
2024	5,146,694	2,511,510	\$1,825,000	9,483,203	43,856,550	6.29	4.62	42%
2025	5,048,144	2,516,723	1,921,250	9,486,116	43,610,471	6.26	4.60	35%
2026	4,703,094	2,539,210	2,262,000	9,504,304	43,364,391	6.23	4.56	28%
2027	3,973,094	2,552,484	1,217,250	7,742,827	43,118,312	8.31	5.57	21%
2028	3,913,706	2,581,532	1,175,250	7,670,488	42,872,233	8.42	5.59	14%
2029	3,881,506	2,594,626	1,133,250	7,609,382	42,626,153	8.50	5.60	7%
2030	3,195,256	2,619,010	1,091,250	6,905,516	42,380,074	9.89	6.14	0%
2031	3,155,606	2,638,940	1,049,250	6,843,796	42,380,074	10.08	6.19	0%
2032	2,828,956	1,849,564	1,007,250	5,685,770	42,380,074	11.05	7.45	0%
2033	2,329,556	1,870,902	965,250	5,165,708	42,380,074	12.86	8.20	0%
2034	2,331,706	1,353,968	923,250	4,608,924	42,380,074	13.02	9.20	0%
2035	2,331,406	1,377,531	866,250	4,575,187	42,380,074	13.25	9.26	0%
2036	1,108,656	627,250		1,735,906	42,380,074	38.23	24.41	0%
2037	1,110,056	646,500		1,756,556	42,380,074	38.18	24.13	0%
2038	1,109,856	668,500		1,778,356	42,380,074	38.19	23.83	0%
2039	1,108,056	690,200		1,798,256	42,380,074	38.25	23.57	0%
2040		710,700		710,700	42,380,074		59.63	0%
TOTAL:	\$53,729,483⁽²⁾	\$32,680,869	\$15,436,500	\$101,846,852				

(1) Estimated Pledged SSGRT Revenues are based on actual unaudited Pledged SSGRT Revenues including Hold Harmless Distributions associated with the Pledged SSGRT Revenues received by the City for Fiscal Year ending June 30, 2022, reported by the New Mexico Taxation and Revenue Department's monthly reports. The decline in Estimated Pledged SSGRT Revenues shown for Fiscal Years 2023 through 2030 reflects the statutory phase-out of Hold Harmless Distributions that began in fiscal year 2016 and culminates in Fiscal Year 2030, when the Hold Harmless Distributions are eliminated. There is no assurance that Pledged SSGRT Revenues received in the future will equal the Pledged SSGRT Revenues used in coverage computations. See "Gross Receipts Tax Hold Harmless Distributions" and "PLEDGED REVENUES-- State Shared Gross Receipts Tax Report" herein.

(2) Column total may not foot due to rounding.

* Preliminary, subject to change.

PLEDGED REVENUES

Pledged SSGRT Revenues means the revenues distributed to the City from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Bond Ordinance; and provided further that the amount of revenues pledged pursuant to the Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance (the term “Pledged State Shared Gross Receipts Tax Revenues” does not include any local option gross receipts tax income received by the City).

Pursuant to the Gross Receipts and Compensating Tax Act (Sections 7-9-1 through 7-9-120 NMSA 1978, as amended), the State imposes a State gross receipts tax (the “State GRT”) for the privilege of engaging in business in the State which is collected and administered by the New Mexico Taxation and Revenue Department (the “Department”). The current rate of imposition of the State GRT is 5.000%. Pursuant to legislation enacted by the State legislature in 2022, the rate of State GRT was reduced from 5.125% to 5.000% effective July 1, 2022, and, beginning July 1, 2023, the rate will be reduced to 4.875%. If, for any single fiscal year occurring after fiscal year 2025 and prior to fiscal year 2030, State GRT revenues are less than ninety-five percent of the gross receipts tax revenues for the previous fiscal year, as determined by the New Mexico Secretary of Finance and Administration, the rate of the gross receipts tax will revert to 5.125% beginning on the July 1 following the determination made by the Secretary of Finance and Administration.

The Revenue Division of the Department remits monthly to municipalities, including the City, an amount equal to the product of the quotient of 1.225% divided by the State GRT rate multiplied by the net receipts (total amount paid by taxpayers less any refunds disbursed), less applicable deductions and disbursements, except net receipts attributable to a nonprofit hospital licensed by the department of health, for the month attributable to the gross receipts tax from business locations, including but not limited to, (i) within the municipality, (ii) on land owned the municipality but outside its boundaries, and (iii) on certain Indian lands contiguous to the municipality in which the municipality performs contractual services that are substantially similar to services performed by the municipality for itself within its boundaries. The foregoing is a summary of relevant portions of the statute, and is not intended to be a complete or verbatim description thereof.

In the Bond Ordinance, “Hold Harmless Distribution” is defined as the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year beginning on July 1, 2015 until the distribution is eliminated after July 1, 2029. See “Gross Receipts Tax Hold Harmless Distributions” herein.

Taxed Activities. For the privilege of engaging in business in the State of New Mexico, the State Gross Receipts Tax is imposed upon any person engaging in business in the State. “Gross Receipts” is defined in the Gross Receipts and Compensating Tax Act as the total amount of money or value or other consideration received from selling property in the State of New Mexico (including tangible personal property handled on consignment in the State), from leasing property employed in the State of New Mexico, from performing services in the State of New Mexico and from selling services outside New Mexico, the product of which is initially used in New Mexico. The definition excludes cash discounts allowed and taken, the State Gross

Agenda Item #8.2.

Receipts Tax payable on transactions for the reporting period and any county sales tax, county fire protection excise tax, county and municipal gross receipts taxes, any type of time-price differential and certain gross receipts or sales taxes imposed by an Indian tribe or pueblo. Unlike most other states, the State taxes sales of services, including legal services and certain medical services.

Effective July 1, 2019, remote (Internet) sellers with total taxable gross receipts of at least \$100,000 from sales, leases, and licenses of tangible personal property sourced to New Mexico customers in the previous calendar year are required under state laws to start collecting and paying State gross receipts tax on their New Mexico transactions. Effective July 1, 2021, the State changed its gross receipts tax sourcing rules from point-of-origin based sourcing to destination-based sourcing for most categories of gross receipt, allowing for the imposition of local taxes on remote sellers. A person (defined to include individuals, corporations, companies, firms, partnerships, limited liability companies, and other entities) is considered to be “engaging in business” in New Mexico and thus have substantial economic nexus with the State if such person has physical presence in the State or had “total taxable gross receipts from sales, leases and licenses of tangible personal property, sales of licenses and sales of services and licenses for use of real property sourced to New Mexico of at least \$100,000 in the previous calendar year. The business location for reporting gross receipts from the performance or sale of professional services performed outside New Mexico when the product of the service is initially used in New Mexico is the location of the professional service provider or seller.

Exemptions and Deductions. Some activities and industries are exempt from the State Gross Receipts Tax many by virtue of their taxation under other laws. Exemptions include but are not limited to receipts of governmental agencies and certain organizations (some of which are taxable by the State, with no local distribution), receipts from the sale of vehicles, occasional sales of property or services, wages, certain agricultural products, dividends and interest and receipts from the sale of or leasing of natural gas, oil or mineral interests. Various deductions are also allowed, including, but not limited to, receipts from the sale or lease of real property, receipts from various types of sales or leases of tangible personal property or services, receipts from sales to governmental agencies or certain organizations, receipts from processing certain agricultural products, receipts from certain publication sales, certain receipts from interstate commerce transactions and receipts from the sale of certain food and certain medical services. See “Imposition of State Gross Receipts Tax” under this caption. In spite of the numerous specified exemptions and deductions from gross receipts taxation, the general presumption is that all receipts of a person engaging in business in the State and the City are subject to the Gross Receipts Tax.

Legislative Changes. Revisions to laws of the State affecting taxed activities and distributions of gross receipts tax revenues could be adopted in the future by the State Legislature. Proposals affecting taxed activities and distributions are frequently considered by the State Legislature. There is no assurance that any future revisions to State laws will not adversely affect activities now subject to the gross receipts tax or distribution of gross receipts tax revenues to the City. See “SPECIAL FACTORS RELATING TO THE BONDS – Legislative Changes” herein.

Manner of Collection and Distribution of State Gross Receipts Tax. Businesses must make their payments of State Gross Receipts Taxes on or before the twenty-fifth of each month for taxable events in the prior month. Collection of the State Gross Receipts Tax is administered by the Revenue Division of the Department (the “Revenue Division”), pursuant to Section 7-1-6 NMSA 1978. Collections are first deposited into a suspense fund for the purpose of making disbursements for refunds, among other items. On the last day of each month, the balance of the suspense fund is transferred to the State general fund, less the following disbursements to the municipalities in the State. The Revenue Division remits monthly to municipalities, including the City, an amount equal to the product of the quotient of 1.225% divided by the tax rate times the net receipts (total amount paid by taxpayers less any refunds disbursed), less applicable deductions and disbursements, attributable to the gross receipts of businesses located in the municipality and other designated areas.

Agenda Item #8.2.

Remedies for Delinquent Taxes. The Revenue Division may assess State Gross Receipts Taxes to a taxpayer who has not paid the taxes due to the State. If any taxpayer to whom State Gross Receipts Taxes have been assessed or upon whom demand for payment has been made does not make payment thereof (or protest the assessment or demand for payment) within ninety (90) days after the date of assessment or demand for payment of the undisputed amount, the taxpayer becomes a delinquent taxpayer. Such taxpayer remains delinquent until payment of all the taxes due, including interest and penalties, or until security is furnished for the payment thereof. The Revenue Division may, under certain circumstances, enter into an agreement with a delinquent taxpayer to permit monthly installment payments for a period of not more than seventy-two (72) months. Interest is due on any delinquent taxes from the first day following the day on which it is due at a variable rate based on the applicable federal underpayment rate under the Internal Revenue Code Section 6621, as determined from time to time, computed on a daily basis until paid, without regard to any installment agreement. However, if the State Gross Receipts Tax is paid within ten (10) days after demand is made, no interest shall be imposed for the period after the date of demand.

The Revenue Division may levy upon all property or rights to property of a delinquent taxpayer and sell the same in order to collect the delinquent tax. The amount of delinquent State Gross Receipts Taxes is also a lien in favor of the State upon all property and rights to property of the delinquent taxpayer, which lien may be foreclosed as provided by State statutes.

State Shared Gross Receipts Tax Report. Set forth below is a 5-year history of the State Shared Gross Receipts Tax Revenues received by the City:

Fiscal Year Ended 6/30	State Gross Receipts Tax Rate ⁽¹⁾	Percentage Distributed to City	State Shared Gross Receipts Tax Revenues ⁽²⁾	Percent Increase (Decrease)
2022	5.125%	1.225%	\$45,895,493	14.34% ⁽³⁾
2021	5.125%	1.225%	40,140,415	2.78%
2020	5.125%	1.225%	39,055,920	5.26%
2019	5.125%	1.225%	37,104,958	(0.66%)
2018	5.125%	1.225%	37,353,341	4.04%

(1) Pursuant legislation enacted by the State legislature in 2022, the rate of State GRT was reduced from 5.125% to 5.000% effective July 1, 2022, and, beginning July 1, 2023, the rate will be reduced to 4.875%.

(2) Figures are net of administrative fee imposed by the New Mexico Taxation and Revenue Department. Figures do not include other gross receipts taxes imposed by the City, but do include the share of Hold Harmless Distributions attributable to the State Shared Gross Receipts Tax. While the share of Hold Harmless Distributions attributable to the State Shared Gross Receipts tax are included in Pledged Revenues, the Hold Harmless Distributions will be phased out over a 15-year period, which began July 1, 2015. See "Gross Receipts Tax Hold Harmless Distributions" herein.

(3) While it is difficult to determine all of the factors contributing to the higher growth in Pledged SSGRT Revenues for fiscal year 2022, the City attributes a portion of the increase to (1) the settlement of a 2018 lawsuit brought by over 40 cities and counties, including the City of Las Cruces, against the State of New Mexico regarding the distribution of gross receipts tax revenues and (2) the change in sourcing rules for the imposition of gross receipts tax that became effective July 1, 2021. See SPECIAL FACTORS RELATING TO THE BONDS – Pledged Revenue Collections Subject to Fluctuation."

Source: New Mexico Department of Finance and Administration, Local Government Division and City of Las Cruces

Agenda Item #8.2.

Other Gross Receipts Taxes (not pledged)

Pledged Revenues consist of the 1.225% State Shared Gross Receipts Tax Revenues. The City also imposes certain other gross receipts taxes which are not pledged to the repayment of the Bonds. These include five 0.25% increments of Municipal Gross Receipts Tax (1.25% total), a 0.25% Municipal Infrastructure Gross Receipts Tax, a 0.0625% Municipal Environmental Services Gross Receipts Tax and a 0.375% Municipal Hold Harmless Gross Receipts Tax. The total gross receipts tax rate within the City is currently 8.1875% (reflecting the combined State (5.00%), County (1.25%) and City (1.9375%) gross receipts tax rates).

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Agenda Item #8.2.

Gross Receipts Reported by Standard Industrial Classification

The following represents total taxable gross receipts reported in the City by Standard Industrial Classification:
Total Taxable Gross Receipts

Classification	Fiscal Year Ended June 30				
	2018	2019	2020	2021	2022
Agriculture, Forestry, Fishing & Hunting	\$3,174,576	\$3,689,321	\$11,539,560	\$14,063,463	\$4,539,764
Mining/Oil & Gas Extraction	28,541	19,702	3,140	97,003	254,313
Utilities	80,734,189	74,841,089	74,772,780	82,629,930	78,380,874
Construction	265,167,169	253,486,081	397,632,760	323,325,866	301,852,199
Manufacturing	36,515,799	38,301,336	46,701,580	55,495,485	46,864,904
Wholesale Trade	45,713,517	47,935,312	56,344,403	69,445,982	89,627,095
Retail Trade	852,247,674	892,876,181	969,449,933	1,127,400,244	1,076,150,174
Transportation & Warehousing	17,703,166	16,131,527	18,058,918	21,001,302	6,354,248
Information & Cultural Industries	145,835,722	145,492,700	147,897,499	79,078,416	100,575,191
Finance and Insurance	49,270,395	25,192,635	27,679,737	33,718,860	28,793,390
Real Estate, Rental & Leasing	42,020,852	41,547,304	60,168,547	67,163,195	61,469,248
Professional, Scientific & Technical Services	164,855,753	206,064,221	170,666,140	183,600,586	196,254,870
Management of Companies & Enterprises	4,605,162	4,510,433	4,730,288	4,271,299	2,591,948
Admin & Support, Waste Services	39,887,622	46,617,914	51,035,559	64,754,839	61,140,234
Educational Services	5,611,429	9,392,237	14,125,498	14,688,499	7,907,661
Health Care and Social Assistance	483,001,158	465,556,214	522,341,574	580,109,531	483,899,707
Arts, Entertainment & Recreation	14,055,408	13,966,144	14,698,775	14,483,704	11,862,650
Accommodation & Food Services	268,647,846	290,400,910	296,667,818	297,755,417	297,318,132
Other Services (except Public Admin)	192,646,698	196,442,924	217,697,633	218,778,237	192,804,851
Public Administration	15,052,465	14,855,345	13,047,168	16,686,982	22,162,043
Unclassified	10,173,737	19,056,051	10,005,779	7,147,366	40,174,420
TOTAL TAXABLE	<u>2,736,948,878</u>	<u>\$2,806,375,581</u>	<u>\$3,125,265,089</u>	<u>\$3,277,017,067</u>	<u>\$3,114,638,217</u>

Source: New Mexico Taxation and Revenue Department (RP-80 by Business Activity Months)

Historical Total Gross Receipts Reported For the City

The following represents the total gross receipts and total retail gross receipts reported in the City and the State. Total gross receipts and total taxable gross receipts reported in the tables below include amounts representing the sale of items which may not be subject to Gross Receipts Tax. See “PLEDGED REVENUES – Taxed Activities” and “PLEDGED REVENUES – Exemptions” herein for an explanation of activities which are subject to, or exempt from, Gross Receipts Tax.

Fiscal Year (ending 6/30)	City of Las Cruces		State of New Mexico	
	Retail Trade	Total	Retail Trade	Total
2022	\$1,989,543,196	\$5,989,217,424	\$30,631,436,359	\$139,916,372,389
2021	2,049,401,393	7,025,130,187	32,763,338,511	144,660,114,721
2020	1,763,315,484	6,547,544,892	30,744,989,884	147,485,848,215
2019	1,683,842,897	6,241,908,629	28,911,739,542	165,147,432,808
2018	1,635,661,655	5,575,539,940	26,770,655,797	114,662,938,781

Source: New Mexico Taxation & Revenue Department (RP-80 by Business Activity Months)

Historical Taxable Gross Receipts Reported For the City

Fiscal Year (ending 6/30)	Taxable Gross Receipts Reported in City of Las Cruces	Taxable Gross Receipts Reported in State of New Mexico
2022	\$3,144,638,217	\$72,895,961,670
2021	3,277,017,067	73,760,062,595
2020	3,125,267,880	80,200,008,306
2019	2,806,375,582	87,734,491,754
2018	2,736,949,602	57,971,834,977

Source: New Mexico Taxation and Revenue Department. (RP-80 by Business Activity Months)

ADDITIONAL OBLIGATIONS PAYABLE FROM PLEDGED REVENUES

Parity Obligations

Parity Bonds Test. The Bond Ordinance does not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Bonds. Before any additional Parity Bonds are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in the 2023 Debt Service Fund and the 2023 the Reserve Fund (if any accumulation is then required in the Series 2023 Reserve Fund), in accordance with the Bond Ordinance; and

(2) The Pledged SSGRT Revenues (not including the Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 200% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Bonds, (2) other outstanding Parity Bonds payable from and constituting a lien upon the Pledged Revenues, and (3) the Parity Bonds proposed to be issued.

Agenda Item #8.2.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Bonds, (a) any amount of the reserve fund requirement for the additional Parity Bonds is immediately deposited in or credited to the reserve fund for the additional Parity Bonds or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Bonds is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Bonds, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Bonds or any issue of outstanding Parity Bonds for which such reserve fund was created.

So long as the Build America Mutual Assurance Company (“BAM”) municipal bond insurance policy for the 2016 Subordinate Bonds shall be in force and effect or any amounts are owed to BAM related to the 2016 Subordinate Bonds, and in addition to requirements set forth above, before any additional Parity Bonds are issued, it must be determined that the Pledged SSGRT Revenues (not including the Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Bonds, (2) the outstanding 2016 Subordinate Bonds, (3) other outstanding Parity Subordinate Bonds, and (4) the Parity Bonds proposed to be issued. Compliance with the foregoing requirement shall be evidenced by a certificate delivered in accordance with the Bond Ordinance.

Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or Financial Services Director, that the Pledged SSGRT Revenues (not including the Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A immediately above, shall conclusively determine the right of the City to issue additional Parity Bonds. The Independent Accountant, City Treasurer or Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

Subordinated and Superior Obligations. Nothing in the Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged SSGRT Revenues with a lien on any of the Pledged SSGRT Revenues subordinate to the lien of the Bonds and on a parity with the Parity Subordinate Obligations in accordance with the requirements set forth in the ordinances authorizing the outstanding Parity Subordinate Obligations.

The City shall not issue any obligation having a lien on any of the Pledged SSGRT Revenues which is prior and superior to the lien thereon of the Bonds.

Refunding Bonds

The provisions of the Bond Ordinance described above are subject to the following exceptions:

Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding obligations constituting a lien upon the Pledged SSGRT Revenues, the Bonds or other obligations, or any part thereof, such obligations may be refunded, but only with the consent of the holders, unless the obligations shall then mature or be callable for redemption, or the plan of refunding calls for payment of the obligations at maturity or at a redemption date, regardless of whether the lien priority is changed by the refunding except that superior obligations are prohibited as provided in the Bond Ordinance and except as provided below.

Limitation Upon Issuance of Parity Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged SSGRT Revenues on parity with the lien of the Series 2023 Bonds, unless:

Agenda Item #8.2.

(1) The lien on the Pledged SSGRT Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged SSGRT Revenues of the Series 2023 Bonds; or

(2) The refunding obligations are issued in compliance with the requirements described above under “State Shared Gross Receipts Tax Parity Obligations.”

Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

(1) The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded; or

(3) The refunding bonds or other refunding obligations are issued in compliance with the requirements of the Bond Ordinance described above under “Parity Obligations -- *Parity Bonds Test.*”

Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged SSGRT Revenues, shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated above, but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Bonds.

CITY COVENANTS IN THE BOND ORDINANCE

The City has covenanted in the Bond Ordinance, among other things:

Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds as set forth in the Bond Ordinance.

Payment of Bonds. The City will promptly pay the principal of and the interest on every Bond at the place, on the date and in the manner specified in the Bond Ordinance and in the Bonds according to the true intent and meaning of the Bond Ordinance.

City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any owner of the Bonds.

Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

Agenda Item #8.2.

Audits and Budgets. The City will, within two hundred seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

Other Liens. Other than as described and identified by the Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged SSGRT Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to the Bond Ordinance.

Debt Service Funds and Reserve Funds. The Debt Service Fund and Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in the Bond Ordinance.

Surety Bonds. Each municipal official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of such funds.

Performing Duties. The City will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds.

Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. In furtherance of the covenants set forth above, the City established a fund separate from any other funds established and maintained under the Bond Ordinance designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds, and amounts credited to the Rebate fund shall be free and clear under any pledge under the Bond Ordinance.

Continuing Disclosure Undertaking. The officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Notwithstanding any other provisions of the Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default", and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

THE CITY

General

The Las Cruces/Doña Ana County area borders Texas and Mexico and has a rich and colorful history, ranging from 16th century Spanish explorations to the landing of the space shuttle. Las Cruces is the second largest city in the State and is the commercial service and cultural center of southern New Mexico. The City of Las Cruces is located approximately 45 miles north of El Paso, Texas and Ciudad Juárez, Mexico and 225 miles south of Albuquerque, New Mexico.

The economy of the Las Cruces MSA (Metropolitan Statistical Area) is diversified with the major employers being government which accounted for approximately 20,800 jobs as of November 2022. The remaining non-agricultural jobs are in education and health services (17,400), trade/ transportation/ utilities (11,400), leisure and hospitality (9,000), retail trade (7,300), professional and business services (7,200), natural resources, mining and construction (4,000), manufacturing (3,100), transportation and warehousing (2,600), financial activities (2,200), wholesale trade (1,500) information (600), and all other services (1,500).

Growth in the economy is demonstrated in the growth of gross receipts from retail trade, assessed valuation, building permits, housing prices, and median household income.

Government

The City was founded in 1849 and incorporated in 1907 and operates under a home rule charter with a Council-Manager form of government. Nonpartisan elections are held for members of the City Council of the City (the “Council”) for the election of councilors from six single-member districts and for a Mayor to be nominated and elected at large by the resident and qualified voters of the City.

Councilors and the Mayor are elected for staggered four year terms. The Mayor and the Council and the date of expiration of their current terms are as follows:

<u>Name</u>	<u>Office</u>	<u>Current Term Expires</u>
Ken Miyagishima	Mayor	December 31, 2023
Kasandra Gandara	Councilor – District 1	December 31, 2023
Tessa Abeyta	Councilor – District 2	December 31, 2023
Becki Graham	Councilor – District 3	December 31, 2025
Johana Bencomo	Councilor – District 4	December 31, 2023
Becky Corran	Councilor – District 5	December 31, 2025
Yvonne M. Flores	Councilor – District 6	December 31, 2025

Administrative Officers

City Manager Ifo Pili began his duties as Las Cruces City Manager in September 2020. Before coming to Las Cruces, Mr. Pili was the city administrator in Eagle Mountain City, Utah since 2012. He also served as Eagle Mountain City’s assistant city administrator and economic development coordinator for six years before becoming city administrator. He also was the district administrator for the Unified Fire Service Area, which served 11 Utah municipalities and unincorporated Salt Lake County. Mr. Pili was also an adjunct professor in the Master of Public Administration program at Brigham Young University, teaching local government management. He earned a Bachelor of Science degree in political science and a Master of Public Administration degree from BYU.

Agenda Item #8.2.

Finance Director of Financial Services Leeann DeMouche joined the City of Las Cruces in 2011 with an extensive analytical background in economics and project management. Ms. DeMouche spent ten years with New Mexico State University as the Water Resource Specialist. In 2011, she began her career with the City as the Water Conservation Coordinator. In 2013 she was promoted as the Rate and Economic Analyst Manager, 2015 Fleet Administrator, 2018 Chief Budget Officer, and 2021 Finance Director. Ms. DeMouche is a graduate of New Mexico State University with a BA and MA in Economics.

City Treasurer Erika Jaquez, MBA, as the Treasurer for the City of Las Cruces, has responsibility for management and direction of treasury operations including short-term investment portfolio management, long and short term debt issuance, operational budgeting, bank relationship management and credit card processing. She started with the City in October 2011 and has held various positions in finance, public works, and internal audit. Ms. Jaquez earned her Master of Business Administration and Master of Accountancy from New Mexico State University.

City Clerk Christine Rivera Christine Rivera has been with the City of Las Cruces since 2012, was appointed interim city clerk in October of 2019, and became city clerk in August 2020. She received her Certified Municipal Clerk designation in 2016. She earned her Bachelors in Psychology from Louisiana College in 2001 and her Masters in Psychology from Capella University in 2016.

Acting City Attorney Jocelyn A. Garrison Ms. Garrison has been with the City of Las Cruces since 2018. She has served as an assistant city attorney and acting deputy city attorney while at the City of Las Cruces. Prior to joining the City, she was an attorney at the Law Office of the Public Defenders. She earned her law degree from the University of New Mexico of Law in 2009 and Bachelor of Arts degree in criminal justice and government from New Mexico State University.

Other Employees

As of June 30, 2022, the City had approximately 1,670 full time, part time and seasonal employees, approximately 444 of which are represented by labor unions. The City believes that relations with its employees are good.

Retirement Plan

The City participates in a pension plan organized on a statewide basis and operated by the State of New Mexico. The Public Employees' Retirement Association of New Mexico (the Plan"), established by Chapter 167, Laws of 1947, New Mexico Statutes Annotated, 1978 Compilation, as amended, requires contributions, computed as a percentage of salary, from both employee and employer for all full-time employees. The majority of State and municipal employees in New Mexico participate in the Plan. The Plan requires contributions by the City and by employees at rates established by statute.

In addition to retirement benefits, the Plan provides disability benefits, surviving spouse and children's benefits, deferred benefits option and cost of living adjustments for all eligible participants. Employer contributions to the pension plan amounted to \$9,068,107 for the fiscal year ended June 30, 2022. The City's liability under the Plan is limited to the periodic employer contributions, that it is required to make for its participating employees. Future deficits of the Plan are expected to be financed by the State.

On June 25, 2012, the Governmental Accounting Standards Board approved Statement No. 68 which requires governments providing defined benefit pensions to recognize their long-term obligation for pension benefits as a liability for the first time, and to more comprehensively and comparably measure the annual costs of pension benefits. Statement No. 68 requires cost-sharing employers, such as the City, to record a liability and expense equal to their proportionate share of the collective net pension liability and expense for the cost-sharing plan. Statement No. 68 was effective for fiscal years beginning after June 15, 2014.

Agenda Item #8.2.

The City offers other post-employment benefits through the Retiree Health Care Fund, a cost-sharing multiple employer defined benefit plan administered by the New Mexico Retiree Healthcare Authority. This plan is used to provide post-employment health insurance benefits for eligible employees and their dependents. The contribution requirements are established by and may be amended by the statute. The City's contribution to the fund for Fiscal Year 2022 was \$1,625,695. For additional information regarding the post-employment benefit plan, please refer to Note 11 to the City's audited financial statements.

City Budgets

The City adheres to the following procedure in establishing its annual budget: the City Staff prepares a budget which is forwarded to the City Council prior to May 1 for the fiscal year commencing the following July 1; public input is sought by the City Council during the month of May through public hearings; the budget is approved by the City Council and forwarded for approval to the State of New Mexico, Local Government Division of the Department of Finance and Administration; the final budget is returned to the City with recommended changes and modifications; and the final budget is acknowledged by the City Council.

The operating budget includes proposed expenditures and the means of financing them.

The City Manager is authorized to transfer budgeted amounts that are within a designated organizational unit, are within the same fund and do not increase spending for any fund. The City Manager must obtain approval of the City Council and the State prior to making revisions that alter the total expenditures of any fund. As a management control device, the City employs formal budgetary integration at the line item level.

Deficit financing is not permitted under New Mexico law. The level of classification detail at which expenditure may not legally exceed appropriation for each budget item is the fund level (i.e., General, Water, Sewer, etc.).

City Strategic Plan

The City Council adopted a new strategic plan for 2021 through 2026. The strategic plan is a mid-term planning tool used by the City Council, City Management, and Staff to identify community priorities and budget accordingly.

The strategic plan is organized into six themes and related objectives:

- Community Prosperity
 - Expanded housing options for all income levels
 - Enhanced economic diversity and business strength
- Education and community services
 - Enhanced physical and mental resources
 - Improved access to healthy food options
- Environmental sustainability
 - Achieve the goals included in the climate action plan adopted in 2020
 - Promote balanced growth
- Capital improvements and infrastructure

Agenda Item #8.2.

- o Quality infrastructure that meets the community's needs
 - o Expanded transit access and options, including pedestrian and bicycle improved road and pavement conditions
- Communication, involvement, and follow-up
 - o Robust communication channels with residents between City departments
 - o Timely and consistent follow-up by City staff to residents and the public
- Public safety
 - o A more humane criminal justice system
 - o A safe and secure community

Each theme in the strategic plan contains several goals for a total of 55 goals. The majority of these goals were developed during the two-year planning for Elevate Las Cruces, the City's comprehensive plan. In addition to these, the City Council identified nine council goals, also to be prioritized in the short-to-mid-term planning horizon. Performance measures were developed by staff during the update of department strategic business plans.

Industry

A combination of a well-educated labor force, favorable tax rates and a high quality of living has attracted industry to Las Cruces. The blend of industries contributing to the diversification of the City's economy include: TMC Design (DOD contractor); Pony Carburetor (manufacturer); White Sands Missile Range (U.S. Army, private industry testing facility), Mountain View Medical Center (hospital), NASA LBJ Test Facility (rocket testing), Sapphire Energy (alternative energy production); Wal-Mart (retail); Tresco, Inc. (sheltered employment); VMC (technical support/communication); F&A Dairy Products (cheese manufacturer); and NMSU Physical Science Laboratory.

Education

The Las Cruces School District No. 2 (the "District") is the second largest in the State, with an enrollment of approximately 23,711 students for school year 2022-2023. The district has 40 schools: 24 elementary schools (grades pre-K-5), one combined elementary and middle school (K-8), 8 middle schools (grades 6-8), 7 high schools (grades 9-12). Two of the seven high schools are early college high schools and are located on the campus of New Mexico State University. The District also has a virtual learning academy serving elementary through high school students.

New Mexico State University

New Mexico State University (the "University"), was originally founded in 1888, and in 1889 was established as a land grant college. The University consists of its main campus in the City, with branch campuses located in Alamogordo, Grants, Doña Ana and a satellite learning center in Albuquerque. The University had enrollment of 22,799 students across all campuses, and its Las Cruces Campus had a Fall 2022 enrollment (full-time equivalent) of 14,268 full time undergraduate and graduate students. 29 doctoral programs, 68 master's degree programs, and 97 undergraduate degree programs, 24 graduate certificate programs, and one education specialist program are available in the University's 6 colleges (Agriculture, Consumer and Environmental Sciences; Arts and Sciences; Business; Engineering; Health, Education and Social Transformation; and Honors) and the Graduate School.

The University's main campus encompasses approximately 900 acres and consists of more than 211 academic, research, and auxiliary buildings, and over 400 housing buildings. As of September 15, 2022 the University employed 1,581 faculty members (of which 1,041 are located on the Las Cruces

Agenda Item #8.2.

campus) and 2,659 staff (of which 2,317 are located on campus in Las Cruces). The University’s largest single research operation is the Physical Science Laboratory. Research for engineering, space technology, and farm production and related industries are also conducted by various University departments. The University is classified as an R2 Doctoral/Research institution as rated by the Carnegie Foundation. The University anchors the southern end of New Mexico’s Rio Grande Research Corridor. The statewide Water Resources Research Institute is situated at the University and studies the State’s water supply and demands, conservation and use, as well as ecological and other aspects thereof.

The Doña Ana Community College, affiliated with the University and the area’s occupational training school, offers approximately 6,666 students a variety of programs designed to train students for meaningful employment. The program is designed to be flexible and can be programmed to meet the specific training needs of employers.

Agriculture

Many private and commercial farms are located in Doña Ana County. Principal crops include cotton, pecans, alfalfa, onions, lettuce, chile, barley, nursery stock, and feed grains. Water for the various agricultural operations is provided by surface water diverted from the Rio Grande River and approximately 900 irrigation wells. The area’s growing season averages about 200 days each year. The livestock, dairy cattle, Stahmann Farms (2,000 irrigated acres), and the poultry industry also provide a significant portion of agricultural income. Several chile processing plants are located in the area with seasonal employment growing to nearly 1,000.

Transportation

Historically a crossroads of the Southwest, Las Cruces is serviced by Interstate Highways I-10 (east-west) and I-25 (north-south). In addition, the City is served by five major U.S. highways and seven State highways. More than 20 interstate, regional, and local motor carriers serve Las Cruces; four of them operate terminals in the area.

Commuter air service and corporate and general aviation service is available at the City’s international airport. Major scheduled airline service is provided by El Paso International Airport, approximately 50 miles from Las Cruces.

Daily rail service, with piggyback and container service, is provided by the Santa Fe and Southern Pacific railroads.

Labor Force and Percent Unemployed

The following table, derived from information supplied by the New Mexico Department of Workforce Solutions, presents information on employment within the Las Cruces MSA (Doña Ana County), the State and the United States, for the periods indicated. Unless otherwise noted, the annual unemployment figures indicate average rates for the entire year and do not reflect monthly or seasonal trends.

Employment Information

	Las Cruces MSA (Doña Ana County)		State of New Mexico		United States
Year ⁽¹⁾	Labor Force	Percent Unemployed	Labor Force	Percent Unemployed	Percent Unemployed
2022 ⁽²⁾	100,078	5.30%	950,595	5.00%	3.60%
2021	98,170	6.60%	943,356	6.80%	5.40%
2020	97,153	8.30%	927,685	9.00%	8.90%
2019	99,907	5.20%	954,596	4.90%	3.70%
2018	96,769	5.70%	934,178	5.80%	4.40%
2017	94,943	6.20%	929,567	6.20%	4.40%
2016	95,001	7.20%	928,732	6.70%	4.90%
2015	93,179	7.40%	927,999	6.50%	5.30%
2014	92,462	6.50%	927,142	6.70%	6.20%
2013	92,219	6.90%	923,899	6.90%	7.40%

(1) Figures are annual averages.

(2) Data for June, 2022; figures are preliminary.

Source: U.S. Bureau of Labor Statistics, August 2022

Covered Wage and Salary Employment by NAICS Code Classification

The following is a history of wage and salary employment for Doña Ana County. The New Mexico Department of Workforce Solutions publishes quarterly reports of covered employment and wages. Beginning with 2001 data, employment was classified according to the new North American Industry Classification System (NAICS).

Average Annual Covered Wage and Salary Employment, By Major Industrial Sector Non-Agricultural Employment –Doña Ana County Annual Average⁽¹⁾

Sector	2018	2019	2020	2021	2022 ⁽²⁾
Grand Total	73,768	72,891	69,490	71,175	73,987
Total Private	55,878	55,850	52,657	54,325	56,185
Accommodation and Food Services	7,321	7,498	6,151	6,947	7,773
Administrative and Waste Services	4,669	3,760	2,960	3,236	3,292
Agriculture, Forestry, Fishing & Hunting	2,904	2,866	2,628	2,433	2,390
Arts, Entertainment, and Recreation	928	934	585	576	945
Construction	3,593	3,706	3,724	3,809	3,940
Educational Services	694	704	701	751	**
Finance and Insurance	1,685	1,657	1,429	1,339	1,429
Health Care and Social Assistance	14,567	14,812	14,860	15,205	16,429
Information	678	632	540	509	550
Management of Companies and Enterprises	43	72	85	86	86
Manufacturing	2,498	2,717	2,775	2,900	3,207
Mining	41	54	53	44	43
Other Services, Ex. Public Admin	1,218	1,208	1,086	1,162	1,308
Professional and Technical Services	3,408	3,672	3,616	3,390	3,417
Real Estate and Rental and Leasing	779	784	815	827	843
Retail Trade	7,542	7,242	6,993	7,282	7,522
Transportation and Warehousing	1,723	1,860	1,937	2,089	2,367
Utilities	406	355	297	305	1,223
Wholesale Trade	1,180	1,317	1,422	1,435	1,508
Total Government	17,890	17,041	16,833	16,850	17,803

(1) Figures are annual averages of quarterly data.

(2) Second quarter, 2022.

Source: New Mexico Department of Workforce Solutions

Agenda Item #8.2.

Major Employers

The following are the principal employers located in or near the City.

Las Cruces Metropolitan Statistical Area Principal Employers

1,000 - 4,999 Employees

City of Las Cruces
Gadsden ISD
Las Cruces Public School
Memorial Medical Center
New Mexico State University
White Sands Missile Range

500-999 Employees

Doña Ana Branch Community College
Doña Ana County
Mountain View Regional Medical Center
NASA
Albertsons
Trax International
Stampede Meat
Electronic Caregiver
Mesilla Valley Transportation

Source: Mesilla Valley Economic Development Authority and New Mexico Department of Workforce Solutions.

Per Capita Income

The following table sets forth annual per capita personal income levels for the Las Cruces Metropolitan Statistical Area (“MSA”), the State of New Mexico, and the United States. The Las Cruces MSA and the State’s per capita income level over this period have been lower than the national average. All figures are subject to periodic revisions.

Year	Las Cruces MSA	New Mexico	United States
2021	\$45,045	\$50,311	\$64,143
2020	41,597	46,760	59,765
2019	38,142	43,530	56,250
2018	36,063	41,218	54,098
2017	35,189	39,458	51,811
2016	34,544	38,775	49,571
2015	33,493	38,103	48,190
2014	32,011	37,219	46,464
2013	30,589	35,088	44,493
2012	31,374	35,749	44,282

Sources: Bureau of Economic Analysis, United States Department of Commerce.

Agenda Item #8.2.

Effective Buying Income

The following table reflects the percentage of households by Effective Buying Income (“EBI”) and a three-year comparison of the estimated median household income as reported by Claritas Inc. EBI is personal income less personal tax and non-tax payments. Personal income includes wages and salaries, other labor income, proprietors’ income, rental income, dividends, personal interest income, and transfer payments. Deductions are made for federal, state, and local taxes, non-tax payments such as fines and penalties, and personal contributions for social security insurance. The following chart depicts the median household EBI level for the Las Cruces MSA, the State of New Mexico and the United States.

Effective Buying Income Group	Las Cruces MSA	New Mexico	United States
Under \$25,000	31.58%	23.08%	16.38%
\$25,000 – 34,999	10.90%	10.17%	7.70%
\$35,000 – 49,999	12.56%	12.92%	11.36%
\$50,000 – 74,999	16.53%	16.79%	16.21%
\$75,000 and over	28.43%	37.04%	48.35%
2018 Est. Median Household Income	\$40,551	\$48,044	\$60,133
2019 Est. Median Household Income	\$43,267	\$49,654	\$62,278
2020 Est. Median Household Income	\$39,705	\$49,384	\$65,228
2021 Est. Median Household Income	\$38,109	\$49,658	\$67,086
2022 Est. Median Household Income	\$45,534	\$55,028	\$72,191

Source: Spotlight, December 2022.

Age Distribution

The following table sets forth a comparative age distribution profile for the City, the State of New Mexico and the United States.

Age Group	Las Cruces	New Mexico	United States
0-17	24.14%	22.30%	22.00%
18-24	13.31%	9.42%	9.28%
25-34	14.01%	13.22%	13.48%
35-44	11.30%	12.45%	12.82%
45-54	9.95%	11.08%	12.18%
55 and Older	27.29%	31.53%	30.24%

Source: Spotlight, December 2022.

Population

Based on information gained from the United States Census Bureau, the following table shows the historical population data for the City of Las Cruces, Doña Ana County and the State of New Mexico.

Population

<u>Year</u>	<u>City of Las Cruces</u>	<u>Doña Ana County</u>	<u>State of New Mexico</u>
2022	108,591	224,886	2,126,179
2020	105,591	218,867	2,097,688
2019	103,432	218,523	2,096,829
2018	102,657	214,739	2,081,363
2010	97,618	218,523	2,112,957
2000	74,267	175,524	1,821,078
1990	62,648	136,523	1,519,933
1980	45,086	96,340	1,303,143
1970	37,857	69,773	1,017,055

— Source: Spotlight, July 2022 and United States Census Bureau.

Building Permits and Assessed Valuations

The 1980s saw a relatively stable level of building activity within the City. Construction activity reached a low in 1991 and increased at a steady pace throughout the 1990s. Growth continued during the 2000s until the onset of economic and construction slow-downs in 2007. In recent years, the City has mostly experienced growth in construction.

City of Las Cruces, New Mexico
Building Permits

<u>Year</u>	<u>Valuation</u>	<u>Number of Permits</u>
2022*	\$335,396,071	9,530
2021	321,739,242	9,641
2020	253,682,133	8,547
2019	179,358,342	6,614
2018	214,378,952	4,776
2017	223,537,332	8,422
2016	219,652,972	6,151
2015	136,270,075	3,570
2013	141,830,679	2,463
2012	162,624,265	2,459

Source: City of Las Cruces Community Development Department.

*Through December 2022.

History of Assessed Values

<u>Tax Year</u>	<u>City of Las Cruces</u>	<u>Doña Ana County</u>
2022	\$2,810,356,108	\$5,223,570,138
2021	2,629,782,733	4,935,560,916
2020	2,552,890,119	4,783,117,888
2019	2,452,517,126	4,602,866,403
2018	2,365,635,364	4,450,597,884
2017	2,293,290,617	4,323,278,362
2016	2,215,682,442	4,193,488,596
2015	2,165,733,246	4,106,398,168
2014	2,102,950,157	3,975,407,290
2013	2,076,068,745	3,888,811,543

Source: Doña Ana County Assessor's Office.

Financial Statements

The following General Fund Balance Sheet and Statement of Revenues, Expenditures and Changes in Fund Balances have been included herein for informational purposes only. Figures were taken from the audit reports prepared by the City. Audited figures are excerpts of the audit reports and do not purport to be complete. Reference is made to the complete audit reports which are available upon request.

**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES –
GENERAL FUND⁽¹⁾**

	2018	2019	2020	2021	2022
REVENUES					
Local Taxes:					
Gross receipts	\$85,229,365	\$84,786,667	\$90,340,739	\$97,593,897	\$122,059,903
Property	11,958,901	12,249,039	12,763,080	13,233,032	13,330,826
Utility franchise	1,190,900	-			
Total local taxes	<u>\$97,188,266</u>	<u>\$97,035,706</u>	<u>\$103,103,819</u>	<u>\$110,826,929</u>	<u>\$135,390,729</u>
State-shared taxes	531,630	637,637	472,300	541,319	643,066
Charges for services	2,854,738	3,290,364	2,522,487	766,399	1,239,652
Fees and fines	594,605	549,072	311,623	216,230	234,400
Investment income (loss)	(281,792)	1,989,566	1,613,241	35,135	(704,725)
Franchise fee	2,707,293	3,628,782	3,510,306	4,292,458	4,281,498
Licenses and permits	1,471,630	1,473,546	1,787,286	2,529,467	3,356,634
Operating grants and contributions					
Intergovernmental	40,418	15,973	16,267	14,901	15,568
Other	4,741,366	4,507,388	4,174,595	3,732,914	7,430,412
Total Revenues	<u>111,039,055</u>	<u>113,128,034</u>	<u>117,511,924</u>	<u>122,955,752</u>	<u>151,887,234</u>
EXPENDITURES					
Current:					
General government	17,958,367	18,791,042	19,032,925	18,588,324	26,428,977
Economic development	3,310,315	3,990,650		2,534,112	3,115,046
Police	23,823,819	25,536,609	25,185,636	22,712,126	25,553,304
Fire	14,521,364	16,282,527	16,221,513	15,793,885	18,247,544
Community development	3,609,846	4,450,169	3,801,890	3,960,914	4,216,866
Quality of Life	5,842,368	6,465,482	6,391,893	6,243,602	7,061,968
Public works	12,533,426	12,111,416	13,057,782	8,228,681	12,570,016
Information technology					
Transportation					
Parks and recreation	10,177,121	11,032,649	10,627,344	8,784,074	12,636,023
Capital Outlay	4,867,131	4,911,888	2,021,780	4,297,927	5,270,326
Debt service					
Interest					
Principal					
Total Expenditures	<u>96,643,757</u>	<u>103,572,432</u>	<u>99,295,123</u>	<u>91,143,645</u>	<u>115,100,070</u>
Revenues Over (Under) Expenditures	<u>14,395,298</u>	<u>9,555,602</u>	<u>18,216,801</u>	<u>31,812,107</u>	<u>36,787,164</u>
OTHER FINANCING SOURCES (USES)					
Issuance of debt:					
Proceeds from sale of capital assets	127,905	260,372	130,344		
Payment to agency					
Transfers in	3,075,574	6,293,917	5,702,555	3,304,119	5,287,856
Transfers out	(25,214,573)	(17,459,534)	(27,184,709)	(27,626,489)	(31,178,295)
Total other financing sources (uses)	<u>(22,011,094)</u>	<u>(10,905,245)</u>	<u>(21,351,810)</u>	<u>(24,322,370)</u>	<u>(25,890,439)</u>
Net Change in Fund Balances	<u>(7,615,796)</u>	<u>(1,349,643)</u>	<u>(3,135,009)</u>	<u>7,489,737</u>	<u>10,896,725</u>
Fund Balances - Beginning of Year	<u>55,992,243</u>	<u>48,376,447</u>	<u>47,026,804</u>	<u>43,891,795</u>	<u>51,381,532</u>
Fund Balances – End of Year	<u>\$48,376,447</u>	<u>\$47,026,804</u>	<u>\$43,891,795</u>	<u>\$51,381,532</u>	<u>\$62,278,257</u>

(1) Information appearing in the table is derived from the City's audited financial statements, but table is not audited
Source: City of Las Cruces.

Agenda Item #8.2.

CITY OF LAS CRUCES, NEW MEXICO BALANCE SHEET – GENERAL FUND⁽¹⁾

	2018	2019	2020	2021	2022
ASSETS					
Pooled cash and investments	\$ 30,684,330	\$ 31,290,527	\$ 36,239,451	\$ 33,813,122	\$44,791,886
Restricted cash and investments	-	-	-	-	-
Receivables, net	1,143,993	1,003,292	646,188	907,1953	796,359
Due from other funds	2,878,509	2,356,860	1,441,900	1,273,602	1,562,759
Due from other governmental units	15,952,603	15,978,747	15,813,191	18,860,630	21,501,563
Leases receivable					2,245,749
Inventories	1,561,385	1,702,416	1,711,370	1,760,958	1,645,743
Total Assets	<u>\$52,220,820</u>	<u>\$ 52,331,842</u>	<u>\$ 55,852,100</u>	<u>\$ 56,615,507</u>	<u>\$ 72,544,059</u>
DEFERRED OUTFLOWS OF RESOURCES					
Deferred amount from investment Earnings					
Total Deferred Outflow of Resources					
Total Assets and Deferred Outflow of Resources	\$ 52,220,820	\$ 52,331,842	\$ 55,852,100	\$ 56,615,507	\$ 72,544,059
LIABILITIES					
Accounts and Contracts Payable	\$ 1,297,228	\$ 2,531,580	\$ 1,759,098	\$ 2,058,322	\$ 4,000,510
Due to other funds					
Accrued Liabilities	1,818,586	1,878,065	9,267,941	2,254,842	3,392,283
Unearned Revenues	<u>257,228</u>	<u>259,582</u>	<u>257,297</u>	<u>252,522</u>	<u>30,662</u>
Total Liabilities	3,373,042	4,669,227	11,284,336	4,565,686	7,423,455
Deferred Inflows of Resources					
Deferred special assessment receipts					
Unavailable revenue	445,097	623,374	663,533	655,852	
Deferred inflows related to leases					2,245,749
Deferred amount from investment earnings	<u>26,234</u>	<u>12,437</u>	<u>12,437</u>	<u>12,437</u>	<u>596,598</u>
Total Deferred Inflows of Resources	<u>3,844,373</u>	<u>635,811</u>	<u>675,970</u>	<u>668,289</u>	<u>2,842,347</u>
Total Liabilities and Deferred Inflows of Resources		5,305,038	11,960,306	5,233,975	10,265,802
FUND BALANCES					
Non-spendable:					
Inventories	\$ 1,561,384	\$ 1,702,416	\$ 1,711,807	\$ 1,760,958	\$ 1,645,763
Restricted For:					
General Government	200,000				
Economic Development	50,317	404,793	547,794	769,085	912,362
Public safety programs	115,417	246,676	656,505	381,947	226,106
Housing and community development	70,466	64,157	65,387	269,104	58,830
Parks and recreation	298,239	723,102	383,351	269,465	889,613
Public works	18,220				78,245
Community and cultural services*	698,041	752,400	791,878	924,662	857,571
Debt service funds					
Health-related programs					
Transportation					
Committed for:					
Health related programs					
Debt service	8,122,444	9,007,794	9,380,532	10,679,581	10,463,998
Public safety programs	2,930,186	3,972,450	4,178,662	2,472,858	2,582,858
Public works	-	-	-	6,800,000	6,500,000
Transportation	4,258,445	5,391,042	3,500,000	2,511,854	2,511,054
Quality of Life	1,370,000	1,370,000	1,250,000	2,150,000	2,150,000
Economic Development	75,000	-	825,320	850,200	773,000
Assigned to:					
Economic development	1,977,234	2,083,962	1,347,523	1,716,968	1,519,399
Public works	231,355	308,349		563,487	
Culture and recreation					
Transportation	250,750	160,823			
Community development					
Vehicle acquisition	1,547,089	633,505	1,352,415	1,668,918	854,875
Unassigned:					
Unassigned:	<u>24,601,860</u>	<u>20,205,335</u>	<u>17,900,621</u>	<u>17,592,445</u>	<u>30,254,603</u>
Total fund balances	<u>\$48,376,447</u>	<u>\$47,026,804</u>	<u>\$43,891,795</u>	<u>\$51,381,532</u>	<u>\$62,278,257</u>
Total Liabilities, Deferred Inflows of Resources, and Fund Balances	<u>\$52,220,820</u>	<u>\$52,331,842</u>	<u>\$55,852,101</u>	<u>\$56,615,507</u>	<u>\$72,544,059</u>

(1) Information appearing in the table is derived from the City's audited financial statements, but table is not audited.

Source: City of Las Cruces

Agenda Item #8.2.

Other City Obligations

The tables below summarize all outstanding revenue bond obligations of the City as of August 30, 2022.

State Shared Gross Receipts Tax Bonds

Series	Description	Original Par Amount	Par Outstanding	Average Interest Rate	Final Maturity
2011A	SSGRT Revenue Bonds	\$ 9,640,000	\$ 1,100,000	3.79%	2023
2014	SSGRT Revenue Bonds	10,000,000	3,345,000	2.88%	2026
2015	SSGRT Refunding Revenue Bonds	19,195,000	12,745,000	3.25%	2035
2016	Sub Lien Taxable SSGRT Improvement Revenue Bonds	8,585,000	5,970,000	3.53%	2031
2017	SSGRT NMFA Loan	3,203,527	533,478	2.05%	2023
2017	SSGRT Revenue Bonds	10,570,000	4,515,000	4.14%	2029
2019	SSGRT Sub Lien Taxable Improvement Revenue Bonds	8,870,000	8,330,000	2.55%	2031
2020	SSGRT Refunding Revenue Bonds (Convention Ctr) ¹	15,435,000	13,750,000	3.89%	2039
2020A	SSGRT Revenue Bonds NMFA Loan	7,190,000	6,795,000	5.00%	2032
2020B	SSGRT Sub-Lien Revenue Bonds	6,750,000	6,645,000	4.67%	2029
2022	SSGRT Sub Lien Revenue Bonds	5,000,000	5,000,000	2.12%	2033
Total		\$ 104,438,527	\$ 63,728,478		

⁽¹⁾Also secured by Lodgers' Tax Revenues and Convention Center Fee Revenues

Municipal Gross Receipts Tax Bonds

Series	Description	Original Par Amount	Par Outstanding	Average Interest Rate	Final Maturity
2014A	Improvement Revenue Bonds (Street)	\$ 8,000,000	\$ 2,805,000	3.02%	2028
2014B	Improvement Revenue Bonds (Flood Control)	1,500,000	240,000	3.00%	2024
2016	Improvement Revenue Bonds (Flood Control)	5,000,000	1,690,000	4.50%	2028
2017	Improvement Revenue Bonds (Street)	5,115,000	2,090,000	2.13%	2030
2018	Improvement Revenue Bonds (Fire Pumper)	1,419,664	644,785	2.01%	2025
2020A	Refunding Revenue Bonds (Street)	5,080,000	3,335,000	1.63%	2033
2020B	Refunding Revenue Bonds (Flood Control)	3,580,000	2,340,000	1.63%	2032
Total		\$29,694,664	\$13,144,785		

General Obligation Bonds

Series	Description	Original Par Amount	Par Outstanding	Average Interest Rate	Final Maturity
2019	General Obligation Bonds	\$18,000,000	\$7,880,000	4.13%	2030
2020	General Obligation Bonds	17,600,000	10,335,000	3.50%	2032
	Total	\$35,600,000	\$18,215,000		

Hold Harmless Gross Receipts Tax Revenue Bonds

Series	Description	Original Par Amount	Par Outstanding	Average Interest Rate	Final Maturity
2015A	Improvement Revenue Bonds	\$23,075,000	\$16,640,000	3.55%	2035
2015B	Taxable Improvement Revenue Bonds	4,020,000	2,980,000	3.77%	2035
2018	Improvement Revenue Bonds	9,600,000	5,830,000	2.30%	2027
	Total	\$36,695,000	\$25,450,000		

Joint Utility Revenue Bonds

Series	Description	Original Par Amount	Par Outstanding	Average Interest Rate	Final Maturity
2014A	Refunding Revenue Bonds	\$7,125,000	\$2,175,000	3.80%	2025
2014B	Improvement Revenue Bonds	3,425,000	2,320,000	3.33%	2034
2015	Refunding and Improvement Revenue Bonds	16,895,000	8,845,000	3.32%	2035
2015A	Improvement Revenue Bonds	17,065,000	13,045,000	3.58%	2035
2016	Improvement Revenue Bonds	16,375,000	12,825,000	3.13%	2036
2017	Improvement Revenue Bonds (NMFA Loan)	5,135,000	4,125,000	2.71%	2037
2018	Improvement Revenue Bonds (Sublien)	22,180,000	20,735,000	3.84%	2038
2020	Refunding and Improvement Revenue Bonds	12,825,000	9,475,000	5.00%	2027
2020A	Improvement Revenue Bonds (NMFA Loan)	11,240,000	10,565,000	4.67%	2040
2020B	Improvement Revenue Bonds (Sublien) (NMFA Loan)	7,985,000	7,885,000	4.58%	2041
	Total	\$120,250,000	\$91,995,000		

Source: City of Las Cruces and EMMA-Municipal Securities Rulemaking Board.

Agenda Item #8.2.

The table below summarizes the outstanding Department of Housing and Urban Development (HUD) Loan obligation and other obligations of the City as of June 30, 2022:

Category of Indebtedness	Project	Security of Repayment	Issue Date	Original Principal Amount	Interest Rate	Date of Final Maturity	Amount Outstanding as of 6/30/2022
2010 NMFA Note	Griggs Walnut	Environmental GRT (EGRT)	1/18/2008	\$ 1,478,799	2.000%	2032	\$ 832,186
2010 HUD Loan	Facilities	Museum of Nature & Science	7/21/2010	2,000,000	2.000%	2030	1,129,000
2014 NMFA Loan	SCSWA Projects	SCSWA Revenues & EGRT	6/20/2014	2,780,000	0.250%	2028	990,000
2018 NMFA Loan	Street Equipment	Gas Tax Revenues	11/21/2018	<u>2,575,000</u>	1.88%-2.59%	2025	<u>1,140,000</u>
Total Other Obligations				<u>\$8,833,799</u>			<u>\$4,091,186</u>

Source: City of Las Cruces

LITIGATION AND INSURANCE

At the time of the original delivery of the Bonds, the City will deliver a certificate to the effect that no litigation or administrative action of proceedings is pending or, to the knowledge of the appropriate officials, threatened, restraining or enjoining, or seeking to restrain or enjoin, the issuance and delivery of the Bonds, the effectiveness of the Bond Ordinance, the levying or collecting of taxes to pay the principal of and interest on the Bonds or contesting or questioning the proceedings and authority under which the Bonds have been authorized and are to be issued, sold, executed or delivered, or the validity of the Bonds.

The risks of loss through damage to buildings, contents, and heavy equipment, and losses from employee defalcation are covered by commercial insurance purchased from third parties. Settled claims from these risks have not exceeded commercial insurance coverage for the past three years. The City has established a self-insurance fund to manage risks related to physical damage to City vehicles, loss associated with actions of employees resulting in damage to the persons or property of others, and for employee injury losses. The risk of loss associated with actions of employees resulting in damage to persons or property of others is subject to limitations of the New Mexico State Tort Claims Act. The self-insurance fund uses excess insurance agreements to reduce its exposure to large losses from employee on-the-job injuries.

FINANCIAL ADVISOR

RBC Capital Markets, LLC ("RBC CM") is employed as Financial Advisor to the City of Las Cruces in connection with the issuance of the Bonds. The Financial Advisor's fee for services rendered with respect to the sale of the Bonds is contingent upon the issuance and delivery of the Bonds. The Financial Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information in this Official Statement.

TRANSCRIPT AND CLOSING STATEMENTS

A complete transcript of proceedings and a no-litigation certificate (described above under “LITIGATION AND INSURANCE”) will be delivered by the City when the Bonds are delivered. The City will at that time also provide a certificate of the City relating to the accuracy and completeness of this Official Statement.

TAX EXEMPTION

General

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, to be delivered at the time of original issuance of the Bonds, under existing laws, regulations rulings and judicial decisions, and assuming compliance with covenants described herein, interest on Bonds is excludable from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax; however, for tax years beginning after December 31, 2022, interest on the Bonds is included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. Bond Counsel is also of the opinion, based on existing laws of the State of New Mexico as enacted and construed, that interest on the Bonds is excludable from net income for present State of New Mexico income tax purposes.

The Internal Revenue Code of 1986, as amended (the “Code”), imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal tax purposes of interest on obligations such as the Bonds. The City has made various representations and warranties with respect to, and has covenanted in the Bond Ordinance and other documents, instruments and certificates to comply with the applicable provisions of the Code to assure that interest on the Bonds will not become includible in gross income. Failure to comply with these covenants or the inaccuracy of these representations and warranties may result in interest on the Bonds being included in gross income from the date of issue of the Bonds. The opinion of Bond Counsel assumes compliance with the covenants and the accuracy of such representations and warranties.

Although Bond Counsel has rendered an opinion that interest on the Bonds is excludable from gross income for federal income tax purposes, the accrual or receipt of interest on the Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient’s particular tax status or other items of income or deduction. Bond Counsel expresses no opinion regarding any such consequences. Purchasers of the Bonds, particularly Purchasers that are corporations (including S corporations and foreign corporations operating branches in the United States), property or casualty insurance companies, banks, thrifts or other financial institutions, certain recipients of Social Security or Railroad Retirement benefits, taxpayers otherwise entitled to claim the earned income credit or taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations are advised to consult their tax advisors as to the tax consequences of purchasing or owning the Bonds.

The opinions expressed by Bond Counsel are based upon existing law as of the date of issuance and delivery of the Bonds, and Bond Counsel expresses no opinion as of any date subsequent thereto or with respect to any pending legislation.

From time to time, there are legislative proposals in Congress that, if enacted, could alter or amend the federal tax matters referred to above or adversely affect the market value of the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted, it would apply to Bonds issued prior to enactment. Each Underwriter of the Bonds should consult his or her own tax advisor regarding any pending or proposed federal tax legislation. Bond Counsel expresses no opinion regarding any pending or proposed federal tax legislation.

Internal Revenue Service Audit Program

The Internal Revenue Service (the "Service") has an ongoing program auditing tax-exempt obligations to determine whether, in the view of the Service, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. No assurances can be given as to whether the Service will commence an audit of the Bonds. If an audit is commenced, under current procedures the Service will treat the City as the taxpayer and the Bond owners may have no right to participate in such procedure. None of the Financial Advisor, the Underwriter of the Bonds nor Bond Counsel is obligated to defend the tax-exempt status of the Bonds. The City has covenanted in the Bond Ordinance not to take any action that would cause the interest on the Bonds to become includable in gross income except to the extent described above for the owners thereof for federal income tax purposes. None of the City, the Financial Advisor, the Underwriter of the Bonds or Bond Counsel is responsible to pay or reimburse the costs of any Bond owner with respect to any audit or litigation relating to the Bonds.

Original Issue Discount

The Bonds may be offered at a discount ("original issue discount") equal generally to the difference between public offering price and principal amount. For federal income tax purposes, original issue discount on a bond accrues periodically over the term of the bond as interest with the same tax exemption and alternative minimum tax status as regular interest. The accrual of original issue discount increases the holder's tax basis in the bond for determining taxable gain or loss from sale or from redemption prior to maturity. Holders of Bonds offered at an original issue discount should consult their tax advisors for an explanation of the accrual rules.

Original Issue Premium

The Bonds may be offered at a premium ("original issue premium") over their principal amount. For federal income tax purposes, original issue premium is amortizable periodically over the term of a bond through reductions in the holders' tax basis in the bond for determining taxable gain or loss from sale or from redemption prior to maturity. Amortizable premium is accounted for as reducing the tax-exempt interest on the bond rather than creating a deductible expense or loss. Holders of Bonds offered at an original issue premium should consult their tax advisors for an explanation of the amortization rules.

FINANCIAL STATEMENTS

The general purpose financial statements of the City as of June 30, 2022, and for the year then ended, contained in Appendix A to this Official Statement, have been audited by Pattillo, Brown & Hill, L.L.P., Certified Public Accountants, Albuquerque, New Mexico, as set forth in their report thereon included in Appendix A hereto. Pattillo, Brown & Hill, L.L.P., has not been engaged to perform, and has not performed since June 30, 2022, any procedures on the financial statements shown in the excerpt. Further, Pattillo, Brown & Hill, L.L.P. has not been engaged to perform and has not performed any procedures relating to financial information or any other information contained in this Official Statement. Copies of the City's comprehensive annual financial report may be requested from the City's Finance Department, 700 North Main Street, Box 20000, Las Cruces, New Mexico 88004. The financial statements are included for informational purposes only.

LEGAL MATTERS

Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico, as Bond Counsel, will render an opinion with respect to the validity of the Bonds and will render the opinions described above under "TAX EXEMPTION." The proposed form of such opinion is attached hereto as Appendix B. Modrall, Sperling, Roehl, Harris & Sisk, P.A., has also acted as Special Counsel to the City in connection with the

preparation of the Official Statement. The fees of Bond Counsel and Special Counsel are contingent upon the issuance and delivery of the Bonds.

RATING

The Series 2023 Bonds have been assigned a rating of “___” from Moody’s Investors Services (“Moody’s”). An explanation of the significance of such rating may be obtained from Moody’s.

Such rating reflects only the view of Moody’s. The rating is not a recommendation to buy, sell or hold the Bonds and there is no assurance that the rating will not be revised downward or withdrawn entirely by the rating agency, if, in its judgment, circumstances so warrant. Any downward revision or withdrawal of such rating may have an effect on the market price of the Bonds.

CONTINUING DISCLOSURE

The City will enter into an undertaking (the “Undertaking”), in the form attached as Appendix C to this Official Statement, for the benefit of the holders of the Bonds to provide (i) certain financial information by no later than March 31st of each year, beginning March 31, 2024 until the Bonds are no longer outstanding, and (ii) operating data, and to provide notice of certain events, pursuant to the requirements of section (b)(5)(i) of Rule 15c2-12 of the Securities and Exchange Commission (17 C.F.R. § 240.15c2-12). A failure by the City to provide any information required thereunder shall not constitute an Event of Default under the Bond Ordinance. The City has previously entered into continuing disclosure undertakings (each a “Prior Undertaking” and collectively, the “Prior Undertakings”) with respect to certain other obligations of the City in accordance with Rule 15c2-12 and except as described below, during the last five years, the City has complied in all material respects with those Prior Undertakings.

Compliance with Prior Continuing Disclosure Undertakings

The City previously entered into continuing disclosure undertakings (the “Prior Undertakings”) with respect to certain previously issued bonds of the City, which require the filing each year of audited financial statements and annual updates with respect to certain financial information and operating data related to the City (collectively, the “Prior Annual Reports”). Over the last five years, the City included in its Prior Annual Reports the combined pledged revenues, but did not include the breakout of the Convention Center Fee and Lodgers’ Tax Revenues, as required by certain of the Prior Annual Reports. The City completed a remedial filing February 7, 2020 providing the breakout of this information and will continue to provide such breakout in all future filings.

Compliance with Continuing Disclosure Undertakings in Future Years

The City intends to maintain compliance with its continuing disclosure undertakings in future years through the collective oversight and effort of current City finance staff and private consultants, all of whom have experience and knowledge related to the City’s continuing disclosure obligations. Additionally, the City has Continuing Disclosure Procedures on file with the current City finance staff and the City’s private consultants, which were adopted by the City Council on July 7, 2014.

ADDITIONAL INFORMATION

All of the summaries of the statutes, ordinances, resolutions, opinions, contracts, agreements, financial and statistical data, and other related reports described in this Official Statement are subject to the actual provisions of such documents. The summaries do not purport to be complete statements of such provisions and reference is made to such documents, copies of which are either publicly available or available for inspection during normal business hours at the offices of the City Clerk of the City of Las

Agenda Item #8.2.

Cruces, City Hall, 700 North Main Street, P.O. Box 20000, Las Cruces, New Mexico 88004, or at the offices of RBC Capital Markets, LLC, 6301 Uptown Blvd. NE, Suite 110, Albuquerque, New Mexico 87110.

OFFICIAL STATEMENT CERTIFICATION

As of the date hereof, to my knowledge and belief, this Official Statement is true, complete and correct in all material respects, and does not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made herein, in light of the circumstances under which they are made, not misleading.

The preparation of this Official Statement and its distribution have been authorized by the Las Cruces City Council.

CITY OF LAS CRUCES, NEW MEXICO

By: _____
Ken Miyagishima, Mayor

APPENDIX A

**EXCERPTS FROM AUDITED FINANCIAL STATEMENTS OF
THE CITY OF LAS CRUCES, NEW MEXICO
FOR FISCAL YEAR ENDING JUNE 30, 2022**

The City has not requested the consent of Pattillo, Brown & Hill, LLP, which performed the audit of the City's financial statements, to the inclusion of the audit report and excerpts thereof in this Official Statement, and the auditor has not conducted a post-audit review of those financial statements.

APPENDIX B
FORM OF BOND COUNSEL OPINION

_____, 2023

City of Las Cruces
Las Cruces, New Mexico

\$ _____
**State Shared Gross Receipts Tax
Improvement Revenue Bonds
Series 2023**

Ladies and Gentlemen:

We have acted as bond counsel to the City of Las Cruces, New Mexico (the “City”) in connection with the issuance and sale by the City of its \$ _____ State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the “Series 2023 Bonds”). The Bonds are issued pursuant to the Constitution and laws of the State of New Mexico (the “State”) and Ordinance No. 3024, adopted on February 21, 2023, as supplemented by Pricing Certificate executed and delivered on March __, 2023 (collectively, the “Bond Ordinance”). Except as expressly defined herein, capitalized terms used herein have the same meanings as such terms have in the Bond Ordinance.

We have examined those portions of the Constitution and the laws of the State and the United States of America relevant to the opinions herein, a certified transcript of proceedings of the Council, the governing body of the City (the “Transcript”), and other proceedings and documents relevant to the authorization and issuance by the City of the Bonds, including the form of the Bonds in the Bond Ordinance. As to the questions of fact material to our opinion, we have relied upon the Transcript and other representations and certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, and subject to the assumptions and qualifications set forth below, we are of the opinion that, under existing law on the date of this opinion:

1. The Bonds constitute valid and binding special, limited obligations of the City under and in accordance with the Bond Ordinance.
2. The Bond Ordinance has been duly authorized, executed and delivered by the City and the provisions of the Bond Ordinance are valid and binding on the City.
3. As more fully described in the Bond Ordinance, the Series 2023 Bonds are payable as to principal and interest, solely from, and are secured by a first lien pledge (but not an exclusive first lien pledge) of Pledged State Shared Gross Receipts Tax Revenues of the City. The owners of the Bonds have no right to have property taxes levied by the City for the payment of principal and interest on the Bonds and the Bonds do not represent or constitute a debt or pledge of, or a charge against, the general credit of the City.
4. The Bond Ordinance creates the lien on the Pledged Revenues that it purports to create.

Agenda Item #8.2.

5. Under existing laws, regulations, rulings and judicial decisions, interest on the Bonds is excludable from gross income for federal income tax purposes. We are also of the opinion that interest on the Bonds is) is not a specific item of tax preference for purposes of the federal alternative minimum tax under the Code; however, for tax years beginning after December 31, 2022, interest on the Bonds is included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. Although we are of the opinion that interest on the Bonds is excludable from gross income for federal income tax purposes, the accrual or receipt of interest on the Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient’s particular tax status or other items of income or deduction. We express no opinion regarding any such consequences.

6. The Bonds and the income from the Bonds are exempt from all taxation by the State or any political subdivision of the State.

The opinions set forth above in Paragraph 5 above are subject to continuing compliance by the City with covenants regarding federal tax law contained in the Bond Ordinance and the proceedings and other documents relevant to the issuance by the City of the Bonds. Failure to comply with these covenants may result in interest on the Bonds being included in gross income retroactive to their date of issuance.

The opinions expressed herein are based upon existing legislation as of the date of issuance and delivery of the Bonds, and we express no opinion as of any date subsequent thereto or with respect to any pending legislation.

The obligations of the City related to the Bonds are subject to the reasonable exercise in the future by the State and its governmental bodies of the police power inherent in the sovereignty of the State and to the exercise by the United States of the powers (including bankruptcy powers) delegated to it by the United States Constitution. The obligations of the City and the security provided therefor, as contained in the Bond Ordinance, may be subject to general principles of equity which permit the exercise of judicial discretion and are subject to the provisions of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors’ rights generally, now or hereafter in effect.

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of result.

As bond counsel, we are passing upon only those matters set forth in this opinion and are not passing upon the accuracy or completeness of any statement made in connection with any sale of the Bonds or upon any tax consequences arising from the receipt or accrual of interest on, or the ownership of, the Bonds except those specifically addressed in Paragraphs 5 and 6 above.

Respectfully submitted,

APPENDIX C

FORM OF CONTINUING DISCLOSURE UNDERTAKING

CONTINUING DISCLOSURE UNDERTAKING

Section 1. Recitals. This Continuing Disclosure Undertaking (the “Undertaking”) is executed and delivered by the City of Las Cruces, New Mexico (the “City”) in connection with the issuance of its \$_____ State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the “Bonds”). The Bonds are being issued pursuant to the general laws of the State, including Sections 3-31-1 to 3-31-12 of the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented, the Charter of the City, other applicable New Mexico laws, Ordinance No. 3024 adopted by the City Council on February 21, 2023 as supplemented by a pricing certificate executed and delivered on March __, 2023 (collectively, the “Ordinance”). Pursuant to the Ordinance and to allow the Purchaser of the Bonds to comply with the Rule (defined below), the City is required to make certain continuing disclosure undertakings for the benefit of owners (including beneficial owners) of the Bonds (the “Owners”). This Undertaking is intended to satisfy the requirements of the Rule.

Section 2. Definitions.

(a) “Annual Financial Information” means the financial information or operating data with respect to the City, delivered at least annually pursuant to Sections 3(a) and 3(b), consisting of information of the type included in the section of the Official Statement entitled “PLEDGED REVENUES.” Annual Financial Information will include Audited Financial Statements if available.

(b) “Audited Financial Statements” means the City’s annual financial statements prepared in accordance with generally accepted accounting principles, as in effect from time to time (“GAAP”), for governmental units as prescribed by the Governmental Accounting Standards Board (“GASB”), which financial statements have been prepared as may then be required or permitted by the laws of the State.

(c) “EMMA” means the MSRB’s Electronic Municipal Market Access system located on its website at emma.msrb.org.

(d) “Event” means the information or circumstances described in Section 3(d).

(e) “Financial Obligation” shall mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (iii) guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board in compliance with the Rule.

(f) “MSRB” means the Municipal Securities Rulemaking Board. The current address of the MSRB is 1900 Duke Street, Suite 600, Alexandria, Virginia, 22314, phone (703) 797-6600 fax (703) 797-6708.

(g) “Official Statement” means the Official Statement dated March __, 2023 delivered in connection with the original issue and sale of the Bonds.

(h) “Report Date” means March 31 of each year, beginning in 2024.

(i) “Rule” means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended (17 C.F.R. Part 240, § 240.15c2-12), as the same may be amended from time to time.

(j) “SEC” means the Securities and Exchange Commission.

(k) “State” means the State of New Mexico.

Section 3. Provision of Annual Financial Information and Reporting of Event.

(a) The City, or its designated agent, will provide the Annual Financial Information for the preceding fiscal year to EMMA on or before each Report Date while the Bonds are outstanding.

(b) If Audited Financial Statements are not provided as a part of the Annual Financial Information, the City, or its designated agent, will provide unaudited financial statements as part of the Annual Financial Information. In such cases, Audited Financial Statements will be provided to EMMA when and if available.

(c) The City, or its designated agent, may provide Annual Financial Information by specific reference to other documents, including information reports and official statements relating to other debt issues of the City, which have been submitted to EMMA or filed with the SEC; provided, however, that if the document so referenced is a “final official statement” within the meaning of the Rule, such final official statement must also be available from the MSRB.

(d) This paragraph (d) shall govern the giving of notices of the occurrence of any of the following Events with respect to the Bonds:

(i) principal and interest payment delinquencies;

(ii) non-payment related defaults, if material;

(iii) unscheduled draws on debt service reserves reflecting financial difficulties;

(iv) unscheduled draws on credit enhancements reflecting financial difficulties;

(v) substitution of credit or liquidity providers, or their failure to perform;

(vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;

(vii) modifications to rights of Bondholders, if material;

(viii) bond calls, if material, or tender offers;

(ix) defeasances;

(x) release, substitution or sale of property securing repayment of the Bond, if material;

(xi) rating changes;

(xii) bankruptcy, insolvency, receivership or a similar event with respect to the District or an obligated person;

(xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) appointment of a successor or additional trustee, or a change of name of a trustee, if material;

(xv) the incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material; and

(xvi) a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

(e) At any time the Bonds are outstanding, the City shall file, in a timely manner not in excess of ten (10) business days after the occurrence of an Event, a notice of such occurrence with EMMA.

(f) At any time the Bonds are outstanding, the City shall provide to EMMA, notice in a timely manner not in excess of ten (10) business days after the occurrence of any failure of the City to timely provide the Annual Financial Information and Audited Financial Statements as specified in Section 3 hereof.

Section 4. Method of Transmission. Unless otherwise required by law, and subject to technical and economic feasibility, the City, or its designated agent, will employ such methods of electronic or physical information transmission as are requested or recommended from time to time by EMMA, the MSRB and the SEC.

Section 5. Enforcement. The obligations of the City under this Undertaking are for the benefit of the Owners. Each Owner is authorized to take action to seek specific performance by court order to compel the City to comply with its obligations under this Undertaking, which action will be the exclusive remedy available to it or any other Owner. The City's breach of its obligations under this Undertaking will not constitute an event of default under the Ordinance, and none of the rights and remedies provided by the Ordinance will be available to the Owners with respect to such a breach.

Section 6. Term. The City's obligations under this Undertaking will be in effect from and after the issuance and delivery of the Bonds and will extend to the earliest of (i) the date all principal and interest on the Bonds has been paid or legally defeased pursuant to the terms of the Ordinance; (ii) the date on which the City is no longer an "obligated person" with respect to the Bonds within the meaning of the Rule; or (iii) the date on which those portions of the Rule which require this Undertaking are determined to be invalid or unenforceable by a court of competent jurisdiction in a non-appealable action, have been

Agenda Item #8.2.

repealed retroactively or otherwise do not apply to the Bonds. The City shall file a notice of any such termination with EMMA.

Section 7. Amendments. The City may amend this Undertaking from time to time, without the consent of any Owner, upon the City’s receipt of an opinion of independent counsel experienced in federal securities laws to the effect that such amendment:

- (a) is made in connection with a change in circumstances that arises from a change in legal requirements, a change in law, a change in the identity, nature or status of the City or a change in the availability or character of financial information for the City;
- (b) this Undertaking, as amended, would have complied with the Rule at the time of the initial issue and sale of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any changes in circumstances; and
- (c) the amendment does not materially impair the interests of the Owners.

Any Annual Financial Information containing amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided. If an amendment changes the accounting principles to be followed in preparing financial statements, the Annual Financial Information and Audited Financial Statements for the year in which the change is made will present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 8. Beneficiaries. This Undertaking binds and inures to the sole benefit of the City and the Owners and creates no rights in any other person or entity.

Section 9. Special Funds. This Undertaking is subject to the availability of necessary funds from annual Pledged Revenues (as such term is defined in the Ordinance).

Section 10. Governing Law. This Undertaking is governed by and is to be construed in accordance with the law of the State.

Date: March __, 2023

CITY OF LAS CRUCES, NEW MEXICO

[CITY SEAL]

By: _____
Ken Miyagishima, Mayor

Attest:

By: _____
Christine Rivera, City Clerk

**APPENDIX D
OFFICIAL NOTICE OF BOND SALE**

\$12,000,000*
State Shared Gross Receipts Tax Improvement Revenue Bonds
Series 2023

PUBLIC NOTICE IS HEREBY GIVEN that electronic bids will be received by the City Council (the “Council”) of the City of Las Cruces, New Mexico (the “City”), for the purchase of all of the City’s State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the “2023 Bonds”), more particularly described below. The 2023 Bonds will be awarded to the winning bidder for the 2023 Bonds by 3:00 p.m., prevailing Mountain Time, March 7, 2023.

Bids for the purchase of the 2023 Bonds will be accepted through the Grant Street Group electronic bidding web site (“Grant Street Group”) at www.grantstreet.com. No other method of submitting bids will be accepted. The date and time for submitting bids will be as follows:

Bid Date: March 7, 2023
Bid Time: Between 10:30 a.m. and 11:00 a.m. Eastern Time
(Between 8:30 a.m. and 9:00 a.m. Mountain Time)
Submit Bid to: www.grantstreet.com

Information related to this auction can be obtained from Grant Street Group Auction Support at (412) 391-5555 (x370), attention John Carver.

To bid, bidders must have both (1) completed the registration form on the Grant Street Group website and (2) requested and received admission to the City’s auction, as described under “TERMS OF SALE - Submission of Bids” below. The use of Grant Street Group shall be at the bidder’s risk and expense, and the City shall have no liability with respect thereto.

Neither the City, Grant Street Group, the Municipal Advisor, nor Bond Counsel shall be responsible for, and each bidder expressly assumes the risk of, any incomplete, inaccurate, or untimely bid submitted by Internet transmission by such bidder, including, without limitation, by reason of garbled transmissions, mechanical failure, engaged telephone or telecommunications lines, or any other cause arising from delivery by Internet transmission. Additionally, the Grant Street Group time stamp will govern the receipt of all bids. The official bid clock does not automatically refresh. Bidders must refresh the auction page periodically to monitor the progression of the bid clock and to ensure that their bid will be submitted prior to the termination of the auction. All bids will be deemed to incorporate the provisions of this Official Notice of Bond Sale.

This Official Notice of Bond Sale, and the information set forth herein, are not to be treated as a complete disclosure of all relevant information with respect to the 2023 Bonds.

* Preliminary, subject to change.

The information set forth herein is subject, in all respects, to a more complete description of the 2023 Bonds and the security therefore set forth in the Preliminary Official Statement dated February __, 2023 (the “Preliminary Official Statement”).

BOND DETAILS

The 2023 Bonds will be issued in the aggregate principal amount of \$12,000,000*, exclusive of premium, if any. The 2023 Bonds and the interest thereon are general obligations of the City. The City has prepared the Preliminary Official Statement, relating to the 2023 Bonds which is deemed by the City to be final as of its date for purposes of allowing bidders to comply with Rule 15c2-12 of the Securities Exchange Commission (“the Rule”), except for the omission of certain information as permitted by the Rule. Details of the 2023 Bonds, including maturities, redemption provisions, payment dates and security for payment are contained in the Preliminary Official Statement. The Preliminary Official Statement is subject to revision, amendment and completion in a Final Official Statement.

The 2023 Bonds will be issued in the aggregate principal amount of \$12,000,000* , will be dated the date of delivery, will be issued as fully registered bonds and will mature on August 1 of each year as follows:

Years	Amounts
<u>Maturing</u>	<u>Maturing</u>
2024	\$1,275,000
2025	1,382,000
2026	1,795,000
2027	840,000
2028	840,000
2029	840,000
2030	840,000
2031	840,000
2032	840,000
2033	840,000
2034	840,000
2035	828,000

Official Statement. The Preliminary Official Statement may be viewed and downloaded from www.grantstreet.com or a physical copy may be obtained by contacting the City or the Municipal Advisor, see “Information” below.

The City will make available to the winning bidder, within seven business days after the award of the sale of the 2023 Bonds, the Final Official Statement which is to be downloaded from www.grantstreet.com. One physical copy of the Final Official Statement also will be provided to the winning bidder at that time; provided, however, the winning bidder must cooperate in providing the information required to complete the Final Official Statement. Additional copies of the Final Official Statement may be provided at the expense of the winning bidder.

* Preliminary, subject to change.

The winning bidder shall comply with the requirements of Rule 15c2-12 and the rules of the Municipal Securities Rulemaking Board.

TERMS OF SALE

Submission of Bids. All bids must be submitted only by electronic bidding on Grant Street Group at www.grantstreet.com. No other provider of bidding services and no other means of delivery (i.e. telephone, telefax or physical delivery) will be accepted. Bidding for the 2023 Bonds will begin at 10:30 a.m., Eastern Time (8:30 a.m. Mountain Time), as indicated above. The receipt of bids will end promptly at 11:00 a.m., Eastern Time (9:00 a.m. Mountain Time), unless extended in accordance with the two-minute rule described herein. If any bid becomes a leading bid two (2) minutes prior to the end of the auction, then the auction will be automatically extended by two (2) minutes from the time such new leading bid was received by Grant Street Group. The auction end time will continue to be extended, indefinitely, until a single leading bid remains the leading bid for at least two (2) minutes.

To bid, bidders must first visit the Grant Street Group website where, if they have never registered with Grant Street Group, they can register and then request admission to bid on the 2023 Bonds. Bidders will be notified prior to the scheduled bidding time of their eligibility to bid. Only NASD registered broker-dealers and dealer banks with DTC clearing arrangements will be eligible to bid. Bidders who have previously registered with Grant Street Group may call **(412) 391-5555, x 370, attention John Carver**, for their ID Number or password.

Rules of Grant Street Group. Bidders must comply with, and all bids must be made in accordance with, the Rules of Grant Street Group in addition to the requirements of this Official Notice of Bond Sale. The Rules of Grant Street Group can be viewed on the Grant Street Group website and are incorporated herein by reference. In the event the Rules of Grant Street Group conflict with this Official Notice of Bond Sale, this Official Notice of Bond Sale shall prevail.

Bidding Parameters. Bidders are required to submit unconditional all-or-none bids specifying the rate of interest at which the bidder will purchase all of the 2023 Bonds. Interest shall be bid in multiples of 1/20th or 1/8th percentum and only one interest rate may be bid for each maturity of the 2023 Bonds. The maximum interest rate may not exceed 5% and the maximum interest rate specified for any maturity of the 2023 Bonds may not exceed the minimum interest rate specified for any maturity of the 2023 Bonds by more than 3 percent (3%). The maximum net effective interest rate of the 2023 Bonds shall not exceed five percent (5%) per annum. The 2023 Bonds will not be sold for less than par.

Term Bonds. A bidder may elect to have all or a portion of the 2023 Bonds scheduled to mature in consecutive years issued as one or more term bonds (the "Term Bonds") scheduled to mature in the latest of the consecutive years and subject to mandatory redemption requirements consistent with the schedule of serial maturities set forth in the Preliminary Official Statement, however, not less than all Bonds of the same serial maturity shall be converted to Term Bonds with mandatory redemption requirements.

Adjustment of principal amounts, modification or clarification prior to examination of bids. The City Financial Services Director, in consultation with the City's financial and bond advisors, in the City Financial Service Director's sole discretion and prior to the examination of bids, may (i) adjust the aggregate principal amount set forth herein or may adjust the principal amount of each series without increasing the aggregate principal amount of Bonds; (ii) adjust individual maturities, and/or (iii) modify or clarify any other term hereof, including the date on which bids for the 2023 Bonds will be received, by issuing a notification of the adjusted series, amounts, modification or clarification via Thomson Municipal News ("TM3") and/or Grant Street platform and/or Bloomberg Financial Services no later than 8:00 a.m., Mountain Time, on the Bid Date.

Adjustments to principal amounts after determination of best bid. The aggregate principal amount of the 2023 Bonds is subject to increase or reduction, and each scheduled maturity thereof is subject to increase or reduction, by the City Financial Services Director after the determination of the Best Bid (defined below). Such adjustments will be made within no more than two (2) hours after the end of the time of bid examination and will be in the sole discretion of the City. To cooperate with any adjustment in the principal amounts, the Purchaser is required to indicate by e-mail to Leeann DeMouche at ldeMouche@las-cruces.org or such other address as may be indicated by the City Financial Services Director within one-half (1/2) hour after the end of the time of bid examination, the amount of any original issue discount or premium on any maturity of the 2023 Bonds, the initial offering price of each maturity, the cost of bond insurance, if any, and the amount received from the sale of the 2023 Bonds to the public that will be retained by the Purchaser as its compensation.

The City Financial Services Director in consultation with the City's financial and bond advisors, may change the dollar amount bid by the Purchaser if the aggregate principal amount of the 2023 Bonds is adjusted as described below, but the interest rates specified by the Purchaser for all maturities will not change. The City Financial Services Director in consultation with the City's financial and bond advisors, will make every effort to ensure that the percentage net compensation to the Purchaser (i.e., the percentage resulting from dividing (i) the aggregate difference between the offering price of the 2023 Bonds to the public and the price to be paid to the City, less any bond insurance premium to be paid by the bidder, by (ii) the principal amount of the 2023 Bonds) does not increase or decrease from what it would have been if no adjustment was made to principal amounts shown in the maturity schedule. The City will notify the Purchaser of the final principal amounts and the resulting adjusted prices no later than 12:00 p.m. Mountain Time on the day of the sale and award of the 2023 Bonds. THE PURCHASER MAY NOT WITHDRAW OR MODIFY ITS BID ONCE SUBMITTED TO THE CITY FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INCREASE OR DECREASE IN THE FINAL PRINCIPAL AMOUNTS AND THE AGGREGATE PURCHASE PRICE OF THE 2023 Bonds.

Information Regarding Bids. Bidders may change and submit bids as many times as they wish during the bidding, provided, however, that each bid submitted subsequent to a bidder's initial bid must result in a lower true interest cost ("TIC") with respect to a bid when compared to the immediately preceding bid of such bidder. During the bidding, no bidder will see any other

bidder's bid, but each bidder will be able to see its own ranking (i.e., "Leader," "Cover," "3rd," etc.).

Bids Constitute an Irrevocable Offer. Each bid submitted through Grant Street Group shall be deemed an irrevocable offer to purchase the 2023 Bonds on the terms provided in this Official Notice of Bond Sale and shall be binding upon the bidder.

Basis of Award. The 2023 Bonds will be sold to the bidder or bidders offering to purchase the same at the lowest true interest cost. The actuarial yield on the 2023 Bonds using the true interest cost method will be computed at that yield which, if used to compute the present value of all payments of principal and interest on the 2023 Bonds as of April 11, 2023, produces an amount equal to the aggregate bid price. Such calculation will be made based upon a 360-day year and a semiannual interval for compounding.

The winning bid or bids will be indicated on Grant Street Group and the auction results, as posted on such website, will be subject to verification by the City. The City will verify the auction results immediately following the close of the bidding period and notice of confirmation by the City of the winning bidder or bidders will be made by a posting on Grant Street Group stating "Auction Results Verified and Confirmed".

An award may be made by the City to any bidder in a principal amount less than the principal amount of the 2023 Bonds for which the bid is submitted. Further, in the event of an award by the City for a principal amount less than the principal amount the bidder submitted, any premium bid shall be ratably reduced. If two or more bids have the same true interest cost, the first bid submitted, as determined by reference to the time stamp displayed on Grant Street Group, shall be deemed to be the leading bid.

Sale Reservations. The City reserves the right (a) to reject any and all bids for any Bonds, (b) to reoffer any Bonds for public sale, and (c) to waive any irregularity or informality in any bid.

Good Faith Deposit Not Required to Bid. A good faith deposit will not be required in connection with the submission of any bid for the 2023 Bonds. The winning bidder will be required to submit a Bid Award Deposit (see "Bid Award Deposit" below).

Bid Award Deposit. Not later than 2:00 p.m., Mountain Time on March 7, 2023, the winning bidder is required to submit a Bid Award Deposit of \$240,000.00. All Bid Award Deposits must be made in good funds by wire transfer of the required amount to an account specified by the City Manager and provided to the winning bidder after the sale of the 2023 Bonds.

No interest will be paid by the City on the amount of the Bid Award Deposit. The proceeds of the Bid Award Deposit of the winning bidder will be applied to the purchase price of the 2023 Bonds, or in the event of the failure of a winning bidder to take up and pay for the 2023 Bonds in compliance with the terms of the bid, at the option of the City, its Bid Award Deposit may be retained as liquidated damages, as partial payment of actual damages or as security for any other remedy available to the City.

Manner and Time of Delivery. The 2023 Bonds will be delivered to DTC for the account of the winning bidder or bidders at the expense of the City on April 11, 2023, or such later date as the City and the winning bidder may agree. Payment of the purchase price due at delivery must be made in Federal Reserve funds for immediate and unconditional credit to the City.

Continuing Disclosure Undertaking. The City has covenanted to provide, in a timely manner, on the Electronic Municipal Market Access (EMMA) Website maintained by the Municipal Securities Rulemaking Board notice of the occurrence of specified, material events. The City has not failed to comply with any of its previous undertakings under Rule 15c2-12, except as may be disclosed in the Preliminary Official Statement.

State Securities Laws. The City has taken no action to qualify the offer or sale of the 2023 Bonds under the securities laws of any state. Should any such qualification be necessary, the City agrees to cooperate with the winning bidder in such matters, provided that the City reserves the right not to consent to service of process outside its boundaries and expenses related to any such qualification shall be the responsibility of the winning bidder.

CUSIP Numbers. CUSIP numbers will be issued and printed on the 2023 Bonds at the expense of the City. The City's Municipal Advisor will apply for CUSIP numbers prior to the sale date of the 2023 Bonds. Any error or omission in printing such numbers on the 2023 Bonds will not constitute cause for any winning bidder to refuse delivery of any Bond.

Legal Opinion, Certificates and Transcript. The validity and enforceability of the 2023 Bonds will be approved by the City's Bond Counsel. A copy of the form of the opinion of Bond Counsel is attached as an exhibit to the Preliminary Official Statement.

The purchaser of the 2023 Bonds will receive a certified transcript of legal proceedings which will include, among other items:

(a) a certificate of the City to the effect that, as of its date, the Preliminary Official Statement was deemed final within the meaning of Rule 15c2-12, except for the omissions permitted under Rule 15c2-12;

(b) a certificate of the City to the effect that there is no litigation pending or, to its knowledge, threatened affecting the validity of the 2023 Bonds as of the date of their delivery; and

(c) a certificate of the City to the effect that, as of the date of the Official Statement and at all times to and including the date of delivery of the 2023 Bonds, the Official Statement did not contain any untrue statement of a material fact or omit any statement of a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Establishment of Issue Price (Hold-the-Offering Price Rule May Apply if Competitive Sale Requirements are Not Satisfied): The winning bidder shall assist the City in establishing the issue price of the 2023 Bonds and shall execute and deliver to the City at closing an "issue price" or similar certificate in substantially the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the winning bidder, the City,

and Bond Counsel. All actions to be taken by the City to establish the issue price of the 2023 Bonds may be taken on behalf of the City by the City's municipal advisor identified herein and any notice or report to be provided to the City may be provided to the City's municipal advisor.

(a) The City intends that the provisions of Treasury Regulation Section 1.148-1(f)(3)(i) (defining "competitive sale" for purposes of establishing the issue price of the 2023 Bonds) will apply to the initial sale of the 2023 Bonds (the "competitive sale requirements") because:

(i) the City shall disseminate a Notice of Sale to potential underwriters in a manner that is reasonably designed to reach potential underwriters;

(ii) all bidders shall have an equal opportunity to bid;

(iii) the City may receive bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and

(iv) the City anticipates awarding the sale of the 2023 Bonds to the bidder who submits a firm offer to purchase the 2023 Bonds at the highest price (or lowest interest cost), as set forth in this Notice of Sale.

Any bid submitted pursuant to the Notice of Sale shall be considered a firm offer for the purchase of the 2023 Bonds, as specified in the bid.

In the event that the competitive sale requirements described above in subparagraph (a) are not satisfied, the City shall so advise the winning bidder. The City may determine to treat (i) the first price at which 10% of each maturity of the 2023 Bonds is sold to the public as the issue price of that maturity and/or (ii) the initial offering price to the public as of the sale date of any maturity of the 2023 Bonds as the issue price of that maturity (the "hold-the-offering-price rule"), in each case applied on a maturity-by-maturity basis. The winning bidder shall advise the City if any maturity of the 2023 Bonds satisfies the 10% test as of the date and time of the award of the 2023 Bonds. The City shall promptly advise the winning bidder, at or before the time of award of the 2023 Bonds, which maturities of the 2023 Bonds shall be subject to the 10% test or shall be subject to the hold-the-offering-price rule during the Holding Period, as defined in subparagraph (d)(i) below. Bids will not be subject to cancellation in the event that the City determines to apply the hold-the-offering-price rule to any maturity of the 2023 Bonds. Bidders should prepare their bids on the assumption that all of the maturities of the 2023 Bonds will be subject to the 10% test in order to establish the issue price of the 2023 Bonds.

(b) The City acknowledges that, in making the representation set forth above, the winning bidder will rely on (i) the agreement of each underwriter to comply with the hold-the-offering-price rule, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the 2023 Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an underwriter is a party to a retail distribution agreement that was employed in connection with the initial sale of the 2023 Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, as set forth in the retail distribution agreement and the related pricing wires. The City further

acknowledges that each underwriter shall be solely liable for its failure to comply with its agreement regarding the hold-the-offering-price rule and that no underwriter shall be liable for the failure of any other underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the 2023 Bonds.

(c) By submitting a bid, each bidder confirms that:

(i) any agreement among underwriters, any selling group agreement, and each retail distribution agreement (to which the bidder is a party) relating to the initial sale of the 2023 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A) report the prices at which it sells to the public the unsold 2023 Bonds of each maturity allotted to it until it is notified by the winning bidder that either the 10% test has been satisfied as to the 2023 Bonds of that maturity or all 2023 Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the winning bidder and as set forth in the related pricing wires, and

(ii) any agreement among underwriters relating to the initial sale of the 2023 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the 2023 Bonds to the public to require each broker-dealer that is a party to such retail distribution agreement to (A) report the prices at which it sells to the public the unsold 2023 Bonds of each maturity allotted to it until it is notified by the winning bidder or such underwriter that either the 10% test has been satisfied as to the 2023 Bonds of that maturity or all 2023 Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the winning bidder or such underwriter and as set forth in the related pricing wires.

(d) The following terms are defined below:

(i) Hold-the-Offering-Price Maturity means a maturity of the 2023 Bonds of which less than 10% has been sold to the Public on the Sale Date.

(ii) Holding Period means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (a) the close of the fifth business day after the Sale Date, or (b) the date on which the winning bidder sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(iii) Maturity means 2023 Bonds with the same credit and payment terms. Bond with different maturity dates, or 2023 Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(iv) Public means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(v) Sale Date means the first day on which there is a binding contract in writing for the sale of a Maturity of the 2023 Bonds. The Sale Date of the 2023 Bonds is expected to be March 7, 2023.

(vi) Underwriter means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the 2023 Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the 2023 Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the 2023 Bonds to the to the Public).

Postponement of Sale. The City reserves the right to postpone the date and time established for the receipt of bids. Any such postponement will be announced by posting on Grant Street Group prior to commencement of the bidding. If any date and time fixed for the receipt of bids and the sale of the 2023 Bonds is postponed, an alternative sale date and time will be announced at least one business day prior to such alternative sale date. On any such alternative sale date and time, any bidder may submit bids electronically as described above for the purchase of the 2023 Bonds in conformity in all respects with the provision of this Official Notice of Bond Sale, except for the date and time of sale and except for any changes announced by posting on Grant Street Group at the time the sale date and time are announced.

Ratings. A rating of “__” has been received by Moody’s Investors Service.

Information. Copies (in reasonable quantities) of this Official Notice of Bond Sale, the Preliminary Official Statement, and other information concerning the City and the 2023 Bonds may be obtained from:

Erik Harrigan, Director
RBC Capital Markets
6301 Uptown Blvd., Ste. 110
Albuquerque, NM 87110
Phone: (505) 872-5999

The date of this Official Notice of Bond Sale is February __, 2023.

CITY OF LAS CRUCES, NEW MEXICO

EXHIBIT A

FORM OF CERTIFICATE REGARDING ISSUE PRICE

(For use where three or more bids for the 2023 Bonds were received by the City.)

The undersigned hereby certifies as follows with respect to the \$_____ principal amount of City of Las Cruces, New Mexico, State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the "Bonds").

1. *Reasonably Expected Initial Offering Price.*

- (a) As of the Sale Date, the reasonably expected initial offering prices of the 2023 Bonds to the Public by the Underwriter are the prices listed in Schedule A (the "Expected Offering Prices"). The Expected Offering Prices are the prices for the Maturities of the 2023 Bonds used by the Underwriter in formulating its bid to purchase the 2023 Bonds. Attached as Schedule B is a true and correct copy of the bid provided by the Underwriter to purchase the 2023 Bonds.
- (b) The Underwriter was not given the opportunity to review other bids prior to submitting its bid.
- (c) The bid submitted by the Underwriter constituted a firm offer to purchase the 2023 Bonds.

2. *Defined Terms.*

- (a) *Maturity* means 2023 Bonds with the same credit and payment terms. 2023 Bonds with different maturity dates, or 2023 Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.
- (b) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term "related party" for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.
- (c) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the 2023 Bonds. The Sale Date of the 2023 Bonds is March 7, 2023.
- (d) *Underwriter* means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the 2023 Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the

2023 Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the 2023 Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the City with respect to certain of the representations set forth in the Tax Compliance Certificate and with respect to compliance with the federal income tax rules affecting the 2023 Bonds, and by Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Bond Counsel in connection with rendering its opinion that the interest on the 2023 Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the City from time to time relating to the 2023 Bonds.

By: _____
Name: _____
Dated: _____

(For use where the City did not receive three or more bids for the 2023 Bonds.)

CERTIFICATE REGARDING ISSUE PRICE

The undersigned hereby certifies as follows with respect to the \$_____ principal amount of City of Las Cruces, New Mexico, Series 2023 (the "2023 Bonds").

1. *Hold-the-Price.*

- (a) Other than the 2023 Bonds maturing in ____ (“Hold-the-Price Maturities”), if any, the first prices at which at least ten percent (“Substantial Amount”) of the principal amount of each Maturity was sold on the Sale Date to the Public are their respective initial offering prices (“Initial Offering Prices”), as listed in the pricing wire or equivalent communication for the 2023 Bonds that is attached to this Certificate as Schedule A.
- (b) On or before the Sale Date, the Purchaser offered to the Public each Maturity of the Hold-the-Price Maturities at their respective Initial Offering Prices, as set forth in Schedule A hereto.
- (c) As set forth in the Notice of Sale, the Purchaser agreed in writing to neither offer nor sell any of the Hold-the-Price Maturities to any person at any higher price than the Initial Offering Price for such Hold-the-Price Maturity until the earlier of the close of the fifth business day after the Sale Date or the date on which the Purchaser sells a Substantial Amount of a Hold-the-Price Maturity of the 2023 Bonds to the Public at no higher price than the Initial Offering Price for such Hold-the-Price Maturity.

2. *Defined Terms.*

- (a) *Maturity* means 2023 Bonds with the same credit and payment terms. 2023 Bonds with different maturity dates, or 2023 Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.
- (b) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.
- (c) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the 2023 Bonds. The Sale Date of the 2023 Bonds is March 7, 2023.

(d) *Underwriter* means (i) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the 2023 Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the 2023 Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the 2023 Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the City with respect to certain of the representations set forth in the Tax Compliance Certificate and with respect to compliance with the federal income tax rules affecting the 2023 Bonds, and by Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Bond Counsel in connection with rendering its opinion that the interest on the 2023 Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the City from time to time relating to the 2023 Bonds.

By: _____
Name: _____
Dated: _____

To: Members of the City Council of the City of Las Cruces

From: Ifo Pili, City Manager

Date: February 10, 2023

Re: \$12,000,000* City of Las Cruces State Shared Gross Receipts Tax
Improvement Revenue Bonds, Series 2023

*Preliminary and subject to change.

The attached Preliminary Official Statement (the "POS") has been prepared in connection with the offering and sale of the \$12,000,000* City of Las Cruces State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the "Bonds"). The POS makes various disclosures about the City, the Bond Ordinance and the Bonds. The POS will be reviewed by bidders for the Bonds and a final Official Statement will be provided to investors after the best bid is accepted by the City.

The attached POS is similar to the one used when other state shared gross receipts tax revenue bonds were issued by the City in 2020. The information has been updated by City staff. Katherine McKinney and Peter Franklin of the Modrall Sperling Law Firm, the City's Bond and Disclosure Counsel and Erik Harrigan and Kaeley Weimerskirch of RBC Capital Markets Corporation, the City's Financial Advisor, assisted in the disclosure process by assembling the information, attending disclosure conferences and reviewing the financial and economic data in the POS. In connection with the preparation of the POS, we have participated in due diligence meetings and conference calls. During those meetings and calls we discussed, confirmed and updated information contained in the POS, examined information for materiality, and identified additional information for inclusion. If you have any questions relating to the disclosure process and preparation of the POS, please contact me.

Under regulations imposed by the U.S. Securities and Exchange Commission (the "SEC"), the Preliminary Official Statement must not contain any untrue statement of a material fact, or omit to state a material fact. A material fact is one that could influence an investor in making a decision to purchase the Bonds. The SEC recently increased emphasis on the quality of disclosures made in municipal bond offerings. The SEC has stated that responsibility for disclosures lies with the members of the governing body approving the issuance of municipal bonds, following this guiding principal:

"Public entities that issue securities are primarily liable for the content of their disclosure documents.... In addition to the government entity issuing municipal securities, public officials of the issuer who have ultimate authority to approve the issuance of securities and related disclosure documents have responsibilities under the federal securities laws as well. In authorizing the issuance of the securities and related disclosure documents, a public official may not authorize disclosure that the official knows to be false; nor may the public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading."

Although City staff and the finance team collaborated in preparing the POS, each Councilor should review it carefully. The POS is a City Council document, and the City and its Council are responsible for its accuracy. Please use extra care in reviewing the sections labeled "INTRODUCTION," "SECURITY FOR THE BONDS," "PLEDGED REVENUES" and "THE CITY." In conducting your review, focus on whether the POS contains misleading statements of material facts or omits to state

Agenda Item #8.2.

material facts. A material fact is one that could influence an investor in making a decision to purchase the Bonds.

After reviewing the POS, please contact me if you have any reason to believe that the POS contains any inaccurate information or if you know of anything that might make any of the statements made in the POS incomplete or misleading. Thank you for your attention to this important matter.

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 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.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Bond Ordinance unless the context requires otherwise.

The City Council is informed that:

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico and is operating as a home rule City pursuant to Article X, Section 6 of the Constitution of the State and the Charter of the City; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, the City now receives monthly from the Revenue Division of the New Mexico Taxation and Revenue Department from the

statewide gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e. the total gross receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the City and other places designated in Section 7-1-6.4 NMSA 1978 (such distributions to the City as further defined herein the ("Pledged Revenues"); and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides as follows:

C. Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor; and

WHEREAS, except for the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2016 Subordinate Lien Bonds, 2017 Bonds, the 2017 NMFA Loan, the 2019 Subordinate Lien Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2020B Subordinate Lien Bonds, and the 2022 Subordinate Lien Bonds, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council hereby determines that issuance of the Series 2023 Bonds for the purpose of providing funds for (1) constructing, purchasing, furnishing, equipping,

rehabilitating, making additions to or making improvements to public facilities (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways will provide for the public health, peace and safety of the City and its citizens; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Series 2023 Bonds be issued with a first lien, but not an exclusive first lien, on the Pledged State Shared Gross Receipts Tax Revenues on parity with the lien thereon of outstanding Parity Bonds and senior to the lien thereon of the outstanding Parity Subordinate Obligations; and

WHEREAS, the proposed form of this Bond Ordinance has been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Series 2023 Bonds in a competitive public sale to the bidder submitting the best bid therefore (the "Purchaser") pursuant to a Pricing Certificate supplementing this Bond Ordinance to be executed by the City Manager or City Financial Services Director as the Delegates, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Series 2023 Bonds set forth in the Pricing Certificate be within the parameters set forth in this Bond Ordinance; and

WHEREAS, the City Council intends that the specific details of and requirements for bidding for the bonds in the public sale of the Series 2023 Bonds shall be provided in an official notice of sale (the "Notice of Sale") to be approved on behalf of the City by the City Financial Services Director or Treasurer or her designee; and

WHEREAS, the specific principal amounts, interest rates, maturity dates, prices and other final terms and other features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy and a Reserve Fund Insurance Policy (if any) will be established in the Pricing Certificate; and

WHEREAS, the City Council has determined that it is in the best interests of the City to authorize the issuance of the Bonds pursuant to this Bond Ordinance.

NOW, THEREFORE, be it ordained by the governing body of the City of Las Cruces:

(I)

Section 1. Definitions. As used in this Bond Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Act” means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

“Bond Insurance Policy” means the financial guaranty insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

“Bond Ordinance” means this City Ordinance No. 3024 adopted on February 21, 2023, as supplemented by the Pricing Certificate.

“Bondholder,” “holder,” “owner” or “Owner” means the registered owner of any Bond as shown on the registration books of the City for the Bonds, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the Bondholders shall mean the Holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of all Bonds then outstanding.

Agenda Item #8.2.

“Bonds” or “Series 2023 Bonds” or “2023 Bonds” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

“Business Day” means a day on which commercial banks in the city in which the principal office of the Paying Agent and Registrar is located are open for conduct of substantially all of their business operations.

“Charter” means the home rule charter of the City submitted to Las Cruces City Commission on January 7, 1985, and approved by the voters of the City on March 5, 1985, as amended and supplemented.

“City” means the City of Las Cruces, in the County of Doña Ana and State of New Mexico.

“City Council” means the City Council of the City or any future successor governing body of the City.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

“Continuing Disclosure Undertaking” means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser.

Agenda Item #8.2.

“Depository” means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

“Event of Default” means any of the events stated in Section 25 of this Bond Ordinance.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including, to the extent applicable, the fees, compensation, costs and expenses paid or to be paid to the Paying Agent and Registrar, the Insurer and legal fees, financial advisor fees, expenses and applicable gross receipts taxes, costs of printing and distributing the Preliminary Official Statement and the Official Statement, rating fees and accounting fees and expenses.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the City as its fiscal year.

“Fitch” means Fitch Ratings, Inc., its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the entire Bond Ordinance and not solely to the particular section or paragraph of this Bond Ordinance in which such word is used.

“Hold Harmless Distribution” means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such

Agenda Item #8.2.

distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year beginning on July 1, 2015 until the distribution is eliminated after July 1, 2029.

“Independent Accountant” means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City who (i) is, in fact, independent and not under the domination of the City, (ii) does not have any substantial interest, direct or indirect, with the City, and (iii) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

“Insured Bank” means a bank or savings and loan association insured by an agency of the United States.

“Interest Payment Date” means each June 1 and December 1, commencing December 1, 2023 (or such other date specified in the Pricing Certificate).

“Moody's” means Moody's Investor Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Notice of Sale” means the official notice of sale of the Bonds.

“Official Statement” means the final disclosure document relating to the issuance and sale of the Bonds.

Agenda Item #8.2.

“Outstanding” or “outstanding” when used in reference to bonds means, on any particular date, the aggregate of all Bonds delivered under this Bond Ordinance except:

A. those cancelled at or prior to such date or delivered or acquired by the City at or prior to such date for cancellation;

B. those otherwise deemed to be paid in accordance with Section 28 or Section 31 of this Bond Ordinance;

C. those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the City and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course.

“Parity Bonds” or “Parity Obligations” means the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2017 Bonds, the 2017 NMFA Loan, the 2020 Refunding Bonds, the 2020A Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues on parity with the Bonds, as provided in Section 20 of this Bond Ordinance.

“Parity Subordinate Obligations” means the 2016 Subordinate Bonds, the 2019 Subordinate Bonds, the 2020B Bonds, the 2022 Subordinate Lien Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

Agenda Item #8.2.

“Paying Agent” means the City Treasurer, as agent for the City for the payment of the Bonds or any other entity at the time appointed Paying Agent by resolution of the City Council.

“Permitted Investments” means, but only to the extent permitted by applicable laws of the State or ordinances of the City, the following:

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership.
2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
3. Federal Financing Bank
4. Federal Housing Administration Debentures (FHA)
5. General Services Administration
Participation certificates

6. Government National Mortgage Association (GNMA or “Ginnie Mae”)
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations
7. U.S. Maritime Administration
Guaranteed Title XI financing
8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
Senior debt obligations
2. Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”)
Participation Certificates
Senior debt obligations
3. Federal National Mortgage Association (FNMA or “Fannie Mae”)
Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or “Sallie Mae”)

Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System

Consolidated system wide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposits accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements.

H. Commercial paper rated, at the time of purchase, “Prime - 1” by Moody's and “A-1” or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody's and “A-1” or “A” or better by S&P.

Agenda Item #8.2.

K. Repurchase Agreements for 30 days or less must follow the following criteria.

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the City and a dealer bank or securities firm
 - a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's, or
 - b. Banks rated "A" or above by S&P and Moody's.
2. The written repo contract must include the following:
 - a. Securities which are acceptable for transfer are:
 - (1) Direct U.S. governments, or
 - (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
 - b. The term of the repo may be up to 30 days
 - c. The collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral)

before/simultaneous with payment (perfection by possession of certificated securities).

d. Valuation of Collateral

(1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

(a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3. Legal opinion which must be delivered to the City:

a. Repo meets guidelines under state law for legal investment of public funds.

L. The State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the State Treasurer.

“Pledged Revenue Fund” means the State Shared Gross Receipts Tax Revenue Fund, continued in Section 16 of this Bond Ordinance.

“Pledged State Shared Gross Receipts Tax Revenues” or “Pledged Revenues” means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution to the extent the City receives any Hold Harmless Distribution; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term “Pledged State Shared Gross Receipts Tax Revenues” does not include any local option gross receipts tax income received by the City).

“Preliminary Official Statement” means the initial disclosure document relating to the issuance and sale of the Bonds.

“Pricing Certificate” means one or more certificates executed by the City Manager or City Financial Services Director, dated on or before the date of delivery of the Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender

provisions; (vii) the creation of any capitalized interest fund, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the amount of the Reserve Requirement, if any, and whether such Reserve Fund shall be funded with proceeds of the Bonds or through the deposit of a Reserve Fund Insurance Policy; and (x) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Ordinance.

“Purchaser” means the best bidder for the Bonds.

“Rating Category” means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

“Registrar” means the City Treasurer, as agent for the City for transfer and exchange of the Bonds or any other entity at the time appointed by resolution of the City Council.

“Reserve Fund Insurance Policy” means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund as provided in the Pricing Certificate in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

“S&P” means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“State” means the State of New Mexico.

Agenda Item #8.2.

“2011A Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2011A” issued in the original aggregate principal amount of \$9,640,000 by City Ordinance No. 2618 adopted by the City Council on June 8, 2011.

“2014 Bonds” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014 issued in an original aggregate principal amount of \$10,000,000 by City Ordinance No. 2718 adopted by the City Council on June 24, 2014.

“2015 Bonds” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015 issued in an original aggregate principal amount of \$19,195,000 by City Ordinance No. 2739 adopted by the City Council on December 1, 2014 and Resolution No. 15-140 adopted by the City Council on February 3, 2015.

“2016 Subordinate Bonds” means the “City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016” authorized in the original aggregate principal amount of \$8,585,000 by City Ordinance No. 2774 adopted by the City Council on February 16, 2016 and Resolution No. 16-18 adopted by the City Council on March 9, 2016.

“2017 Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017” issued in an original aggregate principal amount of \$10,570,000 by City Ordinance No. 2808 adopted by the City Council on May 1, 2017 and Resolution No. 17-187 adopted by the City Council on May 10, 2017.

“2017 NMFA Loan” means the loan agreement between the City and the New Mexico Finance Authority executed on February 24, 2017 in the original aggregate principal

Agenda Item #8.2.

amount of \$3,203,527 by City Ordinance No. 2801 adopted by the City Council on January 17, 2017.

“2019 Subordinate Bonds” means the “City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019 authorized in the original aggregate principal amount of \$8,870,000 by City Council Ordinance No. 2894 adopted on August 5, 2019.

“2020 Refunding Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020” authorized in the original aggregate principal amount of \$15,435,000 by City Council Ordinance No. 2912 adopted on February 18, 2020, as supplemented by the Pricing Certificate executed on February 26, 2020.

“2020A Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A” authorized in the original aggregate principal amount of \$7,190,000 by City Council Ordinance No. 2925 adopted on May 18, 2020, as supplemented by the Pricing Certificate executed on June 17, 2020.

“2020B Subordinate Bonds” means the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B” authorized in the original aggregate principal amount of \$6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020, as supplemented by the Pricing Certificate executed on June 17, 2020.

“2022 Subordinate Lien Bonds” means the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022” authorized in the original aggregate principal amount of \$5,000,000 by City council Ordinance

Agenda Item #8.2.

No. 3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate executed on August 18, 2022.

“2023 Acquisition Fund” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Improvement Project Acquisition Fund” established by Section 16 of the Bond Ordinance.

“2023 Debt Service Fund” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Debt Service Fund” established in Section 16 of this Bond Ordinance.

“2023 Improvement Project” means (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying Expenses related to the issuance of the Bonds.

“2023 Minimum Reserve” means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2023 Bonds, (ii) the maximum annual debt service on the outstanding Series 2023 Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2023 Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

“2023 Reserve Fund” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Reserve Fund” established by Section 16 of this Bond Ordinance.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Bond Ordinance) by the City Council and the officers of the City, directed toward the Improvement Project, the issuance of the Bonds for the Improvement Project and the

sale of the Bonds to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the 2023 Improvement Project. The 2023 Improvement Project and the method of financing the 2023 Improvement Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the 2023 Improvement Project as set forth in the Pricing Certificate and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

Section 4. Findings: Declaration. The City Council hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The 2023 Improvement Project is needed to meet the needs of the City and its inhabitants.

B. Moneys available for the 2023 Improvement Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the 2023 Improvement Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D. It is economically feasible to defray, in part, the cost of the 2023 Improvement Project by the issuance of the Bonds.

E. The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2023 Improvement Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F. The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds, if any, for the outstanding Parity Bonds and the Parity Subordinate Obligations.

Section 5. Bonds – Authorization, Parameters and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, revenue bonds to be designated as 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, and the issuance, sale and delivery of the Bonds is hereby authorized.

B. Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023. The Series 2023 Bonds shall be issued subject to the following parameters:

(i) The Series 2023 Bonds shall be issued in an aggregate principal amount not to exceed \$12,150,000 for the 2023 Improvement Project.

(ii) The net effective interest rate on the Series 2023 Bonds shall not exceed 10% per annum.

(iii) The final maturity of the Series 2023 Bonds shall not be later than June 1, 2038.

(iv) The Series 2023 Bonds shall be payable solely from, and shall constitute a first lien, but not an exclusive first lien, upon the Pledged Revenues, on parity with the lien thereon of other outstanding Parity Obligations.

(v) The Series 2023 Bonds shall be sold to the Purchaser pursuant to a competitive public sale.

(vi) The maximum sale price of the Series 2023 Bonds shall be not more than \$12,150,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii) The underwriter's discount shall be the discount included in the bid which provides the lowest interest cost to the City while maximizing net bond proceeds to the City.

(viii) The Series 2023 Bonds shall be in substantially the form set forth in this Ordinance.

C. The City Manager or City Financial Services Director are hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Pricing Certificate.

D. The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of \$5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on December 1, 2023 (or such other date as specified in

the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

E. Notice of Sale. The sale of the Bonds shall be pursuant to a Notice of Sale, the details and publication of which shall be consistent with this Ordinance and approved by the City Treasurer or her designee, which action is hereby authorized.

F. Award of Bonds. The Bonds shall be awarded to the Purchaser as provided in the Award Resolution.

Section 6. Redemption of Bonds.

A. Notice of Redemption. In the event that the Bonds are subject to redemption prior to maturity, as may be established in the Pricing Certificate, notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. The City shall give notice of optional redemption of the Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued

interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the City.

B. Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph A of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Section 7. Filing of Manual Signatures. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Mayor or Mayor Pro Tem and City Clerk may each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8. Execution and Authentication of Bonds.

A. Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor or Mayor Pro Tem and shall be attested with the facsimile or manual signature of the City Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor or Mayor Pro Tem and City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

B. Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and inscribed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10. Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto.

If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 11. Registration, Transfer, Exchange and Ownership of Bonds.

A. Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption as herein provided, or (ii) after the mailing to registered owners of notice calling such Bonds or portion thereof for redemption as herein provided. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C. Owner of the Bonds. The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of

either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Lost Bonds. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

E. Additional Bonds. Executed but unauthenticated Bonds are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F. Charges. For each new Bond issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Bond requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a

successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than \$50,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

H. Book Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the

City determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another Depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Officers of the City are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of this Bond Ordinance, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent, Registrar or the City to the Depository as provided in the Bond Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the City to the Depository.

Section 12. Special Limited Obligations. All of the Bonds and all payments of principal, premium, if any, and interest thereon whether at maturity or on a redemption date, together with any interest accruing thereon, shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues, which revenues are so pledged and are payable as set forth in Section 17 of this Bond Ordinance. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal

of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and each of the Bonds shall recite that it is payable and collectible solely out of the Pledged Revenues, pledged as set forth in this Bond Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to the payment of the Bonds, in its sole discretion.

Section 13. Form of Bonds. The forms, terms and provisions of the Bonds shall be substantially in the form set forth below, with such changes therein as are not inconsistent with the Bond Ordinance.

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF NEW MEXICO

COUNTY OF DOÑA ANA

CITY OF LAS CRUCES, NEW MEXICO

STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS,

SERIES 2023

Bond No. _____ \$ _____

INTEREST RATE	MATURITY DATE	DATE OF BOND	CUSIP
% per annum	June 1, _____	_____, 2023	_____

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

The City of Las Cruces (the “City”), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the “Paying Agent”), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on _____ 1, _____ and on June 1 and December 1 of each year (each an “Interest Payment Date”) thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by

such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of \$_____ issued in denominations of \$5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the "Series 2023 Bonds") issued under and pursuant to City Ordinance No. 3024, as supplemented by a Pricing Certificate dated _____, 2023 (as supplemented, the "Bond Ordinance").

The Series 2023 Bonds maturing on and after June 1, _____, are subject to prior redemption at the City's option in one or more units of principal of \$5,000 on and after June 1, _____ in whole or in part at any time, in such order of maturities as the City may determine (and

by lot if less than all of the Series 2023 Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each \$5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Redemption shall be made upon prior notice mailed to each registered owner of each Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly

endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or owner a new Bond or Bonds in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar shall not be required (i) to transfer or exchange any Bond during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption, or (ii) to transfer or exchange any Bond or part thereof called for redemption. The Registrar will close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name any Bond is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest in the Bond Ordinance; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and

interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Series 2023 Bonds on the Pledged Revenues is an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with, or subordinate and junior to, the lien on the Pledged Revenues of the Series 2023 Bonds. Amounts and securities held in the 2023 Debt Service Fund and 2023 Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Bonds.

The Bonds are issued to provide funds to defray in part the costs of (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; and (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying expenses and costs of issuance related to the issuance of the Bonds.

The City covenants and agrees with the owner of this Bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law, and that the Bonds do not exceed or violate any constitutional or statutory limitation of or pertaining to the City.

This Bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the Certificate of Authentication.

IN WITNESS WHEREOF, the City of Las Cruces, New Mexico has caused this bond to be signed and executed on the City's behalf with the facsimile or manual signature of the Mayor or Mayor Pro Tem and the facsimile or manual signature of the City Clerk and has caused the corporate seal of the City or a facsimile thereof to be affixed hereon, all as of the Date of Bond.

CITY OF LAS CRUCES, NEW MEXICO

By_____

Mayor or Mayor Pro Tem

By_____

City Clerk

(SEAL)

(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

Agenda Item #8.2.

This is one of the Bonds described in the Bond Ordinance, and this bond has been registered on the registration books kept by the undersigned as Registrar for the Bonds.

Date of Authentication:

City Treasurer of the City of Las Cruces,
New Mexico, as Registrar

By _____
Authorized Officer

(End of Form of Registrar's Certificate of Authentication)
(Form of Assignment)

For value received, _____ hereby sells, assigns and transfer unto _____ the within bond and hereby irrevocably constitutes and appoints _____ attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

Social Security or Tax Identification No. of Assignee _____
Dated: _____
Signature Guarantee:

NOTE: The assignor's signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

(End of Form of Assignment)

(End of Form of Bond)

Section 14. Period of 2023 Improvement Project's Usefulness. It is hereby determined and recited that the period of usefulness of the 2023 Improvement Project financed with the proceeds of the Series 2023 Bonds will not expire prior to the final maturity date of the Series 2023 Bonds.

Section 15. Use of Bond Proceeds and Other Funds; Completion of 2023 Improvement Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2023 Improvement Project.

A. Expenses. An amount necessary, together with other legally available funds of the City, shall be used to pay Expenses.

B. 2023 Acquisition Fund. Proceeds derived from the sale of the Series 2023 Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2023 Acquisition Fund. Until the completion of the 2023 Improvement Project, the money in the 2023 Acquisition Fund shall be used and paid out solely for the purpose of the 2023 Improvement Project in compliance with applicable law.

C. 2023 Reserve Fund. No deposit of proceeds of the Bonds, Pledged State Shared Gross Receipts Tax Revenues or other City moneys into the 2023 Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D. 2023 Improvement Project Completion. As soon as practicable after completion of the 2023 Improvement Project, and in any event not more than 60 days after

completion of the 2023 Improvement Project, any proceeds remaining unspent (other than any amount retained by the City for any 2023 Improvement Project costs not then due and payable) shall be transferred and deposited in the 2023 Debt Service Fund and used by the City to pay principal and interest on the Series 2023 Bonds as same become due.

E. Purchaser Not Responsible. The Purchaser of the Bonds shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

F. Bond Insurance Policy and/or Reserve Fund Insurance Policy. A Bond Insurance Policy and/or Reserve Fund Insurance Policy may be obtained in connection with the issuance of each of the Series 2023 Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the issuer of the Bond Insurance Policy and/or Reserve Fund Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy and/or Reserve Fund Insurance Policy shall be included in the Pricing Certificate.

Section 16. Funds and Accounts. The City hereby creates and continues the following special and separate funds and accounts:

A. 2023 Acquisition Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Improvement Project Acquisition Fund” to be maintained by the City.

B. Pledged Revenue Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Revenue Fund” (the “State Shared Gross Receipts Tax Revenue Fund”) to be maintained by the City, into which the City shall deposit the Pledged State Shared Gross Receipts Tax Revenues.

C. 2023 Debt Service Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Debt Service Fund” (the “2023 Debt Service Fund”) to be maintained by the City.

D. 2023 Reserve Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Reserve Fund” (the “2023 Reserve Fund”) to be maintained by the City.

Section 17. Deposit of Pledged Revenues and Flow of Funds.

A. Administration of Pledged Revenue Funds. So long as any of the Series 2023 Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

B. Debt Service Fund Payments. The following amounts shall be withdrawn from the State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Bonds), and shall be concurrently credited to the 2023 Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2023 Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2023 Bonds then outstanding.

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next

maturing installment of principal of the outstanding Series 2023 Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2023 Bonds then outstanding.

C. Credit. In making the deposits required to be made into the 2023 Debt Service Fund, if there are any amounts then on deposit in the 2023 Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph B above shall be reduced by the amount available in such fund for such purpose.

D. Transfer of Money out of 2023 Debt Service Fund. Each payment of principal and interest becoming due on the Series 2023 Bonds shall be transferred from the 2023 Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

E. 2023 Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2023 Reserve Fund upon the issuance of the Series 2023 Bonds or any time thereafter so long as the Pledged State Shared Gross Receipts Tax Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds. If the Pledged State Shared Gross Receipts Tax Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2023 Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months, an amount equal to the 2023 Minimum Reserve will be held in the 2023 Reserve Fund.

After funding the 2023 Reserve Fund in an amount equal to the 2023 Minimum Reserve, no additional payments need be made into the 2023 Reserve Fund so long as the moneys therein shall equal not less than the 2023 Minimum Reserve. The moneys (if any) in

the 2023 Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in paragraph (F) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023 Bonds resulting from failure to deposit into the 2023 Debt Service Fund sufficient funds to pay the principal and interest as the same accrue. In the event that the funding of the 2023 Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount of the 2023 Minimum Reserve.

F. Defraying Delinquencies in the 2023 Debt Service Fund and 2023 Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2023 Debt Service Fund is insufficient to pay principal of and interest on the Series 2023 Bonds then due, then an amount shall be paid into the 2023 Debt Service Fund on such date from the 2023 Reserve Fund (if moneys are then on deposit in the 2023 Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2023 Debt Service Fund from the 2023 Reserve Fund, if any, shall be replaced in the 2023 Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2023 Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by paragraph B of this Section 17. If, in any month, the City shall, for any reason, fail to pay into the 2023 Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2023 Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the 2023 Bonds; provided, however, that any moneys at any time in excess of the 2023 Minimum Reserve in the 2023 Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2023 Reserve Fund shall not be invested in a manner which could cause the

Series 2023 Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2023 Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2023 Reserve Fund exceeds the 2023 Minimum Reserve, all amounts in excess of the 2023 Minimum Reserve shall be transferred to the 2023 Debt Service Fund and used to pay principal of and interest on the Series 2023 Bonds.

G. Payment of Parity Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by paragraphs B, E and F of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Bonds payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the 2023 Bonds and any other outstanding Parity Bonds, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Bonds, for the payment of principal of and interest on all series of outstanding Parity Bonds and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Bonds, for the required debt service reserve fund deposits for all series of outstanding Parity Bonds.

H. Termination Upon Deposits to Maturity. No payment shall be made into the 2023 Debt Service Fund or the 2023 Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2023 Bonds to their respective maturities or

applicable redemption dates, in which case moneys in the 2023 Debt Service Fund and the 2023 Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2023 Debt Service Fund and the 2023 Reserve Fund may be used as provided below.

I. Payment of Parity Subordinate Obligations. Subsequent to the payments required by paragraphs B, E, F and G of this Section, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided shall be used by the City for the payment of interest on and the principal of the Parity Subordinate Obligations now outstanding or hereafter authorized having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Series 2023 Bonds, issued and payable from the Pledged Revenues, as the same become due. Payments with respect to principal, interest and reserve funds for any such Parity Subordinate Obligations may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional Parity Subordinate Obligations.

(J) Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 18. General Administration of Funds. The funds designated in Section 16 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be invested by the City in Permitted Investments or deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose.

Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys in the 2023 Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the 2023 Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2023 Reserve Fund, value the 2023 Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2023 Reserve Fund. If, upon any valuation, the value of the 2023 Reserve Fund exceeds the 2023 Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2023

Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Series 2023 Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2023 Reserve Fund may be used to pay the final installments of principal and interest on the Series 2023 Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Series 2023 Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Series 2023 Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the 2023 Reserve Fund and deposited into the 2023 Debt Service Fund to prevent a default on the Series 2023 Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2023 Reserve Fund to the 2023 Minimum Reserve. Such repayment shall be made as required by paragraph F Section 17 of this Bond Ordinance.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2023 Debt Service Fund and the 2023 Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Series 2023 Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Series 2023 Bonds constitute an irrevocable and first

lien, but not an exclusive first lien on the Pledged Revenues on parity with the lien thereon of the outstanding Parity Bonds and additional Parity Bonds, if any, hereafter authorized to be issued and payable from the Pledged Revenues, and senior to the lien of Parity Subordinate Obligations on the Pledged Revenues.

Section 20. Additional Parity Bonds Payable from Pledged Revenues.

A. Parity Bonds Test. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Series 2023 Bonds. Before any additional Parity Bonds are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in the 2023 Debt Service Fund and the 2023 the Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2) The Pledged State Shared Gross Receipts Tax Revenues (not including the Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 200% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Bonds, (2) other outstanding Parity Bonds payable from and constituting a lien upon the Pledged Revenues, and (3) the Parity Bonds proposed to be issued.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Bonds, (a) any amount of the reserve fund requirement for the additional Parity Bonds is immediately deposited in or credited to the reserve fund for the additional Parity Bonds or, (b) any amount of the reserve fund requirement for any issue of

outstanding Parity Bonds is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Bonds, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Bonds or any issue of outstanding Parity Bonds for which such reserve fund was created.

So long as the Build America Mutual Assurance Company ("BAM") municipal bond insurance policy for the 2016 Subordinate Bonds shall be in force and effect or any amounts are owed to BAM related to the 2016 Subordinate Bonds, and in addition to requirements set forth above, before any additional Parity Bonds are issued, it must be determined that the Pledged State Shared Gross Receipts Tax Revenues (not including the Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Bonds, (2) the outstanding 2016 Subordinate Bonds, (3) other outstanding Parity Subordinate Bonds, and (4) the Parity Bonds proposed to be issued. Compliance with the foregoing requirement shall be evidenced by a certificate delivered in accordance with Section 20(B) of this Ordinance.

B. Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or Financial Services Director, that the Pledged Revenues (not including the Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity Bonds. The Independent Accountant, City Treasurer or Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Bonds and on a parity with the Parity Subordinate Obligations in accordance with the requirements set forth in the ordinances authorizing the outstanding Parity Subordinate Obligations.

D. Superior Obligations Prohibited. The City shall not issue any obligation having a lien on any of the Pledged Revenues pledged by this Bond Ordinance which is prior and superior to the Bonds.

Section 21. Refunding Bonds. The provisions of Section 20 of this Bond Ordinance are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding obligations constituting a lien upon the Pledged Revenues, the Bonds or other obligations, or any part thereof, such obligations may be refunded, but only with the consent of the holders, unless the obligations shall then mature or be callable for redemption, or the plan of refunding calls for payment of the obligations at maturity or at a redemption date, regardless of whether the lien priority is changed by the refunding except that superior obligations are prohibited as provided in paragraph D of Section 20 of this Bond Ordinance and except as provided in paragraphs B and C of this Section.

B. Limitation Upon Issuance of Parity Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Series 2023 Bonds, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Series 2023 Bonds; or

(2) The refunding obligations are issued in compliance Section 20 of this Bond Ordinance.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

(1) The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded; or

(3) The refunding bonds or other refunding obligations are issued in compliance with Section 20 of this Bond Ordinance.

D. Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph C of this Section but without impairing any contractual obligation imposed by any

proceedings authorizing any unrefunded portion of any issue or issues, including the Series 2023 Bonds.

Section 22. Equality of Parity Bonds. The Parity Bonds from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Bonds regardless of whether they are actually issued and delivered or incurred at different times.

Section 23. Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

A. Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds as set forth in Section 15 of this Bond Ordinance.

B. Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2023 Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

C. City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any owner of the Bonds.

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

E. Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F. Audits and Budgets. The City will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

G. Other Liens. Other than as described and identified by this Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

H. Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 30 of this Bond Ordinance.

I. Debt Service Fund and Reserve Fund. The 2023 Debt Service Fund and the 2023 Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

J. Surety Bonds. Each municipal official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of such funds.

K. Performing Duties. The City will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds.

L. Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, other facts and circumstances relevant to the tax treatment of interest on the Bonds, and making related covenants.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds, and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 24. Preliminary Official Statement and Continuing Disclosure Undertaking.

A. Preliminary Official Statement. The preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds.

B. Continuing Disclosure Undertaking. The officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended;

provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an “event of default” under Section 25 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 25. Events of Default. Each of the following events is hereby declared an “event of default”:

A. Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise.

B. Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C. Incapable of Performing. If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

D. Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs A and B of this Section), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

E. Bankruptcy. The City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Section 26. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 25 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 27. Duties Upon Default. Upon the happening of any of the events of default provided in Section 25 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 28. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 29. Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official

Statement and final Official Statement, and the execution of the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 30. Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

- A. An extension of the maturity of any Bond; or
- B. A reduction of the principal amount or interest rate of any Bond; or
- C. The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or
- D. A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or
- E. The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or

F. The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Section 31. Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 32. Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 33. Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 34. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 35. Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 36 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 36. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on February 21, 2023, relating to the authorization and issuance of the 2023. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO 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 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.

A general summary of the Ordinance is:

The Ordinance authorizes the issuance and sale of (1) 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 purpose of constructing, purchasing, acquiring, and improving roadways and public facilities; provides that the Bonds will be payable and collectible from the revenues derived from the 1.225% pledged state shared gross receipts tax distributed to the City; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or City Financial Services Director to execute and deliver the Pricing Certificate; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds, including the

Agenda Item #8.2.

Preliminary Official Statement and Continuing Disclosure Undertaking; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this 21st day of February, 2023.

APPROVED:

ATTEST:

Ken Miyagishima, Mayor

Christine Rivera, City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councilor Gandara:	_____
Councilor Abeyta:	_____
Councilor Graham:	_____
Councilor Bencomo:	_____
Councilor Corran:	_____
Councilor Flores:	_____

APPROVED AS TO FORM

Jocelyn Garrison, Acting City Attorney

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss.
CITY OF LAS CRUCES)

I, Christine Rivera, the duly acting and qualified City Clerk of the City of Las Cruces, New Mexico (the “Governmental Unit”), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the “Governing Body”), constituting the governing body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on February 21, 2023, at the hour of 1:00 p.m., insofar as the same relate to the issuance and delivery of the Bonds, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

3. Notice of such meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the City’s open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2023.

CITY OF LAS CRUCES, NEW MEXICO

Christine Rivera, City Clerk

COUNCIL BILL NO. 23-018ORDINANCE 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 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.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Bond Ordinance unless the context requires otherwise.

The City Council is informed that:

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico and is operating as a home rule City pursuant to Article X, Section 6 of the Constitution of the State and the Charter of the City; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, the City now receives monthly from the Revenue Division of the New Mexico Taxation and Revenue Department from the

statewide gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e. the total gross receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the City and other places designated in Section 7-1-6.4 NMSA 1978 (such distributions to the City as further defined herein the ("Pledged Revenues"); and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides as follows:

C. Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor; and

WHEREAS, except for the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2016 Subordinate Lien Bonds, 2017 Bonds, the 2017 NMFA Loan, the 2019 Subordinate Lien Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2020B Subordinate Lien Bonds, and the 2022 Subordinate Lien Bonds, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council hereby determines that issuance of the Series 2023 Bonds for the purpose of providing funds for (1) constructing, purchasing, furnishing, equipping,

rehabilitating, making additions to or making improvements to public facilities (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways
~~the construction of roadways and construction, furnishing and equipping of facilities~~ will provide for the public health, peace and safety of the City and its citizens; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Series 2023 Bonds be issued with a first lien, but not an exclusive first lien, on the Pledged State Shared Gross Receipts Tax Revenues on parity with the lien thereon of outstanding Parity Bonds and senior to the lien thereon of the outstanding Parity Subordinate Obligations; and

WHEREAS, the proposed form of this Bond Ordinance has been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Series 2023 Bonds in a competitive public sale to the bidder submitting the best bid therefore (the "Purchaser") pursuant to a Pricing Certificate supplementing this Bond Ordinance to be executed by the City Manager or City Financial Services Director as the Delegates, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Series 2023 Bonds set forth in the Pricing Certificate be within the parameters set forth in this Bond Ordinance; and

WHEREAS, the City Council intends that the specific details of and requirements for bidding for the bonds in the public sale of the Series 2023 Bonds shall be provided in an official notice of sale (the "Notice of Sale") to be approved on behalf of the City by the City Financial Services Director or Treasurer or her designee; and

WHEREAS, the specific principal amounts, interest rates, maturity dates, prices and other final terms and other features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy and a Reserve Fund Insurance Policy (if any) will be established in the Pricing Certificate; and

WHEREAS, the City Council has determined that it is in the best interests of the City to authorize the issuance of the Bonds pursuant to this Bond Ordinance.

NOW, THEREFORE, be it ordained by the governing body of the City of Las Cruces:

(I)

Section 1. Definitions. As used in this Bond Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

~~“Acquisition Fund” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Improvement Project Acquisition Fund” established by Section 16 of the Bond Ordinance.~~

“Act” means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

“Bond Insurance Policy” means the financial guaranty insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

“Bond Ordinance” means this City Ordinance No. 3024 adopted on February 21, 2023, as supplemented by the Pricing Certificate.

“Bondholder,” “holder,” “owner” or “Owner” means the registered owner of any Bond as shown on the registration books of the City for the Bonds, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the

Agenda Item #8.2.

Bondholders shall mean the Holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of all Bonds then outstanding.

“Bonds” or “Series 2023 Bonds” or “2023 Bonds” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

“Business Day” means a day on which commercial banks in the city in which the principal office of the Paying Agent and Registrar is located are open for conduct of substantially all of their business operations.

“Charter” means the home rule charter of the City submitted to Las Cruces City Commission on January 7, 1985, and approved by the voters of the City on March 5, 1985, as amended and supplemented.

“City” means the City of Las Cruces, in the County of Doña Ana and State of New Mexico.

“City Council” means the City Council of the City or any future successor governing body of the City.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

Agenda Item #8.2.

“Continuing Disclosure Undertaking” means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser.

“Depository” means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

“Event of Default” means any of the events stated in Section 25 of this Bond Ordinance.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including, to the extent applicable, the fees, compensation, costs and expenses paid or to be paid to the Paying Agent and Registrar, the Insurer and legal fees, financial advisor fees, expenses and applicable gross receipts taxes, costs of printing and distributing the Preliminary Official Statement and the Official Statement, rating fees and accounting fees and expenses.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the City as its fiscal year.

“Fitch” means Fitch Ratings, Inc., its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the entire Bond Ordinance and not solely to the particular section or paragraph of this Bond Ordinance in which such word is used.

“Hold Harmless Distribution” means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year beginning on July 1, 2015 until the distribution is eliminated after July 1, 2029.

“Independent Accountant” means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City who (i) is, in fact, independent and not under the domination of the City, (ii) does not have any substantial interest, direct or indirect, with the City, and (iii) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

“Insured Bank” means a bank or savings and loan association insured by an agency of the United States.

“Interest Payment Date” means each June 1 and December 1, commencing December 1, 2023 (or such other date specified in the Pricing Certificate).

“Moody's” means Moody's Investor Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

Agenda Item #8.2.

“Notice of Sale” means the official notice of sale of the Bonds.

“Official Statement” means the final disclosure document relating to the issuance and sale of the Bonds.

“Outstanding” or “outstanding” when used in reference to bonds means, on any particular date, the aggregate of all Bonds delivered under this Bond Ordinance except:

A. those cancelled at or prior to such date or delivered or acquired by the City at or prior to such date for cancellation;

B. those otherwise deemed to be paid in accordance with Section 28 or Section 31 of this Bond Ordinance;

C. those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the City and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course.

“Parity Bonds” or “Parity Obligations” means the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2017 Bonds, the 2017 NMFA Loan, the 2020 Refunding Bonds, the 2020A Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues on parity with the Bonds, as provided in Section 20 of this Bond Ordinance.

“Parity Subordinate Obligations” means the 2016 Subordinate Bonds, the 2019 Subordinate Bonds, the 2020B Bonds, the 2022 Subordinate Lien Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the

Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

“Paying Agent” means the City Treasurer, as agent for the City for the payment of the Bonds or any other entity at the time appointed Paying Agent by resolution of the City Council.

“Permitted Investments” means, but only to the extent permitted by applicable laws of the State or ordinances of the City, the following:

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership.
2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
3. Federal Financing Bank
4. Federal Housing Administration Debentures (FHA)
5. General Services Administration

Participation certificates

6. Government National Mortgage Association (GNMA or “Ginnie Mae”)

GNMA - guaranteed mortgage-backed bonds

GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration

Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)

Project Notes

Local Authority Bonds

New Communities Debentures - U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System

Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”)

Participation Certificates

Senior debt obligations

3. Federal National Mortgage Association (FNMA or “Fannie Mae”)

Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or “Sallie Mae”)

Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System

Consolidated system wide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposits accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements.

H. Commercial paper rated, at the time of purchase, “Prime - 1” by Moody's and “A-1” or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

Agenda Item #8.2.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P.

K. Repurchase Agreements for 30 days or less must follow the following criteria.

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the City and a dealer bank or securities firm
 - a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's, or
 - b. Banks rated "A" or above by S&P and Moody's.
2. The written repo contract must include the following:
 - a. Securities which are acceptable for transfer are:
 - (1) Direct U.S. governments, or
 - (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
 - b. The term of the repo may be up to 30 days

c. The collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

d. Valuation of Collateral

(1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

(a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3. Legal opinion which must be delivered to the City:

a. Repo meets guidelines under state law for legal investment of public funds.

L. The State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the State Treasurer.

“Pledged Revenue Fund” means the State Shared Gross Receipts Tax Revenue Fund, continued in Section 16 of this Bond Ordinance.

“Pledged State Shared Gross Receipts Tax Revenues” or “Pledged Revenues” means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution to the extent the City receives any Hold Harmless Distribution; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term “Pledged State Shared Gross Receipts Tax Revenues” does not include any local option gross receipts tax income received by the City).

“Preliminary Official Statement” means the initial disclosure document relating to the issuance and sale of the Bonds.

“Pricing Certificate” means one or more certificates executed by the City Manager or City Financial Services Director, dated on or before the date of delivery of the

Agenda Item #8.2.

Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the amount of the Reserve Requirement, if any, and whether such Reserve Fund shall be funded with proceeds of the Bonds or through the deposit of a Reserve Fund Insurance Policy; and (x) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Ordinance.

“Purchaser” means the best bidder for the Bonds.

“Rating Category” means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

“Registrar” means the City Treasurer, as agent for the City for transfer and exchange of the Bonds or any other entity at the time appointed by resolution of the City Council.

“Reserve Fund Insurance Policy” means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund as provided in the Pricing Certificate in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

“S&P” means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity is dissolved or liquidated or no longer

Agenda Item #8.2.

performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“State” means the State of New Mexico.

“2011A Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2011A” issued in the original aggregate principal amount of \$9,640,000 by City Ordinance No. 2618 adopted by the City Council on June 8, 2011.

“2014 Bonds” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014 issued in an original aggregate principal amount of \$10,000,000 by City Ordinance No. 2718 adopted by the City Council on June 24, 2014.

“2015 Bonds” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015 issued in an original aggregate principal amount of \$19,195,000 by City Ordinance No. 2739 adopted by the City Council on December 1, 2014 and Resolution No. 15-140 adopted by the City Council on February 3, 2015.

“2016 Subordinate Bonds” means the “City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016” authorized in the original aggregate principal amount of \$8,585,000 by City Ordinance No. 2774 adopted by the City Council on February 16, 2016 and Resolution No. 16-18 adopted by the City Council on March 9, 2016.

“2017 Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017” issued in an original aggregate

Agenda Item #8.2.

principal amount of \$10,570,000 by City Ordinance No. 2808 adopted by the City Council on May 1, 2017 and Resolution No. 17-187 adopted by the City Council on May 10, 2017.

“2017 NMFA Loan” means the loan agreement between the City and the New Mexico Finance Authority executed on February 24, 2017 in the original aggregate principal amount of \$3,203,527 by City Ordinance No. 2801 adopted by the City Council on January 17, 2017.

“2019 Subordinate Bonds” means the “City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019 authorized in the original aggregate principal amount of \$8,870,000 by City Council Ordinance No. 2894 adopted on August 5, 2019.

“2020 Refunding Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020” authorized in the original aggregate principal amount of \$15,435,000 by City Council Ordinance No. 2912 adopted on February 18, 2020, as supplemented by the Pricing Certificate executed on February 26, 2020.

“2020A Bonds” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A” authorized in the original aggregate principal amount of \$7,190,000 by City Council Ordinance No. 2925 adopted on May 18, 2020, as supplemented by the Pricing Certificate executed on June 17, 2020.

“2020B Subordinate Bonds” means the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B” authorized in the original aggregate principal amount of \$6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020, as supplemented by the Pricing Certificate executed on June 17, 2020.

Agenda Item #8.2.

“2022 Subordinate Lien Bonds” means the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022” authorized in the original aggregate principal amount of \$5,000,000 by City council Ordinance No. 3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate executed on August 18, 2022.

“2023 Acquisition Fund” means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Improvement Project Acquisition Fund” established by Section 16 of the Bond Ordinance.

“2023 Debt Service Fund” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Debt Service Fund” established in Section 16 of this Bond Ordinance.

“2023 Improvement Project” means (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying Expenses related to the issuance of the Bonds.

“2023 Minimum Reserve” means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2023 Bonds, (ii) the maximum annual debt service on the outstanding Series 2023 Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2023 Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

“2023 Reserve Fund” means the “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Reserve Fund” established by Section 16 of this Bond Ordinance.

Agenda Item #8.2.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Bond Ordinance) by the City Council and the officers of the City, directed toward the Improvement Project, the issuance of the Bonds for the Improvement Project and the sale of the Bonds to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the 2023 Improvement Project. The 2023 Improvement Project and the method of financing the 2023 Improvement Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the 2023 Improvement Project as set forth in the Pricing Certificate and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

Section 4. Findings; Declaration. The City Council hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The 2023 Improvement Project is needed to meet the needs of the City and its inhabitants.

B. Moneys available for the 2023 Improvement Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the 2023 Improvement Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D. It is economically feasible to defray, in part, the cost of the 2023 Improvement Project by the issuance of the Bonds.

E. The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2023 Improvement Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F. The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds, if any, for the outstanding Parity Bonds and the Parity Subordinate Obligations.

Section 5. Bonds – Authorization, Parameters and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, revenue bonds to be designated as 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, and the issuance, sale and delivery of the Bonds is hereby authorized.

B. Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023. The Series 2023 Bonds shall be issued subject to the following parameters:

(i) The Series 2023 Bonds shall be issued in an aggregate principal amount not to exceed \$12,150,000 for the 2023 Improvement Project.

(ii) The net effective interest rate on the Series 2023 Bonds shall not exceed 10% per annum.

(iii) The final maturity of the Series 2023 Bonds shall not be later than June 1, 2038.

(iv) The Series 2023 Bonds shall be payable solely from, and shall constitute a first lien, but not an exclusive first lien, upon the Pledged Revenues, on parity with the lien thereon of other outstanding Parity Obligations.

(v) The Series 2023 Bonds shall be sold to the Purchaser pursuant to a competitive public sale.

(vi) The maximum sale price of the Series 2023 Bonds shall be not more than \$12,150,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii) The underwriter's discount shall be the discount included in the bid which provides the lowest interest cost to the City while maximizing net bond proceeds to the City.

(viii) The Series 2023 Bonds shall be in substantially the form set forth in this Ordinance.

C. The City Manager or City Financial Services Director are hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Pricing Certificate.

D. The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of \$5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no

interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on December 1, 2023 (or such other date as specified in the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

E. Notice of Sale. The sale of the Bonds shall be pursuant to a Notice of Sale, the details and publication of which shall be consistent with this Ordinance and approved by the City Treasurer or her designee, which action is hereby authorized.

F. Award of Bonds. The Bonds shall be awarded to the Purchaser as provided in the Award Resolution.

Section 6. Redemption of Bonds.

A. Notice of Redemption. In the event that the Bonds are subject to redemption prior to maturity, as may be established in the Pricing Certificate, notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. The City shall give notice of optional redemption of the Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and

that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the City.

B. Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph A of this Section. In that event, the

Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Section 7. Filing of Manual Signatures. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Mayor or Mayor Pro Tem and City Clerk may each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8. Execution and Authentication of Bonds.

A. Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor or Mayor Pro Tem and shall be attested with the facsimile or manual signature of the City Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor or Mayor Pro Tem and City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

B. Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and

inscribed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10. Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying

Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 11. Registration, Transfer, Exchange and Ownership of Bonds.

A. Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption as herein provided, or (ii) after the mailing to registered owners of notice calling such Bonds or portion thereof for redemption as herein provided. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C. Owner of the Bonds. The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Lost Bonds. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

E. Additional Bonds. Executed but unauthenticated Bonds are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F. Charges. For each new Bond issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Bond requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has

become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than \$50,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

H. Book Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another Depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Officers of the City are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of this Bond Ordinance, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent, Registrar or the City to the Depository as provided in the Bond Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the City to the Depository.

Section 12. Special Limited Obligations. All of the Bonds and all payments of principal, premium, if any, and interest thereon whether at maturity or on a redemption date, together with any interest accruing thereon, shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues, which revenues are so

pledged and are payable as set forth in Section 17 of this Bond Ordinance. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and each of the Bonds shall recite that it is payable and collectible solely out of the Pledged Revenues, pledged as set forth in this Bond Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to the payment of the Bonds, in its sole discretion.

Section 13. Form of Bonds. The forms, terms and provisions of the Bonds shall be substantially in the form set forth below, with such changes therein as are not inconsistent with the Bond Ordinance.

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF NEW MEXICO

COUNTY OF DOÑA ANA

CITY OF LAS CRUCES, NEW MEXICO

STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS,

SERIES 2023

Bond No. _____ \$ _____

INTEREST RATE	MATURITY DATE	DATE OF BOND	CUSIP
% per annum	June 1, _____	_____, 2023	_____

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

The City of Las Cruces (the “City”), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the “Paying Agent”), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on _____ 1, _____ and on June 1 and December 1 of each year (each an “Interest Payment Date”) thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by

such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of \$_____ issued in denominations of \$5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023 (the "Series 2023 Bonds") issued under and pursuant to City Ordinance No. 3024, as supplemented by a Pricing Certificate dated _____, 2023 (as supplemented, the "Bond Ordinance").

The Series 2023 Bonds maturing on and after June 1, _____, are subject to prior redemption at the City's option in one or more units of principal of \$5,000 on and after June 1, _____ in whole or in part at any time, in such order of maturities as the City may determine (and

by lot if less than all of the Series 2023 Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each \$5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Redemption shall be made upon prior notice mailed to each registered owner of each Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly

endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or owner a new Bond or Bonds in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar shall not be required (i) to transfer or exchange any Bond during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption, or (ii) to transfer or exchange any Bond or part thereof called for redemption. The Registrar will close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name any Bond is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest in the Bond Ordinance; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and

interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Series 2023 Bonds on the Pledged Revenues is an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with, or subordinate and junior to, the lien on the Pledged Revenues of the Series 2023 Bonds. Amounts and securities held in the 2023 Debt Service Fund and 2023 Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Bonds.

The Bonds are issued to provide funds to defray in part the costs of (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; and (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways; and (3) paying expenses and costs of issuance related to the issuance of the Bonds.

The City covenants and agrees with the owner of this Bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law, and that the Bonds do not exceed or violate any constitutional or statutory limitation of or pertaining to the City.

This Bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the Certificate of Authentication.

IN WITNESS WHEREOF, the City of Las Cruces, New Mexico has caused this bond to be signed and executed on the City's behalf with the facsimile or manual signature of the Mayor or Mayor Pro Tem and the facsimile or manual signature of the City Clerk and has caused the corporate seal of the City or a facsimile thereof to be affixed hereon, all as of the Date of Bond.

CITY OF LAS CRUCES, NEW MEXICO

By_____

Mayor or Mayor Pro Tem

By_____

City Clerk

(SEAL)

|

(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

This is one of the Bonds described in the Bond Ordinance, and this bond has been registered on the registration books kept by the undersigned as Registrar for the Bonds.

Date of Authentication:

City Treasurer of the City of Las Cruces,
New Mexico, as Registrar

By _____
Authorized Officer

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

For value received, _____ hereby sells, assigns and transfer unto _____ the within bond and hereby irrevocably constitutes and appoints _____ attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

Social Security or Tax Identification No. of Assignee _____

Dated: _____

Signature Guarantee:

Agenda Item #8.2.

NOTE: The assignor's signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

(End of Form of Assignment)

(End of Form of Bond)

|

Section 14. Period of 2023 Improvement Project's Usefulness. It is hereby determined and recited that the period of usefulness of the 2023 Improvement Project financed with the proceeds of the Series 2023 Bonds will not expire prior to the final maturity date of the Series 2023 Bonds.

Section 15. Use of Bond Proceeds and Other Funds; Completion of 2023 Improvement Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2023 Improvement Project.

A. Expenses. An amount necessary, together with other legally available funds of the City, shall be used to pay Expenses.

B. 2023 Acquisition Fund. Proceeds derived from the sale of the Series 2023 Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2023 Acquisition Fund. Until the completion of the 2023 Improvement Project, the money in the 2023 Acquisition Fund shall be used and paid out solely for the purpose of the 2023 Improvement Project in compliance with applicable law.

C. 2023 Reserve Fund. No deposit of proceeds of the Bonds, Pledged State Shared Gross Receipts Tax Revenues or other City moneys into the 2023 Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D. 2023 Improvement Project Completion. As soon as practicable after completion of the 2023 Improvement Project, and in any event not more than 60 days after completion of the 2023 Improvement Project, any proceeds remaining unspent (other than any

amount retained by the City for any 2023 Improvement Project costs not then due and payable) shall be transferred and deposited in the 2023 Debt Service Fund and used by the City to pay principal and interest on the Series 2023 Bonds as same become due.

E. Purchaser Not Responsible. The Purchaser of the Bonds shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

F. Bond Insurance Policy and/or Reserve Fund Insurance Policy. A Bond Insurance Policy and/or Reserve Fund Insurance Policy may be obtained in connection with the issuance of each of the Series 2023 Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the issuer of the Bond Insurance Policy and/or Reserve Fund Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy and/or Reserve Fund Insurance Policy shall be included in the Pricing Certificate.

Section 16. Funds and Accounts. The City hereby creates and continues the following special and separate funds and accounts:

A. 2023 Acquisition Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Improvement Project Acquisition Fund” to be maintained by the City.

B. Pledged Revenue Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Revenue Fund” (the “State Shared Gross Receipts Tax Revenue Fund”) to be maintained by the City, into which the City shall deposit the Pledged State Shared Gross Receipts Tax Revenues.

C. 2023 Debt Service Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Debt Service Fund” (the “2023 Debt Service Fund”) to be maintained by the City.

D. 2023 Reserve Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023, Reserve Fund” (the “2023 Reserve Fund”) to be maintained by the City.

Section 17. Deposit of Pledged Revenues and Flow of Funds.

A. Administration of Pledged Revenue Funds. So long as any of the Series 2023 Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

B. Debt Service Fund Payments. The following amounts shall be withdrawn from the State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Bonds), and shall be concurrently credited to the 2023 Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2023 Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2023 Bonds then outstanding.

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next

maturing installment of principal of the outstanding Series 2023 Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2023 Bonds then outstanding.

C. Credit. In making the deposits required to be made into the 2023 Debt Service Fund, if there are any amounts then on deposit in the 2023 Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph B above shall be reduced by the amount available in such fund for such purpose.

D. Transfer of Money out of 2023 Debt Service Fund. Each payment of principal and interest becoming due on the Series 2023 Bonds shall be transferred from the 2023 Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

E. 2023 Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2023 Reserve Fund upon the issuance of the Series 2023 Bonds or any time thereafter so long as the Pledged State Shared Gross Receipts Tax Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds. ~~in the 2023 Reserve Fund upon the issuance of the 2023 Bonds or any time thereafter except in the event that the City's credit rating for its outstanding Parity State Shared Gross Receipts Tax Revenue Bonds is downgraded to a rating that is below the rating of A/A2 by any of the nationally recognized securities rating agencies identified in this Ordinance. If such downgrade below A/A2 occurs, the City shall promptly notify the Purchaser. If the Pledged State Shared Gross Receipts Tax Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2023 Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24~~

~~months, an amount equal to the 2023 Minimum Reserve will be held in the 2023 Reserve Fund. and shall follow the procedure outlined in either subsection (a) or subsection (b) of this paragraph.~~

~~(i) The City shall begin making substantially equal monthly deposits in the 2023 Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months an amount equal to the 2023 Minimum Reserve will be held in the 2023 Reserve Fund.~~

~~(ii) Alternatively, the City shall deposit in the 2023 Reserve Fund one or more Reserve Fund Insurance Policies which are equal to the 2023 Minimum Reserve. The Reserve Fund Insurance Policies shall continue to be in force until the earlier of (a) the final maturity date of the Series 2023 Bonds (unless such date is extended by agreement of the provider of the policy or surety bond) or (b) the date on which there are sufficient funds on deposit in the 2023 Debt Service Fund to pay the principal of and interest due on the Series 2023 Bonds.~~

After funding the 2023 Reserve Fund in an amount equal to the 2023 Minimum Reserve, no additional payments need be made into the 2023 Reserve Fund so long as the moneys therein shall equal not less than the 2023 Minimum Reserve. The moneys (if any) in the 2023 Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in paragraph (F) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023 Bonds resulting from failure to deposit into the 2023 Debt Service Fund sufficient funds to pay the principal and interest as the same accrue. In the event that the funding of the 2023 Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount of the 2023 Minimum Reserve.

F. Defraying Delinquencies in the 2023 Debt Service Fund and 2023 Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2023 Debt

Service Fund is insufficient to pay principal of and interest on the Series 2023 Bonds then due, then an amount shall be paid into the 2023 Debt Service Fund on such date from the 2023 Reserve Fund (if moneys are then on deposit in the 2023 Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2023 Debt Service Fund from the 2023 Reserve Fund, if any, shall be replaced in the 2023 Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2023 Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by paragraph B of this Section 17. If, in any month, the City shall, for any reason, fail to pay into the 2023 Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2023 Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the 2023 Bonds; provided, however, that any moneys at any time in excess of the 2023 Minimum Reserve in the 2023 Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2023 Reserve Fund shall not be invested in a manner which could cause the Series 2023 Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2023 Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2023 Reserve Fund exceeds the 2023 Minimum Reserve, all amounts in excess of the 2023 Minimum Reserve shall be transferred to the 2023 Debt Service Fund and used to pay principal of and interest on the Series 2023 Bonds.

G. Payment of Parity Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by paragraphs B, E and F of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the

payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Bonds payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the 2023 Bonds and any other outstanding Parity Bonds, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Bonds, for the payment of principal of and interest on all series of outstanding Parity Bonds and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Bonds, for the required debt service reserve fund deposits for all series of outstanding Parity Bonds.

H. Termination Upon Deposits to Maturity. No payment shall be made into the 2023 Debt Service Fund or the 2023 Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2023 Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2023 Debt Service Fund and the 2023 Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2023 Debt Service Fund and the 2023 Reserve Fund may be used as provided below.

I. Payment of Parity Subordinate Obligations. Subsequent to the payments required by paragraphs B, E, F and G of this Section, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided shall be used by the City for the payment of interest on and the principal of the Parity Subordinate Obligations now

outstanding or hereafter authorized having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Series 2023 Bonds, issued and payable from the Pledged Revenues, as the same become due. Payments with respect to principal, interest and reserve funds for any such Parity Subordinate Obligations may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional Parity Subordinate Obligations.

(J) Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 18. General Administration of Funds. The funds designated in Section 16 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be invested by the City in Permitted Investments or deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys in the 2023 Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the 2023 Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2023 Reserve Fund, value the 2023 Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2023 Reserve Fund. If, upon any valuation, the value of the 2023 Reserve Fund exceeds the 2023 Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2023 Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Series 2023 Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2023 Reserve Fund may be used to pay the final installments of principal and interest on the Series 2023 Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Series 2023 Bonds, there shall be delivered an

opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Series 2023 Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the 2023 Reserve Fund and deposited into the 2023 Debt Service Fund to prevent a default on the Series 2023 Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2023 Reserve Fund to the 2023 Minimum Reserve. Such repayment shall be made as required by paragraph F Section 17 of this Bond Ordinance.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2023 Debt Service Fund and the 2023 Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Series 2023 Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Series 2023 Bonds constitute an irrevocable and first lien, but not an exclusive first lien on the Pledged Revenues on parity with the lien thereon of the outstanding Parity Bonds and additional Parity Bonds, if any, hereafter authorized to be issued and payable from the Pledged Revenues, and senior to the lien of Parity Subordinate Obligations on the Pledged Revenues.

Section 20. Additional Parity Bonds Payable from Pledged Revenues.

A. Parity Bonds Test. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on

parity with the lien of the Series 2023 Bonds. Before any additional Parity Bonds are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in the 2023 Debt Service Fund and the 2023 the Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2) The Pledged State Shared Gross Receipts Tax Revenues (not including the Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 200% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Bonds, (2) other outstanding Parity Bonds payable from and constituting a lien upon the Pledged Revenues, and (3) the Parity Bonds proposed to be issued.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Bonds, (a) any amount of the reserve fund requirement for the additional Parity Bonds is immediately deposited in or credited to the reserve fund for the additional Parity Bonds or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Bonds is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Bonds, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Bonds or any issue of outstanding Parity Bonds for which such reserve fund was created.

So long as the Build America Mutual Assurance Company ("BAM") municipal bond insurance policy for the 2016 Subordinate Bonds shall be in force and effect or any amounts are owed to BAM related to the 2016 Subordinate Bonds, and in addition to

requirements set forth above, before any additional Parity Bonds are issued, it must be determined that the Pledged State Shared Gross Receipts Tax Revenues (not including the Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Bonds, (2) the outstanding 2016 Subordinate Bonds, (3) other outstanding Parity Subordinate Bonds, and (4) the Parity Bonds proposed to be issued. Compliance with the foregoing requirement shall be evidenced by a certificate delivered in accordance with Section 20(B) of this Ordinance.

B. Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or ~~Financial Services~~Finance Director, that the Pledged Revenues (not including the Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity Bonds. The Independent Accountant, City Treasurer or Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Bonds and on a parity with the Parity Subordinate Obligations in accordance with the requirements set forth in the ordinances authorizing the outstanding Parity Subordinate Obligations.

D. Superior Obligations Prohibited. The City shall not issue any obligation having a lien on any of the Pledged Revenues pledged by this Bond Ordinance which is prior and superior to the Bonds.

Section 21. Refunding Bonds. The provisions of Section 20 of this Bond Ordinance are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding obligations constituting a lien upon the Pledged Revenues, the Bonds or other obligations, or any part thereof, such obligations may be refunded, but only with the consent of the holders, unless the obligations shall then mature or be callable for redemption, or the plan of refunding calls for payment of the obligations at maturity or at a redemption date, regardless of whether the lien priority is changed by the refunding except that superior obligations are prohibited as provided in paragraph D of Section 20 of this Bond Ordinance and except as provided in paragraphs B and C of this Section.

B. Limitation Upon Issuance of Parity Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Series 2023 Bonds, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Series 2023 Bonds; or

(2) The refunding obligations are issued in compliance Section 20 of this Bond Ordinance.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such

refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

(1) The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded; or

(3) The refunding bonds or other refunding obligations are issued in compliance with Section 20 of this Bond Ordinance.

D. Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph C of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Series 2023 Bonds.

Section 22. Equality of Parity Bonds. The Parity Bonds from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Bonds regardless of whether they are actually issued and delivered or incurred at different times.

Section 23. Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

A. Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds as set forth in Section 15 of this Bond Ordinance.

B. Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2023 Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

C. City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any owner of the Bonds.

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

E. Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F. Audits and Budgets. The City will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

G. Other Liens. Other than as described and identified by this Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

H. Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 30 of this Bond Ordinance.

I. Debt Service Fund and Reserve Fund. The 2023 Debt Service Fund and the 2023 Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

J. Surety Bonds. Each municipal official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of such funds.

K. Performing Duties. The City will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds.

L. Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the

Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, other facts and circumstances relevant to the tax treatment of interest on the Bonds, and making related covenants.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds, and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City

shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 24. Preliminary Official Statement and Continuing Disclosure Undertaking.

A. Preliminary Official Statement. The preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds.

B. Continuing Disclosure Undertaking. The officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 25 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 25. Events of Default. Each of the following events is hereby declared an “event of default”:

A. Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise.

B. Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C. Incapable of Performing. If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

D. Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs A and B of this Section), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

E. Bankruptcy. The City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Section 26. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 25 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of

the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 27. Duties Upon Default. Upon the happening of any of the events of default provided in Section 25 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent

(25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 28. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 29. Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and final Official Statement, and the execution of the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 30. Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial

Agenda Item #8.2.

delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

- A. An extension of the maturity of any Bond; or
- B. A reduction of the principal amount or interest rate of any Bond; or
- C. The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or
- D. A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or
- E. The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or
- F. The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Section 31. Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made

with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 32. Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 33. Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 34. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 35. Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the

signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 36 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 36. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on February 21, 2023, relating to the authorization and issuance of the 2023. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO 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 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.

A general summary of the Ordinance is:

The Ordinance authorizes the issuance and sale of (1) 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 purpose of constructing, purchasing, acquiring, and improving roadways and public facilities; provides that the Bonds will be payable and collectible from the revenues derived from the 1.225% pledged state shared gross receipts tax distributed to the City; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or City Financial Services Director to execute and deliver the Pricing Certificate; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds, including the Preliminary Official Statement and Continuing Disclosure Undertaking; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this 21st day of February, 2023.

APPROVED:

ATTEST:

Ken Miyagishima, Mayor

Christine Rivera, City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councilor Gandara:	_____
Councilor Abeyta:	_____
Councilor Graham:	_____
Councilor Bencomo:	_____
Councilor Corran:	_____
Councilor Flores:	_____

APPROVED AS TO FORM

Jocelyn Garrison, Acting City Attorney

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss.
CITY OF LAS CRUCES)

I, Christine Rivera, the duly acting and qualified City Clerk of the City of Las Cruces, New Mexico (the “Governmental Unit”), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the “Governing Body”), constituting the governing body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on February 21, 2023, at the hour of 1:00 p.m., insofar as the same relate to the issuance and delivery of the Bonds, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

3. Notice of such meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the City’s open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2023.

CITY OF LAS CRUCES, NEW MEXICO

Christine Rivera, City Clerk



City of Las Cruces

City Council Action and Executive Summary

**3026; Council
Bill 23-020**

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	February 6, 2023	Adopted:	February 21, 2023
Drafter:	Donny Prosise	Department:	Financial Services
Program:	Purchasing	Line of Business:	Procure To Pay
Title:	AN ORDINANCE AMENDING CHAPTER 24, PROCUREMENT CODE, OF THE LAS CRUCES MUNICIPAL CODE.		

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

PURPOSE(S) OF ACTION:

To amend the City's Procurement Code

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City's Purchasing Program is recommending modifications to Chapter 24, Procurement Code, of the Las Cruces Municipal Code. These changes should improve and facilitate the procurement process to both City staff and vendors by being more responsive and easier to use. The changes consist of, but are not limited to, format changes to Chapter 24, adding and clarifying definitions, revising authorized exemptions, and increasing the threshold for competitive public procurement. The staff has taken the changes in the Procurement Code before the Finance Select Committee on November 1st, 2022.

SUPPORT INFORMATION:

[Exhibit "A" - P-Code Updates 2023-02](#)

[Attachment "A" - P-Code Updates 2023-02 Redline](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

Finance Select Committee

DOES THIS AMEND THE BUDGET?:

☐ Yes

☐ No

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

☐ Yes

☐ No

Agenda Item #8.3.

Does this action align with Elevate Las Cruces?

☐ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the ordinance and amend the Procurement Code to make the necessary modifications.
2. Vote "No"; this action will not approve the ordinance and the Procurement Code will remain as status quo.
3. Vote to "Amend"; this could modify the ordinance based on direction from City Council to staff.
4. Vote to "Table"; City Council will need to provide direction to staff.

ORDINANCE 3026; COUNCIL BILL 23-020

AN ORDINANCE AMENDING CHAPTER 24, PROCUREMENT CODE, OF THE LAS CRUCES MUNICIPAL CODE.

The City Council is informed that:

WHEREAS, the City's Purchasing Program is recommending changes to Chapter 24, Procurement Code, of the Las Cruces Municipal Code; and

WHEREAS, these changes should improve and facilitate the procurement process to both City staff and vendors by being more responsive and easier to use; and

WHEREAS, the changes consist of, but are not limited to, format changes to Chapter 24, adding and clarifying definitions, revising authorized exemptions, and increasing the threshold for competitive public procurement.

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

(I)

THAT the changes to Chapter 24, Procurement Code, of the Las Cruces Municipal Code are hereby amended and adopted, as shown in Exhibit "A".

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

PART II – MUNICIPAL CODE
Chapter 24 – PROCUREMENT CODE

ARTICLE I. - IN GENERAL

Sec. 24-1. - Purpose.

The purpose of this chapter is to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

(Code 1988, § 25.5-1)

Sec. 24-2. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

All definitions listed within New Mexico Statutes sections 13-1-21 through 13-1-199, NMSA, 1978, plus, sections 13-4-1 through 13-4-43, NMSA, 1978, are incorporated herein by reference. Wherever difference exists between such statutory definitions and any definitions within this chapter, the definition of this chapter shall prevail.

Advertising means a public medium promoting a product, service, or event, including radio, television, print and electronic.

Agreement means two or more persons having common understanding about responsibilities, obligations, duties, and rights.

Approved equal means approved specifications as established by the industry or the using agency.

Award means the issuance of a validly executed contract which may include a purchase order.

Bid means a response to a competitive sealed procurement solicitation.

Bidder means a person who submits a quote/bid in response to a solicitation for respective, competitive quotes/bids.

Blind trust means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other disposition of the property subject to the trust.

Brand name or equal specifications means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Calendar days means all days in a month including weekend, holidays, etc.

Construction Manager At Risk (CMAR) means the construction manager commits to deliver the project within a Guaranteed Maximum Price (GMP) based on the construction documents and specifications.

Contingency means an amount set aside to address unforeseen issues.

Agenda Item #8.3.

Contract means agreement between two or more persons authorized to legally bind their interests by setting forth what each person will or will not do in the procurement of tangible personal property, professional or nonprofessional services, or construction.

Contract administration means a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

Contract limitations and change orders means a construction related written order directing the contractor to make a change, which the contract authorizes with or without the contractor's consent.

Defective pricing means when a contractor has more current, complete, and accurate cost and pricing data and does not disclose it resulting in a significant increase in price.

Employee means an individual drawing salary or wages from the city, whether elected or not; any uncompensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city; and any uncompensated individual serving as an elected official of the city.

Financial interest means:

- (1) Ownership of one percent or more of any property or business; or
- (2) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity means anything of value that is presented or promised in anticipation of receiving a consideration, whether or not the consideration is less than, equal to or greater than the value presented or promised.

Immediate family means an employee's spouse, son, daughter, or parent as defined in FMLA regulations. FMLA defines the term "parent" as "a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when he or she was a minor."

Invitation for bid/invitation to bid (IFB or ITB) means all documents, whether attached or incorporated by reference, used for soliciting sealed bids whereby award is based upon the lowest price that meets specifications.

Local business means a business that has a valid city business certificate or license issued through the City of Las Cruces.

Non-procurement contracts means any agreement that was not the result of a procurement, for example memoranda of understanding, grant pass-through or fiscal agent agreements, or contracts that don't involve expenditures for goods or services.

Offeror means a person submitting a proposal in response to a competitive request for proposals.

Person means any business, individual, union, committee, club, or other organization, or group of individuals.

Pricing data means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Professional services means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified

Agenda Item #8.3.

public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services.

Procurement means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, service, or construction, including needs analysis, specification development, competitive or noncompetitive solicitation of sources, contract development, negotiation and execution, and all phases of contract administration.

Proposal means a response to a competitive sealed procurement solicitation.

Public agency means an administrative division of city, state, or federal government.

Qualified products list means an approved list of tangible goods, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, a determination was made that the list met applicable specification requirements.

Quote means a response to a procurement solicitation less than \$100,000 conducted for the purchase of goods/services/construction, whereby award is based upon the lowest price that meets specifications as deemed practical.

Request for proposals (RFP) means a competitive solicitation of proposals conducted for the purchase of goods/services/construction whereby the responses are evaluated considering multiple, weighted criteria and the resulting contract is awarded based upon the response ranked highest considering such criteria.

Supplies includes tangible goods including, but is not limited to, equipment, materials, rolling stock, books, fuel, tools, printed media.

Tangible goods means physical objects or items (like equipment and inventory) that can be touched and has a real, physical presence.

Technical services means research and development (R&D) work, the development and installation of management information systems (MIS), materials requirement planning (MRP) systems, and the development of technical manuals, printing services, and repair services.

Using agency means any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this chapter.

Working days means only those days per City calendar in which City staff are available to address, observe, or otherwise handle contractual issues as they arise. The following days are normally not considered working days: City Holidays, Saturdays, Sundays, and days in which the City Manager has closed City Offices due to inclement weather or some other specified emergencies.

(Code 1988, § 25.5-3; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. A), 8-6-12)

Sec. 24-3. - Applicability.

- (a) This chapter applies to contracts for the procurement of supplies, services, and construction entered into by the city after the effective date of the ordinance from which this chapter derives. It shall apply to every expenditure of public funds by the city or a public agency for public purchasing irrespective of the source of the funds, except for procurement that is exempt as set forth herein.
- (b) When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal and state law and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

Agenda Item #8.3.

All the dollar thresholds mentioned in this code exclude taxes, freight, and shipping charges.

(Code 1988, § 25.5-2; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-4. - Authorized exemptions from competitive procurement, subject to review and written determination by the purchasing manager. All other applicable contract requirements of this article are required.

- (1) Procurement of goods, services or construction from state agencies, public bodies, or external procurement units.
- (2) Procurement of publicly provided or publicly regulated gas, electricity, water, sewer or refuse collection services.
- (3) Purchases of books and periodicals from publishers or copyright holders thereof to include publications offered on CDs, videos, or the Internet.
- (4) Travel or shipping by common carrier or by private conveyance, or to meals and lodging.
- (5) Purchase of live animal(s).
- (6) Art objects or artifacts or for their creation including exhibits.
- (7) Procurement from self-determination corporations or other such enterprises designed and operated to assist in the care or maintenance of the sick and indigent and the prevention thereof and aided by state or federal antipoverty programs or through private philanthropy.
- (8) Leases, exchanges or purchases of real property or a permanent interest in land.
- (9) Services of bond underwriters and debt rating agencies.
- (10) Agreement for the services of attorneys, legal assistants, and expert witnesses. Services of expert witnesses needed in conjunction with litigation, court reporting services and legislative activities. Contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees.
- (11) Purchases, rentals, leases (personal and real property), and professional/technical services contracts necessary for the investigation of criminal activities. The police department may purchase such materials and services without quotations, requests for proposals, or bids if such would compromise a criminal investigation as determined by the chief of police in writing. All funds expended for this type of activity will be properly receipted and accounted for with supporting documentation. All documentation will be maintained by the police department and shall be subject to internal audit. Rentals, leases, and professional/technical services will be limited to the term of an investigation.
- (12) Contracts with professional entertainers.
- (13) Advertising in all media.
- (14) Promotional goods intended for resale or for the procurement of printing services for materials produced and intended for resale.
- (15) Subscription services.
- (16) Contracts for retirement and other benefits.
- (17) Services provided by lobbyists or legislative experts.

Agenda Item #8.3.

- (18) Contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration.
- (19) Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act.
- (20) Procurement of surety bonds.
- (21) Procurement of parts and labor or maintenance agreement to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop.
- (22) Payments for conference registrations, offsite training courses, or similar minor purchases where prepayments are required, or which are administrative in nature and non-competitive as determined by the purchasing manager.
- (23) Payments for membership dues.
- (24) Existing contracts. The purchasing manager may contract for services, construction, or goods without the use of competitive bids or competitive proposals at a price equal to or less than:
 - a. The current federal or state supply contract or catalogue price, whichever is lower, and the purchase order adequately identifies the contract relied upon. A copy of the federal supply contract or catalogue shall be made part of the procurement record.
 - b. The current contract price held by other intrastate or interstate governmental bodies and their agencies. A copy of the contract relied upon shall be made part of the procurement record.
 - c. A bid awarded by the city to the same contractor, for the same materials or services, within the past 24 months. A copy of the original documentation is to become a permanent part of the procurement record providing the vendor wishes to extend. Resulting contract(s) shall not exceed 48 months after the initial contract execution date.
- (25) Cooperative procurements through other government entities and cooperatives.

(Code 1988, § 25.5-181; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-5. - Small purchases.

- (a) Purchase splitting is prohibited. Separate purchases of the same or similar goods, services, or construction, whether from the same or different businesses, within a time frame established by the purchasing manager, shall be considered a single purchase for purposes of this article.
- (b) Authority. Any contract less than \$100,000.00 for supplies, services, and construction, may be made in accordance with the procedures set forth in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
 - (1) Purchases \$50,000.00 or more but less than \$100,000.00. Unless determined impractical by the purchasing manager, no less than three sources shall be solicited to submit written quotations. Award shall be based on the lowest price meeting specifications. A record of the solicitation and written responses shall be maintained as public record.
 - (2) Purchases \$25,000.00 or more but less than \$50,000.00. Unless determined impractical by the purchasing manager, written quotes from no less than two sources shall be obtained. Award

Agenda Item #8.3.

shall be based upon the lowest price meeting specifications. Solicitations, responses and/or other pricing documentation shall be recorded and maintained as public record.

- (3) Purchases less than \$25,000.00. Unless otherwise determined impractical by the purchasing manager, for a purchase of supplies, services, or construction estimated to be less than \$25,000.00, written quotes from no less than one source shall be obtained. Purchase is to be made only by authorized city employees at the best obtainable price considering time and process efficiencies.
- (c) Professional/technical services less than \$100,000.00. Unless otherwise determined impractical by the purchasing manager, professional/technical services estimated to be less than \$100,000.00 may be purchased in accordance with the following:
 - (1) All professional/technical services estimated to be less than \$100,000.00 shall be procured by either the purchasing manager or authorized department employee calling a reasonable number of firms to obtain written offers when practical. Procurement over this amount shall be by competitive sealed proposal.
 - (2) The purchasing manager or designee shall provide such information as is necessary to provide the potential offeror the opportunity to provide a proper and timely response. Included in the information shall be the factors to be evaluated and the relative weights assigned each factor.
 - (3) The types of questions to be asked of the potential offeror may include, but not be limited to:
 - a. The specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.
 - b. Capacity and capability of the business to perform the work, including any specialized services, within the time limitation, if any.
 - c. Past record of performance or contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.
 - d. Proximity to or familiarity with the area in which the project is located.
 - e. The anticipated price, if price is a factor, for services based upon the information provided by the purchasing manager as to the scope of work.
 - f. Other criteria determined to be essential to the particular contract or project.
 - (4) The award shall be based on the highest-ranking respondent considering the evaluation factors provided in the solicitation. The city may negotiate with any responding offeror with the intent to obtain best and final offer of the offeror.

(Code 1988, § 25.5-34; Ord. No. 1703, § IX, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § V, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-6. - Fiscal responsibility.

- (a) When the aggregate sum of contract modifications, change orders, or contract price adjustments exceeds \$100,000.00, all subsequent contract modifications, change orders, or contract price adjustments shall be subject to city council approval, except for those contracts that will be or are approved under the contract limitations and change order policy.
- (b) Aggregate contract modifications, change orders, or price adjustments up to \$100,000.00 shall be authorized by the city manager conditioned upon the award limitations.

(Code 1988, § 25.5-93; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-7. - Sole source procurement.

A contract may be awarded without competition when the purchasing manager determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or construction item; or when it is likely that award to any other source would result in:

- (a) Substantial duplication of cost to the city that is not expected to be recovered through competition; or
- (b) Unacceptable delays in fulfilling the city's requirement.

The purchasing manager may conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurement shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.

(Code 1988, § 25.5-35; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-8. - Rapid procurement; Emergency procurement.

- (a) Purchases of goods, services, and construction for any amount where Advertising and the solicitation of offers would entail unnecessary and detrimental delay and loss to the city, may be made by the purchasing office, at the best obtainable price in accordance with procedures approved by the purchasing manager. Complete documentation of all proposed prices submitted by offerors must be maintained in the purchasing office for public inspection.
- (b) Notwithstanding any other section of this chapter, the city manager may authorize the purchasing manager or designee to make emergency procurement of supplies, services, or construction items when there exists a threat to public health, welfare, or safety, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract, and the identification number of the contract file. If the city manager determines that urgent and compelling reasons require emergency contractual, professional, and technical services, the city manager, notwithstanding any section of this division, may approve such services, provided that the city manager shall notify the city council of the action citing the compelling and urgent reasons for the action. A complete report shall be submitted to the city council by the using department within a week of the procurement.

(Code 1988, § 25.5-36; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-9 – Contingency

Construction contracts shall be budgeted with no more than a 20% contingency fund for new construction and no more than a 20% contingency fund for rehabilitation projects. Professional and/or Technical service contracts shall be budgeted with no more than a 10% contingency fund.

Sec. 24-10—Purchase Card Program.

Agenda Item #8.3.

The Purchase Card (P-Card) program is intended for use whenever purchase orders are not applicable as determined by the purchasing manager or designee. The P-Card Procedure Manual shall govern P-Card and Department Card (D-Card) issuance, application, usage, monthly statement processing, card maintenance, card violations, disputed or fraudulent charges, and receipt retention.

Secs. 24-11 – 24-30. - Reserved.

ARTICLE II. - ETHICS AND PROHIBITIONS IN PROCUREMENT

Sec. 24-31. - Direct contact.

Direct contact with city elected officials or city staff, other than the purchasing manager, during the bid/proposal process from development of specifications through contract award, will render the bid/proposal as noncompliant and no further consideration will be given the bid/proposal.

(Ord. No. 1923, § 1, 6-17-02)

Sec. 24-32. - Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this Procurement Code constitute violations of the state Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of the ordinance from which this chapter derives shall not be impaired.

(Code 1988, § 25.5-141)

Sec. 24-33. - Employee conflict of interest.

- (a) It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:
 - (1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract; or
 - (2) Any other person, business, or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- (b) A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (c) 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.

(Code 1988, § 25.5-142)

Sec. 24-34. - Gratuities and kickbacks.

- (a) Gratuities. It shall be unlawful for any person to offer, give, or agree to give to any current or former city employee or for any current or former city employee to solicit, accept or agree to accept a

Agenda Item #8.3.

gratuity in exchange for consideration pertaining to a city procurement. Consideration shall include but is not limited to a decision, approval, disapproval, recommendation, or action that influences a procurement solicitation, contract award or the administration of a contract. No sample or sampling of a product or service shall be accepted by a city employee unless the purchasing manager determines that the sample or sampling is to be used in city activities for evaluation or product qualification purposes.

- (b) Kickbacks. It shall be unlawful for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontract under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (c) Contract clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-143; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-35. - Contingent fees.

It shall be unlawful for a person to be retained or to retain a person to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-144; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-36. - Contemporaneous employment.

It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(Code 1988, § 25.5-145)

Sec. 24-37. - Waivers from employee conflict of interest and contemporaneous employment.

The city council may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- (1) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;
- (2) The city employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interests of the city.

(Code 1988, § 25.5-146)

Sec. 24-38. - Use of confidential information.

Agenda Item #8.3.

It shall be unlawful for any city employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-147; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-39. - Recovery of value transferred or received in breach of ethical standards.

- (a) Authority. The value of anything transferred or received in breach of the ethical standards of this chapter by a city employee may be recovered from the city employee.
- (b) Recovery of kickbacks by city. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(Code 1988, § 25.5-148)

Secs. 24-40—24-60. - Reserved.

ARTICLE III. - PURCHASING MANAGER

Sec. 24-61. - Position created.

There is created the position of purchasing manager, who shall be the city's principal public purchasing official.

(Code 1988, § 25.5-21; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-62. - Authority, duties.

- (a) Principal public purchasing official. Except as otherwise provided in this chapter, the purchasing manager shall serve as the principal public purchasing official for the city and shall be responsible for the procurement of supplies, services, and construction in accordance with this chapter.
- (b) Duties. In accordance with this chapter and subject to the supervision of the city manager, the purchasing manager shall:
 - (1) Procure or supervise the procurement of all supplies, services, and construction needed by the city.
 - (2) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services and construction.
 - (3) Provide a quarterly report of all procurements equaling \$100,000.00 and above to the city council as a non-action item.
- (c) Operational procedures. Consistent with this chapter the purchasing manager may adopt operational procedures relating to the execution of his/her duties.

(Code 1988, § 25.5-22; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-63. - Authority to award.

- (a) In the discretion of the purchasing manager, if no acceptable bid or offer is received on the solicitation the purchasing office may purchase the required goods or services in the open market at the best obtainable price or re-advertise the request for bid or proposal.
- (b) The purchasing manager shall be authorized to enter into all budgeted purchase contracts subject to the following conditions:
 - (1) For purchases of non-construction, non-capital improvement related goods or services of \$50,000.00 but less than \$100,000.00, the purchasing manager shall obtain approval from the city manager prior to issuing a purchase order. Purchases below \$50,000.00 will be processed by the purchasing manager.
 - (2) For purchases of non-construction, non-capital improvement related goods or services equaling \$100,000 or more, the purchasing manager shall obtain approval from the city council prior to contracting.
 - (3) For purchases of current year capital improvement projects, capital equipment and vehicles already approved in budget, no council or city manager action is required. These procurements will be processed by the purchasing manager.
 - (4) For purchases of capital improvement projects, capital equipment and vehicles of \$100,000.00 and above which are not included in current year approved budget, city council approval is required.
 - (5) For purchases of goods and services funded through grants or state appropriations previously accepted by council and amended into the budget, no council approval will be required. Procurements will be processed by the purchasing manager.
 - (6) For the purpose of this section, aggregate cost shall not be the determinative on multi-year contracts.
 - (7) Signing of contracts. Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the mayor or city manager or their designees.

(Code 1988, § 25.5-39; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-64. - Delegation to others.

The purchasing manager may delegate authority to purchase supplies, services, or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items. Notwithstanding debarment or suspension, procurement authority with respect to certain supplies, services or construction may be delegated to other city officials by the city manager with the approval of the city council, when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction.

(Code 1988, § 25.5-23; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-65—24-90. - Reserved.

ARTICLE IV. - CONTRACT INFORMATION

Sec. 24-91. - Types of contracts.

- (a) General authority. Subject to the limitations of this section, any type of contract which is appropriate to the procurement, and which will promote the best interests of the city may be used, provided that the use of a cost-plus-a-percentage-of-cost contract be approved by the city council. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.
- (b) Multiterm contracts.
 - (1) Specified period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the city, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof.
 - (2) Determination prior to use. Prior to the utilization of a multiterm contract, it shall be determined in writing that:
 - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. Such a contract will serve the best interests of the city by encouraging effective competition or otherwise promoting economies in city procurement.
- (c) Multiple source contracting.
 - (1) Generally. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the city's actual requirements is limited by the provision of Uniform Commercial Code subsection 2-306(1).
 - (2) Limitations on use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Multiple source awards shall not be made when a single award will meet the city's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
 - (3) Eligible users. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that the city shall reserve the right to take bids separately if:
 - a. A particular quantity requirement arises which exceeds its normal requirement, or an amount specified in the contract; and
 - b. The purchasing manager approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the city.

Agenda Item #8.3.

- (4) Intent to use. If a multiple source award is anticipated prior to issuing a solicitation, the city shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.
- (5) Determination required. The purchasing manager shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(Code 1988, § 25.5-61; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-92. - Contract clauses.

- (a) Required generally. All city contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing manager, after consultation with the city attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (1) Statement of work, delivery schedules, and period of performance;
 - (2) The unilateral right of the city to order in writing changes in the work within the scope of the contract;
 - (3) The unilateral right of the city to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (4) Variations occurring between estimated quantities of work in the contract and actual quantities;
 - (5) Defective pricing;
 - (6) Liquidated damages to include administrative contractual or legal remedies for violation of contract terms;
 - (7) Specified excuses for delay or nonperformance;
 - (8) Termination of the contract for default or cause;
 - (9) Termination of the contract in whole or in part for the convenience of the city;
 - (10) Suspension of work on a construction project ordered by the city; and
 - (11) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract when:
 - a. The contract is negotiated;
 - b. The contractor provides the site or design; or
 - c. The parties have otherwise agreed with respect to the risk of differing site conditions.
- (b) Price adjustments.
 - (1) Adjustments in price resulting from the use of contract clauses required by subsection (a) of this section shall be computed in one or more of the following ways:
 - a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - b. By unit prices specified in the contract or subsequently agreed upon;
 - c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

Agenda Item #8.3.

- d. In such other manner as the contracting parties may mutually agree;
- e. In the absence of agreement by the parties, by a unilateral determination by the city of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the city, as accounted for in accordance with industry price list, catalogue or market prices and subject to the appeals and remedies in article VII of this chapter; or
- f. For all federally funded purchases, cost or price analysis shall be the only means from which pricing shall be determined.

(2) A contractor shall be required to submit cost or pricing data for any adjustment in contract price.

- (c) Standard clauses and modification. The purchasing manager, after consultation with the city attorney, may establish standard contract clauses for use in city contracts. If the purchasing manager establishes any standard clauses addressing the subjects set forth in subsection (a) of this section, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

(Code 1988, § 25.5-62; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § III, 9-7-10)

Sec. 24-93. - Approval of accounting system.

Except with respect to firm fixed-price city contracts, no contract type shall be used unless it has been determined in writing by the purchasing manager that the proposed contractor's accounting system:

- (1) Will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (2) Is adequate to allocate costs in accordance with generally accepted cost accounting principles.

(Code 1988, § 25.5-65; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-94. - Right of inspection.

The city may, at reasonable times, inspect the plant, place of business, storage site, or work site of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the city.

(Code 1988, § 25.5-66)

Sec. 24-95. - Right to audit records.

- (a) Audit of cost or pricing data. The city may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.
- (b) Contract audit. The city shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the

Agenda Item #8.3.

contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

(Code 1988, § 25.5-67)

Sec. 24-96. - Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors for a city contract, a notice of the relevant facts shall be transmitted to the state attorney general by the city attorney.

(Code 1988, § 25.5-68)

Sec. 24-97. - City records.

- (a) Contract file. All determinations and other written records pertaining to the solicitation, award, or performance of a city contract shall be maintained for the city in a contract file by the purchasing manager.
- (b) Retention of procurement records. All procurement records shall be retained and disposed of by the city in accordance with records retention and guidelines and schedules set by the city clerk.

(Code 1988, § 25.5-69; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-98 – 24-120. Reserved.

ARTICLE V. - SOURCE SELECTION

DIVISION 1. - PROFESSIONAL AND TECHNICAL SERVICES PROCUREMENT

Sec. 24-121. - Contracting for designated professional services; selection procedure.

- (a) Criteria. Professional and technical services shall be procured in accordance with this division.
- (b) Determination of award for professional and technical services shall be based on qualifications. Cost will not be a criteria factor in the evaluation process, and it shall be negotiated during the award phase of the contract.
- (c) Where the primary contract may be awarded through the procurement code without review by the selection advisory committee, nothing in this division shall require that the selection advisory committee separately review subcontractors who are an integral part of the primary contract.

Sec. 24-122. - Request for proposals.

- (a) Conditions for use. When the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the request for proposal method set forth herein.
- (b) Request for proposal. A proposal shall be solicited through a request for proposal.
- (c) Public notice. For proposals estimated to be \$100,000.00 or more, adequate public notice of the request for proposals shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the closing of the request for proposals. The public notice shall state the due date and time for proposal submission, and where proposal documents may be inspected or

Agenda Item #8.3.

obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.

- (d) Receipt of proposal. No proposal shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors prior to the deadline for receipt of the proposal by the purchasing manager. A register of proposals shall be prepared containing the name of each offeror. The register of proposals shall be open for public inspection not later than three days after the deadline for receipt of proposals. During the evaluation of proposals, and until approval of the recommendation of award by the city council, the contents of proposals may not be disclosed to the public. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first request for proposals may not be disclosed until after approval by the city council of the recommendation of award for the second RFP or cancellation of the RFP.
- (e) Evaluation factors. The request for proposal shall state the relative importance of price and other evaluation factors.
- (f) Discussion with responsible offeror and revision to proposal. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. Any modification received during the revision and negotiation stages will become a part of the permanent record.
- (g) Award. Awards shall be made to the highest-ranking responsible offeror taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation except that, unless otherwise determined impractical by the purchasing manager, award(s) resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsible local manufacturers or local businesses, award shall be made to a responsible qualified non-local manufacturer or business. The contract file shall contain the basis on which the award is made.
- (h) The procurement of lease financing shall be conducted utilizing request for proposal.
- (i) Award recommendation shall be made to the city council by the purchasing manager.

(Code 1988, § 25.5-32; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § IV, 8-17-09)

Sec. 24-123. - Selection advisory committee.

- (a) There is a selection advisory committee comprised of three department heads: one designated by the committee chair, one from the end user department and one serving on a rotating basis from the total pool of directors. For each request for proposal, there are at least five subject matter experts designated by the director of the department that developed the RFP. There shall be no more than seven subject matter experts total. All external subject matter experts are non-voting technical advisors and are not included in the total number of subject matter experts. A pool of internal subject

Agenda Item #8.3.

matter experts shall be maintained by departments and can be used for the appropriate procurement.

- (b) A member of the selection advisory committee shall serve until a successor is appointed. An alternate may be suggested by any member and submitted to the selection advisory committee chair for approval. Upon approval, the alternate will attend in that member's place.
- (c) The assistant city managers shall serve as a nonvoting member and chair for the selection advisory committee.
- (d) The city's purchasing manager or designee shall serve as staff coordinator for the selection advisory committee.

(Code 1988, § 2-137; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ III, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 1947, § 1, 3-3-03; Ord. No. 2643, § I, 1-17-12; Ord. No. 2852, § 5-21-18)

Sec. 24-124. - Notice of projects; recommendations.

- (a) When the fee for professional and/or technical services is estimated to be \$100,000.00 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.
- (b) If the estimated cost of the services is less than \$100,000.00, review by the selection advisory committee is not required. The purchasing manager may select a qualified firm or firms to provide these services based on adopted purchasing procedures.
- (c) When the fee for the professional/technical services is \$100,000.00 or more, the selection advisory committee shall submit the name of the most qualified professional firm or firms or person to the city council, for purposes of review and approval by the council. Nothing in this subsection shall prohibit the submission of more than one firm.

Sec. 24-125. - Files of qualifications of firms and persons.

The purchasing manager may maintain a file of qualifications of all firms or persons qualified to perform professional and technical services for city projects. These files shall be updated at the request of the selections advisory committee to provide current qualification information. Interviews and presentation of qualifications shall be conducted at the direction of the selection advisory committee. Mailed inquiries may be solicited to provide specific information as may be considered necessary by the selection advisory committee.

(Code 1988, § 2-139; Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-126. - Approval of contracts.

- (a) All city projects that require the contracting for professional and technical services in an amount of \$100,000.00 or more shall be performed under separate contract, and each contract shall require final approval by the city council.
- (b) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.

Agenda Item #8.3.

- (c) This section shall apply only to the primary professional firm. Any subcontractor shall be evaluated as a part of the primary contract.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-127. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-128. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-129. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-130. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-131. - Notice of federal public policy requirements.

Agenda Item #8.3.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-132 - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-133. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-134. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (1) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (2) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (3) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
 - (4) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-135. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-136. - Architectural and engineering services

- (a) If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall use qualifications-based competitive proposal procedures when contracting for architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.
- (b) Qualifications-based competitive proposal procedures require that:
 - (1) An offeror's qualifications be evaluated;
 - (2) Price be excluded as an evaluation factor;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the city.
- (c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.

(Ord. No. 2132, § I, 9-7-04)

Sec. 24-137. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.

Agenda Item #8.3.

- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-138. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of sole source procurement. A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-139. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.
- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-140. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.

Agenda Item #8.3.

- (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeree entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeree or one of the principal bidders/offerees, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-141. Change Orders

- (a) Changes in time. Extensions of time on construction contracts or professional/technical service contracts, may be granted by the Project Manager, subject to appropriate approvals, on a case-by-case basis for the following reasons:
- (1) One additional day for each delay in which the contractor could not perform contractual work and subsequent days as may be required to repair work damage by weather, as defined in General Conditions for Construction Contracts, 2004, during the term of the contract;
 - (2) City-requested changes to project specifications that incur time as a result;
 - (3) Other circumstances in which the City believes such an extension of time is in the best interest of the project and must be approved by the Department Director;
 - (4) Limitations on extensions of time addressed by this policy are as follows:
 - a. An increase of 30 contractual days to the original contract time, shall be approved by the Program Manager;
 - b. An increase of 31 to 60 contractual days to the original contract time shall be approved by the appropriate Department Director;
 - c. An increase of more than 60 contractual days to the original contract time, shall be approved by the City Manager.
- (b) Changes in cost.

Agenda Item #8.3.

- (1) Any changes in contract cost which includes base contract amount, contingency, and NMGR, require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.
- (3) Proposed construction work that deviates from the contract drawings and/or specifications shall be initiated with a field notice followed by a duly authorized change order when there is a change in cost and approved by the appropriate Approver.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-142. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-143. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-144. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-145. - Brand name specification or equal specification.

- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:
- (1) No other design or performance specification or qualified products list is available;

Agenda Item #8.3.

- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (4) Use of a brand name or equal specification is in the city's best interest.

Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.

- (b) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (d) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- (e) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (f) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-146. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit.

(Code 1988, § 25.5-131)

Secs. 24-147—24-160. - Reserved.

DIVISION 2. - PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

Sec. 24-161. - Contracting for construction, architect-engineer, and land surveying selection procedure.

- (a) Architect-engineer, and land surveying services shall be procured in accordance with this division.
- (b) Construction projects may be awarded based on cost, qualifications, or both.

Agenda Item #8.3.

- (c) Determination of award for architects, engineers, landscape architects and surveyors shall be based on qualifications. Cost will not be a criteria factor in the evaluation process, and it shall be negotiated during the award phase of the contract.
- (d) Where the primary contract may be awarded through the procurement code without review by the selection advisory committee, nothing in this division shall require that the selection advisory committee separately review subcontractors who are an integral part of the primary contract.

(Code 1988, § 25.5-33, § 2-136; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ I, II, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2748, §§ I, II, 2-3-15)

Sec. 24-162. - Management of construction contracting.

The head of the city department responsible for a construction project shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the department head shall consider the city's requirements, its resources, and the potential contractor's capabilities.

(Code 1988, § 25.5-91; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-163. - Competitive sealed bidding.

Conditions for use. Where no factors other than cost will be considered, competitive sealed bidding shall be used.

- (a) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (b) Public notice. For bids estimated to be \$100,000.00 or more, adequate public notice of the invitation for bid shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the opening of the bid. The public notice shall state the place, date, and time of bid opening, and where bid documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.
- (c) Bid opening. A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A late bid will not be accepted. Lateness will be determined by the purchasing manager's time clock, and the purchasing manager's determination of promptness or lateness will be final. The amount of each bid and such other relevant information as the purchasing manager deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. A copy of the information may be obtained by sending a self-addressed stamped envelope with reference to the bid number and title to the purchasing department. This information will not be given over the telephone.
- (d) Bid acceptance and bid evaluation. A bid shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are

Agenda Item #8.3.

not set forth in the invitation for bid. Original cover sheet and all documents must be provided fully executed, if not so provided bid will be rejected.

- (e) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of an inadvertently erroneous bid before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - (1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing manager.
- (f) Award. Unless otherwise determined impractical by the purchasing manager, bids resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsive/responsible local bidders, then award should go to qualified non-local manufacturers or businesses. Contracts shall be awarded to the most responsible and responsive bidder who provides the best value as set forth in the requirements and criteria specified in the invitation for bid.
- (g) Multistep sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (h) Federal funding. Any competitive, sealed bid procurement utilizing federal assistance requires at least two bids, firm fixed-price contracts, and selection based principally on price.

(Code 1988, § 25.5-31; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, §§ II, III, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15; Ord. No. 2852, § 5-21-18)

Sec. 24-164. - Request for proposals.

- (a) Conditions for use. When the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the request for proposal method set forth herein.
- (b) Request for proposal. A proposal shall be solicited through a request for proposal.
- (c) Public notice. For proposals estimated to be \$100,000.00 or more, adequate public notice of the request for proposals shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the closing of the request for proposals. The public notice shall state the due date and time for proposal submission, and where proposal documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.

Agenda Item #8.3.

- (d) Receipt of proposal. No proposal shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors prior to the deadline for receipt of the proposal by the purchasing manager. A register of proposals shall be prepared containing the name of each offeror. The register of proposals shall be open for public inspection not later than three days after the deadline for receipt of proposals. During the evaluation of proposals, and until approval of the recommendation of award by the city council, the contents of proposals may not be disclosed to the public. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first request for proposals may not be disclosed until after approval by the city council of the recommendation of award for the second RFP or cancellation of the RFP.
- (e) Evaluation factors. The request for proposal shall state the relative importance of price and other evaluation factors.
- (f) Discussion with responsible offeror and revision to proposal. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. Any modification received during the revision and negotiation stages will become a part of the permanent record.
- (g) Award. Awards shall be made to the highest-ranking responsible offeror taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation except that, unless otherwise determined impractical by the purchasing manager, award(s) resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsible local manufacturers or local businesses, award shall be made to a responsible qualified non-local manufacturers or business. The contract file shall contain the basis on which the award is made.
- (h) The procurement of lease financing shall be conducted utilizing request for proposal.
- (i) Award recommendation shall be made to the city council by the purchasing manager.

(Code 1988, § 25.5-32; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § IV, 8-17-09)

Sec. 24-165. - Selection advisory committee.

- (a) There is a selection advisory committee comprised of three department heads: One designated by the committee chair, one from the end user department and one serving on a rotating basis from the total pool of directors. For each request for proposal, there are at least five subject matter experts designated by the director of the department that developed the RFP. There shall be no more than seven subject matter experts total. All external subject matter experts are non-voting technical advisors and are not included in the total number of subject matter experts. A pool of internal subject matter experts shall be maintained by department and can be used for the appropriate procurement.
- (b) A member of the selection advisory committee shall serve until a successor is appointed. An alternate may be suggested by any member and submitted to the selection advisory committee chair for approval. Upon approval, the alternate will attend in that member's place.

Agenda Item #8.3.

- (c) The assistant city managers shall serve as a nonvoting member and chair for the selection advisory committee.
- (d) The city's purchasing manager or designee shall serve as staff coordinator for the selection advisory committee.

(Code 1988, § 2-137; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ III, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 1947, § 1, 3-3-03; Ord. No. 2643, § I, 1-17-12)

Sec. 24-166. - Notice of projects; recommendations.

- (a) When the fee for professional or technical services is estimated to be \$100,000 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.
- (b) If the estimated cost of the services is less than \$100,000.00, review by the selection advisory committee is not required. The purchasing manager may select a qualified firm or firms to provide these services.
- (c) When the fee for the professional/technical services is \$100,000.00 or more, the selection advisory committee shall submit the name of the most qualified professional firm or firms or person to the city council, for purposes of review and approval by the council. Nothing in this subsection shall prohibit the submission of more than one firm.

Sec. 24-167. - Files of qualifications of firms and persons.

The purchasing manager may maintain a file of qualifications of all firms or persons qualified to perform professional and technical services for city projects. These files shall be updated at the request of the selections advisory committee to provide current qualification information. Interviews and presentation of qualifications shall be conducted at the direction of the selection advisory committee. Mailed inquiries may be solicited to provide specific information as may be considered necessary by the selection advisory committee.

(Code 1988, § 2-139; Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-168. - Approval of contracts.

- (a) All city projects that require the contracting for construction in an amount of \$75,000.00 or more shall be performed under separate contract, and each contract shall require final approval by the city council.
- (b) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.
- (c) This section shall apply only to the primary professional firm. Any subcontractor shall be evaluated as a part of the primary contract.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-169. - Bid security.

(a) Bid security. For the purpose of this article, bid security is subject to the following:

- (1) Required. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing manager to exceed \$50,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state or the equivalent in cash or otherwise supplied in a form satisfactory to the city. Nothing in this subsection shall prevent the requirement of such bonds on construction contracts under \$50,000.00 when the circumstances warrant.
- (2) Amount. Bid security shall be in an amount equal to at least five percent of the amount of the bid.
- (3) Rejection of bids for noncompliance. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.
- (4) Withdrawal of bids. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security.
- (5) Authority to require additional bonds. Nothing in this section shall be construed to limit the authority of the city to require a bid bond or other security in addition to those bonds, or in circumstances other than specified in subsection (a)(1) of this section.

Sec. 24-170 Contract performance and payment bonds.

- (1) Required amounts. When a construction contract is awarded in excess of \$50,000.00, the following bonds or security shall be delivered to the city and shall become binding on the parties upon the execution of the contract:
 - a. A performance bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, in an amount equal to 100 percent of the price specified in the contract; and
 - b. A payment bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.
- (2) Reduction of bond amounts. After notice to the city council, the purchasing manager is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond when a written determination is made that it is in the best interests of the city to do so.
- (3) Authority to require additional bonds. Nothing in this subsection shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (b)(1) of this section.
- (4) Right to file suit on payment bonds. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this subsection, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material shall have the right to sue on the payment bond for any amount unpaid at

the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor but having no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

- (5) Location for filing suit on payment bonds. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.
- (6) Copies of bond forms. Any person may request and obtain from the city a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

(Code 1988, § 25.5-92; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-171. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-172. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-173. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-174. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-175. - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-176. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-177. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - (1) Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
 - (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-178. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-179. - Architectural and engineering services

- (a) If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall use qualifications-based competitive proposal procedures when contracting for architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.
- (b) Qualifications-based competitive proposal procedures require that:
 - (1) An offeror's qualifications be evaluated;
 - (2) Price be excluded as an evaluation factor;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the city.
- (c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.
- (d) The city will use article III, source selection and contract information, division 1, professional and technical services procurement to procure architectural and engineering services in accordance with the city's procurement code as amended.

(Ord. No. 2132, § I, 9-7-04)

Sec. 24-180. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.

Agenda Item #8.3.

- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.
- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-181. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of section 24-95 (Sole source procurement). A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-182. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-183. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity

Agenda Item #8.3.

will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.

- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-184. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeree entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeree or one of the principal bidders/offerees, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-185 Change orders

- (a) **Changes in time.** Extensions of time on construction contracts or professional/technical service contracts, may be granted by the Project Manager, subject to appropriate approvals, on a case-by-case basis for the following reasons:

Agenda Item #8.3.

- (1) One additional day for each delay in which the contractor could not perform contractual work and subsequent days as may be required to repair work damage by weather, as defined in General Conditions for Construction Contracts, 2004, during the term of the contract;
- (2) City-requested changes to project specifications that incur time as a result;
- (3) Other circumstances in which the City believes such an extension of time is in the best interest of the project and must be approved by the Department Director;
- (4) Limitations on extensions of time addressed by this policy are as follows:
 - a. An increase of 30 contractual days to the original contract time, shall be approved by the Program Manager;
 - b. An increase of 31 to 60 contractual days to the original contract time shall be approved by the appropriate Department Director;
 - c. An increase of more than 60 contractual days to the original contract time, shall be approved by the City Manager.

(b) Changes in cost

- (1) Any changes in contract cost which includes base contract amount, contingency, and NMGR, require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.
- (3) Proposed construction work that deviates from the contract drawings and/or specifications shall be initiated with a field notice followed by a duly authorized change order when there is a change in cost and approved by the appropriate Approver and based on current thresholds.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-186. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-187. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-188. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-189. - Brand name specification or equal specification.

- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:
 - (1) No other design or performance specification or qualified products list is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the city's best interest.
- (b) Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.
- (c) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (d) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (e) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-190. - Brand name specification.

- (a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (b) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-84; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-191. - Authority for cooperative procurement.

Agenda Item #8.3.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement.

(Code 1988, § 25.5-131)

Secs. 24-192 – 24-195. Reserved.

DIVISION 3. - PROCUREMENT OF TANGIBLE GOODS

Sec. 24-196. - Contracting for tangible goods selection procedure.

(a) Tangible goods shall be procured in accordance with this division.

Sec. 24-197. - Competitive sealed bidding.

Conditions for use. Where no factors other than cost will be considered, competitive sealed bidding shall be used.

- (a) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (b) Public notice. For bids estimated to be \$100,000.00 or more, adequate public notice of the invitation for bid shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the opening of the bid. The public notice shall state the place, date, and time of bid opening, and where bid documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.
- (c) Bid opening. A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A late bid will not be accepted. Lateness will be determined by the purchasing manager's time clock, and the purchasing manager's determination of promptness or lateness will be final. The amount of each bid and such other relevant information as the purchasing manager deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. A copy of the information may be obtained by sending a self-addressed stamped envelope with reference to the bid number and title to the purchasing department. This information will not be given over the telephone.
- (d) Bid acceptance and bid evaluation. A bid shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bid. Original cover sheet and all documents must be provided fully executed, if not so provided bid will be rejected.
- (e) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of an inadvertently erroneous bid before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice in the office designated in the invitation for bids prior to the

Agenda Item #8.3.

time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- (1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing manager.
- (f) Award. Unless otherwise determined impractical by the purchasing manager, bids resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsive/responsible local bidders, then award should go to qualified non-local manufacturers or businesses. Contracts shall be awarded to the most responsible and responsive bidder who provides the best value as set forth in the requirements and criteria specified in the invitation for bid.
- (g) Multistep sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (h) Federal funding. Any competitive, sealed bid procurement utilizing federal assistance requires at least two bids, firm fixed-price contracts, and selection based principally on price.

(Code 1988, § 25.5-31; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, §§ II, III, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15; Ord. No. 2852, § 5-21-18)

Sec. 24-198. - Notice of projects; recommendations.

- (a) When the cost of tangible goods is estimated to be \$100,000 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.

Sec. 24-199. - Approval of contracts.

- (a) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-200. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and

Agenda Item #8.3.

- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-201. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-202. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-203. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-204. - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-205. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-206. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - (1) Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
 - (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-207. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-208. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to

contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.

- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-209. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of section 24-95 (Sole source procurement). A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-210. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-211. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.

Agenda Item #8.3.

- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-212. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
- (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeror entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeror or one of the principal bidders/offerors, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-213 Change orders

(a) Changes in cost

- (1) Any changes in base contract amount require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director

Agenda Item #8.3.

More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-214. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-215. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-216. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-217. - Brand name specification or equal specification.

- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:

- (1) No other design or performance specification or qualified products list is available;
- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (4) Use of a brand name or equal specification is in the city's best interest.

- (b) Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.

- (c) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.

Agenda Item #8.3.

- (d) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (e) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-218. - Brand name specification.

- (a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (b) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-84; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-219. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement.

(Code 1988, § 25.5-131)

Sec. 24-220. Reserved.

ARTICLE VI. – DEBARMENT OR SUSPENSION

Sec. 24-221. – Authority to suspend.

- (a) The purchasing manager, after consulting with the city attorney and the contract administrator, as defined by the using department, is authorized to suspend a person for cause from consideration for the award of future city contracts for a specified period of time. The suspension may apply to a person in his/her individual as well as corporate capacity. The suspension shall be for a period of not more than three months.
- (b) The causes for suspension shall include one or more of the following:
 - (1) Violation of any city or noncity contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify suspension:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

Agenda Item #8.3.

- b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension.
 - (2) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
 - (3) Violation of the ethical standards set forth in Article II of this chapter.
- (Code 1988, § 25.5-101; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-222. – Authority to debar.

- (a) The purchasing manager, after consulting with the city attorney and the contract administrator, as defined by the using department, is authorized to debar a person for cause from consideration for the award of future city contracts for a specified period of time. The debarment may apply to a person in his/her individual as well as corporate capacity. The debarment shall be for a period of not more than three years.
- (b) The causes for debarment shall include one or more of the following:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor.
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - (4) Violation of any city or noncity contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 - (5) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
 - (6) Violation of the ethical standards set forth in Article II of this chapter.
 - (7) Any violation of the drug-free workplace regulations.

(Code 1988, § 25.5-101; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-223. – Notice of decision.

- (a) Mailing notice. Any written decision by the purchasing manager to debar a person under this article shall be sent by certified mail, return receipt requested, to the person affected by the decision, or by hand delivery and delivery receipt requested.
- (b) Contents of notice. The written notice of the purchasing manager's decision shall set forth in detail all reasons for the debarment and shall inform the person of their rights concerning administrative appeal.

(Code 1988, § 25.5-102; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-224 - Determination of responsibility in construction and consultant contracts.

- (a) In all contracts related to capital projects, the purchasing manager may evaluate the past performance of an entity doing business with the city and determine if the contractor is not a responsible offeror. In the evaluation of the performance of the contractor, the following factors shall be considered:
 - (1) Timeliness of performance;
 - (2) Quality of performance;
 - (3) Compliance with all applicable City ordinances;
 - (4) Compliance with the labor laws regarding payment of wage rates;
 - (5) Compliance with all applicable municipal, state, and federal laws;
 - (6) Poor performance causing delays in performance by other contractors;
 - (7) Failure to comply with safety laws, rules and regulations;
 - (8) Failure to accept responsibility for managing claims arising out of the performance of their contracts;
 - (9) Or any other factor which, singly or in combination with the above, results in a determination by the department director that the proposed contracting entity is not a responsible offeror.
- (b) Any such determination of non-responsibility made by the purchasing manager shall be sent to the contractor by certified mail, return receipt requested. A determination of non-responsibility shall continue until such time as the purchasing manager, based on contract performance occurring after the determination, then determines that offeror has improved its performance sufficient to be deemed responsible. Any determination of non-responsibility may be protested.

Secs. 24-225-24-230. - Reserved.

ARTICLE VII. - APPEALS AND REMEDIES

Sec. 24-231. - Bid protests.

- (a) Right to protest. Any offeror who is aggrieved in connection with the procurement process of this chapter, including but not limited to the solicitation or award of a contract, may file a written protest with the purchasing manager. Such protest must be filed within five working days after the aggrieved bidder or offeror knows or should have known of the facts giving rise to the protest unless, otherwise specified in this chapter. If the protest concerns the awarding of a bid, the protest must be filed within

Agenda Item #8.3.

five working days of receipt of the purchasing's manager's determination. The protestor shall set forth in detail all reasons for the protest. The protest shall:

- (1) Include the name and address of the protestor;
 - (2) Identify the contracting activity and the number of the solicitation, if any, and if a contract has been awarded the contract number, if any;
 - (3) Contain a statement of the grounds for protest;
 - (4) Include supporting exhibits, evidence affidavits or documents to substantiate any claim unless not available within the filing time, in which case the expected availability date shall be indicated; and
 - (5) Specify the ruling requested from the purchasing manager.
- (b) Bid protest appeal bond or security. The options for an appeal bond or security are an appellate bond through a bonding company authorized to do business in New Mexico; letter of credit or its equivalent from a federally insured financial institution; or cashier's check or its equivalent payable to the City of Las Cruces. Amount of appeal bond or security shall be determined as follows:
- (1) One Thousand and No/100 Dollars (\$1,000.00) for a bid protest to a contract expected to be awarded in an amount under One Hundred Thousand and No/100 Dollars (\$100,000.00).
 - (2) Five Thousand and No/100 Dollars (\$5,000.00) for a bid protest to a contract expected to be awarded in an amount between One Hundred Thousand and No/100 Dollars (\$100,000.00) and Five Hundred Thousand and No/100 Dollars (\$500,000.00).
 - (3) Ten Thousand and No/100 Dollars (\$10,000.00) for a bid protest to a contract expected to be awarded in an amount in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00).
 - (4) The purchasing manager will determine the amount of the appeal bond or security based on bids received, the engineer's estimate, and/or budgeted project funds, and that decision will be final.
- (c) Duties of purchasing manager upon receipt of protest. Upon receipt of any protest filed in accordance with section (a) of this section, the purchasing manager shall review the facts giving rise to the protest and within 15 working days mail to the protestor and all other bidders, return receipt requested, a written determination concerning the validity of the protest. The determination shall set forth the rationale, the proposed action to be taken by the purchasing manager or the city and shall inform the protestor and other bidders of their right to appeal the purchasing manager's determination in accordance with the appeal procedures set forth in subsection (c) of this section. Failure to timely appeal the purchasing manager's determination shall bar further recourse by the protestor or any other bidder, and the purchasing manager's determination and proposed action shall be final.
- (d) State of procurement during protest. If timely protest is made under subsection (a) of this section, the purchasing manager shall not proceed further with the solicitation or award of the contract until the appeal process has been concluded in accordance with this section or until the purchasing manager makes a determination based on the records that the award of the contract without delay is necessary to protect substantial interests of the city. If the purchasing manager determines an award without delay is necessary and the protestor later prevails in the appeal, the protestor shall be entitled only to reasonable costs, not to include attorney fees, associated with the preparation and submission of the bid.

Agenda Item #8.3.

- (e) Appeal of purchasing manager's decision. Any protestor or other bidder aggrieved by the purchasing manager's determination made pursuant to subsection (b) of this section may appeal such determination by filing, within five working days of receipt of such decision, a written notice of appeal with the city clerk, which shall set forth in detail all reasons for the appeal and whether or not the protestor will be represented by an attorney.
- (f) Appeals board. All timely appeals of the purchasing manager's determination shall be heard by the appeals board within 15 working days after the filing of the notice of appeal with the city clerk. The appeals board shall consist of three members who are neither city employees nor city councilors and who shall be appointed by the city manager. The members may be paid or may serve voluntarily. The city clerk shall be responsible for notifying all protestors and other bidders of the time and place of the hearing.
- (g) Hearing procedures. The hearing shall be informal but shall provide at a minimum for the swearing in and cross examination of witnesses by the city or any party having filed an appeal. The board may develop rules for the conduct of protest meetings. After concluding the hearing, the appeals board shall issue a written determination, within 15 working days of holding a hearing, of either upholding or reversing the purchasing manager's determination. The determination shall be final.
- (h) Costs. The losing party to the appeal shall be responsible for the reasonable costs of the appeal as determined by the appeals board. The board's determination of costs shall be based on the costs and expenses incurred by the board, including but not limited to the board's salary, attorneys' fees, reproduction, and transcription costs.

(Code 1988, § 25.5-111; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-232. – Debarment appeal.

- (a) Timely appeal. The person debarred may appeal the determination of the purchasing manager by filing, within five working days of the receipt of the determination, a written notice of appeal and filing an appeals bond with the city clerk in an amount to be set by resolution of the city council. Any notice of appeal not filed within the five-working-day period shall not be timely. The notice of appeal shall be filed with the city clerk and shall set forth in detail all reasons for the appeal. No debarred person shall contact orally or in writing any member of the appeals board outside of the adjudicatory process.
- (b) Appeals board. All timely appeals of the purchasing manager's determination shall be heard by the appeals board within 15 working days after filing the notice of appeal with the city clerk. The appeals board shall consist of three members who are neither city employees nor city councilors and who shall be appointed by the city manager. The members may receive travel expenses or per diem or may serve voluntarily.
- (c) Notification of hearing. The city clerk shall be responsible for notifying the debarred person of the time and place of the hearing, which shall be opened to the public and conducted in compliance with the Open Meetings Act.
- (d) Record of hearing. The city shall provide a clerk who shall record the hearing and prepare a nonverbatim account of the hearing. Copies of the recordings and nonverbatim account shall be provided to the debarred person for a reasonable reproduction cost.
- (e) Conduct of hearing. The hearing shall be informal but shall provide at a minimum for the swearing in and cross examination of witnesses by the parties involved. The appeals board shall have the authority to call for the attendance of witnesses and the production of documents, to swear witnesses, to call witnesses itself, to examine witnesses including the debarred person, and to hear

Agenda Item #8.3.

all evidence properly brought before it. The formal rules of evidence shall not apply to this proceeding. The appeals board may adopt additional rules for hearings not inconsistent with this chapter.

- (f) Legal representation. The debarred person may be represented before the appeals board by a representative of his choice. The representative shall be identified, and their name made known to the board three days prior to the hearing. If the representative of the person who has appealed is an attorney, the purchasing manager may be represented by the city attorney.
- (g) Written decision of board. After concluding the hearing, the appeals board shall issue a written decision either upholding or reversing the purchasing manager's determination within 15 working days of the completion of the hearing. The decision of the board shall be based upon the evidence received at the hearing and shall be final.
- (h) Costs. The losing party to the appeal shall be responsible for the reasonable costs of the appeal as determined by the appeals board. The board's determination of costs shall be based on the costs and expenses incurred by the board, including but not limited to the board's salary, attorneys' fees, reproduction, and transcription costs.

(Code 1988, § 25.5-103; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-233. - Remedies for solicitations or awards in violation of law.

- (a) Prior to bid opening or closing date for receipt of proposals. If, prior to the bid opening or the closing date for receipt of proposals, the purchasing manager, after consultation with the city attorney, determines that a solicitation made under this chapter is in violation of federal, state, or municipal law, the solicitation shall be canceled or revised to comply with applicable law.
- (b) Prior to award. If, after bid opening or the closing date for receipt of proposals, the purchasing manager, after consultation with the city attorney, determines that a solicitation or a proposed award of a contract made under this chapter is in violation of federal, state, or municipal law, the solicitation or proposed award shall be canceled.
- (c) After award. If, after an award, the purchasing manager, after consultation with the city attorney, determines that a solicitation or award of a contract made under this chapter was in violation of applicable law, then:
 - (1) If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:
 - a. Ratified and affirmed, provided it is determined that doing so is in the best interests of the city; or
 - b. Terminated, and the person awarded the contract shall be compensated for actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
 - (2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the city.

(Code 1988, § 25.5-113; Ord. No. 1923, § 1, 6-17-02)

PART II – MUNICIPAL CODE
Chapter 24 – PROCUREMENT CODE

ARTICLE I. - IN GENERAL

Sec. 24-1. - Purpose.

The purpose of this chapter is to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

(Code 1988, § 25.5-1)

Sec. 24-2. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

All definitions listed within New Mexico Statutes sections 13-1-21 through 13-1-199, NMSA, 1978, plus, sections 13-4-1 through 13-4-43, NMSA, 1978, are incorporated herein by reference. Wherever difference exists between such statutory definitions and any definitions within this chapter, the definition of this chapter shall prevail.

Advertising means a public medium promoting a product, service, or event, including radio, television, print and electronic.

Agreement means two or more persons having common understanding about responsibilities, obligations, duties, and rights.

Approved equal means approved specifications as established by the industry or the using agency.

Award means the issuance of a validly executed contract which may include a purchase order.

Bid means a response to a competitive sealed procurement solicitation.

Bidder means a person who submits a quote/bid in response to a solicitation for respective, competitive quotes/bids.

Blind trust means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other disposition of the property subject to the trust.

Brand name or equal specifications means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Calendar days means all days in a month including weekend, holidays, etc.

Construction Manager At Risk (CMAR) means the construction manager commits to deliver the project within a Guaranteed Maximum Price (GMP) based on the construction documents and specifications.

Contingency means an amount set aside to address unforeseen issues.

Agenda Item #8.3.

Contract means agreement between two or more persons authorized to legally bind their interests by setting forth what each person will or will not do in the procurement of tangible personal property, professional or nonprofessional services, or construction.

Contract administration means a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

Contract limitations and change orders means a construction related written order directing the contractor to make a change, which the contract authorizes with or without the contractor's consent.

Defective pricing means when a contractor has more current, complete, and accurate cost and pricing data and does not disclose it resulting in a significant increase in price.

Employee means an individual drawing salary or wages from the city, whether elected or not; any uncompensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city; and any uncompensated individual serving as an elected official of the city.

Financial interest means:

- (1) Ownership of one percent or more of any property or business; or
- (2) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity means anything of value that is presented or promised in anticipation of receiving a consideration, whether or not the consideration is less than, equal to or greater than the value presented or promised.

Immediate family means an employee's spouse, son, daughter, or parent as defined in FMLA regulations. FMLA defines the term "parent" as "a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when he or she was a minor."

Invitation for bid/invitation to bid (IFB or ITB) means all documents, whether attached or incorporated by reference, used for soliciting sealed bids whereby award is based upon the lowest price that meets specifications.

Local business means a business that has a valid city business certificate or license issued through the City of Las Cruces.

Non-procurement contracts means any agreement that was not the result of a procurement, for example memoranda of understanding, grant pass-through or fiscal agent agreements, or contracts that don't involve expenditures for goods or services.-

Offeror means a person submitting a proposal in response to a competitive request for proposals.

Person means any business, individual, union, committee, club, or other organization, or group of individuals.

Pricing data means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Professional services means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified

Agenda Item #8.3.

public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services.

Procurement means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, service, or construction, including needs analysis, specification development, competitive or noncompetitive solicitation of sources, contract development, negotiation and execution, and all phases of contract administration.

Proposal means a response to a competitive sealed procurement solicitation.

Public agency means an administrative division of city, state, or federal government.

Qualified products list means an approved list of tangible goods, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, a determination was made that the list met applicable specification requirements.

Quote means a response to a procurement solicitation less than ~~\$75100,000~~ conducted for the purchase of goods/services/construction, whereby award is based upon the lowest price that meets specifications as deemed practical.

~~*Request for information (RFI)* means a solicitation to obtain general information about products, services, or suppliers.~~

Request for proposals (RFP) means a competitive solicitation of proposals conducted for the purchase of goods/services/construction whereby the responses are evaluated considering multiple, weighted criteria and the resulting contract is awarded based upon the response ranked highest considering such criteria.

~~*Request for quote (RFQ)* means a competitive solicitation quotes conducted for the purchase of goods/services/construction, whereby award is based upon the lowest price that meets specifications as deemed practical.~~

Supplies includes tangible goods including, but is not limited to, equipment, materials, rolling stock, books, fuel, tools, printed media.

Tangible goods means physical objects or items (like equipment and inventory) that can be touched and has a real, physical presence.

Technical services means research and development (R&D) work, the development and installation of management information systems (MIS), materials requirement planning (MRP) systems, and the development of technical manuals, printing services, and repair services.

Using agency means any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this chapter.

Working days means only those days per City calendar in which City staff are available to address, observe, or otherwise handle contractual issues as they arise. The following days are normally not considered working days: City Holidays, Saturdays, Sundays, and days in which the City Manager has closed City Offices due to inclement weather or some other specified emergencies.

(Code 1988, § 25.5-3; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. A), 8-6-12)

Sec. 24-3. - Applicability.

- (a) This chapter applies to contracts for the procurement of supplies, services, and construction entered into by the city after the effective date of the ordinance from which this chapter derives. It shall apply

to every expenditure of public funds by the city or a public agency for public purchasing irrespective of the source of the funds, except for procurement that is exempt as set forth herein.

- (b) When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal and state law and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

All the dollar thresholds mentioned in this code exclude taxes, freight, and shipping charges.

(Code 1988, § 25.5-2; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-4. - Authorized exemptions from competitive procurement, subject to review and written determination by the purchasing manager. All other applicable contract requirements of this article are required.

~~This chapter shall not apply to the following:~~

- (1) Procurement of goods, services or construction from state agencies, public bodies, or external procurement units.
- (2) Procurement of publicly provided or publicly regulated gas, electricity, water, sewer or refuse collection services.
- (3) Purchases of books and periodicals from publishers or copyright holders thereof to include publications offered on CDs, videos, or the Internet.
- (4) Travel or shipping by common carrier or by private conveyance, or to meals and lodging.
- (5) Purchase of live animal(s).
- (6) Art objects or artifacts or for their creation including exhibits.
- (7) Procurement from self-determination corporations or other such enterprises designed and operated to assist in the care or maintenance of the sick and indigent and the prevention thereof and aided by state or federal antipoverty programs or through private philanthropy.
- (8) Leases, exchanges or purchases of real property or a permanent interest in land.
- (9) Services of bond underwriters and debt rating agencies.
- (10) Agreement for the services of attorneys, legal assistants, and expert witnesses. Services of expert witnesses needed in conjunction with litigation, court reporting services and legislative activities. Contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees.
- (11) Purchases, rentals, leases (personal and real property), and professional/technical services contracts necessary for the investigation of criminal activities. The police department may purchase such materials and services without quotations, requests for proposals, or bids if such would compromise a criminal investigation as determined by the chief of police in writing. All funds expended for this type of activity will be properly receipted and accounted for with supporting documentation. All documentation will be maintained by the police department and shall be subject to internal audit. Rentals, leases, and professional/technical services will be limited to the term of an investigation.

Agenda Item #8.3.

- (12) Contracts with professional entertainers.
- (13) Advertising in all media.
- (14) Promotional goods intended for resale or for the procurement of printing services for materials produced and intended for resale.
- (15) Subscription services.
- (16) Contracts for retirement and other benefits.
- (17) Services provided by lobbyists or legislative experts.
- (18) Contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration.
- (19) Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act.
- (20) Procurement of surety bonds.

~~(21) Procurement of services, supplies, and construction materials when an emergency exists as defined by article I, section 24-2. The duration for this exemption shall occur in accordance with the state of emergency as authorized by article III, section 9-38, and shall terminate concurrently with the authorized state of emergency. Procurement under this section shall be limited to emergency services, supplies, and construction materials for the provision of public health, welfare, or safety, including but not limited to: Health care related goods or services; food and water; health and hygiene products; or other basic life necessities. The city manager may authorize the purchasing manager or designee to make emergency procurement under this provision up to an amount of \$250,000.00. This provision shall otherwise comply with section 24-8.~~

~~(21)~~(22) Procurement of parts and labor or maintenance agreement to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop.

~~(22)~~(23) Payments for conference registrations, offsite training courses, or similar minor purchases where prepayments are required, or which are administrative in nature and non-competitive as determined by the purchasing manager.

~~(23)~~(24) Payments for membership dues.

~~(24) Contracts for retirement and other benefits which are paid on behalf of city employees.~~

(25) Existing contracts. The purchasing manager may contract for services, construction, or goods without the use of competitive bids or competitive proposals at a price equal to or less than:

- a. The current federal or state supply contract or catalogue price, whichever is lower, and the purchase order adequately identifies the contract relied upon. A copy of the federal supply contract or catalogue shall be made part of the procurement record.
- b. The current contract price held by other intrastate or interstate governmental bodies and their agencies. A copy of the contract relied upon shall be made part of the procurement record.

c. A bid awarded by the city to the same contractor, for the same materials or services, within the past 24 months. A copy of the original documentation is to become a permanent part of

the procurement record providing the vendor wishes to extend. Resulting contract(s) shall not exceed 48 months after the initial contract execution date.

(26) Cooperative procurements through other government entities and cooperatives.

(Code 1988, § 25.5-181; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-5. - Small purchases.

- (a) Purchase splitting is prohibited. Separate purchases of the same or similar goods, services, or construction, whether from the same or different businesses, within a time frame established by the purchasing manager, shall be considered a single purchase for purposes of this article.
- (b) Authority. Any contract less than \$~~100,000.00~~75,000.00 for supplies, services, and construction, may be made in accordance with the procedures set forth in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
 - (1) Purchases \$50,000.00 or more but less than \$~~10075~~,000.00. Unless determined impractical by the purchasing manager, no less than three sources shall be solicited to submit written quotations. Award shall be based on the lowest price meeting specifications. A record of the solicitation and written responses shall be maintained as public record.
 - (2) Purchases \$25,000.00 or more but less than \$50,000.00. Unless determined impractical by the purchasing manager, written quotes from no less than two sources shall be obtained. Award shall be based upon the lowest price meeting specifications. Solicitations, responses and/or other pricing documentation shall be recorded and maintained as public record.
 - (3) Purchases less than \$25,000.00. Unless otherwise determined impractical by the purchasing manager, for a purchase of supplies, services, or construction estimated to be less than \$25,000.00, written quotes from no less than one source shall be obtained. Purchase is to be made only by authorized city employees at the best obtainable price considering time and process efficiencies.
 - ~~(4) Purchases less than \$3,000.00. Unless determined impractical by the purchasing manager, purchases less than \$3,000.00 are to be made using a purchasing card/department card excluding services and construction.~~
- (c) Professional/technical services less than \$~~10075~~,000.00. Unless otherwise determined impractical by the purchasing manager, professional/technical services estimated to be less than \$~~10075~~,000.00 may be purchased in accordance with the following:
 - (1) All professional/technical services estimated to be less than \$~~10075~~,000.00 shall be procured by either the purchasing manager or authorized department employee calling a reasonable number of firms to obtain ~~either verbal, telephone or~~ written offers when practical. Procurement over this amount shall be by competitive sealed proposal.
 - (2) The purchasing manager or designee shall provide such information as is necessary to provide the potential offeror the opportunity to provide a proper and timely response. Included in the information shall be the factors to be evaluated and the relative weights assigned each factor.
 - (3) The types of questions to be asked of the potential offeror may include, but not be limited to:
 - a. The specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.

Agenda Item #8.3.

- b. Capacity and capability of the business to perform the work, including any specialized services, within the time limitation, if any.
 - c. Past record of performance or contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.
 - d. Proximity to or familiarity with the area in which the project is located.
 - e. The anticipated price, if price is a factor, for services based upon the information provided by the ~~central purchasing officer~~purchasing manager as to the scope of work.
 - f. Other criteria determined to be essential to the particular contract or project.
- (4) The award shall be based on the highest-ranking respondent considering the evaluation factors provided in the solicitation. The city may negotiate with any responding offeror with the intent to obtain best and final offer of the offeror.

(Code 1988, § 25.5-34; Ord. No. 1703, § IX, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § V, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-6. - Fiscal responsibility.

- (a) When the aggregate sum of contract modifications, change orders, or contract price adjustments exceeds ~~\$10075~~,000.00, all subsequent contract modifications, change orders, or contract price adjustments shall be subject to city council approval, except for those contracts that will be or are approved under the contract limitations and change order policy.
- (b) Aggregate contract modifications, change orders, or price adjustments up to ~~\$10075~~,000.00 shall be authorized by the city manager conditioned upon the award limitations.

(Code 1988, § 25.5-93; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-7. - Sole source procurement.

A contract may be awarded without competition when the purchasing manager determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or construction item; or when it is likely that award to any other source would result in:

- (a) Substantial duplication of cost to the city that is not expected to be recovered through competition; or
- (b) Unacceptable delays in fulfilling the city's requirement.

The purchasing manager may conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurement shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.

(Code 1988, § 25.5-35; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-8. - Rapid procurement; Emergency procurement.

- (a) Purchases of goods, services, and construction for any amount where ~~Aa~~advertising and the solicitation of offers would entail unnecessary and detrimental delay and loss to the city, may be made by the purchasing office, at the best obtainable price in accordance with procedures

approved by the purchasing manager. Complete documentation of all proposed prices submitted by offerors must be maintained in the purchasing office for public inspection.

- (b) Notwithstanding any other section of this chapter, the city manager may authorize the purchasing manager or designee to make emergency procurement of supplies, services, or construction items when there exists a threat to public health, welfare, or safety, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract, and the identification number of the contract file. If the city manager determines that urgent and compelling reasons require emergency contractual, professional, and technical services, the city manager, notwithstanding any section of this division, may approve such services, provided that the city manager shall notify the city council of the action citing the compelling and urgent reasons for the action. A complete report shall be submitted to the city council by the using department within a week of the procurement.

(Code 1988, § 25.5-36; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-9 – Contingency

Construction contracts shall be budgeted with no more than a 20% contingency fund for new construction and no more than a 20% contingency fund for rehabilitation projects. Professional ~~/ and/or t~~ Technical service contracts shall be budgeted with no more than a 10% contingency fund.

Sec. 24-10—Purchase Card Program.

~~The purpose of the Purchase Card (P-Card) program is to streamline and simplify the requisitioning, purchasing, and payment of transactions typically costing less than \$3,000.00 per transaction and less than \$5,000.00 per month per card. The Purchase Card (P-Card) program is intended for use whenever purchase orders are not applicable or impractical as determined by the purchasing manager or designee. The Purchase P-Card Program Procedure Manual shall govern P-Card and Department Card (D-Card) issuance, application, usage, monthly statement processing, card maintenance, card violations, disputed or fraudulent charges, and receipt retention.~~

- ~~(a) The City is responsible for payment of purchases transacted. The card custodians/purchaser shall be held liable for payment on purchases transacted that are not in compliance with the requirements.~~
- ~~(b) A new custodian shall go through the purchase card policy training before utilizing the purchase card. The purchase card custodian shall submit proper documentation to the P-Card Program Administrator (PCPA) immediately for any changes to the card including custodians, dollar limits, MCC category, name of card, lost or stolen card, and deactivation. Temporary employees will not have a purchase card issued in their name or be appointed as the custodian of any cards unless the purchasing manager determines in writing when it is in the best interests of the city.~~
- ~~(c) The City is exempt from paying New Mexico Gross Receipts Tax on purchases for tangible goods except for materials used in construction projects. The purchase card custodians shall keep itemized receipts for goods purchased.~~

~~(d) The card custodians shall perform statement reconciliation promptly by the deadline provided by the PCPA and shall ensure all transaction are valid and legitimate and itemized receipts are obtained. Violation of this article and Purchase Card Program Procedure Manual may lead to suspension of the purchase card and may include disciplinary action.~~

Secs. 24-11 – 24-30. - Reserved.

ARTICLE II. - ETHICS AND PROHIBITIONS IN PROCUREMENT

Sec. 24-31. - Direct contact.

Direct contact with city elected officials or city staff, other than the purchasing manager, during the bid/proposal process from development of specifications through contract award, will render the bid/proposal as noncompliant and no further consideration will be given the bid/proposal.

(Ord. No. 1923, § 1, 6-17-02)

Sec. 24-32. - Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this Procurement Code constitute violations of the state Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of the ordinance from which this chapter derives shall not be impaired.

(Code 1988, § 25.5-141)

Sec. 24-33. - Employee conflict of interest.

(a) It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:

- (1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract; or
- (2) Any other person, business, or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

(b) A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

(b)(c) 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.

(Code 1988, § 25.5-142)

Sec. 24-34. - Gratuities and kickbacks.

(a) Gratuities. It shall be unlawful for any person to offer, give, or agree to give to any current or former city employee or for any current or former city employee to solicit, accept or agree to accept a

Agenda Item #8.3.

gratuity in exchange for consideration pertaining to a city procurement. Consideration shall include but is not limited to a decision, approval, disapproval, recommendation, or action that influences a procurement solicitation, contract award or the administration of a contract. No sample or sampling of a product or service shall be accepted by a city employee unless the purchasing manager determines that the sample or sampling is to be used in city activities for evaluation or product qualification purposes.

- (b) Kickbacks. It shall be unlawful for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontract under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (c) Contract clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-143; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-35. - Contingent fees.

It shall be unlawful for a person to be retained or to retain a person to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-144; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-36. - Contemporaneous employment.

It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(Code 1988, § 25.5-145)

Sec. 24-37. - Waivers from employee conflict of interest and contemporaneous employment.

The city council may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- (1) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;
- (2) The city employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interests of the city.

(Code 1988, § 25.5-146)

Sec. 24-38. - Use of confidential information.

Agenda Item #8.3.

It shall be unlawful for any city employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-147; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-39. - Recovery of value transferred or received in breach of ethical standards.

- (a) Authority. The value of anything transferred or received in breach of the ethical standards of this chapter by a city employee may be recovered from the city employee.
- (b) Recovery of kickbacks by city. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(Code 1988, § 25.5-148)

Secs. 24-40—24-60. - Reserved.

ARTICLE III. - PURCHASING MANAGER

Sec. 24-61. - Position created.

There is created the position of purchasing manager, who shall be the city's principal public purchasing official.

(Code 1988, § 25.5-21; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-62. - Authority, duties.

- (a) Principal public purchasing official. Except as otherwise provided in this chapter, the purchasing manager shall serve as the principal public purchasing official for the city and shall be responsible for the procurement of supplies, services, and construction in accordance with this chapter.
- (b) Duties. In accordance with this chapter and subject to the supervision of the city manager, the purchasing manager shall:
 - (1) Procure or supervise the procurement of all supplies, services, and construction needed by the city.
 - (2) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services and construction.
 - (3) Provide a quarterly report of all procurements equaling \$~~10075~~,000.00 and above to the city council as a non-action item.
- (c) Operational procedures. Consistent with this chapter ~~and with~~ the purchasing manager may adopt operational procedures relating to the execution of his/her duties.

Agenda Item #8.3.

(Code 1988, § 25.5-22; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-63. - Authority to award.

- (a) In the discretion of the purchasing manager, if no acceptable bid or offer is received on the solicitation the purchasing office may purchase the required goods or services in the open market at the best obtainable price or re-advertise the request for bid or proposal.
- (b) The purchasing manager shall be authorized to enter into all budgeted purchase contracts subject to the following conditions:
 - (1) For purchases of non-construction, non-capital improvement related goods or services of \$50,000.00 but less than \$~~10075~~,000.00, the purchasing manager shall obtain approval from the ~~City-city Manager-manager~~ prior to issuing a purchase order. Purchases below \$50,000.00 will be processed by the purchasing manager.
 - (2) For purchases of non-construction, non-capital improvement related goods or services equaling \$~~10075~~,000 or more, the purchasing manager shall obtain approval from the city council prior to contracting.
 - (3) For purchases of current year capital improvement projects, capital equipment and vehicles already approved in budget, no council or city manager action is required. These procurements will be processed by the purchasing manager.
 - (4) For purchases of capital improvement projects, capital equipment and vehicles of \$~~10075~~,000.00 and above which ~~ARE NOT~~are not included in current year approved budget, city council approval is required.
 - (5) For purchases of goods and services funded through grants or state appropriations previously accepted by council and amended into the budget, no council approval will be required. Procurements will be processed by the purchasing manager.
 - (6) For the purpose of this section, aggregate cost shall not be the determinative on multi-year contracts.
 - (7) Signing of contracts. ~~After city council approval, c~~Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the ~~Mayor~~mayor or city manager or their designees.

(Code 1988, § 25.5-39; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-64. - Delegation to others.

The purchasing manager may delegate authority to purchase supplies, services, or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items. Notwithstanding debarment or suspension, procurement authority with respect to certain supplies, services or construction may be delegated to other city officials by the city manager with the approval of the city council, when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction.

(Code 1988, § 25.5-23; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-65—24-90. - Reserved.

ARTICLE IV. - CONTRACT INFORMATION

Sec. 24-91. - Types of contracts.

- (a) General authority. Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the city may be used, provided that the use of a cost-plus-a-percentage-of-cost contract be approved by the city council. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.
- (b) Multiterm contracts.
 - (1) Specified period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the city, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof.
 - (2) Determination prior to use. Prior to the utilization of a multiterm contract, it shall be determined in writing that:
 - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. Such a contract will serve the best interests of the city by encouraging effective competition or otherwise promoting economies in city procurement.
- (c) Multiple source contracting.
 - (1) Generally. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the city's actual requirements is limited by the provision of Uniform Commercial Code subsection 2-306(1).
 - (2) Limitations on use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Multiple source awards shall not be made when a single award will meet the city's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
 - (3) Eligible users. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that the city shall reserve the right to take bids separately if:
 - a. A particular quantity requirement arises which exceeds its normal requirement, or an amount specified in the contract; and
 - b. The purchasing manager approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the city.

Agenda Item #8.3.

- (4) Intent to use. If a multiple source award is anticipated prior to issuing a solicitation, the city shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.
- (5) Determination required. The purchasing manager shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(Code 1988, § 25.5-61; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-92. - Contract clauses.

- (a) Required generally. All city contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing manager, after consultation with the city attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (1) Statement of work, delivery schedules, and period of performance;
 - (2) The unilateral right of the city to order in writing changes in the work within the scope of the contract;
 - (3) The unilateral right of the city to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (4) Variations occurring between estimated quantities of work in the contract and actual quantities;
 - (5) Defective pricing;
 - (6) Liquidated damages to include administrative contractual or legal remedies for violation of contract terms;
 - (7) Specified excuses for delay or nonperformance;
 - (8) Termination of the contract for default or cause;
 - (9) Termination of the contract in whole or in part for the convenience of the city;
 - (10) Suspension of work on a construction project ordered by the city; and
 - (11) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract when:
 - a. The contract is negotiated;
 - b. The contractor provides the site or design; or
 - c. The parties have otherwise agreed with respect to the risk of differing site conditions.
- (b) Price adjustments.
 - (1) Adjustments in price resulting from the use of contract clauses required by subsection (a) of this section shall be computed in one or more of the following ways:
 - a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - b. By unit prices specified in the contract or subsequently agreed upon;
 - c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

Agenda Item #8.3.

- d. In such other manner as the contracting parties may mutually agree;
- e. In the absence of agreement by the parties, by a unilateral determination by the city of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the city, as accounted for in accordance with industry price list, catalogue or market prices and subject to the appeals and remedies in article VII of this chapter; or
- f. For all federally funded purchases, cost or price analysis shall be the only means from which pricing shall be determined.

(2) A contractor shall be required to submit cost or pricing data for any adjustment in contract price.

- (c) Standard clauses and modification. The purchasing manager, after consultation with the city attorney, may establish standard contract clauses for use in city contracts. If the purchasing manager establishes any standard clauses addressing the subjects set forth in subsection (a) of this section, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

(Code 1988, § 25.5-62; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § III, 9-7-10)

Sec. 24-93. - Approval of accounting system.

Except with respect to firm fixed-price city contracts, no contract type shall be used unless it has been determined in writing by the purchasing manager that the proposed contractor's accounting system:

- (1) Will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (2) Is adequate to allocate costs in accordance with generally accepted cost accounting principles.

(Code 1988, § 25.5-65; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-94. - Right of inspection.

The city may, at reasonable times, inspect the plant, place of business, storage site, or work site of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the city.

(Code 1988, § 25.5-66)

Sec. 24-95. - Right to audit records.

- (a) Audit of cost or pricing data. The city may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.
- (b) Contract audit. The city shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the

contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

(Code 1988, § 25.5-67)

Sec. 24-96. - Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors for a city contract, a notice of the relevant facts shall be transmitted to the state attorney general by the city attorney.

(Code 1988, § 25.5-68)

Sec. 24-97. - City records.

- (a) Contract file. All determinations and other written records pertaining to the solicitation, award, or performance of a city contract shall be maintained for the city in a contract file by the purchasing manager.
- (b) Retention of procurement records. All procurement records shall be retained and disposed of by the city in accordance with records retention and guidelines and schedules set by the city clerk.

(Code 1988, § 25.5-69; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-98 – 24-120. Reserved.

ARTICLE V. - SOURCE SELECTION

DIVISION 1. - PROFESSIONAL AND TECHNICAL SERVICES PROCUREMENT

Sec. 24-121. - Contracting for designated professional services; selection procedure.

- (a) Criteria. Professional and technical services shall be procured in accordance with this ~~section~~division.
- (b) Determination of award for professional and technical services shall be based on qualifications. Cost will not be a criteria factor in the evaluation process, and it shall be negotiated during the award phase of the contract.
- (c) Where the primary contract may be awarded through the procurement code without review by the selection advisory committee, nothing in this division shall require that the selection advisory committee separately review subcontractors who are an integral part of the primary contract.

Sec. 24-122. - Request for proposals.

- (a) Conditions for use. When the ~~purchasing manager determines that the~~ use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the request for proposal method set forth herein.
- (b) Request for proposal. A proposal shall be solicited through a request for proposal.
- (c) Public notice. ~~Adequate public notice of the request for proposal shall be given in the same manner as competitive sealed bidding.~~ For proposals estimated to be \$100,000.00 or more, adequate public notice of the request for proposals shall be given at a reasonable time not less than seven calendar

days prior to the date set forth for the closing of the request for proposals. The public notice shall state the due date and time for proposal submission, and where proposal documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.

- (d) Receipt of proposal. No proposal shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors prior to the deadline for receipt of the proposal by the purchasing manager. A register of proposals shall be prepared containing the name of each offeror. The register of proposals shall be open for public inspection not later than three days after the deadline for receipt of proposals. During the evaluation of proposals, and until approval of the recommendation of award by the city council, the contents of proposals may not be disclosed to the public. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first request for proposals may not be disclosed until after approval by the city council of the recommendation of award for the second RFP or cancellation of the RFP.
- (e) Evaluation factors. The request for proposal shall state the relative importance of price and other evaluation factors.
- (f) Discussion with responsible offeror and revision to proposal. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. Any modification received during the revision and negotiation stages will become a part of the permanent record.
- (g) Award. Awards shall be made to the highest-ranking responsible offeror taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation except that, unless otherwise determined impractical by the purchasing manager, award(s) resulting in contract(s) totaling less than \$~~75100~~,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsible local manufacturers or local businesses, award shall be made to a responsible qualified non-local manufacturer or business. The contract file shall contain the basis on which the award is made.
- (h) The procurement of lease financing shall be conducted utilizing request for proposal.
- (i) Award recommendation shall be made to the city council by the purchasing manager.

(Code 1988, § 25.5-32; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § IV, 8-17-09)

Sec. 24-123. - Selection advisory committee.

- (a) There is a selection advisory committee comprised of three department heads: one designated by the committee chair, one from the end user department and one serving on a rotating basis from the total pool of directors. For each request for proposal, there are at least five subject matter experts designated by the director of the department that developed the RFP. There shall be no more than

Agenda Item #8.3.

seven subject matter experts total. All external subject matter experts are non-voting technical advisors and are not included in the total number of subject matter experts. A pool of internal subject matter experts shall be maintained by departments and can be used for the appropriate procurement.

- (b) A member of the selection advisory committee shall serve until a successor is appointed. An alternate may be suggested by any member and submitted to the selection advisory committee chair for approval. Upon approval, the alternate will attend in that member's place.
- (c) The assistant city managers shall serve as a nonvoting member and chair for the selection advisory committee.
- (d) The city's purchasing manager or designee shall serve as staff coordinator for the selection advisory committee.

(Code 1988, § 2-137; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ III, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 1947, § 1, 3-3-03; Ord. No. 2643, § I, 1-17-12; Ord. No. 2852, § 5-21-18)

Sec. 24-124. - Notice of projects; recommendations.

- (a) When the fee for professional and/or technical services is estimated to be \$10075,000.00 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.
- (b) If the estimated cost of the services is less than \$10075,000.00, review by the selection advisory committee is not required. The purchasing manager may select a qualified firm or firms to provide these services based on adopted purchasing procedures.
- (c) When the fee for the professional/technical services is \$10075,000.00 or more, the selection advisory committee shall submit the name of the most qualified professional firm or firms or person to the city council, for purposes of review and approval by the council. Nothing in this subsection shall prohibit the submission of more than one firm.

Sec. 24-125. - Files of qualifications of firms and persons.

The purchasing manager may maintain a file of qualifications of all firms or persons qualified to perform professional and technical services for city projects. These files shall be updated at the request of the selections advisory committee to provide current qualification information. Interviews and presentation of qualifications shall be conducted at the direction of the selection advisory committee. Mailed inquiries may be solicited to provide specific information as may be considered necessary by the selection advisory committee.

(Code 1988, § 2-139; Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-126. - Approval of contracts.

- (a) All city projects that require the contracting for professional and technical services in an amount of \$10075,000.00 or more shall be performed under separate contract, and each contract shall require final approval by the city council.

- (b) ~~After city council approval, c~~Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.
- (c) This section shall apply only to the primary professional firm. Any subcontractor shall be evaluated as a part of the primary contract.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-127. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-128. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-129. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-130. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-131. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-132 - Buy American/~~Buy~~ Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate ~~Buy~~ Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-133. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-134. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (1) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (2) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (3) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
 - (4) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

Agenda Item #8.3.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-135. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-136. - Architectural and engineering services

- (a) If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall use qualifications-based competitive proposal procedures when contracting for architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.
- (b) Qualifications-based competitive proposal procedures require that:
 - (1) An offeror's qualifications be evaluated;
 - (2) Price be excluded as an evaluation factor;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the city.
- (c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.

(Ord. No. 2132, § I, 9-7-04)

Sec. 24-137. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to

Agenda Item #8.3.

contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.

- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-138. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of sole source procurement. A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-139. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.
- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-140. - Preferences.

Agenda Item #8.3.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeror entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeror or one of the principal bidders/offerors, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-141. Change Orders ~~–Time~~

- (a) Changes in time. Extensions of time on construction contracts or professional/technical service contracts, may be granted by the Project Manager, subject to appropriate approvals, on a case-by-case basis for the following reasons:
 - (1) One additional day for each delay in which the contractor could not perform contractual work and subsequent days as may be required to repair work damage by weather, as defined in General Conditions for Construction Contracts, 2004, during the term of the contract;
 - (2) City-requested changes to project specifications that incur time as a result;
 - (3) Other circumstances in which the City believes such an extension of time is in the best interest of the project and must be approved by the Department Director;
 - (4) Limitations on extensions of time addressed by this policy are as follows:
 - a. An increase of 30 contractual days to the original contract time, shall be approved by the Program Manager;
 - b. An increase of 31 to 60 contractual days to the original contract time shall be approved by the appropriate Department Director;

Agenda Item #8.3.

- c. An increase of more than 60 contractual days to the original contract time, shall be approved by the City Manager.

(b) Changes in cost.

- (1) Any changes in contract cost which includes base contract amount, contingency, and NMGR, require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.
- (3) Proposed construction work that deviates from the contract drawings and/or specifications shall be initiated with a field notice followed by a duly authorized change order when there is a change in cost and approved by the appropriate Approver.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-142. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-143. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-144. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-145. - Brand name specification or equal specification.

Agenda Item #8.3.

- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:
- (1) No other design or performance specification or qualified products list is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the city's best interest.

Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.

- (b) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (d) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- (e) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (f) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-146. - Authority for cooperative procurement.

The purchasing manager~~city council~~ may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit.

(Code 1988, § 25.5-131)

Secs. 24-147—24-160. - Reserved.

DIVISION 2. - PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

Sec. 24-161. - Contracting for construction, architect-engineer, and land surveying selection procedure.

(a) ~~Construction, a~~Architect-engineer, and land surveying services shall be procured in accordance with this ~~section~~division.

(a)(b) ~~Construction projects may be awarded based on cost, qualifications, or both.~~

(b)(c) ~~Determination of award for—construction,~~ architects, engineers, landscape architects and surveyors shall be based on qualifications. Cost will not be a criteria factor in the evaluation process, and it shall be negotiated during the award phase of the contract.

(e)(d) ~~Where the primary contract may be awarded through the procurement code without review by the selection advisory committee, nothing in this division shall require that the selection advisory committee separately review subcontractors who are an integral part of the primary contract.~~

(Code 1988, § 25.5-33, § 2-136; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ I, II, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2748, §§ I, II, 2-3-15)

Sec. 24-162. - Management of construction contracting.

The head of the city department responsible for a construction project shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the department head shall consider the city's requirements, its resources, and the potential contractor's capabilities.

(Code 1988, § 25.5-91; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-163. - Competitive sealed bidding.

Conditions for use. ~~All contracts of the city shall be awarded by competitive sealed bidding. Where no factors other than cost will be considered, competitive sealed bidding shall be used.~~

- (a) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (b) Public notice. For bids estimated to be \$10075,000.00 or more, adequate public notice of the invitation for bid shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the opening of the bid. The public notice shall state the place, date, and time of bid opening, and where bid documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.
- (c) Bid opening. A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A late bid will not be accepted. Lateness will be determined by the purchasing manager's time clock, and the purchasing manager's determination of promptness or lateness will be final. The amount of each bid and such other relevant information as the purchasing manager deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. A copy of the information may be obtained by sending a self-addressed stamped envelope with reference to the bid number and title to the purchasing department. This information will not be given over the telephone.
- (d) Bid acceptance and bid evaluation. A bid shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements

Agenda Item #8.3.

set forth in the invitation for bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bid. Original cover sheet and all documents must be provided fully executed, if not so provided bid will be rejected.

- (e) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of an inadvertently erroneous bid before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - (1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing manager.
- (f) Award. Unless otherwise determined impractical by the purchasing manager, bids resulting in contract(s) totaling less than ~~\$10075~~,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsive/responsible local bidders, then award should go to qualified non-local manufacturers or businesses. Contracts shall be awarded to the most responsible and responsive bidder who provides the best value as set forth in the requirements and criteria specified in the invitation for bid.
- (g) Multistep sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (h) Federal funding. Any competitive, sealed bid procurement utilizing federal assistance requires at least two bids, firmed fixed-price contracts, and selection based principally on price.

(Code 1988, § 25.5-31; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, §§ II, III, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15; Ord. No. 2852, § 5-21-18)

Sec. 24-164. - Request for proposals.

- (a) Conditions for use. When the ~~purchasing manager determines that the~~ use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the request for proposal method set forth herein.
- (b) Request for proposal. A proposal shall be solicited through a request for proposal.
- (c) Public notice. ~~Adequate public notice of the request for proposal shall be given in the same manner as competitive sealed bidding. For proposals estimated to be \$100,000.00 or more, adequate public notice of the request for proposals shall be given at a reasonable time not less than seven calendar~~

days prior to the date set forth for the closing of the request for proposals. The public notice shall state the due date and time for proposal submission, and where proposal documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.

- (d) Receipt of proposal. No proposal shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors prior to the deadline for receipt of the proposal by the purchasing manager. A register of proposals shall be prepared containing the name of each offeror. The register of proposals shall be open for public inspection not later than three days after the deadline for receipt of proposals. During the evaluation of proposals, and until approval of the recommendation of award by the city council, the contents of proposals may not be disclosed to the public. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first request for proposals may not be disclosed until after approval by the city council of the recommendation of award for the second RFP or cancellation of the RFP.
- (e) Evaluation factors. The request for proposal shall state the relative importance of price and other evaluation factors.
- (f) Discussion with responsible offeror and revision to proposal. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. Any modification received during the revision and negotiation stages will become a part of the permanent record.
- (g) Award. Awards shall be made to the highest-ranking responsible offeror taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation except that, unless otherwise determined impractical by the purchasing manager, award(s) resulting in contract(s) totaling less than \$~~10075~~,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsible local manufacturers or local businesses, award shall be made to a responsible qualified non-local manufacturers or business. The contract file shall contain the basis on which the award is made.
- (h) The procurement of lease financing shall be conducted utilizing request for proposal.
- (i) Award recommendation shall be made to the city council by the purchasing manager.

(Code 1988, § 25.5-32; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § IV, 8-17-09)

Sec. 24-165. - Selection advisory committee.

- (a) There is a selection advisory committee comprised of three department heads: One designated by the committee chair, one from the end user department and one serving on a rotating basis from the total pool of directors. For each request for proposal, there are at least five subject matter experts designated by the director of the department that developed the RFP. There shall be no more than seven subject matter experts total. All external subject matter experts are non-voting technical

Agenda Item #8.3.

advisors and are not included in the total number of subject matter experts. A pool of internal subject matter experts shall be maintained by department and can be used for the appropriate procurement.

- (b) A member of the selection advisory committee shall serve until a successor is appointed. An alternate may be suggested by any member and submitted to the selection advisory committee chair for approval. Upon approval, the alternate will attend in that member's place.
- (c) The assistant city managers shall serve as a nonvoting member and chair for the selection advisory committee.
- (d) The city's purchasing manager or designee shall serve as staff coordinator for the selection advisory committee.

(Code 1988, § 2-137; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ III, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 1947, § 1, 3-3-03; Ord. No. 2643, § I, 1-17-12)

Sec. 24-166. - Notice of projects; recommendations.

- (a) When the fee for professional or technical services is estimated to be \$~~10075~~,000 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.
- (b) If the estimated cost of the services is less than \$~~10075~~,000.00, review by the selection advisory committee is not required. The purchasing manager may select a qualified firm or firms to provide these services.
- (c) When the fee for the professional/technical services is \$~~10075~~,000.00 or more, the selection advisory committee shall submit the name of the most qualified professional firm or firms or person to the city council, for purposes of review and approval by the council. Nothing in this subsection shall prohibit the submission of more than one firm.

Sec. 24-167. - Files of qualifications of firms and persons.

The purchasing manager may maintain a file of qualifications of all firms or persons qualified to perform professional and technical services for city projects. These files shall be updated at the request of the selections advisory committee to provide current qualification information. Interviews and presentation of qualifications shall be conducted at the direction of the selection advisory committee. Mailed inquiries may be solicited to provide specific information as may be considered necessary by the selection advisory committee.

(Code 1988, § 2-139; Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-168. - Approval of contracts.

- (a) All city projects that require the contracting for construction in an amount of \$75,000.00 or more shall be performed under separate contract, and each contract shall require final approval by the city council.
- (b) ~~After city council approval, c~~Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.

Agenda Item #8.3.

- (c) This section shall apply only to the primary professional firm. Any subcontractor shall be evaluated as a part of the primary contract.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-169. - Bid security.

- (a) Bid security. For the purpose of this article, bid security is subject to the following:
 - (1) Required. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing manager to exceed \$50,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state or the equivalent in cash or otherwise supplied in a form satisfactory to the city. Nothing in this subsection shall prevent the requirement of such bonds on construction contracts under \$50,000.00 when the circumstances warrant.
 - (2) Amount. Bid security shall be in an amount equal to at least five percent of the amount of the bid.
 - (3) Rejection of bids for noncompliance. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.
 - (4) Withdrawal of bids. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security.
 - (5) Authority to require additional bonds. Nothing in this section shall be construed to limit the authority of the city to require a bid bond or other security in addition to those bonds, or in circumstances other than specified in subsection (a)(1) of this section.

Sec. 24-170 Contract performance and payment bonds.

- (1) Required amounts. When a construction contract is awarded in excess of \$50,000.00, the following bonds or security shall be delivered to the city and shall become binding on the parties upon the execution of the contract:
 - a. A performance bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, in an amount equal to 100 percent of the price specified in the contract; and
 - b. A payment bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.
- (2) Reduction of bond amounts. After notice to the city council, the purchasing manager is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond when a written determination is made that it is in the best interests of the city to do so.
- (3) Authority to require additional bonds. Nothing in this subsection shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (b)(1) of this section.

Agenda Item #8.3.

- (4) Right to file suit on payment bonds. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this subsection, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor but having no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.
- (5) Location for filing suit on payment bonds. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.
- (6) Copies of bond forms. Any person may request and obtain from the city a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

(Code 1988, § 25.5-92; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-171. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-172. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-173. - Copyrights and rights in data.

Agenda Item #8.3.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-174. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-175. - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-176. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-177. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - (1) Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and

Agenda Item #8.3.

- (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-178. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-179. - Architectural and engineering services

- (a) If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall use qualifications-based competitive proposal procedures when contracting for architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.
- (b) Qualifications-based competitive proposal procedures require that:
 - (1) An offeror's qualifications be evaluated;
 - (2) Price be excluded as an evaluation factor;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the city.
- (c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.
- (d) The city will use article III, source selection and contract information, division 1, professional and technical services procurement to procure architectural and engineering services in accordance with the city's procurement code as amended.

(Ord. No. 2132, § I, 9-7-04)

Sec. 24-180. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:

Agenda Item #8.3.

- (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.
- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-181. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of section 24-95 (Sole source procurement). A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-182. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-183. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

Agenda Item #8.3.

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.
- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-184. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeror entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeror or one of the principal bidders/offerors, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-185 Change order ~~policy~~ Times

(a) Changes in time. Extensions of time on construction contracts or professional/technical service contracts, may be granted by the Project Manager, subject to appropriate approvals, on a case-by-case basis for the following reasons:

- (1) One additional day for each delay in which the contractor could not perform contractual work and subsequent days as may be required to repair work damage by weather, as defined in General Conditions for Construction Contracts, 2004, during the term of the contract;
- (2) City-requested changes to project specifications that incur time as a result;
- (3) Other circumstances in which the City believes such an extension of time is in the best interest of the project and must be approved by the Department Director;
- (4) Limitations on extensions of time addressed by this policy are as follows:
 - a. An increase of 30 contractual days to the original contract time, shall be approved by the Program Manager;
 - b. An increase of 31 to 60 contractual days to the original contract time shall be approved by the appropriate Department Director;
 - c. An increase of more than 60 contractual days to the original contract time, shall be approved by the City Manager.

(b) Changes in cost

- (1) Any changes in contract cost which includes base contract amount, contingency, and NMGR, require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.
- (3) Proposed construction work that deviates from the contract drawings and/or specifications shall be initiated with a field notice followed by a duly authorized change order when there is a change in cost and approved by the appropriate Approver and based on current thresholds.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-186. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-187. - Maximum practicable competition.

Agenda Item #8.3.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-188. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-189. - Brand name specification or equal specification.

- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:
 - (1) No other design or performance specification or qualified products list is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the city's best interest.
- (b) Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.
- (c) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (d) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (e) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-190. - Brand name specification.

- (a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (b) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price

competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-84; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-191. - Authority for cooperative procurement.

The ~~purchasing manager~~city council may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement.

(Code 1988, § 25.5-131)

Secs. 24-192 – 24-~~195~~. Reserved.

DIVISION 3. - PROCUREMENT OF TANGIBLE GOODS

Sec. 24-196. - Contracting for tangible goods selection procedure.

(a) Tangible goods shall be procured in accordance with this division.

Sec. 24-197. - Competitive sealed bidding.

Conditions for use. Where no factors other than cost will be considered, competitive sealed bidding shall be used.

- (a) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (b) Public notice. For bids estimated to be \$100,000.00 or more, adequate public notice of the invitation for bid shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the opening of the bid. The public notice shall state the place, date, and time of bid opening, and where bid documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.
- (c) Bid opening. A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A late bid will not be accepted. Lateness will be determined by the purchasing manager's time clock, and the purchasing manager's determination of promptness or lateness will be final. The amount of each bid and such other relevant information as the purchasing manager deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. A copy of the information may be obtained by sending a self-addressed stamped envelope with reference to the bid number and title to the purchasing department. This information will not be given over the telephone.
- (d) Bid acceptance and bid evaluation. A bid shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are

not set forth in the invitation for bid. Original cover sheet and all documents must be provided fully executed, if not so provided bid will be rejected.

(e) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of an inadvertently erroneous bid before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing manager.

(f) Award. Unless otherwise determined impractical by the purchasing manager, bids resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsive/responsible local bidders, then award should go to qualified non-local manufacturers or businesses. Contracts shall be awarded to the most responsible and responsive bidder who provides the best value as set forth in the requirements and criteria specified in the invitation for bid.

(g) Multistep sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

(h) Federal funding. Any competitive, sealed bid procurement utilizing federal assistance requires at least two bids, firm fixed-price contracts, and selection based principally on price.

(Code 1988, § 25.5-31; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, §§ II, III, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15; Ord. No. 2852, § 5-21-18)

Sec. 24-198. - Notice of projects; recommendations.

(a) When the cost of tangible goods is estimated to be \$100,000 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.

Sec. 24-199. - Approval of contracts.

(a) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-200. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-201. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-202. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-203. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-204. - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-205. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-206. - Small, women-owned and minority business enterprises.

(a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.

(b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:

- (1) Including qualified small, women-owned, and minority businesses on solicitation lists;
- (2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
- (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
- (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.

(c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-207. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-208. - Cost or pricing data.

(a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.

(b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:

- (1) The contract price is based on established catalogue prices or market prices;
- (2) The contract price is set by law or regulation; or

- (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.
- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-209. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of section 24-95 (Sole source procurement). A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-210. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-211. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and

that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.

- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-212. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.

(1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.

(2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.

(3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.

- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.

- (c) Limitations. No bidder/offeror entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeror or one of the principal bidders/offerors, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-213 Change orders

- (a) Changes in cost**

(1) Any changes in base contract amount require the following approvals:

<u>Change</u>	<u>Approver</u>
<u>Less than 5%</u>	<u>Program Manager</u>
<u>More than 5% less than 10%</u>	<u>Department Director</u>
<u>More than 10% less than 15%</u>	<u>Assistant City Manager</u>
<u>More than 15%</u>	<u>City Manager</u>
<u>Contract approved by City Council</u>	<u>City Council</u>
<u>Exceeds approved budget amount</u>	<u>City Council</u>

(2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-214. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-215. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-216. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-217. - Brand name specification or equal specification.

(a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:

- (1) No other design or performance specification or qualified products list is available;
- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (4) Use of a brand name or equal specification is in the city's best interest.

- (b) Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.
- (c) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (d) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (e) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-218. - Brand name specification.

- (a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (b) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-84; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-219. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement.

(Code 1988, § 25.5-131)

Sec. 24-220. Reserved.

ARTICLE VI. – DEBARMENT OR SUSPENSION

Sec. 24-221. – Authority to suspend.

- (a) The purchasing manager, after consulting with the city attorney and the contract administrator, as defined by the using department, is authorized to suspend a person for cause from consideration for the award of future city contracts for a specified period of time. The suspension may apply to a person in his/her individual as well as corporate capacity. The suspension shall be for a period of not more than three months.
- (b) The causes for suspension shall include one or more of the following:

Agenda Item #8.3.

- (1) Violation of any city or noncity contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify suspension:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension.
- (2) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
- (3) Violation of the ethical standards set forth in Article II of this chapter.

(Code 1988, § 25.5-101; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-222. – Authority to debar.

- (a) The purchasing manager, after consulting with the city attorney and the contract administrator, as defined by the using department, is authorized to debar a person for cause from consideration for the award of future city contracts for a specified period of time. The debarment may apply to a person in his/her individual as well as corporate capacity. The debarment shall be for a period of not more than three years.
- (b) The causes for debarment shall include one or more of the following:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor.
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - (4) Violation of any city or noncity contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 - (5) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
 - (6) Violation of the ethical standards set forth in Article II of this chapter.

Agenda Item #8.3.

- (7) Any violation of the drug-free workplace regulations.

(Code 1988, § 25.5-101; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-223. – Notice of decision.

- (a) Mailing notice. Any written decision by the purchasing manager to debar a person under this article shall be sent by certified mail, return receipt requested, to the person affected by the decision, or by hand delivery and delivery receipt requested.
- (b) Contents of notice. The written notice of the purchasing manager's decision shall set forth in detail all reasons for the debarment and shall inform the person of their rights concerning administrative appeal.

(Code 1988, § 25.5-102; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-224 - Determination of responsibility in construction and consultant contracts.

- (a) In all contracts related to capital projects, the purchasing manager may evaluate the past performance of an entity doing business with the city and determine if the contractor is not a responsible offeror. In the evaluation of the performance of the contractor, the following factors shall be considered:
- (1) Timeliness of performance;
 - (2) Quality of performance;
 - (3) Compliance with all applicable City ordinances;
 - (4) Compliance with the labor laws regarding payment of wage rates;
 - (5) Compliance with all applicable municipal, state, and federal laws;
 - (6) Poor performance causing delays in performance by other contractors;
 - (7) Failure to comply with safety laws, rules and regulations;
 - (8) Failure to accept responsibility for managing claims arising out of the performance of their contracts;
 - (9) Or any other factor which, singly or in combination with the above, results in a determination by the department director that the proposed contracting entity is not a responsible offeror.
- (b) Any such determination of non-responsibility made by the purchasing manager shall be sent to the contractor by certified mail, return receipt requested. A determination of non-responsibility shall continue until such time as the purchasing manager, based on contract performance occurring after the determination, then determines that offeror has improved its performance sufficient to be deemed responsible. Any determination of non-responsibility may be protested.

Secs. 24-225-24-230. - Reserved.

ARTICLE VII. - APPEALS AND REMEDIES

Sec. 24-231. - Bid protests.

- (a) Right to protest. Any offeror who is aggrieved in connection with the procurement process of this chapter, including but not limited to the solicitation or award of a contract, may file a written protest with the purchasing manager. Such protest must be filed within five working days after the aggrieved bidder or offeror knows or should have known of the facts giving rise to the protest unless, otherwise specified in this chapter, ~~and shall be accompanied by an appeals bond (except where prohibited by federal law) in an amount set by the city council by resolution (Resolution No. 00-148).~~ If the protest concerns the awarding of a bid, the protest must be filed within five working days of receipt of the purchasing manager's determination. The protestor shall set forth in detail all reasons for the protest. The protest shall:
- (1) Include the name and address of the protestor;
 - (2) Identify the contracting activity and the number of the solicitation, if any, and if a contract has been awarded the contract number, if any;
 - (3) Contain a statement of the grounds for protest;
 - (4) Include supporting exhibits, evidence affidavits or documents to substantiate any claim unless not available within the filing time, in which case the expected availability date shall be indicated; and
 - (5) Specify the ruling requested from the purchasing manager.
- ~~(b) Bid protest appeal bond or security. The options for an appeal bond or security are an appellate bond through a bonding company authorized to do business in New Mexico; letter of credit or its equivalent from a federally insured financial institution; or cashier's check or its equivalent payable to the City of Las Cruces. Amount of appeal bond or security shall be determined as follows:~~
- ~~(1) One Thousand and No/100 Dollars (\$1,000.00) for a bid protest to a contract expected to be awarded in an amount under One Hundred Thousand and No/100 Dollars (\$100,000.00).~~
 - ~~(2) Five Thousand and No/100 Dollars (\$5,000.00) for a bid protest to a contract expected to be awarded in an amount between One Hundred Thousand and No/100 Dollars (\$100,000.00) and Five Hundred Thousand and No/100 Dollars (\$500,000.00).~~
 - ~~(3) Ten Thousand and No/100 Dollars (\$10,000.00) for a bid protest to a contract expected to be awarded in an amount in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00).~~
 - ~~(4) The purchasing manager will determine the amount of the appeal bond or security based on bids received, the engineer's estimate, and/or budgeted project funds, and that decision will be final.~~
- (b) Duties of purchasing manager upon receipt of protest. Upon receipt of any protest filed in accordance with section (a) of this section, the purchasing manager shall review the facts giving rise to the protest and within 15 working days mail to the protestor and all other bidders, return receipt requested, a written determination concerning the validity of the protest. The determination shall set forth the rationale, the proposed action to be taken by the purchasing manager or the city and shall inform the protestor and other bidders of their right to appeal the purchasing manager's determination in accordance with the appeal procedures set forth in subsection (c) of this section. Failure to timely appeal the purchasing manager's determination shall bar further recourse by the protestor or any other bidder, and the purchasing manager's determination and proposed action shall be final.
- ~~(c) State of procurement during protest. If timely protest is made under subsection (a) of this section, the purchasing manager shall not proceed further with the solicitation or award of the contract until the~~

appeal process has been concluded in accordance with this section or until the purchasing manager makes a determination based on the records that the award of the contract without delay is necessary to protect substantial interests of the city. If the purchasing manager determines an award without delay is necessary and the protestor later prevails in the appeal, the protestor shall be entitled only to reasonable costs, not to include attorney fees, associated with the preparation and submission of the bid.

~~(c)~~(d) Appeal of purchasing manager's decision. Any protestor or other bidder aggrieved by the purchasing manager's determination made pursuant to subsection (b) of this section may appeal such determination by filing, within five working days of receipt of such decision, a written notice of appeal with the city clerk, which shall set forth in detail all reasons for the appeal and whether or not the protestor will be represented by an attorney.

~~(d)~~(e) Appeals board. All timely appeals of the purchasing manager's determination shall be heard by the appeals board within 15 working days after the filing of the notice of appeal with the city clerk. The appeals board shall consist of three members who are neither city employees nor city councilors and who shall be appointed by the city manager. The members may be paid or may serve voluntarily. The city clerk shall be responsible for notifying all protestors and other bidders of the time and place of the hearing.

~~(e)~~(f) Hearing procedures. The hearing shall be informal but shall provide at a minimum for the swearing in and cross examination of witnesses by the city or any party having filed an appeal. The board may develop rules for the conduct of protest meetings. After concluding the hearing, the appeals board shall issue a written determination, within 15 working days of holding a hearing, of either upholding or reversing the purchasing manager's determination. The determination shall be final.

~~(f)~~(g) Costs. The losing party to the appeal shall be responsible for the reasonable costs of the appeal as determined by the appeals board. The board's determination of costs shall be based on the costs and expenses incurred by the board, including but not limited to the board's salary, attorneys' fees, reproduction, and transcription costs.

~~(g)(a) State of procurement during protest. If timely protest is made under subsection (a) of this section, the purchasing manager shall not proceed further with the solicitation or award of the contract until the appeal process has been concluded in accordance with this section or until the purchasing manager makes a determination based on the records that the award of the contract without delay is necessary to protect substantial interests of the city. If the purchasing manager determines an award without delay is necessary and the protestor later prevails in the appeal, the protestor shall be entitled only to reasonable costs, not to include attorney fees, associated with the preparation and submission of the bid.~~

(Code 1988, § 25.5-111; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-232. – Debarment appeal.

(a) Timely appeal. The person debarred may appeal the determination of the purchasing manager by filing, within five working days of the receipt of the determination, a written notice of appeal and filing an appeals bond with the city clerk in an amount to be set by resolution of the city council. Any notice of appeal not filed within the five-working-day period shall not be timely. The notice of appeal shall be filed with the city clerk and shall set forth in detail all reasons for the appeal. No debarred person shall contact orally or in writing any member of the appeals board outside of the adjudicatory process.

Agenda Item #8.3.

- (b) Appeals board. All timely appeals of the purchasing manager's determination shall be heard by the appeals board within 15 working days after filing the notice of appeal with the city clerk. The appeals board shall consist of three members who are neither city employees nor city councilors and who shall be appointed by the city manager. The members may receive travel expenses or per diem or may serve voluntarily.
- (c) Notification of hearing. The city clerk shall be responsible for notifying the debarred person of the time and place of the hearing, which shall be opened to the public and conducted in compliance with the Open Meetings Act.
- (d) Record of hearing. The city shall provide a clerk who shall record the hearing and prepare a nonverbatim account of the hearing. Copies of the recordings and nonverbatim account shall be provided to the debarred person for a reasonable reproduction cost.
- (e) Conduct of hearing. The hearing shall be informal but shall provide at a minimum for the swearing in and cross examination of witnesses by the parties involved. The appeals board shall have the authority to call for the attendance of witnesses and the production of documents, to swear witnesses, to call witnesses itself, to examine witnesses including the debarred person, and to hear all evidence properly brought before it. The formal rules of evidence shall not apply to this proceeding. The appeals board may adopt additional rules for hearings not inconsistent with this chapter.
- (f) Legal representation. The debarred person may be represented before the appeals board by a representative of his choice. The representative shall be identified, and their name made known to the board three days prior to the hearing. If the representative of the person who has appealed is an attorney, the purchasing manager may be represented by the city attorney.
- (g) Written decision of board. After concluding the hearing, the appeals board shall issue a written decision either upholding or reversing the purchasing manager's determination within 15 working days of the completion of the hearing. The decision of the board shall be based upon the evidence received at the hearing and shall be final.
- (h) Costs. The losing party to the appeal shall be responsible for the reasonable costs of the appeal as determined by the appeals board. The board's determination of costs shall be based on the costs and expenses incurred by the board, including but not limited to the board's salary, attorneys' fees, reproduction, and transcription costs.

(Code 1988, § 25.5-103; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-233. - Remedies for solicitations or awards in violation of law.

- (a) Prior to bid opening or closing date for receipt of proposals. If, prior to the bid opening or the closing date for receipt of proposals, the purchasing manager, after consultation with the city attorney, determines that a solicitation made under this chapter is in violation of federal, state, or municipal law, the solicitation shall be canceled or revised to comply with applicable law.
- (b) Prior to award. If, after bid opening or the closing date for receipt of proposals, the purchasing manager, after consultation with the city attorney, determines that a solicitation or a proposed award of a contract made under this chapter is in violation of federal, state, or municipal law, the solicitation or proposed award shall be canceled.
- (c) After award. If, after an award, the purchasing manager, after consultation with the city attorney, determines that a solicitation or award of a contract made under this chapter was in violation of applicable law, then:

Agenda Item #8.3.

- (1) If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:
 - a. Ratified and affirmed, provided it is determined that doing so is in the best interests of the city; or
 - b. Terminated, and the person awarded the contract shall be compensated for actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
- (2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the city.

(Code 1988, § 25.5-113; Ord. No. 1923, § 1, 6-17-02)



City of Las Cruces

City Council Action and Executive Summary

**3027; Council
Bill 23-021**

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

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

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Drafter: John Castillo

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Program: Land Use Development

Line of Business: Development Center

Title: 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.

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

PURPOSE(S) OF ACTION:

Zone Change

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

The applicant is requesting a zone change from C-1 (Commercial Low Intensity) to C-2 (Commercial Medium Intensity) on a developed parcel of land located at 2505 Missouri Avenue. The purpose of the proposed zone change is to bring the property into compliance with the 2001 Las Cruces Municipal Code, as amended as it currently does not meet the maximum gross floor square footage of 2,500 as outlined in the development standards of the C-1 zoning district and is considered a legal non-conforming property. The property is currently 3,189 square feet and is being used as a Cannabis retail establishment that received approval for a Special Use Permit in June of 2022.

The property is zoned C-1 (Commercial Low Intensity) which has a 2,500 sq. ft. maximum building gross floor area requirement as outlined in the development standards of the C-1 zoning district. The proposed zone change request will allow the business owner to operate from the entire 3,189 sq. ft. building. The rezoning will support increased attraction and retention of business at this location while bringing the property into compliance with the zoning code. The surrounding neighborhood has a mixture of retail, office, and residential land uses. Based on the existing neighborhood, the proposed zone change is compatible with the surrounding area, specifically the commercial corridor, and would be in harmony with Section 38-2 of the 2001 Zoning Code.

The proposed zone change is consistent with the intent of Elevate Las Cruces including the Future Development Map and several Goals, Policies, and Actions. Missouri Avenue is classified as an arterial roadway in Elevate Las Cruces' Future Thoroughfare Map and the MPO Future Thoroughfare Plan. The subject property is also located near a proposed Mixed-Use Corridor within the Urban Neighborhood Place Type. As Mixed-Use Corridors support residential and non-residential land uses along the roadway or trail corridors and the Urban

Agenda Item #10.1.

Neighborhood Place Type includes a variety of residential housing types and areas that support neighborhood development. These corridors link existing urban destinations such as downtown, medical complexes, and NMSU, and projected Town Centers and Neighborhood Centers. The Mixed-Use Corridor concept also provides a feasible way for transforming communities to incorporate urban form and intensity among single-family neighborhoods of lower density. They weave new mixed-use development into older opportunity areas - reinvigorating commercial corridors and increasing the value of adjacent residential areas.

On August 23, 2022 the Planning and Zoning Commission (P&Z), per Section 38-10 B. 2. B. of the 2001 Zoning Code, as amended, recommended approval of the proposed zone changes by a vote of 6-0-0 (One Commissioners Seat Vacant) based on the following findings, also reflected in Exhibit "B":

- The subject property is located along a principal arterial roadway where medium to high-intensity zoning such as the proposed C-2 zoning designation is encouraged
- The proposed zone change will allow for the expansion of an existing business, increase employment, and increase the value of the subject property and the surrounding area. (2001 Zoning Code, Article 1, Section 38-2N)
- Based upon staff's analysis of the proposal, the proposed zone change request meets the intent of the Elevate Las Cruces Comprehensive Plan
- Is compatible with adjacent uses and zoning districts; meets the purpose and intent outline in Section 38-2 of the 2001 Zoning Code, as amended; and fulfills the purpose of the Las Cruces Municipal Code Section 2-382

The case was publicly noticed in accordance with the City's notification provisions; staff received no phone calls in support or protest of the zone change prior or during the P&Z hearing.

SUPPORT INFORMATION:

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

[Exhibit "B"-Findings](#)

[Attachment "A" -2505 Missouri PZ Staff Report](#)

[Attachment "B" -08-23-2022 P&Z Minutes](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

Agenda Item #10.1.

1. Vote "Yes", this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 2505 Missouri Avenue will be rezoned from C-1 (Commercial Low Intensity) to C-2 (Commercial Medium Intensity).
2. Vote "No", this will deny the Ordinance and will reject the recommendation made by the P&Z. The current zoning designation of C-1 (Commercial Low Intensity) will remain on the subject property. Denial of the zone change will require new information or facts of finding not identified or presented during staff review or the P&Z meeting.
3. Vote to "Amend", this could allow the City Council to modify the Ordinance by adding conditions as determined appropriate.
4. Vote to "Table", this could allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3027; COUNCIL BILL 23-021

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.

The City Council is informed that:

WHEREAS, K. Payne Relief LLC., property owner, has submitted a request for a zone change from C-1 (Commercial Low Intensity) to C-2 (Commercial Medium Intensity) for 2505 Missouri Avenue; and

WHEREAS, the proposed C-2 zoning designation will allow for additional attraction and current retention of the existing business, as well as, bring the property into compliance with the 2001 Las Cruces Municipal Code, as amended; and

WHEREAS, the proposed site is in the Urban Neighborhood Place Types and adjacent to a proposed Mixed-Use Corridor as shown on the Future Development Map within Elevate Las Cruces Comprehensive Plan which supports neighborhood commercial development and a variety of residential housing types at medium-to-high densities uses; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on August 23, 2022, recommended that said zone change request be approved by a vote of 6-0-0 (one Commissioner seat vacant).

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

(I)

THAT the land, as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-2 (Commercial Medium Intensity).

(II)

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

(III)

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

(IV)

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

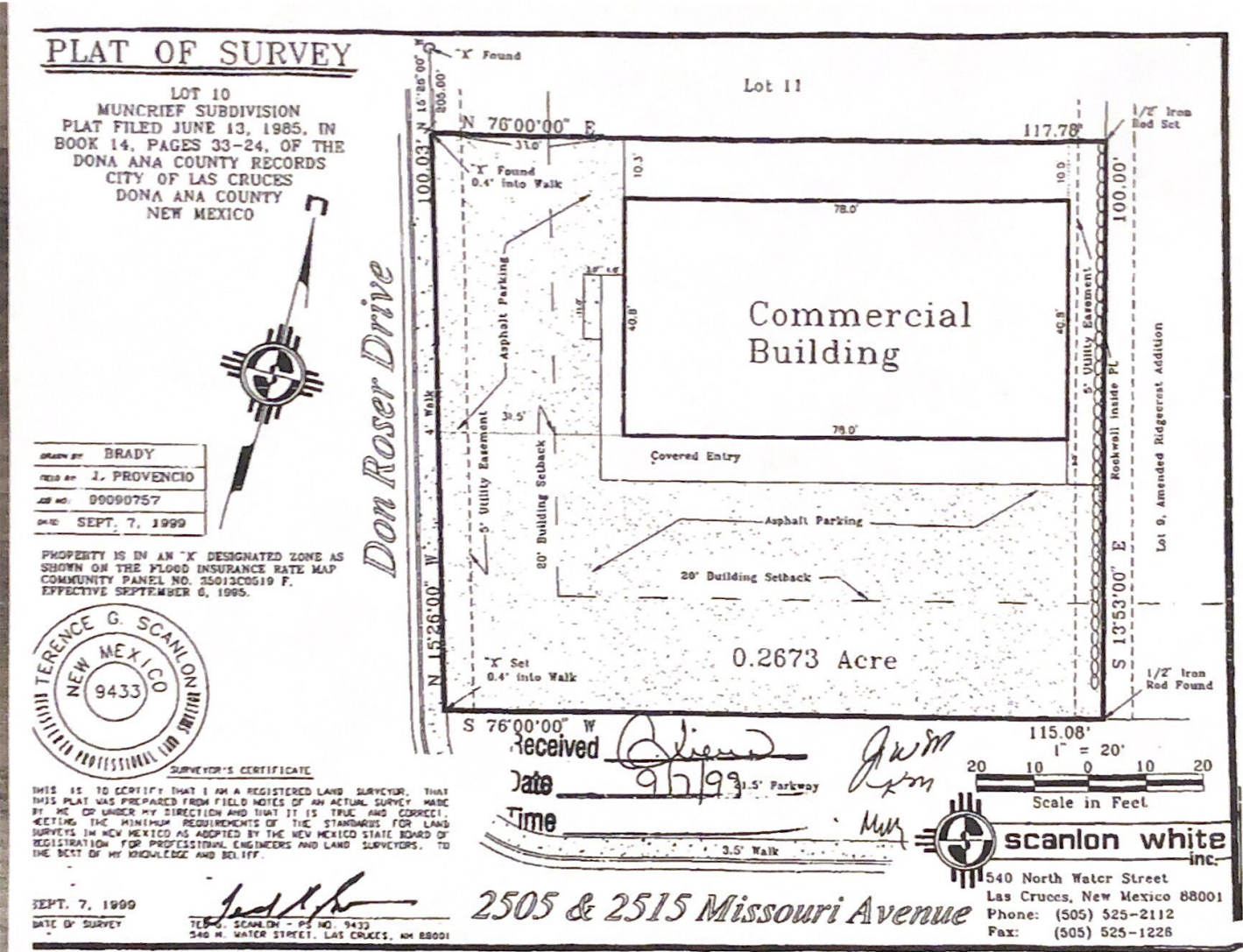
ATTEST:

Moved by:

Seconded by:

AYES

NAYS



FINDINGS

- The subject property is located along a principal arterial roadway where medium to high intensity zoning such as the proposed C-2 zoning designation is encouraged
- The proposed zone change will allow for expansion of an existing business, increase employment, and increase the value of the subject property and the surrounding area. (2001 Zoning Code, Article 1, Section 38-2N)
- Based upon staff's analysis of the proposal, the proposed zone change request meets the intent of the Elevate Las Cruces Comprehensive Plan based on the following Goals, Policies and Actions:
 - CE-3: Centers and Corridors
 - CE4: Develop mixed-use neighborhoods that incorporate wide range of recreational, commercial, and civic uses.
 - Policy CE-4.2
 - Action CE 4.1.2
 - CP-4: Seek a balance of business recruitment, retention, and expansion to diversity economic opportunities
 - Policy CP-4.2
 - CL-18: Provide opportunities for residents to improve their mental health and physical health.
- Is compatible with adjacent uses and zoning districts; meets the purpose and intent outline in Section 38-2 of the 2001 Zoning Code, as amended; and fulfills the purpose of the Las Cruces Municipal Code Section 2-382



City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

Planning & Zoning Commission 08/23/2022
CASE 22ZO0500094: REZONING

STAFF CONTACT: John Castillo, (575) 541-2288,
jcastillo@las-cruces.org

OWNER: K. Payne Relief, LLC – DBA From the Earth

REPRESENTATIVE: Keifer Payne

DISTRICT: District #3

SITE ADDRESS: 2505 Missouri Avenue.

EXISTING ZONING: C-1 (Commercial Low Intensity)

REQUEST: Rezone from C-1 (Commercial Low Intensity)
to C-2 (Commercial Medium Intensity)

RELATED APPLICATIONS: N/A

STAFF RECOMMENDATION: Approval

SUMMARY OF REQUEST CASE 22ZO0500094:

The applicant is requesting a zone change from C-1 (Commercial Low Intensity) to C-2 (Commercial Medium Intensity) for a property that encompasses 0.264 ± acres. The proposed zone change would allow for expansion of the existing development and would bring the property into compliance with the 2001 Zoning Code, as amended.

SUMMARY OF RECOMMENDATION:

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

- The subject property is located along a principal arterial roadway where medium to high intensity zoning such as the proposed C-2 zoning designation is encouraged.
- The proposed zone change will allow for expansion of an existing business, increase employment, and increase the value of the subject property and the surrounding area. (2001 Zoning Code, Article 1, Section 38-2N).
- Based upon staff's analysis of the proposal, the proposed zone change request meets the intent of the Elevate Las Cruces Comprehensive Plan; is compatible with adjacent uses and zoning districts; meets the purpose and intent outlined in Section 38-2 of the 2001 Zoning Code, as amended; and fulfills the purpose of the Las Cruces Municipal Code Section 2-382.

REZONING

PROPOSAL AND LAND USE HISTORY

PROJECT DESCRIPTION:

The applicant is seeking to bring a commercially developed parcel into compliance for future additions to the existing development. The subject property is 0.264 ± acres in size, with a structure that is 3,198 ± square feet in size, which exceeds the maximum building gross floor area requirement of 2,500 square feet of the existing C-1 (Commercial Low Intensity) zoning designation. The applicant is currently using no more than the required 2,500 square feet of the building to satisfy the requirement of the C-1 zoning district. The applicant is proposing to utilize the entire 3,198 ± square foot building as business begins to grow, which requires the property to come into compliance with the 2001 Zoning Code, as amended. The proposed zone change to C-2 (Commercial Medium Intensity) would bring the property into compliance with the 2001 Zoning Code, as amended.

LAND USE HISTORY:

The property was commercially zoned prior to 1970. In 2008 the property was further subdivided via the Muncrief Subdivision leading to the 0.264 ± acre lot that exists today. The building that exists currently on the property was built in 1977 and is 3,198 ± square feet in size. The lot sits at the corner of Don Roser Drive and Missouri Avenue.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Comprehensive Plan 2040	Yes
Thoroughfare Plans	Yes
Purpose and Intent of the Code: Section 38-2	Yes
Criteria for Decisions: Section 2-382	Yes
New Mexico Case Law	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

The property is located within an area containing a mix of zoning districts. These districts include R-1a (Single-Family Medium Density), C-1 (Commercial Low Intensity), C-2 (Commercial Medium Intensity), and C-3C (Commercial High Intensity – Conditional). The single-family uses within the R-1a district are directly northeast of the subject property. Several other properties containing multi-family residential, retail, service and office uses surround the subject property. The two roads providing ingress/egress to the property are Don Roser Drive and Missouri Avenue, both minor arterial roadways as designated by the Mesilla Valley Metropolitan Planning Organization (MPO) . From a staff perspective, the proposed zone is compatible with the area and would pose no greater impact to surrounding properties.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

The property is located within an area designated as a The Suburban Neighborhood Place Type as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. The Suburban Neighborhood Place Type provides for low-to-moderate density residential land uses intermixed with areas of commercial development. As part of this, office and retail uses are some of the predominant land uses found in this place type.

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

- Community Environment:
 - Goal CE-3: Centers and Corridors – Support community growth through concentrated development at activity centers and along key corridors.
 - Goal CE-4: Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, and civic uses.
 - Policy CE-4.2: Incorporate employment and shopping nodes into new and redeveloping neighborhoods that incorporate a wide range of recreational, commercial and civic uses
 - Action CE 4.1.2: Promote transitions between residential development types at intersecting streets and alleys
- Community Prosperity:
 - Goal CP-4: Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.
 - Policy CP-4.2: Support efforts to be regionally and nationally competitive in regard to retaining and growing businesses.
- Community Livability:
 - Goal CL-18: Provide opportunities for residents to improve their mental health and physical health.

The goals and policies outlined within the Comprehensive Plan support the expansion of office and commercial uses, which supports economic growth and revitalization within the City's core, creates opportunities for the business community, and helps provide services to the surrounding residential community.

COMPLIANCE WITH THOROUGHFARE PLANS:

Missouri Avenue and Don Roser Drive are minor arterial roadways, as designated by the Mesilla Valley MPO Future Thoroughfare Plan and Elevate Las Cruces Future Thoroughfare Map, where medium to high intensity commercial uses and zoning are considered appropriate.

CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:

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

The relevant purpose and intent statements to the proposed zone change are:

- A. Ensure that all development is in accordance with this Code and the Las Cruces Comprehensive Plan and its elements;
- B. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses;
- L. Ensure the development proposals are sensitive to the character of existing neighborhoods; and

Q. Mitigate conflicts among neighbors.

Review by City of Las Cruces staff determined the proposed zone change would not adversely impact the surrounding area. The proposed zone change will also allow for the expansion of an existing business and provide additional opportunities for employment in the City of Las Cruces.

CRITERIA FOR DECISIONS:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth;
- Impairment of the public health, safety or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, design standards and other companion codes.

Based on reviews of applicable codes and policies, City Staff did not identify any issues associated with the proposed zone change. The existing use and proposed addition will not contradict the purpose and intent of the Zoning Code nor impair public health, safety, or general welfare of the City.

NEW MEXICO CASE LAW:

1. There was an error when the existing zoning map pattern was created; or
2. Changed neighborhood or community conditions justify the change; or
3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other applicable City master plan(s), even though criterion (1) or (2) above do not apply because
 - a. there is a public need for a change of the kind in question, and
 - b. that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

The subject property was zoned commercially prior to 1970. In that previous zoning code, commercially zoned properties did not have a maximum lot size requirement nor a maximum building square footage standard. The adoption of the 1981 Zoning Code created more intense commercial zoning categories and added a maximum building square footage of 3,000 square feet to the C-1 zoning district. The adoption of the 2001 Zoning Code then created a less intense commercial zoning category of the C-1 zoning district and added a maximum lot size requirement and reduced the maximum building square footage to 2,500 square feet. This essentially made the property non-conforming with the current 2001 Zoning Code. The proposed zone change to C-2 would bring the property into compliance with the 2001 Zoning Code, as amended.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is currently zoned C-1 (Commercial Low Intensity) and the existing commercial retail store is a permitted use, but the issue of the existing building exceeding the maximum gross floor area standard makes the property non-

conforming. Future proposed additions to the existing facilities requires the property to come into compliance with 2001 Zoning Code, as amended.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

The proposed zoning designation of C-2 (Commercial Medium Intensity) would allow for the permitted and continued use of the retail store and bring the property into compliance with the 2001 Zoning Code, as amended. As designed, the subject property is 0.264 ± acres in size, all of which meet the proposed C-2 zoning designation and eliminates the Maximum Building Gross Floor Area Square Footage. The setbacks for the proposed C-2 zoning on the properties include: front, 15 feet; rear, 15 feet or 0 feet; sides, 5 feet or 0 feet. The maximum allowed height for C-3 zoning is 60 feet.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas and sewer are available for the site and are adequate for the existing use and any potential new construction and expansions on the property. All adjacent rights-of-way are paved including curb, gutter, sidewalk and lighting.

FLOOD PLAIN:

The property is not located in a flood zone.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notice of a Public Hearing was mailed to all property owners within 500 feet on August 5, 2022 for the Planning and Zoning Commission meeting. No public input was received at the time the staff report was drafted.

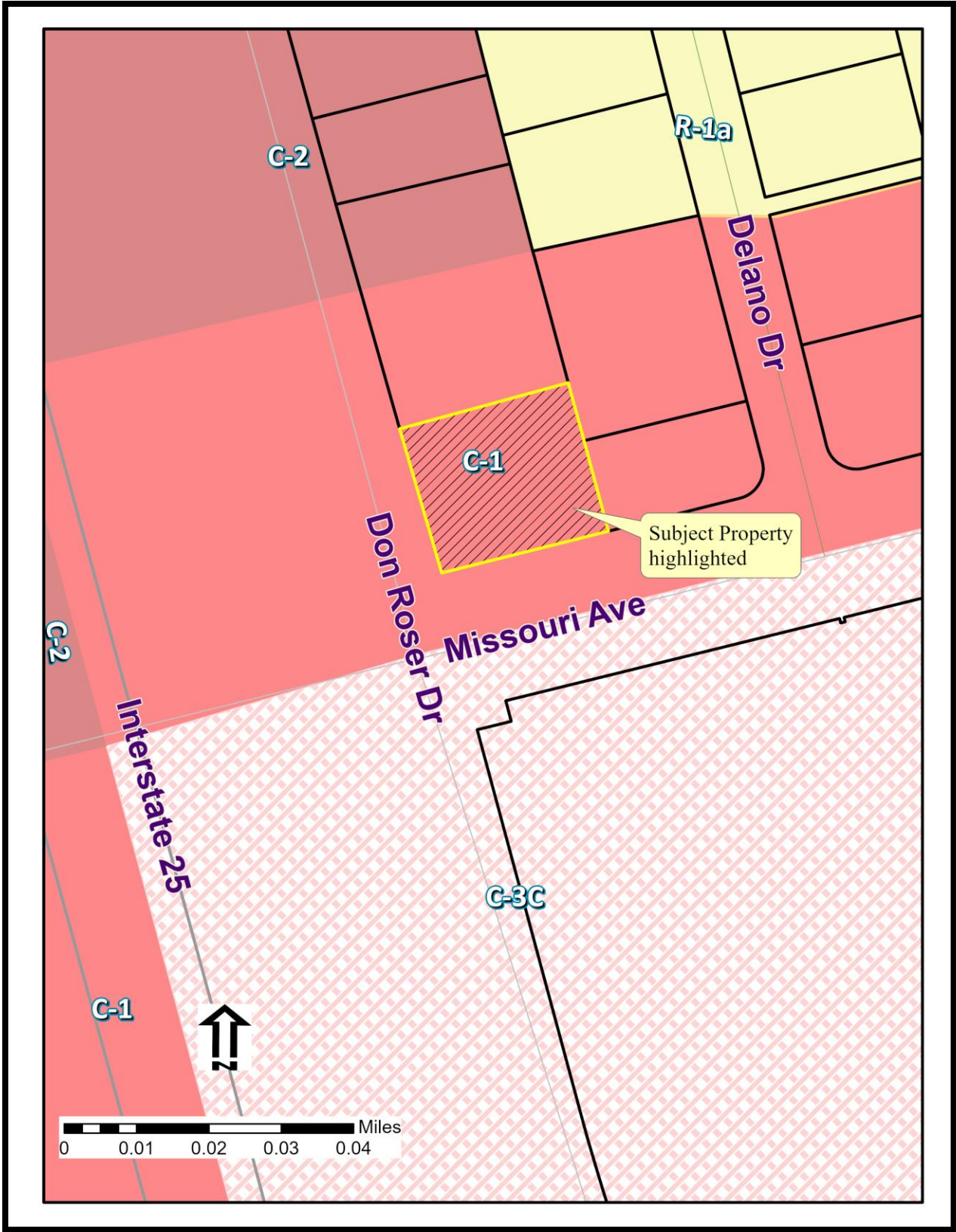
STAFF COMMENTS:

No reviewing departments had any negative comments and there have been no objections to the proposed rezoning.

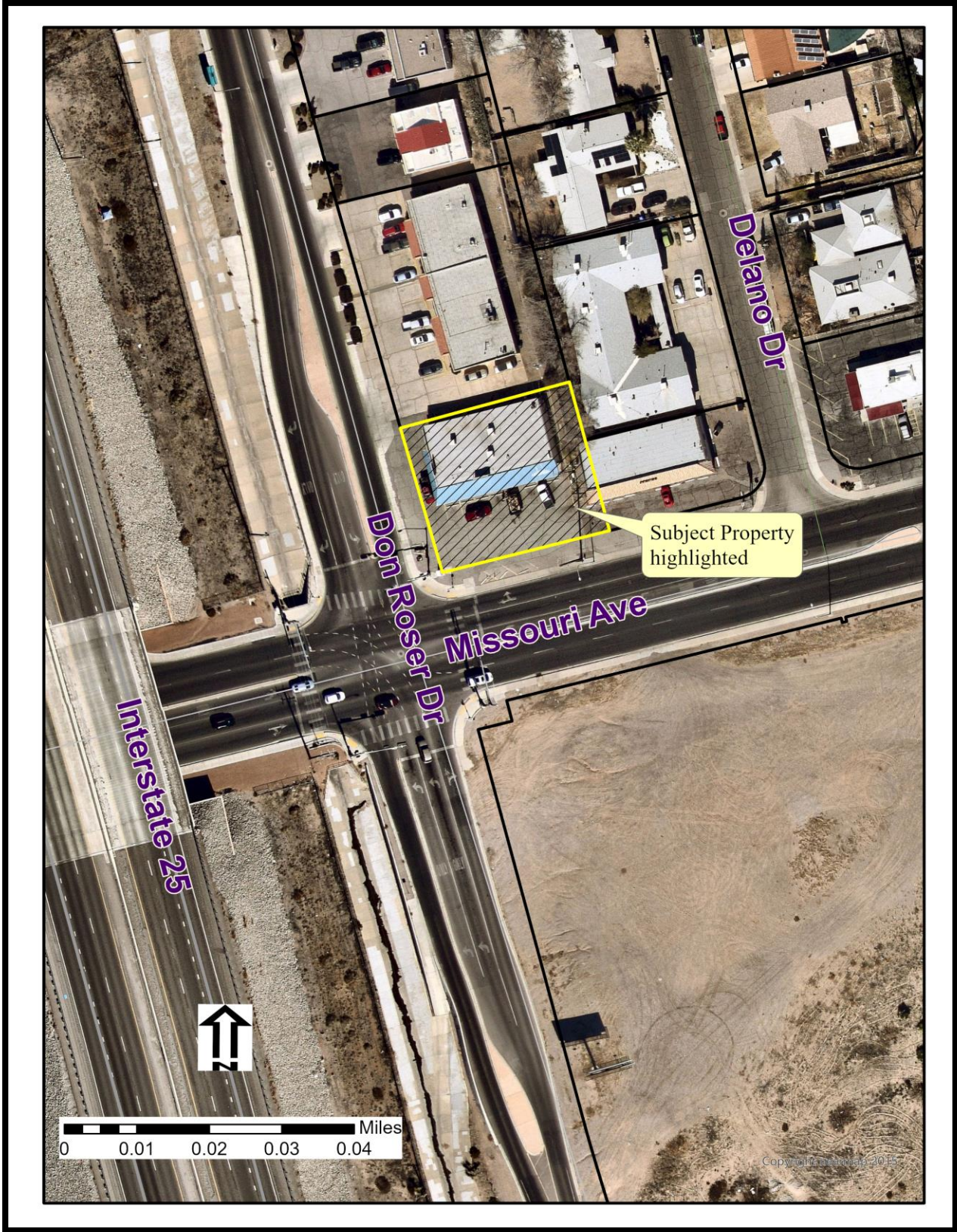
ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Site Plan
4. Department Comments

ATTACHMENT 1
Zoning Map

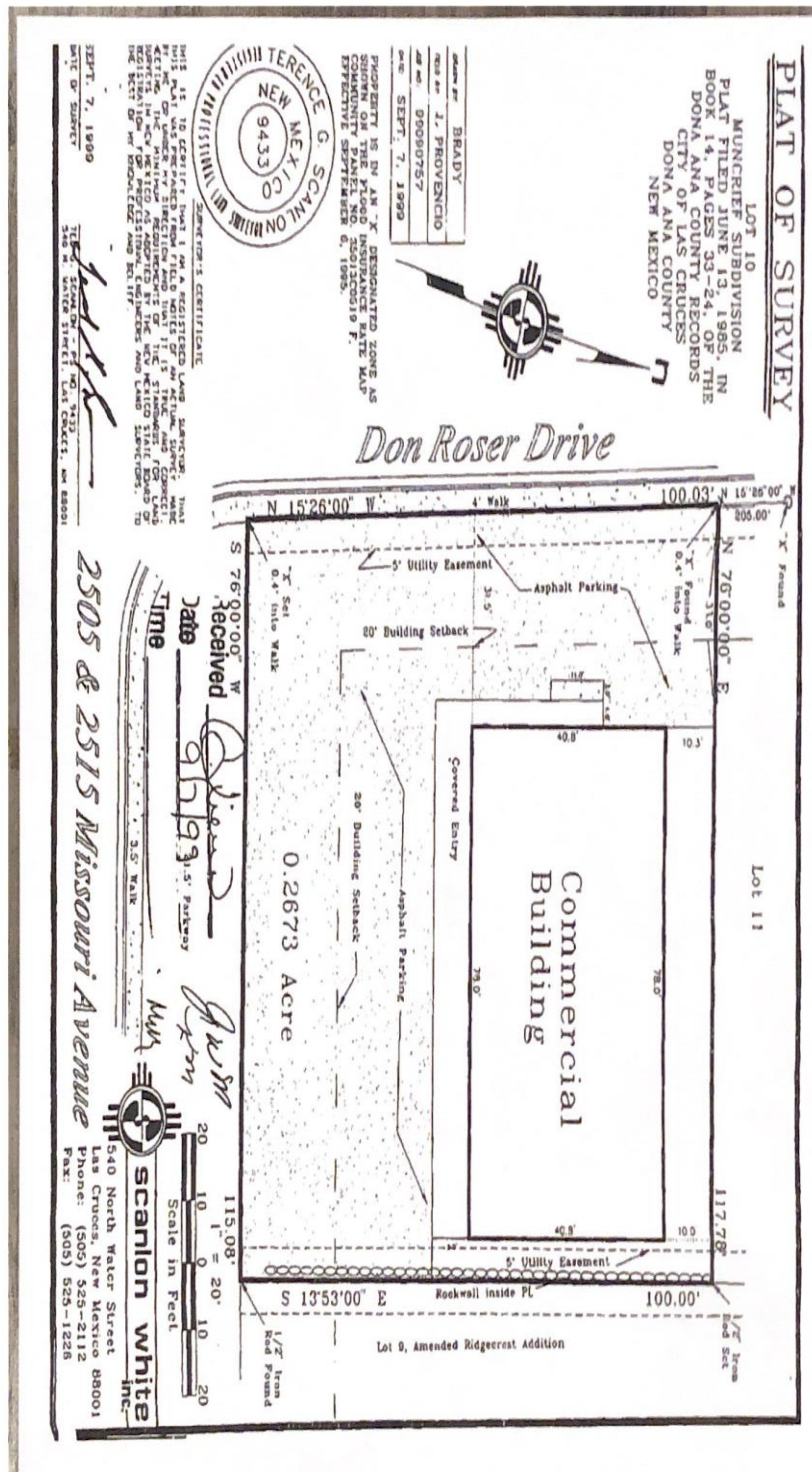


ATTACHMENT 2
Aerial Map



ATTACHMENT 3

SITE PLAN



ATTACHMENT 4

Department Review Comments

Department: Planning

Status: YES

Department: Right Of Way

Status: YES

Department: Long Range Planning

Status: YES

Department: Traffic Engineering

Status: YES

Department: Engineering

Status: YES

Department: Utility Engineering

STATUS: YES

Department: Fire

Status: YES

Department: City MPO

Status: YES

**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
August 23, 2022 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

Luis Armando Guerrero, Chair
Joaquin Acosta, Member
James Bennett, Member
Scott Kaiser, Vice-Chair
Enrico Smith, Member
Vanessa Vega, Secretary

STAFF PRESENT:

Larry Nichols, Director Community Development Department, CLC
Katherine Harrison-Rogers, Senior Planner
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Jocelyn Garrison, CLC Senior Assistant City Attorney
Adrian Guzman, CLC Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Guerrero: All right. Well good evening everyone. It's been a beautiful past few rainy days in Las Cruces. Just so you all know, I just found out like five minutes ago I'm supposed to run this meeting, so hopefully we go without hiccups. But I think we'll be fine.

2. CONFLICT OF INTEREST

Guerrero: First order of business, is there any conflict of interest with any of the agenda items tonight? No, it does not seem, then I think we're good.

3. APPROVAL OF MINUTES – July 26, 2022

Guerrero: Why don't we move on to the approval of minutes? Could I get a motion to approve the minutes?

Breen I make a motion to approve the minutes.

Kaiser: I'll second.

Guerrero: All righty.

1 Baum: Board Member Vega.
2
3 Vega: Yes.
4
5 Baum: Board Member Smith.
6
7 Smith: Yes.
8
9 Baum: Kaiser.
10
11 Kaiser: I abstain. I was absent last meeting.
12
13 Baum: Thank you. Board Member Bennett.
14
15 Bennett: Yes.
16
17 Baum: Board Member Acosta.
18
19 Acosta: Yes.
20
21 Baum: Board Member Guerrero.
22
23 Guerrero: Yes.
24
25 Baum: Thank you. All right. Excellent. Well, the minute's pass.
26

27 **4. ELECTION OF OFFICERS**
28

29 Guerrero: We are going to be doing an election of officers. As mentioned, the former
30 Chair, Mr. Harvey Gordon, resigned. And we need to decide if I'm going to
31 be the chair, if somebody else wants to do it, totally fine, but yes. I don't
32 know how we do this part.
33
34 Nichols: Mr. Chair. You'll ask the Commission to make nominations, and we get a
35 second, and then we go to vote. But ask the nominee if they're willing to
36 accept the nomination and go to vote.
37
38 Guerrero: Perfect. All righty. Well, does anybody want to make a nomination for
39 Chair?
40
41 Bennett: I nominate Luis as Chair.
42
43 Guerrero: Okay.
44
45 Vega: And then I second.
46

1 Guerrero: All right. Perfect. Then do we still vote or?
2
3 Nichols: You would accept the nomination.
4
5 Guerrero: Yes. Yes, I do.
6
7 Nichols: Yes, So take a vote, please.
8
9 Baum: Board Member Vega. We have too many microphones on. We need to
10 turn them off, please. Thank you. Board Member Vega.
11
12 Vega: Yes. Thank you.
13
14 Baum: Board Member Smith.
15
16 Smith: Yes.
17
18 Baum: Thank you. Board Member Kaiser.
19
20 Kaiser: Yes.
21
22 Baum: Thank you. Board Member Bennett.
23
24 Bennett: Yes.
25
26 Baum: Thank you. Board Member Acosta.
27
28 Acosta: Yes.
29
30 Baum: And Board Member Guerrero.
31
32 Guerrero: Yes.
33
34 Baum: Thank you.
35
36 Guerrero: All right. Perfect. Well, that's solves one of the seats. Now we need to
37 nominate someone for Vice-Chair. Would anybody like to make a
38 nomination for Vice-Chair?
39
40 Bennett: I nominate Scott.
41
42 Vega: I second.
43
44 Guerrero: All right, perfect.
45
46 Kaiser: I am willing.

1
2 Guerrero: Perfect. Then we got a vote then.
3
4 Baum: Board Member Vega.
5
6 Vega: Yes.
7
8 Baum: Board Member Smith.
9
10 Smith: Yes.
11
12 Baum: Board Member Kaiser.
13
14 Kaiser: Yes.
15
16 Baum: Board Member Bennett.
17
18 Bennett: Yes.
19
20 Baum: Board Member Acosta.
21
22 Acosta: Yes.
23
24 Baum: Chair Guerrero.
25
26 Guerrero: Yes. All righty. Awesome. Well that was quick. Now, do we, we don't
27 have any postponements, so we're going to skip that.
28
29 H-Rogers: Mr. Chair.
30
31 Guerrero: Yes.
32
33 H-Rogers: One point of order/ Because Commissioner Kaiser was Secretary now that
34 ...
35
36 Guerrero: Okay, well now never mind. Scratch that. We need to nominate a secretary.
37 Any of the Commissioners wants to nominate someone as the secretary?
38
39 Kaiser: I'll return the favor and nominate Commissioner Vega.
40
41 Guerrero: That sounds great.
42
43 Vega: Is it because I'm a woman?
44
45 Kaiser: Absolutely not.
46

1 Bennett: I'll second.
2
3 Vega: I accept.
4
5 Guerrero: All right. Perfect. Then let's vote.
6
7 Baum: Board Member Vega.
8
9 Vega: Yes.
10
11 Baum: Board Member Smith.
12
13 Smith: Yes.
14
15 Baum: Board Member Kaiser.
16
17 Kaiser: Yes.
18
19 Baum: Board Member Bennett.
20
21 Bennett: Yes.
22
23 Baum: Board Member Acosta.
24
25 Acosta: Yes.
26
27 Baum: Chair Guerrero.
28
29 Guerrero: Yes.
30
31 Baum: Thank you.
32
33 Guerrero: All right. Perfect. I think, is that it? We got all of it. Perfect. All right.
34 Excellent.
35

36 **5. POSTPONEMENTS – None**

37
38 **6. PUBLIC PARTICIPATION**

39
40 Guerrero: Then up next, we have public participation. This is if anybody has anything
41 they would like to share that is not in the agenda. Do we have anybody in
42 the public that would like to come up and speak on something that is not in
43 the agenda? No. All right then that's fine.
44

45 **7. CONSENT AGENDA - None**
46

1 Guerrero: Now we don't have anything on the consent agenda today either.

2
3 **Realize Las Cruces Development Code Update**

4
5 Guerrero: There is a request though, and I'll need a vote from my colleagues, to move
6 item number 10 before we do old business. Would anybody like to make a
7 motion for that?

8
9 Vega: I make a motion to move item number 10.

10
11 Guerrero: Okay. Can I get a second?

12
13 Kaiser: Second.

14
15 Guerrero: All right, perfect. Do we need a vote for that?

16
17 Baum: Board Member Vega.

18
19 Vega: Yes.

20
21 Baum: Board Member Smith.

22
23 Smith: Yes.

24
25 Baum: Board Member Kaiser.

26
27 Kaiser: Yes.

28
29 Baum: Board Member Bennett.

30
31 Bennett: Yes.

32
33 Baum: Board Member Acosta.

34
35 Acosta: Yes.

36
37 Baum: Chair Guerrero.

38
39 Guerrero: Yes.

40
41 Baum: Thank you.

42
43 Guerrero: Perfect. Then in that case we're going to move on to item number 10 which
44 is the Realize Las Cruces Development Code update. Do we have anybody
45 from either City staff or one of the presenters?
46

1 Nichols: Yes, Chair.

2
3 Guerrero: Yes sir.

4
5 Nichols: Katherine will do an introduction. And then we'll have our consultant from
6 Freese and Nichols do a presentation.

7
8 Guerrero: Excellent. Thank you.

9
10 H-Rogers: Good evening Members of the P&Z. This is something that I think we're all
11 really familiar with. We're working on the code rewrite for Realize Las
12 Cruces. Those are all of our development codes, zoning, subdivision, signs,
13 development standards, things of that nature. And we're just doing one of
14 our regular updates to let you know where we are in the process, where
15 we're going. And we have our consultants from Freese and Nichols here to
16 give you a small presentation. And with that I will go ahead and open that,
17 and I will turn it over to Erica Craycraft.

18
19 Craycraft: Good evening members of the Commission. Again, my name is Erica
20 Craycraft with Freese and Nichols joining you today with a brief update on
21 the development code revision. Joining me today is Dawn Warrick and
22 Karen Perez with Freese and Nichols. And other members of our team who
23 you may see at a different meeting are Fred Lopez from Quantum
24 Engineering and local attorney Dana Kyle.

25
26 Today I would like to share with you a reminder of our process and give you
27 an update on our current status, and also preview our upcoming next steps
28 and plans for community engagement. And lastly I'd be happy to take any
29 questions or comments that you may have. First looking at our process,
30 and generally our scope, the items that you see here are the current
31 sections of your development code that we are reviewing in this process.
32 On the left side you see the items that are major reviews, those are your
33 zoning, your zoning map, subdivision regulations, design standards which
34 are things like landscaping and parking requirements, drainage and flood
35 control, and signs. We have about a two year process that is structured into
36 three phases. And our first phase was what we call the diagnostic
37 evaluation. This was a period of about six months that started last spring.
38 During that time, we reviewed your existing plans that you had in place like
39 the Elevate Las Cruces Comprehensive Plan, the Active Transportation
40 Plan, Parks Master Plan, and others. We also took that time to review your
41 existing codes that you have in place today. We had a virtual open house
42 where we invited open-ended community input through a website that is
43 actually still available if anyone would like to participate
44 @realizelascruces.com. And also during that time, we conducted a series
45 of interviews with folks who we consider to be frequent code users. So that
46 included members of the City Council and P&Z who were seated at that

1 time, members of the local development community, several community
2 organizations, and others, during that time to get an understanding of what
3 works well, what maybe doesn't work well, what we should be considering
4 through this update.

5
6 That informed us as we've moved into our current phase, Phase 2, which is
7 actually drafting the code content. We're working very closely with your City
8 staff through this phase and we are about two-thirds of the way through
9 Phase 2. Looking ahead to Phase 3, which we envision being early next
10 year, that will be several months dedicated to refining the final document.
11 Once we have a complete draft that's ready for public review that will go
12 through a refinement process at that time. As I mentioned, we are currently
13 in Phase 2, you can see on the right side the new primary sections that the
14 code will be organized by. For each of those sections we prepare a draft,
15 we being the consultant team. We share that with your City staff. They
16 review it they share their comments with us, and we make revisions to that
17 section. We repeat that process until the draft is ready to move forward.

18
19 We're currently focusing on the design standards and also on the zoning.
20 The first two sections that you see here, general provisions and subdivision
21 regulations, we have an initial draft of those that is actually available on the
22 website, realizelascruces.com on the documents page. If anyone would like
23 to view those initial drafts they are available. Also, there's a brief video
24 about five minutes long with each of those sections that gives you an
25 overview about what the purpose of this section is and also some key things
26 to note about that section. These are posted on the website mainly for
27 transparency purpose. We aren't necessarily asking for any public input on
28 these drafts at this time, but they are available if anyone would like to look
29 at them.

30
31 As we're drafting these sections, we're looking frequently back to your
32 existing plans, especially the Elevate plan. When the City prepared that
33 plan, there was a very robust community engagement process with a lot of
34 different local groups and stakeholders involved in that process that helped
35 to establish that vision in the plan. The plan has about 500 different
36 recommendations that relate to partially the development code, but also
37 capital improvements, other studies that may be required or general
38 policies. So we have been looking especially at the items related to the
39 development code. We took those items, about 200 of them, and
40 categorized them in this table that you see here, just a snippet of, but this
41 is our working list as we're working through the development code where
42 we can keep track of all of the items that Elevate's policy framework
43 recommended, so we can be sure that we are addressing the plans
44 recommendations.
45

1 In terms of the plans physical framework, we're also incorporating that into
2 the code update by looking especially at the place types and overlay place
3 types, you'll see that those relate to the zoning districts. And also to some
4 of the design standards like the roadway design or the landscaping. Those
5 frequently refer back to the place types that came out of the plan. In addition
6 to plan implementation, we're also looking at ways that we can simplify and
7 streamline the document so it's easier to understand. It is a very technical
8 document so we are trying to use tables and flowcharts as much as possible
9 to make sure that everyone can understand the requirements.

10
11 Looking ahead at our next steps and plans for community engagement, you
12 may be aware that there's a technical advisory committee that has started
13 meeting. They were appointed by the Mayor and the Council and there are
14 15 members who are representatives of the local development community,
15 various community organizations, also several professors and other
16 academics who are involved in that committee. It is a City staff led initiative.
17 Your assistant City Manager, Eric Enriquez is the primary staff point of
18 contact for that committee. The committee is reviewing draft sections for
19 preliminary feedback at this time. The sections that they're reviewing are
20 also available on the website at the location I mentioned earlier in case
21 anyone would like to review that content is available for everyone. But
22 again, we're not necessarily asking for community wide input until we have
23 that more polished, complete draft at the beginning of the year.

24
25 So our next steps, we will continue to work with City staff as we have been
26 doing to refine the draft code and get a complete draft ready. City staff will
27 continue working with that technical advisory committee to get any
28 preliminary feedback to help us be informed as we're preparing this initial
29 draft. Once we have that polished draft ready, we'll bring it back to the
30 Planning and Zoning Commission and to City Council for your review and
31 to let us know if you see any issues or anything else that you would like to
32 be addressed before we go out for the formal public involvement and input
33 process. Once we have that green light from you all, we'll start an open
34 house event for additional community feedback on that complete draft. That
35 open house event we envision occurring probably in early spring of next
36 year. And we envision that as being a two evening event where it would be
37 the same event either evening, just to allow more opportunities for folks to
38 attend that in person if they would like. And all of our public engagement
39 activities, we'd like to start with an educational component at the beginning,
40 so everyone has a background and understanding of what the purpose of
41 the code is and how it would apply to them so they have the background
42 that they need to be able to provide meaningful input. At that meeting, we'll
43 also share highlights of the draft once it is completed, that would be
44 something like a top 20 things to know about the draft code. At the meeting
45 we'll have opportunities for feedback from the community. And then that
46 feedback period will also extend for a time after the open house event. So

1 if someone came to that event and that was their first time learning anything
2 about the development code, they would have the background knowledge
3 presented to them at that meeting. They could have some time to go home
4 and review the draft and share their comments with us later, they don't have
5 to necessarily have it that evening. And we would also like to host some
6 one on one discussions that can either be at the event or could be held
7 separately. But we envision those being a sit down conversation with
8 anyone who is a property owner or a business owner, someone who is
9 interested or concerned about how the code might apply to them. So we
10 could sit down with them, look up their individual address, and be able to
11 talk with them about how the existing code applies and how the new one
12 will be different. And then also, in addition to the in person event we would
13 like to have a virtual alternative that's available for a period of time as well,
14 if somebody prefers to participate online rather than in person.

15
16 I mentioned during Phase 1 that we had a virtual open house, that is the
17 screenshot that you see here. It is still available at this time if anyone
18 wanted to go share any open ended comments, they can feel free to do so.
19 Next, also, during that public engagement period, all of the code users that
20 I mentioned that we interviewed during Phase 1, we would like to circle back
21 with them again, at this point and make sure that we kind of close that
22 feedback loop that we incorporated their comments and their concerns were
23 addressed. This is just a reminder of who those code users were that we
24 interviewed back during Phase 1. So we will invite all of these folks to join
25 us again once we have a complete draft and review any of their additional
26 comments or questions.

27
28 Once we have that input through the open house and also for the code user
29 interviews, we'll bring that input back to you all at the P&Z and to City
30 Council. And in addition to presenting the input, we'll also be presenting
31 proposed revisions that we would recommend based on what we heard at
32 the community input. So we'll present that for your feedback and direction.
33 Once we have incorporated that public input into our drafts, then at that time
34 we would move forward with the official formal adoption meetings and public
35 hearings that would go along with that. So that concludes my presentation,
36 I would be happy to take any questions or comments that you may have.
37 Thank you.

38
39 Guerrero: Thank you so much for that presentation. Do we have any questions from
40 the Commission? Seeing none. Why don't we move to public comment? I
41 think I, yes, does anybody from the public have any questions that they
42 would like to ask?

43
44 Nichols: Mr. Chair.

45
46 Guerrero: Yes.

1
2 Nichols: I would just make a brief comment to the Commission. This is a very
3 important study. We kept hearing the word on your presentation and very
4 informative presentation, thank you for that. But you kept hearing the word
5 code. And so this will be a code, this will be part of the laws that we use to
6 gauge our zoning and our land development. It is in concert with the Elevate
7 Las Cruces Comprehensive Plan. This particular code had not been
8 updated or revised for a number of years. But once we had adopted the
9 Elevate Comprehensive Plan, we recognized the necessity to update the
10 land development or the zoning code to work in concert with that. So it'd
11 be brought to you. We're about halfway through, are we with the
12 consultancy and developing this. But it's going to be very well vetted to both
13 Council, the Planning and Zoning Commission, and to the public. And we
14 look forward to new developments. Thank you.

15
16 Guerrero: Yes, absolutely. And thank you so much. You know I remember hearing
17 that the code has not been updated since I believe 2001, I may or may not
18 be correct. But it's been a number of years, and as we all know the City has
19 grown and a lot has changed. And of course now we have the new
20 Comprehensive Plan so I'm excited to see how this is going to fit well with
21 the City. Just one comment real quick, I did notice in your presentation
22 there was something for like virtual alternative for two weeks. Could you
23 maybe explain a little bit more what that would look like?

24
25 Craycraft: Sure. Sure. It could take a variety of forms. We use, one of the tools was
26 the screenshot that I showed with the colorful boxes, that's more the open
27 ended input for a community engagement at a later point. It would likely
28 take the form of a series of informational videos, so everyone can have the
29 background knowledge and the highlights of the draft as well. And also
30 some type of a more interactive survey.

31
32 Guerrero: All right. Thank you. Thank you very much. I think that's a great idea. If
33 we learned anything from the pandemic is that you know people want to
34 participate, they may not always be able to be in person. So thank you for
35 doing that. Does anybody else have any other comments before we move
36 on? Then thank you so much for your time.

37
38 Craycraft: Thank you.

39
40 Guerrero: Sorry. There was a, somebody had raised their hand. I'm sorry, I did not
41 see you. Yes, would you like to come up and make a comment? All right.
42 Perfect. My first swear in. So before you make your comment, I do need
43 to swear you in. First of all, can we get your name?

44
45 Gurley: Gary Gurley.
46

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

4 Gurley: Well, it's a question more than a testimony.
5

6 Guerrero: Okay, well that's okay. We'll give you three minutes. And go ahead.
7

8 Gurley: Okay, I just wanted to know ...
9

10 Guerrero: You might need to speak a little bit closer to the mic.
11

12 Gurley: I wanted to know what the (*inaudible*) was on all of these changes you're
13 going to make to the various cases that you have for zoning changes, as
14 applies to the much larger change that is going to take place in May of next
15 year? And why have all of these minor changes on a periodic basis, and
16 why not wait for the larger change to take place in May and base your
17 decisions on zoning changes on the adjustments that you've made, the final
18 adjustments that you make in May?
19

20 Guerrero: That is a great question. Somebody from City staff want to take that?
21

22 H-Rogers: I'd be happy to answer. My name is Katherine. I'm Senior Planner with the
23 department. So there was no type of moratorium that was placed on the
24 ability for people to proceed with zone changes until this code was adopted.
25 So that allows people who perhaps want to develop or who have a property
26 perhaps that's not in conformance and they want to get a zone change so
27 that they can do maybe a little bit more with their property, they can do that.
28 So they're allowed to go through the process under our current codes. So
29 they can utilize their property or make plans to move forward in the future.
30 But at this point in time, the City elected to not halt development or zoning
31 changes moving forward until that code was adopted. And that's pretty
32 typical, that the City would continue to allow people to proceed with their
33 development plans. Does that answer your question?
34

35 Gurley: Well, how do you know that you're not going to run into a conflict where you
36 make a decision now, which will be in conflict with your final changes?
37

38 H-Rogers: So that's also a really good question. So when we make recommendations
39 involving zone changes we're basing it on our current comprehensive plan,
40 and some of the guidance that that particular plan provides us. That plan
41 was adopted approximately two years ago. And of course the code that
42 we're working on now is also intended to implement that plan. So they
43 should be in alignment. However, there are instances where maybe there's
44 some things that don't quite jive or something may be considered
45 nonconforming moving forward. There are provisions in the code that
46 protect those uses that were made legal under one code, but may have

1 some illegality in a new code, we call it nonconforming, and they're allowed
2 to continue that, they won't be penalized for that.

3
4 Gurley: Okay. That was my main question.

5
6 Guerrero: All righty. Well, thank you very much. Thank you very much Katherine for
7 answering that. And thank you so much to the representative, we look
8 forward to keep working with you.

9
10 **8. OLD BUSINESS - None**

11
12 **9. NEW BUSINESS**

13
14 **9.1 5056 Carter Drive Zone Change:** A zone change request from UR (Urban
15 Ranch) to REM (Residential Estates Mobile) for ± 1.163 acres of property
16 generally located between Cortez Drive and Shannon Road in Council
17 District 6. Submitted by Moy Surveying, Inc. on behalf of Angel Meraz,
18 property owner. (Case # 22ZO0500073)

19
20 Guerrero: All right. Well, we're going to move on to new business. So first of all could
21 I get a motion to hear case or sorry, item 9.1?

22
23 Vega: I make a motion to hear item 9.1.

24
25 Smith: Second.

26
27 Guerrero: All right.

28
29 Baum: Board Member Smith.

30
31 Smith: Yes.

32
33 Baum: Board Member Vega.

34
35 Vega: Yes.

36
37 Baum: Board Member Kaiser.

38
39 Kaiser: Yes.

40
41 Baum: Board Member Bennett.

42
43 Bennett: Yes.

44
45 Baum: Board Member Acosta.

1 Acosta: Yes.

2
3 Baum: Chair Guerrero.

4
5 Guerrero: Yes. All right. Thank you. Go ahead.

6
7 Banegas: Mr. Chairman, Members of the Commission. Vincent Banegas Interim
8 Planner for the record presenting the case before you, case 22ZO0500073.
9 It is a rezoning proposal for property that's located at 5056 Carter Drive.
10 Currently zoned UR, which is an '81 designation called Urban Ranch. And
11 they're seeking to rezone the property to Residential Estates Mobile. That
12 designation is a legitimate zoning district in the 2001 Zoning Code. Just to
13 give you a little background on some of those zoning districts that may no
14 longer be in the current code. When the US 70 annexation took in most of
15 the eastern portion of the City, there were a lot of properties out there that
16 had uses that were not very typical elsewhere in the City, and the City
17 decided to create some additional zoning districts at that time under the '81
18 Zoning Code in order to accommodate the uses. The UR zone was one of
19 them. But through the rewrite of the zoning code resulting in the 2001 code,
20 it no longer exists.

21
22 The property is roughly 1.163 acres in size. The UR designation under that
23 previous code allowed for a minimum lot size of one acre. And one of the
24 unique characteristics, it also allowed the keeping of small and large
25 animals in a semirural atmosphere, that was the purpose and intent of that
26 zone. So at the present time, it is a defunct zoning designation/. It is
27 considered nonconforming, very much like what was just mentioned for that
28 gentleman's question. And so in order to allow future development on the
29 property or changes to the property that would require permits, things of that
30 nature, they have to be brought into compliance. And that would require
31 what we used to call a conversion zone. Taking a look at what's on the
32 property and trying to match it up as best we can with some of the existing
33 designations in the 2001 Zoning Code as amended. The property sits within
34 the suburban neighborhood place type pursuant to the Elevate Las Cruces
35 Comprehensive Plan. And as mentioned previously in some of the other
36 cases, that allows for a land use character that considers low to moderate
37 density residential uses with some areas are intermixed with some areas of
38 commercial use.

39
40 The property at the present time is predominantly vacant. There has been
41 some development in context to some fencing that was placed on the
42 property. The property does show at present time some fencing that is
43 located along at least one side of the property line, the back, and then a
44 portion of the other side. And there's some fenced in storage that has taken
45 place there.
46

1 The applicant in preparation of this case, it was brought to staff's attention
2 that this had occurred, and we started receiving quite a bit of phone calls on
3 the matter. And I've been in contact with the applicant's representative to
4 discuss that. And certainly if they're utilizing some of the equipment and
5 the structures in there to store equipment for the construction of a home
6 that they have applied for, it is under review, it's gone through the review
7 process and it's pending the outcome of the zone change to bring about
8 compliance with zoning designations. So if they do that, then it's okay if it's
9 being used for some other purpose for property you know storage material
10 that is used for property beyond this subject parcel, then there's some
11 issues and other considerations that have to be made. So the applicant's
12 representative was aware of that.

13
14 The zoning for the area is identified as follows. You have the subject
15 property outlined in red, and adjacent to that you still have several
16 properties that are in the nonconforming UR designated zoning district. And
17 the reason that that could have occurred is first and foremost the City did
18 take upon itself the process of conversion of zoning districts for properties
19 throughout the City, but we also encourage property owners to come
20 forward and help us out and help identify the properties that no longer had
21 a designation that was subjected to the 2001 code. And in certain
22 instances, obviously, we had some gaps and we didn't cover the entire City.
23 But also as part of our process, staff process, whenever we engage property
24 owners to take on that conversion process, if they didn't want to participate,
25 they opted out. And so I'm not quite sure what the scenario is here with
26 several of the properties being UR, but basically all those UR properties will
27 at some point in time need to be brought into compliance.

28
29 The one in question this evening is this one outlined in red, identified as the
30 subject property. So you do have some REM zoning, which is what is being
31 proposed this evening, directly south, you certainly have a substantial
32 amount west of the subject property. But you have Carter Drive which
33 provides the immediate access to the subject property, and some of the
34 other roadways are somewhat improved and some are partially improved.
35 I know Cortez has some right-of-way issues and some improvement issues
36 that are still pending in terms of meeting current code. But nonetheless,
37 this is the zoning that you see in the immediate area. The EE zoning
38 designation as an equestrian estates zoning district, it too allows the
39 keeping the small and large animals. It has a one acre minimum lot size.
40 And the only difference between EE and the REM designation is that the
41 REM, and for that matter I should say the UR designation, the REM allows
42 for mobile homes. But in this case the building permit that are referenced
43 already is seeking to do a site built home not a mobile home.

44
45 So this is the aerial map for the subject property. You can see as of when
46 this was taken, the property was undeveloped. There were no fences,

1 fenced in storage identified. Surrounding it you do have several properties
2 that have site built construction and a few that still have mobile home
3 placement upon them. But clear majority of the properties are fairly large
4 lot. And some, although not all, some do have the keeping of small animals
5 and large animals to this day.
6

7 So once again the proposal is to change the zoning from UR to REM. And
8 this facilitates the construction of a site built home, not a mobile home, on
9 the subject property. And I want to clarify that because one of the citizens,
10 the property owners out in that area called and was rather concerned that it
11 would allow mobile homes. This is the site plan that was submitted for the
12 residential construction permit. I used it just to show you the expanse of the
13 property itself. It's fairly large. Carter Drive is along this edge of the site
14 plan. So they will be taking immediate access off of Carter Drive. The
15 building itself will sit behind the required 25 foot setback. And it's my
16 understanding that the fenced in storage area's back in this area.
17

18 This is just a couple of photos showing that, again the placement of the
19 fencing, fenced in storage area and some of the equipment trailers that are
20 placed back there. A little different angle. There will have to some
21 modification of the fencing, the first 25 feet is within the required front yard,
22 and unless they receive a variance for that it'll have to come down to four
23 feet in height, but that's really a separate issue as it pertains to the zone
24 change.
25

26 So in terms of our analysis from a staff perspective, there was no health,
27 safety, or welfare issues that were identified by reviewing staff. Staff did
28 find that the zoning district that was proposed is compatible with the
29 proposed use in the surrounding neighborhood, certainly based on what I
30 showed in terms of zoning and the aerial. The property is within the
31 suburban place type as per Elevate Las Cruces and is consistent with the
32 character that's defined therein. The UR/REM comparison in terms of
33 zoning development characteristics is similar. The REM allows for a smaller
34 lot size, half acre minimum, versus the one acre for the UR, the defunct UR.
35 The REM allows mobile home, but again they're looking to build site built
36 and the UR required site built and manufactured home only. All other
37 standards are the same. So the REM was selected and we feel that it's
38 compatible with those REM zones in the immediate area.
39

40 In terms of public notice and input, we carried that out pursuant to code. I
41 think early this month, on the fifth of this month, the letters went out. And
42 as indicated staff did not receive calls about the zoning per se, we received
43 calls about the fencing and the fenced in storage. The one letter or e-mail
44 that I did receive late, which was forwarded to you for your consideration,
45 talked about the mobile home placement or the possibility. I don't think
46 that's an issue given what permit has been submitted and gone through

review at this point in time, but certainly if you feel it necessary to apply a condition you could do so, that would require manufactured home, site built home only. So that's what we have in terms of input.

So staff recommendation regarding this this case is approval, and it's based on the following findings. For one, the property's existing zoning is nonconforming, it no longer exists in our 2001 code. And certainly prior to any development, we have to bring the zoning district into compliance. Staff has found the REM zoning district that was requested to be compatible with the area. And it certainly fits the intentions of the property owner in terms of future improvement. The property is also within the suburban neighborhood place type, again characterized by low to moderate residential density, this certainly fits that bill and several goals, policies, and actions that are identified in Elevate Las Cruces. We find that the request is compatible with that, there's certainly support in that document for the request. And we also find that it meets the purpose and intent of the 2001 Zoning Code and the criteria for decisions found in the municipal code. So the surrounding area is also developed as large lot, REM doesn't detract from that. And so again yet another finding that supports the request.

So your options this evening is to vote "yes" and approve the request. You can vote "no" and deny it. Please provide any findings that staff has not identified and that we have provided those in support of the request. You could vote "yes" with any conditions you feel are appropriate, or you can vote to table. And that concludes staff's presentation. Mr. Chairman, I believe we have the representative for the property owner in attendance. And either he or I can answer any questions you may have.

Guerrero: Perfect. Thank you. Yes, if we could have the representative, the representative is available. Perfect. Come forward. All right before we get started, I believe I do need to swear you in. What's your name.

Magallanez: Aton Magallanez.

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

Magallanez: I do.

Guerrero: All right. Perfect. Go ahead.

Magallanez: Thank you. Yes, so my name is Anton Magallanez. I'm with Moy Surveying and we are representing the owner of the property. Unfortunately, I did recommend that they come today but they were out of town celebrating a birthday. So he said if there's any questions of course, I needed to relay it to him, he'd be happy to answer. We did meet with the, or during our

1 preapplication process prior to the zone change we discussed with staff the
2 opportunity for Urban Ranch, excuse me, EE versus REM. After talking
3 with staff and looking at surrounding properties, we did determine REM was
4 the most applicable given what their intentions were, which is a site built
5 home as mentioned with the permit, along with just alignment with what the
6 lot looks like and what they're wanting to do relative to what also is
7 happening in the surrounding area. I've been through this process before
8 where we're taking a debunked zone designation and putting it into
9 conformance and so I do appreciate the conversion, however, this property
10 with the current owner would have never been able to be allowed to utilize
11 that conversion given the conversion process ended prior to them
12 purchasing the lot. So because now any zone change of course goes
13 through this process, we're at the mercy of just having to get that zone
14 designation change so that he can move forward and of course build his
15 home. They plan to live there.

16
17 When I did survey the property prior to even submitting the zone change, I
18 was actually going to just locate the property corners because there is an
19 easement that runs there. And so they wanted to make sure and build and
20 not obviously encroach in that easement. And it was at that point that they
21 then applied for the building permit, were told, Hey, you can't actually build
22 on it yet because of the zone designation. At that time there was a chain
23 link fence already there along with the wire fence that is on the east
24 boundary of the property. Since then, they have in fact erected via a permit
25 after the fact, with the fence that is in place. And I did talk to the applicant
26 after addressing concerns that the public had had as to what the items were
27 that were on the lot. And they have mobilized some of their equipment to
28 start to erect the house once we get the go ahead with the zone change.
29 They are custom home builders. So their business personally, of course is
30 custom home building. However, they've just mobilized their equipment to
31 in fact be able to build their house once this designation, if this designation
32 is approved. The storage containers are Conex boxes, because the owner
33 currently is selling his house and so his personal belongings are within the
34 storage Conex boxes that are there. So of course the intent would be that
35 all the insides of that Conex box would be of course furnishing the home.
36 And then there were also concerns regarding the RV units, but those are
37 just personal fifth wheels that the owner has. They're not used for
38 construction purposes or anything like that. They're just personal items that
39 they've placed there for the time being. So, you know, given the process
40 and what we have to go through, we're just seeking the REM designation
41 so that we can move forward and let them have the ability to get their permit
42 approved and build their home.

43
44 Guerrero: All right. Well, thank you very much. Do we have any questions from the
45 Commission? No. Seeing none. We'll move to public comment. Do we
46 have any members? And thank you, sorry, thank you so much. Do we have

any members from the public that would like to make a comment on this?
Doesn't look like we do, so in that case let's go ahead and make a vote.

Baum: I need a motion in a second. Please.

Guerrero: My apologies. Sorry,

Bennett: I make a motion to approve 9.1.

Vega: I second.

Guerrero: All right. Excellent.

Baum: Board Member Vega.

Vega: I vote to approve based on staff recommendation and it meets Elevate Las Cruces

Baum: Board Member Smith.

Smith: I vote to approve based on staff recommendation and consistency with purpose intent of the zoning ordinance.

Baum: Board Member Kaiser.

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

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation, this meets neighborhood character and compatibility, as well as Elevate Las Cruces.

Baum: Board Member Acosta.

Acosta: I vote yes based off of staff recommendation.

Baum: Chair Guerrero.

Guerrero: As well vote yes based on staff recommendation and meeting Elevate Las Cruces. All right perfect. The motion passes. Thank you very much.

9.2 3400 Bataan Memorial East Zone Change: A zone change request from A-2 (Agricultural District) to C-3 (Commercial High Intensity) for ± 17.07 acres of property generally located between Rinconada Boulevard (east), Roadrunner Parkway (west), Northrise Drive (south), and Bataan Memorial

1 East (north) in Council District 6. Submitted by John Heck on behalf of Tuff
2 Co. LLC, property owner. (Case # 22ZO0500084)

3
4 Guerrero: Moving on to the next item in our agenda, we have 9.2 which is also a zoning
5 change. Could I get a motion in a second?

6
7 Vega: Make a motion to hear item 9.2.

8
9 Guerrero: Thank you,

10
11 Smith: I second.

12
13 Guerrero: All righty. Thank you.

14
15 Banegas: Mr. Chairman, Members of the Commission. Vincent Banegas again
16 presenting case 22ZO0500084. It is a zone change. Yet another
17 conversion type zone change from A-2 to C-3 involving property located at
18 3400 Bataan Memorial East. Current conditions are as follows, the property
19 is approximately 17.07 acres in size. As indicated it is A-2. A-2 is, or was
20 our agricultural district zoning designation as part of the '81 code. Again,
21 when the 2001 code came into effect A-2 was no longer part of it. So back
22 in the day A-2 was applied to properties that were either agricultural in
23 nature in terms of land use, but quite often it was used as a placeholder
24 when annexations occurred and the property owner did not know exactly
25 what designation they wished to proceed with. Oftentimes the A-2 zone
26 was utilized for kind of a reservation of future considerations for zoning
27 district. So the current zoning of A-2 is defunct. As indicated it is
28 nonconforming and we do need to seek out a conversion to an appropriate
29 designation pursuant to the 2001 code.

30
31 In this case, the property is located in a regional commercial place type that
32 is identified as part of the Elevate Las Cruces Comprehensive Plan. And
33 just to give you a little idea as to the character of that place type, it seeks to
34 allow large retail and professional office type service uses that require a
35 large draw or typically have a large draw in terms of customer base. The
36 property itself is predominantly vacant. There is a single-family dwelling on
37 site built back in 1949. I don't believe it's occupied at the present time. It
38 doesn't look like it is. It looks like there's some maintenance that is needed.
39 So I believe again, most of, clearly the majority of the acreage is vacant,
40 certainly an underutilized parcel.

41
42 So the Highway 70 annexation back in 1967 brought the parcel in. It is
43 outside the Northrise Business Park Development Plan. I believe in your
44 packet I may have misspoke. It is literally one parcel outside the boundary
45 of that business park development plan. I think I said it was within, but I
46 have confirmed it is outside. It is part of the MBSK subdivision and there

1 was a replant that sought to add a little bit of acreage at the apex of the
2 access point along Northrise Drive, and that apex was widened to
3 approximately 70 feet if memory serves. That apex location is right where
4 this cursor is pointing to, that's where the replat came into play. But the
5 subject property is outlined in red here. And you can see that there's a few
6 other A-2 properties immediately west of the subject property and there are
7 certainly several others located south of the property and south of Northrise
8 Drive. You do have other zoning designations in the immediate vicinity,
9 several of which are commercial in nature. You do have some C-3C zoning,
10 you do have some C-2C further north across Bataan Memorial and the
11 highway. And a lot of these PUD designated parcels or zoned parcels have
12 an underlining underlying zoning district for commercial uses. So quite a bit
13 of commercial that certainly ties in and supports the regional commercial
14 place type that's mentioned in Elevate.

15
16 So you do have this aerial showing the property. It is right underneath the
17 word subject where the single-family home currently sits, otherwise it is
18 vacant. You do have an access point off of Bataan Memorial and you will
19 have access point off of Northrise Drive. As it relates to any future
20 development, I'm sure from the perspective Bataan Memorial you will have
21 New Mexico Department of Transportation involved in the review of any
22 permit, as well as City staff of course. But beyond that, a lot of the area
23 surrounding the subject property at least immediately east and west is
24 predominantly vacant as well. You do have some I believe it's Domino's up
25 in this corner of Bataan Memorial and Roadrunner Parkway. You have a
26 large office complex. You do have on the south side of Northrise near the
27 intersection of Northrise and Roadrunner you have some, I believe it's the
28 residential care facility. And further south you do have some multifamily
29 apartments so again uses that are consistent with Elevate.

30
31 So the proposal before us is to rezone the property from A-2 to C-3. C-3
32 being the commercial high intensity zone within our 2001 code. It's certainly
33 a reasonable request given the Elevate Las Cruces place type, the parcel
34 size, and the physical location of the property. No development proposal
35 was identified as part of the application packet for this request, so staff is
36 unaware of what the ultimate intention is in terms of build out.

37
38 So from a reviewing perspective, staff didn't find any considerable issues to
39 be addressed at this point in time. I'm sure we will reserve that for an actual
40 application for development so that we can better review what is requested
41 with development code. So here's a couple of photos, this is looking north
42 from Northrise Drive, single-family home is shown here in the background
43 up on the hill. It is a very somewhat hilly property, change in elevation from
44 the Bataan Memorial side down to Northrise side fairly considerably. This
45 is looking south, again the single-family dwelling here. You can see the
46 access point almost on the far right of the photo. It's a little driveway that

comes from Bataan Memorial into the property, otherwise you have this wall along Bataan Memorial that restricts access. So there are no health, safety, or welfare issues identified by staff. We do find that the requested zoning of C-3 is compatible with the surrounding neighborhood. It's certainly compatible with the regional commercial place type as per Elevate Las Cruces. And we find that several goals, policies, and actions support the request. It speaks to developing vacant land, creating employment opportunities, job housing, balance, and growing businesses etc. Those are some of the key themes of policy that supports the request.

So in terms of public notice, notice was made pursuant to current code. Again early in the month letters were sent out. On this particular case, staff has not received any input to date. Here we are. Staff's recommendation is approval based on the following findings, the property has nonconforming zoning and said zoning needs to be brought into compliance in order to allow further development on site. The C-3 is considered to be the most appropriate zoning designation given the location, surrounding area, roadway access, and lot size. The area certainly seems to be geared towards drawing from a large population base. And so it's consistent with that place type, as mentioned I indicated that several goals and policies supported the request. It meets the purpose and intent of the 2001 Las Cruces Zoning Code as amended. And it meets the criteria for decisions found in the municipal code. So the surrounding area already has a variety of uses and zoning districts that are certainly consistent with that C-3 zoning district.

So your options this evening is the vote "yes" and approve the request, vote "no" and deny, you can vote "yes" with conditions, or vote to table. And I believe, Mr. Chairman, that the property owner and/or representative is in the audience. And so again, either the individual or myself can answer any questions you might have.

Guerrero: Yes, of course. Yes. Do we have the either owner or representative in the audience? Yes sure. Could you come up? Just watch your step there. All right perfect. First of all can we get your first and last name?

Heck: John Heck H-E-C-K.

Guerrero: All righty. Thank you. And do you swear and affirm that the testimony you're about to give is the truth and nothing but the truth until under penalty of law?

Heck: Absolutely. All right. Yes. Go ahead.

Guerrero: Any questions that you would have about the property, I'll be glad to answer.

- 1 Guerrero: Sure. All right. Well, does anybody have any questions for the property?
2 Go ahead, Commissioner.
3
- 4 Acosta: Do you have any idea what you're looking to put there commercially wise
5 or?
6
- 7 Heck: The existing house has been vacant for about seven years and been
8 ransacked by various and assorted different people in and out of the
9 property. It has broken windows, they tore out most of the copper pipe and
10 electrical. I recently replaced the roof on it which was incredibly antiquated
11 with Shake Shingles which are no longer allowed. I'm a general contractor.
12 This is basically what I do is find older properties and fix them up and turn
13 them somehow. I do have a client out of Washington State that's very
14 interested in purchasing this house if I remodel it and bring it up to code,
15 and they're going to use it as an Airbnb.
16
- 17 Acosta: Thank you.
18
- 19 Heck: The rest of the property, I don't know what will happen with it at this point in
20 time.
21
- 22 Guerrero: Thank you. Thank you so much. Does anybody else have any questions?
23 Yes, Commissioner Kaiser.
24
- 25 Kaiser: This is actually a question for staff. I noticed in the staff report, attachment
26 three, the department review comments, it still has under several
27 departments the status as listed as in process. I just haven't seen that
28 before so I'm not sure if there's a significance there.
29
- 30 Banegas: Mr. Chairman, Commissioner Kaiser. When I looked at that, that was
31 indeed the status by a few of the reviewing departments. They were having
32 difficulty locating the property. There was a legal description, or metes and
33 bounds description, and so I provided on the specific location, cleared it up,
34 and they didn't have any issues beyond that.
35
- 36 Guerrero: All righty. Thank you very much. Does anybody else have any questions
37 or comments for either staff or the owner? No. In that case we're going to
38 move on to comments from the public. Would anybody in the public like to
39 speak about this specific case? Does not look like it. So in that case, could
40 I get a motion to approve this case?
41
- 42 Kaiser: I'll make a motion to approve item 9.2.
43
- 44 Smith: I second.
45
- 46 Guerrero: All right.

1
2 Baum: Board Member Vega.
3
4 Vega: I vote to approve based on site visit and it meets the zoning code updates
5
6 Baum: Board Member Smith.
7
8 Smith: I vote yes based on site visit and staff recommendation
9
10 Baum: Board Member Kaiser.
11
12 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
13 Cruces.
14
15 Baum: Board Member Bennett.
16
17 Bennett: I vote to approve based on staff recommendation, this meets to Elevate Las
18 Cruces, and the municipal code.
19
20 Baum: Board Member Acosta.
21
22 Acosta: I vote yes based off staff recommendation and compliance with the Elevate
23 Las Cruces Comprehensive Plan.
24
25 Baum: Chair Guerrero.
26
27 Guerrero: Yes, I vote yes, also based on staff recommendations, site visit, and
28 compliance with Elevate Las Cruces. Perfect. We have a motion that
29 passed. Thank you very much.
30
31 **9.3 2505 Missouri Avenue Zone Change:** A zone change request from C-1
32 (Commercial Low Intensity) to C-2 (Commercial Medium Intensity) for ±
33 0.2673-acre property located at 2505 Missouri Avenue in Council District 3.
34 Submitted by Keifer Payne on behalf of Nathan and Raylen Wilcox, property
35 owner. (22ZO0500094)
36
37 Guerrero: We are going to move on to the next item in the agenda which is item 9.3,
38 which is also a zone change. Could I get a motion from the Commission?
39
40 Kaiser: I'll make a motion to hear item 9.3.
41
42 Vega: I second.
43
44 Guerrero: All right.
45
46 Baum: Board Member Vega.

1
2 Vega: Yes.

3
4 Baum: Board Member Smith.

5
6 Smith: Yes.

7
8 Baum: Board Member Kaiser.

9
10 Kaiser: Yes.

11
12 Baum: Board Member Bennett.

13
14 Bennett: Yes.

15
16 Baum: Board Member Acosta.

17
18 Acosta: Yes.

19
20 Baum: Chair Guerrero.

21
22 Guerrero: Yes.

23
24 Baum: Thank you.

25
26 Guerrero: All right. Perfect. Go ahead.

27
28 Castillo: Good evening Mr. Chair, Commission. My name is John Castillo. I'm with
29 the City of Las Cruces as a planner. Today we're going to be discussing
30 2505 Missouri Avenue. It is a zone change. Currently, the property is 0.264
31 acres and it's located at the corner of Missouri and Don Roser. The address
32 is 2505 Missouri. Through the MPO and Elevate Las Cruces future
33 thoroughfare plans, it's been labeled as a major arterial roadway. Currently
34 it is a built lot. It has an existing commercial building. The property is
35 currently zoned C-1. At this time the property is considered a
36 nonconforming use. This is because with the C-1 zoning the maximum
37 building gross floor area square footage is limited to 2,500 square feet. As
38 the building was built in 1977, it was built at 3,198 square feet. Back in the
39 1981 code, the maximum building gross floor area for the C-1 zoning was
40 3,000 square feet. So today we're just bringing the property into compliance
41 and removing the maximum gross floor.

42
43 Located here is the zoning that shows that it is C-1. Here's an aerial image
44 of the existing property. So today's proposal is going to be to rezone the
45 subject property from C-1 to C-2, which is a commercial medium intensity
46 zoning district. It realigns the existing uses to the current 2001 Las Cruces

1 Zoning Code as amended, and it is also compatible for subject property and
2 neighborhood. This would also eliminate the properties nonconforming
3 uses in regards to the maximum building square footage. It has received
4 approval from all reviewing staff. As you can see here are some images of
5 the building and then looking west and eastbound on Missouri. So there
6 are no health, safety, or welfare issues identified by staff. The C-2 zoning
7 district provides compatibility with existing uses and surrounding
8 neighborhood. The property is located within the Urban Place type as per
9 Elevate Las Cruces. In addition to that, the support would bring long
10 economic growth, and it also realigns the existing zoning districts.

11
12 At the time, notice was sent out to surrounding properties earlier in the
13 month. Staff did receive one phone call that was tied to the Special Use
14 Permit that was also a part of this property. There may have been some
15 confusion at that time because the notice letters tend to look a little bit
16 similar. So staff has recommended approval based on the following
17 findings, that it's located along a principal arterial roadway, we're meeting
18 the high intensity zoning such as the proposed C-2 is encouraged. It will
19 allow for an expansion of existing businesses, increase employment,
20 increase the value of the subject property. Based upon staff's analysis, the
21 proposal and the proposed zone change request meet the intent of Elevate
22 Las Cruces. It's also compatible with the adjacent zoning districts and uses,
23 it also meets the purpose and Intent outlined in Section 38-2 of the Zoning
24 Code and fulfills the Las Cruces Municipal Code Section 2-382. Today your
25 options are to vote "yes" for approval, vote "no" to deny, vote "yes" with
26 conditions, or vote to table.

27
28 Guerrero: All right. Thank you. Do we have anybody representing the property?

29
30 Castillo: We do have the representative here today as well.

31
32 Guerrero: Okay. And would the representative like to come up and speak? You don't
33 have to, but totally up to you. All right, perfect. Then let's move on. Do we
34 have any questions from the Commission? Yes, Commissioner Vega.

35
36 Vega: This is just more of like a clarifying question from staff. So we heard about
37 this I think it was the last meeting or one before. So just for my own
38 knowledge, why weren't we able to, why did we have to go through that first
39 process of getting the permitting for the store and then now adding the
40 space that already existed within it?

41
42 Castillo: So at the time that the applicant came in during one of our preapplication
43 meetings, we did not actually know the square footage of the building. So
44 we were just under the assumption that it was compliant. It wasn't until later
45 on through the Special Use Permit process that we realized the property
46 was nonconforming.

1
2 Vega: Thank you.

3
4 Castillo: And Vincent has more to add to that.

5
6 Banegas: If I may, Mr. Chair, Commissioner Vega. At the time we did have some
7 questions regarding the square footage. The square footage and use for
8 the proposed cannabis retail component was going to meet the C-1 zoning
9 designation. In talking with the property owner or the applicant, they wanted
10 to utilize the whole building. So that's when we started conversations with
11 them to seek a zone change from C-1 to C-2. But my understanding and in
12 communication with the business owner and the applicant is at no time did
13 it become illegal activity in terms of square footage.

14
15 Guerrero: All right. Thank you very much for that. Does anybody else have any
16 questions? Commissioner Kaiser, go ahead.

17
18 Kaiser: So along those lines, if I remember correctly, I believe that previous item
19 before us it was approved based on a condition that they would not exceed
20 I think it was 2,500 square feet. How would this application tonight affect
21 that condition, if I am indeed correct?

22
23 Castillo: Mr. Chair, Commissioner Kaiser. I believe that we would have to look into
24 it a little bit further but I believe it wouldn't make the condition a requirement
25 anymore.

26
27 Kaiser: So this would negate that condition is what you're saying?

28
29 Castillo: Correct.

30
31 Kaiser: Thank you.

32
33 Guerrero: All right. Does anybody else have any more questions? I believe this was
34 the one I missed a couple of months ago. So I don't have any questions
35 either. Do we have any comments from the public at the moment? Seeing
36 that there is no comments. Can I get a motion to approve this case?

37
38 Bennett: I make a motion to approve 9.3.

39
40 Vega: A second.

41
42 Guerrero: All right.

43
44 Baum: Board Member Vega.

- 1 Vega: I vote to approve based on site visit and the zoning change supports
2 economic growth.
3
- 4 Baum: Board Member Smith.
5
- 6 Smith: I vote to approve based on site visit and staff recommendation.
7
- 8 Baum: Board Member Kaiser.
9
- 10 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
11 Cruces
12
- 13 Baum: Board Member Bennett.
14
- 15 Bennett: I vote to approve based on site survey, staff recommendation, as well as
16 meeting the purpose and intent of the code.
17
- 18 Baum: Board Member Acosta.
19
- 20 Acosta: I vote yes to approve based on staff recommendation.
21
- 22 Baum: Chair Guerrero.
23
- 24 Guerrero: I vote yes as well based on staff recommendation and being compliant with
25 Elevate Las Cruces. We have a motion that passed.
26
- 27 **9.4 1534 Santa Thomas Street Special Use Permit:** A Special Use Permit
28 (SUP) for a group child care home not to exceed 12 children on property
29 zoned R-1a (Single-Family Medium Density). The property is 0.144 acres
30 in size and located in Council District 4. Submitted by Roxanna Sanchez,
31 owner of Loving Home Daycare. (Case # 22ZO1000071)
32
- 33 Guerrero: Moving on to the next agenda item. We have 9.4 which is a Special Use
34 Permit. Could I get a motion to hear this case from the Commission?
35
- 36 Vega: Make a motion to approve 9.4.
37
- 38 Smith: I second.
39
- 40 Guerrero: All right. Excellent. Let's take it to a vote.
41
- 42 Baum: Board Member Vega.
43
- 44 Vega: Yes.
45
- 46 Baum: Board Member Smith.

1
2 Smith: Yes.
3
4 Baum: Board Member Kaiser.
5
6 Kaiser: Yes.
7
8 Baum: Board Member Bennett.
9
10 Bennett: Yes.
11
12 Baum: Board Member Acosta.
13
14 Acosta: Yes.
15
16 Baum: Chair Guerrero.
17
18 Guerrero: Yes.
19
20 Baum: Thank you.
21
22 Guerrero: All right. Excellent. Go ahead.
23
24 Banegas: Mr. Chairman, Commissioners. Vincent Banegas, Interim Planner for the
25 record presenting this evening's case regarding 22ZO1000071. It is a
26 Special Use Permit request involving a group childcare home for property
27 located at 1534 Santa Thomas Street. So the current conditions are as
28 follows, the property and property immediately surrounding the subject
29 location is all zoned R-1a, that's our medium density single-family density
30 residential district in our 2001 Zoning Code. The property is located within
31 Legends West North 2 B subdivision. Again, all the property is R-1a within
32 that subdivision. The property is 0.144 acres in size. And it is currently
33 operating a family childcare home, not a group childcare home, on the site,
34 and they've been doing so for approximately two years. Elsewhere they've
35 been operating that as well for a little longer than that. But at present they
36 have five children, they're authorized to have six, and it's the husband and
37 wife who serve as the employees for the operation.
38
39 The property itself has direct access off the Santa Thomas Street. The
40 zoning map is shown here. Santa Thomas is located along this side. The
41 property is outlined in red. And R-1a makes up all of the lots within that
42 subdivision primarily, at least this phase of the subdivision as shown.
43 Across the street on the west side you have, across the property on the
44 west side you have Roadrunner Lane. The City limit boundary, I don't know
45 if you can tell, but there's a dashed line that delineates the City limit
46 boundary. And so anything further west of Roadrunner Lane is in the

1 county, it's outside the City but the zoning designation is identified as D-1
2 and D-2 and those are residential uses. The D-2 I believe allows mobile
3 home to be used as the dwelling. D-2 allows a broader variety of residential
4 uses, anything from site build, manufactured mobile, and in this small corner
5 you have a mobile home park type of zoning.
6

7 So rather antiquated aerial map. I apologize for that because there is quite
8 a bit of development that has taken place, but nonetheless showing the
9 property in question. Two parcels down you have a linkage if you will to a
10 linear park system. And so this property is only developed in accordance
11 with that linkage. Beyond that its residential uses. And again some of the
12 residential uses over here with mobile homes identified throughout. And
13 then in terms of history, the house where the proposed use is to be located
14 was built very recently, in 2019, it meets all the code requirements, both in
15 the Zoning Code and Building Code. It has received its certificate of
16 occupancy. And the applicants have operated as indicated previously a
17 family childcare home since 2017, two years at the present location, and
18 they are licensed by the state. State licensure is required for that use. And
19 just so that you're aware, a family childcare home has a minimum of five
20 children and a maximum of six. A group childcare has beyond six up to 12.
21 And that is exactly what they were proposing to do is convert that family
22 childcare to a group childcare home. They will require of course the
23 licensure not only with the City, but also the state. The state has several
24 requirements that need to be adhered to. And they will be conducting their
25 review much like we are this evening. Ultimately, the use will have to follow
26 all applicable regulations.
27

28 So a couple of photos, this is the front of the property from Santa Thomas
29 Street, it is looking west. And this is the property in question, you can see
30 the gates on either side of the house, at least on this side of the house. This
31 other one's kind of hidden from view. A site plan of the property which was
32 submitted at the time of building permanent consideration, shows that the
33 gates are located or at least they are located more or less in the vicinity
34 here, as well as there. The entire rear yard has a wall of varying heights
35 that's placed on the property line, and that is a good thing because for the
36 safety of the children that will be at this facility there will be outdoor
37 recreation from time to time and that wall and the gates will help with that
38 security.
39

40 The applicant has submitted this aerial photo, you can see this aerial photo
41 much more recent showing many homes in the surrounding properties. But
42 this is the property in question. This was that linkage to a linear park system
43 or path in the area. But they have identified the two car driveway here as a
44 primary drop off and pickup location for the children. They also have three
45 on street auto stalls for drop off and pickup, and then two across the street.
46 Staff, when we reviewed that, we're hoping that those two are used the

1 least, just from a safety perspective we don't want kids running across or
2 getting away from the parents if they're old enough. And so we feel that
3 those along this side of Santa Thomas would be most beneficial for the use
4 under consideration this evening.

5
6 Something further about those parking stalls and drop off/pickup. The
7 applicant has indicated that there will be a three hour window for drop off
8 and a three hour window for pickup. And they're looking to stagger those
9 instances in 30 minute intervals trying to reduce traffic in the surrounding
10 development and to increase safety at least from the context of vehicles and
11 children and parents etc. So staff looked at that as a very good idea to help
12 maintain compatibility with the neighborhood.

13
14 So public notice for this was sent to surrounding properties again early this
15 month. No specific input was received. I did receive a call but they just
16 indicated they would be in attendance. So I'm not quite sure what the issue
17 is regarding that call. But staff has a recommendation and findings of fact
18 for you to consider. We are recommending conditional approval, we'd like
19 for you to consider the condition that reads, the Special Use Permit or SUP
20 approval be contingent upon the group childcare home licensure by the
21 State of New Mexico at the subject location. And that's because both
22 entities have to approve this request in order for it to be a green light, a go,
23 and so it just kind of made sense to me to apply that condition. The findings
24 of fact are as follows the applicant, they have operated a family childcare
25 home since 2017 more or less, and approximately two years at the present
26 location, so they're familiar with the process. And they have been in good
27 standing to the best of staff's knowledge in terms of this use. They're
28 familiar with the state requirements and the operational plans that they've
29 submitted help ensure neighborhood compatibility. The operational plans
30 also help ensure child safety. The State of New Mexico Early Childhood
31 Education and Care Department requires the licensure, so that's another
32 step for consideration for this matter. So there's two sets of eyes, if you will,
33 that will look at this. And childcare has been determined to be a much
34 needed use in and around our neighborhoods. It's in rather short supply if
35 you talk to those who are in need of that type of care. So the subject
36 property is also located in suburban place type, again pursuant to Elevate
37 Las Cruces. So it's consistent with that. Elevate supports the request, it
38 encourages for instance, the creation of small local businesses. It provides
39 economic opportunities for underserved populations. It provides complete
40 neighborhoods by incorporating a wide range of uses in those
41 neighborhoods. It supports home employment opportunities, and increases
42 access, which is specifically identified in Elevate to childcare for single
43 parent households. So for sure, from the Elevate Las Cruces perspective,
44 there's quite a bit of support for the request. It also meets the purpose and
45 intent of the 2001 Las Cruces Zoning Code as amended, and the criteria for
46 decisions found within our municipal code.

1
2 Your options this evening to vote "yes" and approve that request as stated
3 by staff, you can vote "no" and deny it, come up with findings of fact to the
4 contrary of those provided this evening by staff. You can vote "yes" with
5 condition as stipulated, or vote to table. And that concludes staff's
6 presentation. I believe, Miss Roxanna Sanchez, the applicant, is in
7 attendance, or has a representative in attendance that can help answer any
8 questions you may have. And that concludes staff's presentation.
9

10 Guerrero: Thank you so much. Yes, do we have the either applicant or representative
11 that would like to speak? Yes, would you like to speak or do you? All right.
12 No problem. Do we have any questions from the Commission? Yes.
13 Commissioner Smith.
14

15 Smith: Yes, I just have one question. You are going with this floorplan, the current
16 footprint of the home, you're going from you know five or six children to 12.
17 So you're doubling the number of children that are going to be in this
18 residence. Are there any plans to somehow expand this space, whether it's
19 convert the garage, or you know to build anything addition in the future
20 because it seems like a huge increase in number of kids and the current
21 size of this home.
22

23 Banegas: Mr. Chairman, Commissioner Smith. At least from the perspective of data
24 that was submitted as part of the application, it does not appear as if there
25 was any intention to expand the envelope of the home. They are aware
26 that there are certain space requirements for each kid pursuant to state law
27 in terms of the process that will be examined, but there was nothing
28 indicative of the need to expand at this point in time.
29

30 Kaiser: Okay, that was more my question whether there's some type of state
31 requirement as far as space for each child. Thank you.
32

33 Guerrero: Thank you. Commissioner Kaiser you had a question or comment?
34

35 Kaiser: Yes. An observation followed by a question. So in both the staff report and
36 then in your presentation this evening you made the comment about some
37 safety concerns about children crossing Santa Thomas Street from one side
38 to the other. It seems to me that that is City's position that this road is
39 inherently unsafe for pedestrian crossings. And when looking at this image
40 right here it seems like there's a number of opportunities to address
41 pedestrian safety concerns, just simply adding some crosswalks, maybe
42 some curb extensions, or other traffic calming measures to really benefit
43 this type of business, which is sorely needed. And it seems that by making
44 just small improvements like that would go a long way in encouraging
45 people to perhaps walk their children around the corner down the street to
46 this business and eliminate the need to be driving an automobile to begin

1 with. So I guess my question is, is the City considering any of that to support
2 a business like this that's sorely needed in our neighborhoods to allow for
3 alternative modes of transportation?
4

5 Banegas: Mr. Chairman, Commissioner Kaiser. Staff is not aware of, in order to
6 accomplish some of those things first off, such as a crosswalk, etc., the
7 applicant would have to meet with staff and traffic engineering as an
8 example to see if it would be a prudent measure to apply crosswalk
9 markings in this vicinity. But staff did not imply or wasn't the intent of staff
10 to imply that Santa Thomas was a dangerous roadway; it's just a local
11 roadway much like any other local roadway elsewhere in the City in a
12 residential neighborhood. It's just that from the perspective of where those
13 two stalls are the parent and child would have to cross and it's a little
14 deceiving. I think that's a 50 foot roadway, at least right-of-way rather. And
15 so you do have 19 foot wide stalls that are marked out there. So the idea
16 was just to limit the use of those two stalls so that it increases safety. I think
17 with the interval for pickup and drop off that was being proposed by the
18 applicant and the use of stalls one through five, much of any safety concern
19 that staff had regarding the use of the two stalls, six and seven, would
20 greatly be reduced. And again, in terms of any other street treatments, that
21 kind of thing to help facilitate the use, no discussions have been made at
22 this point in time with the applicable departments.
23

24 Kaiser: Thank you for that. And I'll just say I, myself live on a street very similar to
25 this and people fly, absolutely fly through the neighborhood, because
26 there's no reason for them not to slow down. So I guess my ask would be
27 of staff, should the applicant and other neighbors raise this as a potential
28 safety concern. That you work with them and the appropriate departments
29 to find some reasonable accommodations to slow traffic. Thank you.
30

31 Guerrero: Thank you. Yes, does anybody else have any questions or comments? I
32 have just a question, and it's just a general question. It's not at all the
33 individual applicants. But so if we do it with the condition of them getting
34 the different licensure from the state, what is the follow up process that the
35 City does? Do you guys actually go and make sure that they got that before
36 they move on to their operation? Do they have to come back to the City, or
37 how does that usually work?
38

39 Banegas: So Mr. Chairman, Members of the Commission. The process is to come
40 here first for a Special Use Permit approval. If they get that they'll be
41 working with the state to get their approval. But there's an added step from
42 the City's perspective, they'll have to get a home occupation permit to
43 actually conduct the business as indicated in this packet. And so there's an
44 added measure that needs to take place, and it'll be at that time that staff
45 will do the necessary inspections to make sure the ingress/egress to the

1 home and all other measures are in place in accordance to City rules and
2 regulations, and the state I'm sure we'll do the same from their perspective.

3
4 Guerrero: All right. Thank you. Yes. ...

5
6 Nichols: Mr. Chairman. If I may.

7
8 Guerrero: Yes, go ahead.

9
10 Nichols: Just as Vince has mentioned about the home occupation, but this business
11 once it's converted from family to group will require a business registration.
12 When a business application is put in for that, then the building department
13 inspector and the fire department inspects these facilities to enable them to
14 issue that business registration. So there will be a review of the premises
15 and the facility at the time of business registration issuance.

16
17 Guerrero: Excellent. Thank you. Yes and I mean I'm sure the owners are going to
18 make sure that everything gets done appropriately. But yes, I was just you
19 know I've always been curious about that. Well, we will move on to
20 questions from the public or comments from the public. Do we have
21 anybody that would like to speak on this specific case? Seeing none. Could
22 I get a motion to approve this case?

23
24 Bennett: I make a motion to approve 9.4 with conditions stipulated in the report.

25
26 Vega: I second.

27
28 Guerrero: All right. Thank you.

29
30 Baum: Board Member Vega.

31
32 Vega: I vote to approve with conditions outlined by staff including obtaining the
33 state licensure, and also based on staff recommendation.

34
35 Baum: Board Member Smith.

36
37 Smith: I vote yes to approve with conditions based on staff recommendation

38
39 Baum: Board Member Kaiser.

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

43
44 Baum: Board Member Bennett.

45

1 Bennett: I vote to approve based on staff recommendation, Elevate Las Cruces and
2 the need in the community.
3
4 Baum: Board Member Acosta
5
6 Acosta: I vote to approve based on staff recommendation.
7
8 Baum: Chair Guerrero.
9
10 Guerrero: I as well vote to approve with the conditions by staff based on staff
11 recommendation, and of course the need for more services like this in the
12 community. And the motion passes. Thank you very much.
13
14 **9.5 801 E. Farney Lane Variance:** A 7' height variance to the maximum 35'
15 height allowed and a 1 dwelling unit variance to the maximum 79 dwelling
16 units allowed for property currently zoned R-3/C-3C (Multi-Dwelling Medium
17 Density/Commercial High Intensity – Conditional) and proposed to be
18 rezoned through separate action to R-3 (MultiDwelling Medium Density). It
19 is the proposed zoning to which this variance pertains. The property is ±
20 3.98 acres in size and located in Council District 2. Submitted by Tierra
21 West LLC, on behalf of Thomas Development. (Case # 22VO0500089)
22
23 Guerrero: So we're moving on to the next one. We have case 9.5 which is a variance.
24 Could I get a motion to hear this case?
25
26 Vega: I make a motion to approve 9.5.
27
28 Smith: I second.
29
30 Guerrero: All right. Perfect.
31
32 Baum: She made a motion to approve this case. Are you just making a motion to
33 hear this case?
34
35 Guerrero: Sorry. Yes. Yes. It would be to hear this case.
36
37 Baum: Okay.
38
39 Guerrero: Does she need to repeat it or?
40
41 Vega: Sorry about that. I'll make a motion to hear case 9.5.
42
43 Baum: Thank you, just in case keep us safe and legal.
44
45 Baum: Board Member Vega.
46

1 Vega: Yes.
2
3 Baum: Board Member Smith
4
5 Smith: Yes.
6
7 Baum: Board Member Kaiser.
8
9 Kaiser: Yes.
10
11 Baum: Board Member Bennett.
12
13 Bennett: Yes.
14
15 Baum: Board Member Acosta.
16
17 Acosta: Yes.
18
19 Baum: Chair Guerrero.
20
21 Guerrero: Yes.
22
23 Baum: Thank you.
24
25 Guerrero: Thank you. Go ahead.
26
27 Banegas: Mr. Chairman, Members of the commission. My final case anyway, Vincent
28 Banegas, Interim Planner for the record. My final case involves a couple of
29 variances for property located at 801 East Farney Lane. It is case
30 22VO0500089. Current conditions regarding the property, the property is
31 3.98 acres. It is property you have seen. There was a rezoning request
32 that came forward, gosh, I want to say a couple of months ago, it all blurs
33 together. But at that time the property size was listed a little greater than
34 the 3.98. I did mention that there was some effort to clarify that and we
35 have and it is shown correctly on this slide at 3.98 acres. It is an
36 underutilized parcel that is presently pancake zone. It has R-3 and C-3
37 conditional zoning on it. R-3 being our multidwelling medium density
38 designation. And our C-3 is commercial high intensity zoning district. The
39 conditions that were attached to it at the time of zoning back in the day,
40 talked to residential caps, talked to restrictions on commercial uses and
41 hours of operation for those commercial uses, and liquor sales. So when
42 the applicant came forward those few months ago with a zoning change
43 request, they were seeking to rezone from the R-3/C-3C designation to
44 straight R-3. And it is the straight R-3 zoning designation to which these
45 variances will speak.
46

1 The conditions that I identified are found in ordinance 2767. And just
2 wanted to let you know that the case was originally intended to go before
3 City Council at an earlier day, but there was a provision I believe in the
4 purchase agreement that required the consideration by Council to be moved
5 back. And so it is anticipated that October 3rd, first meeting in October,
6 would be the designated date for hopefully approval of that zone change
7 request.

8
9 But this evening as part of the next step for development processes
10 regarding this property, the variances are under consideration. And the
11 property if you recall was identified as part of the urban neighborhood place
12 type, and urban neighborhood kind of elevates the residential component
13 from low to moderate, to moderate to high residential densities, again with
14 intermixed commercial uses within that place type. It's also subject to the
15 EL Paseo Corridor Community Blueprint, as was stated previously for the
16 earlier case. And the applicant's request facilitates development of a
17 proposed senior apartment complex. The again looking at it from the R-3
18 lens, the existing R-3 zoning allows the property to be developed with a
19 density of 20 dwelling units per acre. If you do the math using that 3.98
20 acreage, it comes to just under 80, and so 79 dwelling units would be
21 authorized. It also restricts the maximum height to 35 feet and it was the
22 developers applicant's intention to have 80 units total and up to 42 feet in
23 building height.

24
25 So this is the zoning map of the subject property, it's outlined in red, still
26 showing that pancake designation which again if Council approves the
27 request as recommended by this body to them, it will receive an R-3
28 designation. You do have R-3 immediately east and further north of the
29 subject property. C-3 is directly north of the subject property. That's where
30 a church is located. I believe they have daycare facilities as well. You have
31 commercial zoning C-2 designated further east of the R-3. The R-3 is a
32 park. And then you get into your R-1a. Your R-3 underlying PUD zoning
33 sits here, that is a residential development, it's south of Farney Lane. And
34 then further west along El Paseo you have a residential development
35 following the R-1a standards and Las Cruces High School above that.

36
37 Again, an aerial showing the property outlined. You do see a single-family
38 home more or less at the south, or I should say at the northeast corner of
39 the intersection of El Paseo Road and Farney Lane. That is proposed for
40 demolition when development ultimately begins for the subject property
41 pending approval, of course.

42
43 So the proposal this evening again, I mentioned involves two variances.
44 One is a seven foot variance to the maximum 35 foot height allowed
45 pursuant to the R-3 district, 42 feet as the ultimate build out that they're
46 looking at, and one dwelling unit variance to the maximum 79 dwelling units

1 allowed in the R-3 zoning district for this property. Again, they want to go
2 to 80. So the variances, if approved, facilitate the development of a senior
3 apartment complex. And it is stated in their proposal that the layout, the
4 design of the facility etc, has taken into consideration the ability to go to 80
5 units and 42 feet ultimate height. So, in terms of the height not all of the
6 building that is been proposed, at least the main building being proposed,
7 would take advantage of the full seven foot exceedance. There will be at
8 least, I'll be showing you a site plan that shows a wing shaped building and
9 it is the wings that will go beyond the 35 foot by three feet. Only 8.5% of
10 the building in its entirety, which consists of the common area, will extend
11 four feet further up to seven feet exceedance. So adding the height, it was
12 identified by the applicant, will help conceal some of the rooftop building
13 equipment which we always try to do, we've got that written into our urban
14 design section of the current zoning code. So that's a good thing. The
15 applicant also conducted some site, I called it height studies, but they're
16 sightline studies, to consider minimizing the intrusive views that may be
17 realized from one development onto another. And they've taken the time to
18 look at that. And I think the applicant's representative can speak to that
19 when appropriate. But they've taken the measure to try to mitigate any
20 concerns regarding the height. And I think they found some substantial
21 support for what they were originally requested. So there was some
22 property right-of-way takes for adjacent roadway improvements, I think
23 some of the sidewalks that were improved and the road widths that were
24 widened on some of the roadways, Farney and the West Park Drive, for
25 instance, there was a need for right-of-way and so right-of-way tacks did
26 occur. And so from a physical hardship that decrease in acreage certainly
27 had an impact on the 80 unit count that they would otherwise want to do.
28 And so that was one of the considerations for the proposal, at least from the
29 staff's perspective.

30
31 The applicant also held an early notification meeting with the surrounding
32 properties back in January of this year, actually. And they've been in
33 contact with them since. And I believe the support is still unwavering.
34 There's still a lot of support for the proposal. And part of the reason is that
35 some of the other zoning considerations in terms of existing zoning were
36 not considered very favorable by the neighborhood. So this is a site plan
37 that staff has kind of worked with the applicant on. If you recall, the area
38 along here was garage lined buildings, I'm sure the applicant's
39 representative can speak to some of the options they've considered based
40 on staff meeting and discussion. But they are now locating the duplex units
41 closer to El Paseo Road and having them front at least that roadway and
42 bringing the development closer to said roadway. The garage units or
43 structures are being dispersed throughout the site. And this is that winged
44 main building that I mentioned. And of course landscaping. This is still what
45 I would consider conceptual, there's been no building permit submitted so

1 it's subject to some tweaks. So we'll have to wait and see what ultimately
2 comes forward for staff consideration.
3

4 So this is that winged building, three floor structure. Looking at the top floor
5 you have the three foot bust in terms of maximum height located along each
6 wing. And then this common area is where the seven foot bust would take
7 place. So again, a small percentage of the whole exceeding the 35 foot
8 mark by seven feet. Just a little elevation. So part of the applicant's
9 justification in their letter, they talked about economic financial hardship.
10 And the variances obviously they pointed out helped them achieve the
11 ultimate build out that they've been looking at. And they feel that it remains
12 sensitive to the surrounding neighborhood. It remains sensitive to the
13 blueprint in the Comprehensive Plan. The applicant has as indicated held
14 those early notification meetings with the surrounding property owners. And
15 when they did so, it was with the full intent of going 80 units and 42 feet in
16 height. So it's not been a recent change, this has been an issue that they've
17 carried forward all along. A couple of photos showing the property, house
18 is subject to demolition. This is kind of at the intersection of El Paseo and
19 Farney Lane. This shot is taken looking kind of west-northwest. This is the
20 West Park Drive and Farney Lane is right in there. And again a different
21 angle looking north-northwest, I believe that's Las Cruces High School
22 schools, at least part of it back in here.
23

24 So in our analysis, we found no health, safety, or welfare issues identified
25 within the proposal and the proposed variances we felt do indeed allow the
26 development as originally proposed. It is within the urban pace type and is
27 consistent with that place type and the EL Paseo Corridor from a use
28 perspective. And so we feel that the comp plan does encourage and
29 support the request. It does provide for mixed use medium to high density
30 residential densities along that corridor. It seeks to achieve attainable
31 housing. It certainly provides an added element of variety in terms of
32 housing styles. And in terms of the blueprint, again higher density is
33 encouraged along the corridor, etc. There is some streetscape design that
34 they tried to improve upon with the change out of some of the structures on
35 site. So generally speaking from a use perspective at minimum, we feel
36 that it's compliant with those planning documents.
37

38 The case was noticed as per code earlier in the month. And that early
39 notification took place in January. Staff has not received any recent input
40 from the neighborhood regarding this issue. So staff has the following
41 recommendation and findings, we're asking for conditional approval
42 consideration. And the condition would read that approval of the variances
43 shall be contingent upon the approval of pending zone change to R-3. And
44 that again is set before City Council on the coming months. So the issue
45 there is basically if that R-3 doesn't get approved then the variance is a
46 moot point. And so that's why we're asking for them to be tied together and

1 in context to a condition. So the findings are that the property is
2 underutilized and is 3.98 acres in size. Currently has that pancake zoning
3 but a rezoning request has been proposed. The variances do speak to the
4 R-3 standards as indicated. All along the applicant has considered 80 units
5 and the 42 foot height design. There has been no concerns cited during
6 any discussions regarding height and density. The applicant's desire to
7 proceed with their proposal requires the variances as identified in this
8 presentation. Also property falls within the infill area in that it's underutilized.
9 There is always policy to seek the conversion of property that is inactive to
10 active status. And the subject parcel is subject to and staff feels compliant
11 with the bulk of El Paseo Corridor Community Blueprint. The property is
12 also within that urban neighborhood place type. And there's consistency
13 with that characterization for that place type. So all three criteria of the
14 variances in some form or fashion are met, staff feels they're met. The
15 acreage reduction, for instance, speaks to a physical hardship. With that
16 acreage in place they wouldn't have had to ask for the one dwelling unit
17 variance. It also speaks to the project spurring considerable economic
18 development both at the neighborhood and citywide level for the project.
19 Certainly shorter term and longer term, it's a benefit to the neighborhood
20 and some of the commercial uses within that area. And of course monetary
21 considerations can't be specifically looked at, but if it drastically impacts the
22 project we can consider those and I think the applicant has discussed that
23 in their justification. They need these considerations to move forward with
24 their project. Several goals, policies, and actions within the Comprehensive
25 Plan support the request, as does the purpose and intent of the Zoning
26 Code and the criteria for decisions of the municipal code.

27
28 So your options this evening is vote "yes" and approve the request, you can
29 deny it and provide findings to the contrary of what staff's presented, you
30 could vote "yes" with the condition staff has proposed or any additional that
31 you may feel prudent to apply. And you can also vote to table the request.
32 And this concludes staff's presentation. I know Mr. Ron Bohannon is in the
33 audience from Tierra West, representative for this case. Between us we
34 can answer any question you may have.

35
36 Guerrero: Perfect. Thank you very much. Would you like to come up and speak? All
37 right before I have you speak I would need to swear you in. Could we have
38 your first and last name please?

39
40 Bohannon: Ronald Bohannon. As in Boy-O-H-A-N-N-A-N

41
42 Guerrero: Thank you for the clarification. And do you swear and affirm that the
43 testimony you're about to give is the truth and nothing but the truth under
44 penalty of law?

45
46 Bohannon: I do.

1
2 Guerrero: All right. Perfect. Looks like you have a presentation. So looking forward
3 to it.

4
5 Bohannan: Thank you. I'm actually going to abbreviate this quite a bit. Vincent did a
6 fantastic job. We've been very pleased. First of all I want to say that Tom
7 Mantrac was going to be here. He appeared before you guys on the zoning
8 case. He had a family issue and so he could not get here from Boise, Idaho.
9 And just to remind you that this individual has been doing affordable housing
10 for decades, retains his ownership, and this is going to be a very good asset
11 for the City of Las Cruces. And just to give you some numbers a one
12 bedroom unit to qualify it will be as low as \$12,800 of income per year, and
13 a two bedroom will go to \$14,600, so very low thresholds. So it really
14 represents affordable housing for seniors, which is in dire need for the City.
15 I think the primary one, the one unit is a pretty easy one to do. I mean we
16 looked really hard to try to find two hundredths of a square foot so we
17 wouldn't have to come in and ask for the one unit variance but we just
18 couldn't get there. So we're asking for the one unit. And there was several
19 right-of-way takes as Vincent has pointed out.

20
21 The height variance, that's a little one for people to understand, is when you
22 go from floor to floor on a multistory building, what you have is you have a
23 lot of different mechanical equipment and other areas and you want to have
24 adequate heights inside your units. And so what that does is it builds up
25 that need and so what we've done is we've actually set that to the bare
26 minimum that we've gotten which is 42 feet for predominantly most of the of
27 the building. And then in the middle of the corridor is where our elevator
28 shafts are, and so what we need there is to bump it up for two reasons; one
29 is, nice to have a little bit of architectural articulation and relief on that area,
30 but also to hide those elevator shafts as well. So we worked with the Fire
31 Department, we're going to have two full service elevator shafts in there as
32 well through that.

33
34 I'll be happy to go through the site plan with the Commission. I know there
35 was a lot of questions at zoning. We've made quite a bit, and I think let me
36 just do one real quick. And I can. Oops, go back. How do I go back?
37 Thank you. So what we did along EL Paseo was in the site plan we
38 reoriented the site and we really worked at it really hard. We pulled a lot of
39 different elements on it. And so what we wanted to do was create that
40 streetscape that engaged El Paseo, and we actually looked at the school,
41 which is north of there and we looked at how their walkway was in front of
42 it. And so we really actually have mimicked that area. And so what we did
43 is we took the three units and we built those, we pulled those up against El
44 Paseo, and then what we did is we created an entrance off of El Paseo so
45 that the residents, once you have transit on El Paseo, can use utilize that
46 that area.

1
2 So what you're looking at is you have these three buildings here. And then
3 we've really articulated this entrance right through here. And we plan on
4 bringing that articulated entrance all the way to the front as well as
5 enhancing this as a tenant only entrance through this area. With that, we'll
6 be happy to go through if there's any questions from the Commission, on all
7 of the site variances, site orientations, but we tried to really look at how to
8 take this and engage the street and we think we've done that. If we looked
9 at other options, what that ended up doing was it put our units looking down
10 into the neighbor's backyards. And so we really felt this was the best use
11 and best orientation for that project. So with that, Mr. Chair, I'll be happy to
12 answer any questions that the Commission might have.
13

14 Guerrero: Absolutely. Thank you. Do we have any questions from the Commission?
15

16 Bennett: I don't have a question. But I just want to give my appreciation for this
17 project. I think it's great. And I'm glad that you tried to reduce the amount
18 of added height in the project. So thank you for that.
19

20 Guerrero: Thank you, anybody else? Commissioner Smith,
21

22 Smith: I just have a question for staff. That's more of a zoning change education
23 for me. Initially, back in April when we approved this project to move forward
24 it was zoned R-3 and then commercial. So they're still going forward as a
25 residential. So why was the need to eliminate the commercial aspect of it?
26

27 Banegas: So Mr. Chairman, Commissioner Smith. So the applicant, keep in mind that
28 with the existing zoning that's still in play, the packet that is seeking to
29 change it from R-3/C-3C, to R-3 only is still going to forward, it just looked
30 at the zoning aspect. There was no variance consideration as part of that.
31 So the primary reason the applicant requested that zoning designation was
32 a couple of things, with R-3 zoning they could accomplish what they wanted
33 to do. And another thing with those conditions that were in place with the
34 R-3/C-3C designation, there was substantial restrictions on the density.
35 Yes, 60 units if I recall correctly. That's correct.
36

37 Smith: So basically that allowed them to increase the number of units.
38

39 Banegas: Yes, if they go via the zone change and get rid of those conditions they can
40 go with what the R-3 allows and they're just shy one unit, so that's the
41 variance.
42

43 Smith: All right. Thanks for that clarification. Appreciate it.
44

45 Guerrero: Yes, absolutely. I don't have any questions. But you know just want to echo
46 you know it's very needed to have this kind of property and housing in Las

1 Cruces. So thank you very much. Do we have any questions or comments
2 from the public? It looks like none. I'm so sorry. Yes. Are you both coming
3 up at the same time or one? Okay, perfect. Yes. Come on up then. Just
4 watch your step there. Yes. All righty. Well, I need to swear you in. Could
5 I get your first and your last name, please?
6

7 J. Jaquess: Yes. My name is Joel Jaquess.
8

9 Guerrero: Okay. And do you swear and affirm that the testimony you're about to give
10 us the truth and nothing but the truth under penalty of law?
11

12 J. Jaquess: Yes.
13

14 Guerrero: All righty. Go ahead. You have three minutes I believe.
15

16 J. Jaquess: Okay. All right. My name is Joel Jaquess. And I'm a resident of the
17 subdivision directly south of the subject property, the Heritage Farm
18 subdivision. And my main concern is the added traffic. I know that I've
19 been to almost every meeting that we've been invited to. And the developer
20 assures us that the type of resident in this building, they're not big drivers.
21 You said there won't be a problem with traffic. But it's hard for me to believe
22 with the density that they're wanting, that's going to be a lot of people, but
23 we can't control the traffic.
24

25 Well anyways my main concern is sometimes we leave my house at about
26 nine o'clock in the morning and go down West Park because I work not too
27 far away, but anyways traffic is a mess. There's kids all over the place. Of
28 course, in the summer when there's not school it's not bad. But it's pretty
29 bad at nine o'clock, when they're going to and from class. And as far as the
30 building height, I used to be a framer, and we built a garage for a client and
31 it was, well we started building a garage, and it was one foot taller than the
32 35 foot maximum. We had to change the whole roof to get it to work. So I
33 understand that the codes are there for a reason, that variance, the heights,
34 protecting people's views, making the City consistent, uniform. And I just
35 have a problem with the density and blocking the view of the people that
36 live across the street.
37

38 Guerrero: All right.
39

40 J. Jaquess: Thank you.
41

42 Guerrero: Well thank you. Thank you so much. Well, before we, sorry, you also had
43 a comment. All right. Yes, I would need to swear you in first, if you wouldn't
44 mind. Your first and last name, please?
45

46 A. Jaquess: Ann Jaquess.

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

5 A. Jaquess: Yes.
6

7 Guerrero: All right. Go ahead. And you have three minutes.
8

9 A. Jaquess: I. you know, we come out at about 8:40-ish and so not just on West Park.
10 But ...
11

12 Baum: Could you please move closer to the microphone.
13

14 A. Jaquess: You bet.
15

16 Baum: Thank you.
17

18 A. Jaquess: You're welcome. But also on Farney itself a lot of the parents are coming
19 from El Paseo onto Farney or even from the other direction, then going
20 down West Park to drop off. So and you also get the same thing in the
21 afternoons. And then, so I know on the other side of El Paseo on Farney,
22 they have some speed bumps to help slow. They have two of them, and
23 they also have the little thing that flashes at you if you are driving faster than
24 25. And because that is a really, people get on there and they go much
25 more quickly than 25. So that is a big concern. And even four months ago
26 our neighbor George, who's right up there, his back part of his fence was
27 ran into buy a car from a high school student that came off of West Park,
28 had been stopped, lost control and broke down his block wall. So it's
29 something that I really am hoping the City will look into to make sure that
30 that's really going to be safe. And then during soccer season, West Park
31 you have all the parents and the kids parking there to watch the soccer and
32 all that stuff. So parking and just car traffic, it's something I'm hoping that
33 they look at seriously. Okay.
34

35 Guerrero: Yes. Thank you. Thank you so much. Really, really appreciate those
36 comments.
37

38 A. Jaquess: You bet.
39

40 Guerrero: Yes. Thank you. And be careful walking back up. Do we have any I guess
41 anybody else? Yes. Please come up front.
42

43 I don't know why I'm doing this but ...
44

45 Guerrero: No problem. If I could get your first and last name, please.
46

1 McNamee: My name is Elizabeth McNamee.

2
3 Guerrero: All right. And do you swear and affirm that the testimony you're about to
4 give is the truth and nothing but the truth under penalty of law?

5
6 McNamee: Yes.

7
8 Guerrero: All right, perfect. You have three minutes as well. Thank you.

9
10 McNamee: Okay. Hi, I live on Crescent drive right in the curve. So this whole thing is
11 going to block my whole vision of the mountains. And I'm concerned about
12 what that's going to do to my property. The mountain, you know my property
13 is worth and everything. And it just seems to have gotten bigger. And I'm
14 just scared. I don't know what this is going to do to my life you know. And
15 I just wanted everyone to know. I haven't been able to get to any of the
16 meetings because I have a hard time getting around sometimes. But I don't
17 know. It's right in my line of vision, right up to the mountains from my
18 backyard. And as the height of this thing, if it was two stories maybe it could
19 have gotten by but three stories, it's going to be crazy. And I'm not so
20 worried about the traffic as much, but I am worried about you know what it's
21 going to do to my property. Anyway, my two cents.

22
23 Guerrero: Thank you. Thank you very much. And we're glad you could make it. I
24 think we have one more person wanted to speak. Just please watch your
25 step.

26
27 H-Rogers: Mr. Chair. I do want to point out that there is a ramp for those people that
28 are more comfortable traveling down a ramp than stairs. Just for the future.

29
30 Guerrero: Thank you. Yes. Thank you. Yes, I'm just always concerned that nobody
31 falls and hurts themselves. All right thank you for coming up. Could we get
32 your first and last name, please?

33
34 I'm sorry.

35
36 Guerrero: Could we get your first and your last name?

37
38 Pintar: My first name is George and my last name is Pintar, spelled P-I-N-T-A-R.

39
40 Guerrero: Okay. And do you swear and affirm that the testimony you're about to give
41 is the truth and nothing but the truth under penalty of law?

42
43 Pintar: Yes, I do.

44
45 Guerrero: All right. Go ahead. You have three minutes as well.

46

1 Pintar: I'm not so concerned about the traffic. I'm not concerned about the heights
2 of the building. But I am concerned about the definition of the senior
3 complex. I would like to have a definition of what meant by the senior
4 complex.
5
6 Guerrero: Okay, thank you. Yes. Do we have maybe the applicant would like to
7 answer maybe what the age range or you know, definition of the residents
8 would be?
9
10 Pintar: Is there an age limit?
11
12 Guerrero: Yes. What would the age limit be?
13
14 Bohannan: So, Mr. Chair. There is an age limit. I believe it's over 55. So anybody
15 under 55 can't live at that. It's age restricted.
16
17 Guerrero: Okay perfect. So over 55 years old.
18
19 Pintar; I'm sorry.
20
21 Guerrero: Over 55.
22
23 Pintar: And will it be, would there be a sliding scale in regard to financial?
24
25 Bohannan: Mr. Chair. Yes, I believe there. I gave you the very lowest limits, but there
26 is a sliding scale based on income.
27
28 Guerrero: Okay.
29
30 Pintar; In early discussions with the people who live in Heritage Farms, it was our
31 understanding that the price was going to be about \$1,260 per unit.
32
33 Bohannan: Mr. Chair. Right now we're looking at a one bedroom unit of between \$343
34 to \$649 per unit, and a two bedroom unit from \$411 to \$823 per unit. That's
35 with all of the price increases that we've had because of the pandemic and
36 supply change. But that's where we're at right now.
37
38 Guerrero: Yes. Thank you.
39
40 Bohannan: Still very, very affordable.
41
42 Guerrero: Yes, no, absolutely. Thank you. Yes, thank you. Did you have any more
43 questions, sir?
44

- 1 Pintar Not yet. One of the real concerns though is in relationship to not allowing
2 the age limit, financial limit, but also, how long will that, all of these items be
3 in place? Is there going to be any kind of time limit?
4
- 5 Bohannan: Mr. Chair. Thomas Development has, and I don't know exactly how many
6 they have, but they keep these for over 15 years. It's part of the conditions
7 of approval for affordability that they have to commit. And I want to say it's
8 at least a 15 year timeframe. But I, would need to verify that, but I'm pretty
9 sure it's a 15 year timeframe.
10
- 11 Guerrero: All right. Thank you.
12
- 13 Pintar: May I have one more minute?
14
- 15 Guerrero: Yes, go ahead.
16
- 17 Pintar: Okay, we had some people come through our subdivision concerned about
18 our property value. And is there any kind of history research and so forth,
19 that shows that the property values surrounding one of these senior
20 complex is deteriorated or lessened?
21
- 22 Bohannan: Mr. Chair. I was going to dress this anyway. Property values are set by like
23 properties. I've been in doing development, engineering and development
24 and management for well over four decades. So what you don't have is,
25 you can't have a change in value because of a project. It can affect it, but
26 it doesn't usually affect it negatively. So when you have an appraisal done
27 on a property, they won't look at it and say, oh because you're living next to
28 this property it's decreased. They we'll look at like properties around that
29 area to value those areas. So they look at the areas through that area. And
30 that's a very common question. The Thomas Development, like I said, they
31 kept these properties well over 15 years. They're professionally managed.
32 Tom Mantrac comes with his wife many, many times through the year and
33 they really are engaged in their properties. And so this is going to be a very
34 good piece of property that I don't see that affecting land values. And I just
35 might as well finish.
36
- 37 Guerrero: Sure.
38
- 39 Bohannan: From a traffic standpoint, we offset this entrances to the subdivision to the
40 south. At the time Hector Terrazas was the Traffic Engineer with the City
41 of Las Cruces. We set this at this area, these are gated. There is a parking
42 problem along the park that's created by the high school. I don't know how
43 to get around that. It's nothing that we're going to be creating. The residents
44 over time really stopped driving, and so really they do not have a need for
45 doing a lot of trips through this area. So they're going to be off peak hours
46 as well. So the traffic on this area is diminished versus a regular for market

1 rent, or definitely for commercial area that the traffic is substantially
2 reduced. I'm a registered professional engineer and we do traffic studies.
3 We do that for a living and so that's my testimony as a professional engineer
4 as well.

5
6 From the view heights, we're also, we've got about a three to four foot drop
7 from El Paseo down. The height on this is 35 feet anyway, so even if we
8 weren't there, 35 feet up, going to be up there. It is what it is.

9
10 Guerrero: Yes. Thank you. Yes, and I mean I completely agree, there's little you can
11 do as far as like the high school, NMSU is right around the corner. I mean
12 it is a high trafficked area. You know we can just hope that this doesn't
13 make it too much more traffic.

14
15 Bohannan: It is gated as well.

16
17 Guerrero: Oh, that's good. Do we have any more comments of the Commission before
18 we go into a vote? Commissioner Smith, or whoever wants to go first?
19 Okay, Commissioner Kaiser go first.

20
21 Kaiser: Yes, a couple of questions. One, I think would address some of the traffic
22 concerns that were raised a little bit earlier. The City recently passed the
23 Complete Streets ordinance which is designed to improve traffic safety for
24 all roadway users, reduce speeds through traffic design. So my question to
25 staff is any street improvements, how would that ordinance affect this
26 project?

27
28 Banegas: Mr. Chairman, Commissioner Kaiser. In terms of specific street
29 improvements for this project regarding this variance, there is no anticipated
30 change that has been identified at this point in time. Again, they have not
31 submitted for any building permit for the project yet. They're getting not only
32 the zoning but the variance issue resolved. So staff does not anticipate any
33 change to the right-of-way as part of this development project. So that's
34 what I have for you.

35
36 Kaiser: Okay, I appreciate that. Because you mentioned earlier that there were
37 some right-of-way easements that were in your words "take" that would
38 accommodate you know, improvements that this development would
39 require. So would they not then be required to follow that Complete Streets
40 ordinance in this scenario?

41
42 Banegas: Mr. Chairman, Commissioner Kaiser. In reference to the right-of-way takes
43 that took place in the past, those were for some of the improvements along
44 Farney Lane that have been made. And any improvements primarily for
45 sidewalk, that kind of thing along Wes Park Drive as well. So you'll notice
46 in some of those photos the roadways look in pretty good shape. And that's

1 because there was an effort to improve those roadways, and they needed
2 some of that right-of-way or land for right-of-way acquisition in order to
3 accommodate those changes. But nothing is being set in motion in terms
4 of that specific ordinance.
5

6 Kaiser: Okay, I understand. So the improvements have already been installed.
7

8 Banegas: Correct.
9

10 Kaiser: Got you. My other question is about the streetscape, particularly along EL
11 Paseo Road. I'm not sure I agree with the notion that El Paseo Road has
12 been activated from a streetscape perspective, given the fact that you
13 basically would be walking right up against a compound wall. You have no
14 building facades on El Paseo. So, in my opinion that's not, you're not
15 activating anything. I do appreciate the location or the revised location of
16 the garages to more interior part and having the duplex there. But at the
17 end of the day this thing is an enclosed compound. So I'm not sure I agree
18 with that sentiment.
19

20 And then I also noticed or it appears that the landscaping along EL Paseo
21 would be almost entirely inside the compound wall. And so my question
22 would be, if that's true why wouldn't we want to accommodate some of that
23 landscaping either between the sidewalk and this wall or El Paseo the
24 sidewalk and the wall? I think if you were able to do that you could probably
25 make a slightly better argument that you're activating that streetscape. But
26 I think right now I just don't see how you can say that.
27

28 Bohannan: Mr. Chair, Commissioner Kaiser. We actually did two things, one is we
29 mimicked exactly what was happening at the Las Cruces High School.
30 There are no landscaping, it's all hardscape that's in front of their buildings.
31 It's all walled off. You can't gate it. There's no pedestrian connectivity at all
32 between the school and the sidewalk is just a conveyance. So what we are
33 doing is we're balancing that and we definitely can add more landscaping
34 outside of the compound to balance all those areas out. But we're actually
35 creating that engagement up into the street. You also have speeds upwards
36 of 45 posted, people are driving 55 and 60 miles an hour along that street.
37 So when you actually do get to a point where you engage EL Paseo, you
38 really need to look at slowing down traffic on El Paseo. This isn't one step
39 towards that. It does create that area. We do know that eventually maybe
40 you will have a trolley going down El Paseo. So we made as many
41 amenities and connections that we can to do that, but we're also trying to
42 keep our residents safe through that area. So we'd be happy to work with
43 staff when we're at building permit to do that, to do those type of elements.
44

45 Kaiser: Yes, I appreciate that. And I would encourage you to continue to work with
46 staff to make those improvements. And I would just say, using what you

1 just described at the high school, it would not be a great example to go by
2 in my opinion. We should be doing the complete opposite of that.

3
4 Guerrero: Thank you. Thank you very much Commissioner Kaiser. Commissioner
5 Smith, you had a comment?

6
7 Smith: Yes, I too share some concerns with traffic. That the Jaquess couple that
8 came up. I'm very familiar with this area. When I first moved here 24 years
9 ago, for a year I lived on Farney between El Paseo and North Main. And I
10 know that over the years they've put in some traffic mitigation and calming
11 measures. You know the applicant said that you know the drivers, well the
12 minimum age is going to be 55 you know for residents. I'm 61, I plan on
13 driving for a while. So I think that you know a 55-year-old and above can
14 continue to drive for quite a long time if they're you know in good health. So
15 the traffic that's going to, there will be an increase in traffic. And you know
16 I know this area, that park that they talk about where the soccer games.
17 We're coming into the fall season, soccer league is going to be in place.
18 There's another field, additional field, to the east of that where soccer is
19 played from NMSU students. There's a childcare center there that gets
20 heavy traffic in the morning. And not to mention the traffic from the high
21 school. I'm not sure what's changed over the generations, but it seems like
22 most high school kids either get taken to school by their parents or they
23 driving their own cars. I think school buses are not cool to ride on anymore.
24 So the number, the amount of traffic around Las Cruces High, because I
25 lived near there every day is just incredible. And also there are very few
26 drop off points for the students. So in the mornings throughout the school
27 year, there will always be you know a high level of traffic. And having this
28 facility here, this complex here, the traffic will not be reduced, it will continue
29 to be high, and it actually will increase. So I noticed this is more of an issue
30 for the City as far as what they can do at Las Cruces High to help you know
31 manage the traffic there. But just looking at this area, and just my
32 experience and familiarity with it, the traffic will actually continue to increase.
33 And I'm not sure as you said, you're not sure how that could be addressed.
34 But I just wanted to just put on a record I think this is concern that's going
35 to factor in as this project goes forward. Thank you.

36
37 Bohannan: Thank you Mr. Chair.

38
39 Guerrero: Yes, thank you so much. Do we have any more comments from any other
40 members of the Commission? No, in that case, can we get a motion to vote
41 on this?

42
43 Bennett: I make a motion to approve 9.5 with the conditions outlined in the staff
44 report.

45
46 Vega: I second.

1
2 Guerrero: All right.
3
4 Baum: Board Member Vega.
5
6 Vega: I vote yes to approve with the conditions pending the R-3 approval. Also
7 look forward to seeing more affordable housing in our City.
8
9 Baum: Board Member Smith.
10
11 Smith: I vote yes for Approval with conditions based on staff recommendation. And
12 I just hope that the traffic issue will be addressed at some point in the future.
13
14 Baum: Board Member Kaiser.
15
16 Kaiser: Yes with conditions based on staff recommendation, consistency with
17 Elevate Las Cruces, and this definitely fills a need in our community.
18
19 Baum: Board Member Bennett.
20
21 Bennett: I vote to approve based on staff recommendation, site survey. This also
22 meets the thoroughfare plan along with the EL Paseo Corridor Blueprint
23
24 Baum: Board Member Acosta.
25
26 Acosta: I vote yes to approve based on staff recommendation. And with just mild
27 concern over security because I know we didn't really hear that word too
28 much tonight, but I think everything looks good as well. Thank you.
29
30 Baum: Chair Guerrero.
31
32 Guerrero: I vote yes as well based on staff recommendation, fitting with the Elevate
33 Las Cruces and the El Paseo Corridor plans. And as well the conditions
34 proposed by staff.
35
36 Nichols: Mr. Chairman. If I may. I would like to have the conditions, that the motion
37 was made with conditions, but I would like to have the conditions specifically
38 read for the record so we know what that condition was.
39
40 Guerrero: Absolutely yes.
41
42 Banegas: Mr. Chairman, Members of the commission, Mr. Nichols. The condition that
43 staff put forward is as follows; that approval of the variances shall be
44 contingent upon the approval of the pending zoning change to R-3
45 multidwelling medium density.
46

1 Guerrero: Thank you.

2
3 Nichols: Thank you Mr. Chairman. That condition will be as the vote was, as a
4 motion was made and the seconds. Thank you.

5
6 Guerrero: Perfect. So we don't we don't need to vote for it again right. I think we're
7 good. All right. Perfect. Well, thank you very much. Appreciate you being
8 here. We still have three cases to go. So hope everybody's ready.

9
10 **9.6 Melody Lane Subdivision Road Improvement Waiver:** A proposal to
11 waive the required road improvements to Melody Lane associated with the
12 subdivision of one (1) lot into two (2) single family residential lots. The 1.81
13 ± acre property is zoned REM (Residential Estate-Mobile) and located at
14 5332 Melody Lane in Council District 5. Submitted by Donohue Land
15 Surveys, representative. (21CS0500084)

16
17 Guerrero: Up next we have case number 9.6. Could I get a motion to hear this case?

18
19 Bennett: I make a motion to hear 9.6

20
21 Smith: I second.

22
23 Baum: Board Member Vega.

24
25 Vega: Yes.

26
27 Baum: Board Member Smith.

28
29 Smith: Yes.

30
31 Baum: Board Member Kaiser.

32
33 Kaiser: Yes.

34
35 Baum: Board Member Bennett.

36
37 Bennett: Yes.

38
39 Baum: Board Member Acosta:

40
41 Acosta: Yes.

42
43 Baum: Chair Guerrero.

44
45 Guerrero: Yes.

46

1 Baum: Thank you.

2
3 Guerrero: All right. Perfect. Go ahead.

4
5 Castillo: Good evening once again, Mr. Chair, Members of the Commission. Today
6 we're going to be talking about 5332 Melody Lane. It is going to be a
7 subdivision road waiver request. Current conditions of the property, the
8 property is located at 5332 Melody Lane. It is a single-family residence on
9 approximately 1.81 acres. It's currently zoned REM which is our single-
10 family residential estate mobile zoning district. As I said before, it's located
11 on Melody Lane, which has been classified as a local roadway. Right now
12 Melody Lane currently consists of a 50 foot roadway easement 25 feet
13 between different properties. And it also currently has a 20 foot wide paved
14 roadway. It's located in a low density single-family residential area.

15
16 As you can see here from the zoning map, this is the subject property.
17 Here's an aerial image of the property. On this aerial image the part that
18 we're going to be talking about is going to be this section right here, just a
19 little bit north of the property line. So the proposal today is to waive the road
20 improvement requirements associated with the subdivision. The associated
21 subdivision is a two lot single-family subdivision. As part of this, they're
22 required to construct a full cross section including pavement, sidewalk, curb
23 and gutter, and lighting. They've also dedicated a 25 foot roadway
24 easement as part of the subdivision. As you can see here this is the
25 proposed subdivision. This is the 25 foot roadway easement that was on
26 the property before that's going to be dedicated to the City. As we can see
27 here from the images this is a westbound view of Melody Lane as it currently
28 sits. This is an eastbound view of Melody Lane as we can see it today. The
29 required cross sections are both a minor local one or minor local two. They
30 require like I said sidewalk, driving aisles, curb and gutter.

31
32 Public notice was sent to all relevant, or input and public notices were sent
33 out. All relevant agencies and departments were reviewed. All of them
34 provided a recommendation of denial under the first review. All except for
35 utilities, utilities didn't provide any recommendation for denial as it didn't
36 currently impacted them. Notice was also sent out to the surrounding
37 properties. There was minor feedback, although I put on here there was no
38 feedback. There was minor feedback in regards to what exactly the notice
39 was regarding for the property.

40
41 Staff recommended denial based on the following findings, construction
42 involves subdivision within the corporate limits of the City shall conform to
43 the applicable sections of the City Design Standards. Access to lots within
44 a residential subdivision shall be from a dedicated and accepted improved
45 public right-of-way. The subdivider is responsible for providing road
46 improvements for a full section of local roadway which includes sidewalk,

1 curb and gutter as per the Design Standards in Section 32-36. The
2 applicant has not demonstrated the need for the waiver due to substantial
3 hardship, such as exceptional topographic, soil, or other surface or
4 subsurface conditions. The DRC has recommended approval of the
5 roadway improvements along Melody Lane, as the project is going to be
6 part of a Capital Improvement Project, which at this moment has not been
7 determined when the roadway would be improved through City funding, but
8 they are slated to be a part of the projects. So today's options are going to
9 be to vote "yes" for approval, vote "no" to deny, and vote "yes" with
10 conditions, or vote to table.

11
12 Guerrero: Thank you. Thank you very much. Do we have any comments from the
13 Commission?

14
15 Bennett: So I just wanted clarification. So earlier you said they recommended denial,
16 and then it says in here that it's, they recommended approval, the DRC. I
17 guess I'm just confused.

18
19 Castillo: Yes, so staff provides a recommendation to DRC, which is our Development
20 Review Committee. From there, so the way the road waiver request works
21 is that it has to go before our Development Review Committee for a
22 recommendation to the Planning and Zoning Commission, where the
23 Planning and Zoning Commission will provide a recommendation to City
24 Council. Once it goes to City Council it will get adopted as a resolution
25 based on their determination.

26
27 Bennett: So just for clarification, they recommended approval of the waiver or?

28
29 Castillo: Correct. The Development Review Committee recommended approval of
30 the waiver based on comments made by an associate or deputy director
31 from Public Works saying that it was going to be a part of a capital
32 improvement project.

33
34 Kaiser: So just to clarify that point, so staff's recommendation to us tonight is to
35 approve the waiver.

36
37 Castillo: Correct.

38
39 Kaiser: Okay.

40
41 Smith: I have a question. So the capital improvement project is going through. I
42 mean that's going to happen.

43
44 Castillo: So from my understanding the capital improvement project is slated to
45 happen. I just don't know exactly when.

1 H-Rogers: Mr. Chair. If I might.

2
3 Guerrero: Yes.

4
5 H-Rogers: This particular area in the City has been part of some extensive studies in
6 terms of improvement, both from a drainage standpoint and which
7 roadways might be ripe for full improvements. Melody Lane is the first one
8 in line on that list of roads to be improved in this particular area. So it will
9 be sooner than later. I'm not quite certain, as John had indicated, if it's
10 going to be next year, but it is on the list and it's the first one in this particular.

11
12 Guerrero: Okay. Commissioner Kaiser do you have another comment or question?

13
14 Kaiser: Yes, yes, I think our confusion is the staff report has two things, it has denial
15 and then also approval. So we're approving the waiver per staff's
16 recommendation tonight

17
18 Castillo: Yes. So yes staff recommended denial, however, the Development Review
19 Committee recommended approval.

20
21 Kaiser: Okay. Thank you. No further questions. I think my other questions are
22 irrelevant,

23
24 Guerrero: Yes, this one's a little confusing as well. But thank you very much for
25 clarifying that. Do we have any members from the public that would like to
26 make a comment? Seeing none. Could I get a motion for, whatever we're
27 doing? I'm so sorry. I did not see you. Please come up forth. All righty.
28 I'll need to swear you in. If I could get your first and last name, please.

29
30 Gutierrez: Aaron Gutierrez.

31
32 Guerrero: All right Mr. Gutierrez. And do you swear and affirm that the testimony
33 you're about to give is the truth and nothing but the truth under penalty of
34 law?

35
36 Gutierrez: Yes.

37
38 Guerrero: All right, go ahead. You have three minutes.

39
40 Gutierrez: I am a property owner on that Melody Lane. And I know there is a lot of
41 running water that goes through and destroys the end of the property point
42 where he was mentioning, because I'm right on the corner of Mesa Grande
43 and Melody Lane. Is this going to be all the way? The whole street
44 completely with curb and gutter and new asphalt and stuff like that on that?
45 Is that including sewer and electric, or I mean sewer and gas, or just an
46 upgrade on the road?

1
2 Guerrero: And do we have staff answering. I believe it was just a portion of that right?
3 Not the full street.
4
5 Castillo: Mr. Chair, Commission. So the property owner would be required to do a
6 full cross section for his property and then asphalt for the remainder up to
7 the nearest improved roadway. It does not include any type of utilities.
8
9 Guerrero: Okay. I hope that answers your question.
10
11 Gutierrez: Yes. Thank you.
12
13 Guerrero: All right. Thank you so much. Do we have any other member from the
14 public that would like to make a comment or ask a question? Seeing none.
15 Could I get a motion from the Commission?
16
17 Kaiser: So I think I'm going to do this right. So I will motion to approve agenda item
18 9.6, which is waiving the road improvements associated with a subdivision.
19 Is that correct?
20
21 Vega: I second. And if we need to clarify that please let us know.
22
23 Guerrero: Yes. Do we do we have the correct motion made?
24
25 H-Rogers: So Mr. Chair, Members of the Commission. The motion should always be
26 made in the affirmative.
27
28 Guerrero: Okay.
29
30 H-Rogers: Always.
31
32 Guerrero: Okay. Then I believe we're good to go.
33
34 Baum: Board Member Vega.
35
36 Vega: I vote to approve the waiver based on staff recommendation.
37
38 Baum: Board Member Smith.
39
40 Smith: I've vote no to deny based on this request not meeting three of the four
41 zoning decision criteria and policies
42
43 H-Rogers: So point of order. Commissioner Smith, your vote is it to approve the waiver
44 or is it to deny the waiver
45
46 Smith: To deny the waiver.

1
2 Baum: Board Member Kaiser
3
4 Kaiser: Yes to approve the waiver based on staff's recommendation and the fact
5 that there's a capital improvement planning project ongoing that will address
6 these concerns.
7
8 Baum: Board Member Bennett.
9
10 Bennett: I vote to approve based on DRC recommendations, discussion tonight,
11 neighborhood character, and the CIP that will be happening.
12
13 Baum: Board Member Acosta.
14
15 Acosta: I vote to approve based off of the recommendation of approval and Elevate
16 Las Cruces.
17
18 Baum: Chair Guerrero.
19
20 Guerrero: I as well vote yes to approve based on the DRC recommendation. And yes,
21 just vote yes.
22
23 Baum: Approval five to one. Thank you.
24
25 Guerrero: All right. Thank you very much. This one passes.
26
27 **9.7 EBL&T Subdivision "A" Replat No. 37 Road Improvement Waiver: A**
28 **proposal to waive the required road improvements to Kennedy Road**
29 **associated with the subdivision of one (1) lot into two (2) single family**
30 **residential lots. The 2.276 ± acre property is zoned REM (Residential**
31 **Estate-Mobile) and located at 1086 Kennedy Road in Council District 5.**
32 **Submitted by Moy Surveying, representative. (22CS0500044)**
33
34 Guerrero: We're moving on to the next one, which is item number 9.7. Could I get a
35 motion to hear the case?
36
37 Vega: I make a motion to hear item 9.7.
38
39 Kaiser: I'll second.
40
41 Guerrero: All right.
42
43 Baum: Board Member Vega.
44
45 Vega: Yes.
46

1 Baum: Board Member Smith.

2
3 Smith: Yes.

4
5 Baum: Board Member Kaiser.

6
7 Kaiser: Yes.

8
9 Baum: Board Member Bennett.

10
11 Bennett: Yes.

12
13 Baum: Board Member Acosta.

14
15 Acosta: Yes.

16
17 Baum: Chair Guerrero.

18
19 Guerrero: Yes.

20
21 Baum: Thank you.

22
23 Castillo: Good evening once again. Today we are bringing forth another subdivision
24 road waiver request. This one is going to be located at 1086 Kennedy Road.
25 The current conditions for the property, it's a single-family residence on 2.27
26 acres. It's currently zoned REM, once again, it's our single-family residential
27 estate mobile. Kennedy Road is a proposed principal arterial. Currently it
28 has a 20 foot wide paved road and it is a low density single-family residential
29 area.

30
31 Here's a zoning map showing the area. Here's an aerial of the area. So
32 the proposal is to waive the roadway improvement requirements associated
33 once again with the subdivision process. They are going through the
34 alternate summary subdivision process where it takes one lot and they're
35 going to turn it into two single-family subdivision lots. Currently right now
36 Kennedy Road sits as a 40 foot right-of-way. They are also going to
37 dedicate an additional 40 feet, and they are required to construct half a road
38 cross section which includes pavement, sidewalk, curb and gutter, and
39 lighting. As we can see here from the proposed subdivision, this portion
40 right here is going to be what they dedicate to the City of Las Cruces for the
41 roadway improvements. As we can see here looking eastbound on
42 Kennedy Road, we can see the asphalt that currently sits there. And this is
43 what it looks like going westbound. The required cross sections, whichever
44 they choose, are here. And as we can see being a major arterial it is going
45 to require 120 foot right-of-way. And as it currently sits they are not going

1 to meet the entire cross section so they would only provide half of their cross
2 section.

3
4 Public notice and input. Reviewers were sent to all relevant agencies and
5 departments, all except for utilities recommended the denial of the review.
6 Notice was also sent out to surrounding properties. Once again, we did
7 receive phone calls on this regarding how it would impact surrounding
8 properties. On July 13, 2022, this did go before our Development Review
9 Committee. Staff did have a discussion, they recognized the existing
10 improvements were needed, however, they did recommend a fee in lieu of
11 the required improvements for the preferred construction. Based on that
12 the Development Review Committee recommended denial based on strict
13 interpretation of the code. The denial based on findings from staff as well,
14 as stated before were based on construction of all subdivisions. Access to
15 lots within a residential subdivision shall be from a dedicated and accepted
16 right-of-way. The subdivider is responsible for providing road
17 improvements for one half of an adjacent minor arterial roadway. And the
18 applicant has not demonstrated the need for the waiver due to substantial
19 hardship, due to exceptional topographic soil or other surface or subsurface
20 conditions, or that such conditions would result in inhibiting the objectives
21 of the code. Today, your options are to vote "yes" for approval, vote "no" to
22 deny, vote "yes" with conditions, or vote to table.

23
24 Guerrero: All right. Thank you very much for that presentation. Do we still have a
25 representative for Moy Surveying? Did you want to come up and say a few
26 things? And I won't need to swear you in because you've already been
27 sworn in. So go ahead.

28
29 Magallanez: Sounds good. Thank you very much. I have a question that maybe staff
30 can help answer for me first. It's kind of related to a dedication take, but
31 would a building permit without any replat require a dedication or trigger a
32 dedication as well? So the confirmation or the answer I'm getting is that a
33 replat or a building permit by itself wouldn't trigger a dedication, which I think
34 is really interesting always because as we've heard other presentations
35 tonight that are multimillion dollar presentations I'm almost certain that El
36 Paseo has to grow in its right-of-way width because I'm doing a replat there
37 which is requiring it, but it's only because we are vacating property lines that
38 the City now has the opportunity to take a dedication and then potentially
39 require improvements on it because we're removing lot lines. Versus a
40 multimillion dollar building project may not require additional right-of-way
41 dedication, which then wouldn't trigger improvements potential on that. We
42 also just saw with our last case that I also don't believe this is cited for a
43 CIP, and I don't know if staff can answer that question very quickly, but I
44 don't believe this portion of Kennedy is within the capital improvement plan
45 or project. So therefore, we have a case where we're required to give a
46 right-of-way dedication, to provide a payment in lieu of in addition to that,

1 for a portion of roadway that more than likely won't get built out, I don't even
2 think in my lifetime to be quite frank, only because this property, although it
3 does connect from Engler would have to have really large City dedication
4 and City takes through private property to connect down to Armstrong. So
5 that's what the major thoroughfare plan is. I don't know if I could possibly
6 bring that up in that amount of time. But the bigger picture of this is that
7 there is connectivity from where Engler and this road would be all the way
8 down to where Armstrong is according to the MPO. I agree with all of that.
9 However, I feel like at some point, I totally recognize the importance of
10 complete streets, but I also feel like it's a challenge to burden the property
11 owners to provide dedication on a portion of a road, well to provide right-of-
12 way improvement on a portion of a road that more than likely will not get
13 built again anytime soon. With that said, my other question to staff is, are
14 the funds for a payment in lieu earmarked for this road? Do we know that
15 answer? Would anyone be able to?

16
17 H-Rogers: So at this point in time we have not earmarked fees in lieu for particular
18 roadways. However, in conversations with our finance director, it is possible
19 to do that. But historically, the answer is no.
20

21 Magallanez: Yes. And again, I recognize the importance of that. But I think when we
22 look at that whole picture in its entirety, it's a really interesting story.
23 Because we have property owners who are, quote, I mean, actually
24 developing if we will because they are increasing the number of lots, but are
25 now required to give a payment in lieu for a road that may not even be the
26 road that they are in fact living in front of. So yes, this road does need some
27 improvement, we have seen that. It is a City maintained road that has not
28 been very well maintained from the City in its previous years. But my
29 concern is also that the payment in lieu won't even help to satisfy what is
30 required of this road that the denials from DRC stated. And I think that's a
31 very interesting thing to consider as we continue to think about this, because
32 again I think if this was in the CIP then we might be looking at a different
33 recommendation. However, because it's not, the homeowners then
34 required to provide payments in lieu of for a road that won't get built but the
35 payment won't even be applied towards this portion of a road more than
36 likely as it's probably not high on the list, because that road dead ends about
37 1,000 feet down the road before it'll ever become the minor arterial that it
38 has to be to connect to it. So I think it's again, just important to think of that
39 whole narrative. But I just wanted to make sure that the Commission was
40 aware of
41

42 Guerrero: Yes. Thank you. Thank you very much for that.
43

44 Magallanez: Thank you.
45

1 Guerrero: Do we have any comments from the Commission? Yes, go ahead.
2 Commissioner Kaiser.

3
4 Kaiser: This one is also a little bit of a head scratcher for me. So I think the first
5 place that I immediately went to when reading through this application is
6 really the existing conditions as it compares to what supposedly the future
7 conditions should be at some undetermined time in the future. And I'm
8 having trouble sort of making the connection there, I intellectually
9 understand the need to plan and to identify minor arterial road, but when
10 you look at the existing conditions of the site and the neighborhood, and I
11 think it's even stated in the DRC comments that more than likely the City is
12 going to need to execute eminent domain to be able to fully build out the
13 road as it's being planned for in the thoroughfare plan. So the fact that it's
14 this, an in lieu fee is not earmarked is a little bit worrisome in that regard, in
15 that we have no idea if and when the City can even fully build out this road,
16 and here we are asking somebody to pay a significant amount of money for
17 just subdividing a single residential lot to go into the general fund that may
18 not even ultimately end up contributing to the funding of the road if and when
19 it does in fact get built. So that's kind of what I'm struggling with I guess is
20 how to kind of reconcile that. I could certainly see a need for something
21 smaller, you know that would match more appropriately the existing
22 conditions in the site, maybe some modified improvements, but if you go
23 back to that road section, the road cross sections that you showed, that's a
24 heck of a lot of money that they're going to have to put up and then if you
25 compare that with the existing conditions, it just it doesn't, it's not adding up
26 to me. And then I guess, well my ultimate question for clarification is we're
27 talking a total of 80 foot right-of-way designation on both those parcels,
28 right.

29
30 Castillo: So for this one it would be each, well the parcel as a whole would give, it's
31 dedicating right now another 40 feet. Through a prior subdivision it had
32 already dedicated five feet, and then through this one, so in total it'll dedicate
33 a total of 45 feet towards the development of Kennedy Road.

34
35 Kaiser: Okay, so the current right-of-way as it stands now is how large?

36
37 Castillo: It's the 20 foot wide paved roadway.

38
39 Kaiser: Okay, and then what, in order to accommodate this future road condition,
40 how much right-of-way total would the City you need to acquire?

41
42 Castillo: So the City would need to acquire right-of-way from each of the adjoining
43 properties that run along Kennedy.

44
45 Kaiser: I understand that. So I guess looking at the cross section it would be 120
46 feet total, the City currently only has you said 25 feet.

1
2 Castillo: It's a 20 foot asphalt as we can see from the image.

3
4 Kaiser: And that's the current right-of-way 25 feet?

5
6 Castillo: Yes, because from, so from this portion we can see that some properties
7 have dedicated right-of-way, but they haven't, as they're past subdivisions I
8 can't speak to how they provided their improvements, if they were waived
9 or if they were having to be built upon. And other properties haven't created
10 those improvements. So at the time we don't have the full right-of-way that
11 we would need to acquire.

12
13 Kaiser: Understood. And then looking across the street, directly across the street,
14 that house would almost entirely have to be razed in order to acquire, or to
15 even build the road, right? I mean.

16
17 Castillo: Correct. There are some properties that would have to be adjusted in order
18 to build the roadway to its full potential. But as this occurs, it may not reach
19 that full potential. The applicant is also allowed to propose an alternate
20 cross section, reducing the amount of right of way that they would have to
21 build out.

22
23 Kaiser: Okay, thank you.

24
25 Guerrero: Thank you. Does anybody else have any other comments? I had a similar
26 concern as Commissioner Kaiser and as the representative have made, and
27 I think that's just something to consider as we move forward with code
28 changes and comprehensive plans. You know because if we are asking
29 people to pay a significant fee and then they don't actually see you know
30 the improvement of the area they're applying for it, I think that's a little
31 concerning. So you know just wanted to share that. With that, could I make
32 a motion, or sorry, did somebody want to make a motion for I guess denial.

33
34 Vega: I make a motion to vote on item 9.7.

35
36 Bennett: I second.

37
38 Guerrero: All right, perfect.

39
40 Baum: Board Member Vega.

41
42 Vega: Correct me if I'm wrong. If we vote to table so that we can get more answers
43 to some of the questions that we've proposed today, is that an option? Like
44 specifically, would this be included in the CIP? Or what does happen to the
45 funding if the property owner has to set aside funds for the street?
46

1 H-Rogers: So there's a motion on the table to move forward with a vote to approve, if
2 that's in the affirmative. And so that motion, there was a second correct?
3 Was there a second on that? Yes. So that motion is on the table and so a
4 vote will have to be taken. So if you had wanted to table it that would have
5 been the motion that would have been required at the time.

6
7 Vega: Okay, so my vote then is to deny based on staff approval or staff
8 recommendation

9
10 Baum: Board Member Smith.

11
12 Smith: I vote to deny based on DRC and staff recommendation,

13
14 Baum: Board Member Kaiser

15
16 Kaiser: I'm voting to approve the waiver based on existing conditions and the
17 uncertainty around if and when and how the full road cross section would
18 be developed in the future as well as the lack of earmarks for the in lieu fee.

19
20 Baum: Board Member Bennett.

21
22 Bennett: I vote to deny based on staff recommendation.

23
24 Baum: Board Member Acosta.

25
26 Acosta: I vote to approve based off of Commissioner Kaiser's response as well. And
27 also just kind of with noticing a precedence that was kind of noted down
28 here earlier as well, and just finding it a little bit difficult to pass on fees that
29 no one knows where they're going to get spent yet so. All right.

30
31 Baum: Chair Guerrero.

32
33 Guerrero: I will vote to deny this. But I definitely want it to you know just be known
34 that we need more transparency as far as like fees and where it's going. I
35 think I think we owe that to the public.

36
37 Baum: The vote was four to deny and two approve. Thank you.

38
39 Guerrero: Thank you. Thank you very much.

40
41 **9.8 Zoning Code Amendments for Cannabis Uses:** Various amendments to
42 Chapter 38, Zoning Code, of the Las Cruces Municipal Code for the purpose
43 of eliminating the 300' buffer requirement between individual cannabis
44 retailers/microbusinesses and eliminating the 300' buffer between cannabis
45 retailers/microbusinesses and single-family zoning districts. The following
46 sections are subject to amendments:

- Sec. 38-32 Office, Commercial, and Industrial Zoning District
- Sec. 38-53 Conditional Uses; and
- Sec. 38-54 Special Use Permits

Guerrero: And we're moving into the final item of the night or the final case of the night which is 9.8. Can I get a motion to hear this from the Commission?

Nichols: Mr. Chair. If I may.

Guerrero: Yes.

Nichols: We've been going at this nearly three hours. I was wondering if we might consider a five minute recess, then come back to consider the last item

Guerrero: I'm okay with that. How does everybody feel? Is everybody else *(inaudible)*? All right let's take a quick five minute break. It is 8:51. Come back at 8:56-ish.

Guerrero: All right well it is 8:56. That's five minutes. I believe we have the full Commission back. And we only have one last the case, which is 9.8. Can I get a motion from the Commission please?

Kaiser: I make a motion to hear item 9.8.

Smith: I second.

Guerrero: All right.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Acosta.

1
2 Acosta: Yes.

3
4 Baum: Chair Guerrero.

5
6 Guerrero: Yes. Okay. Go ahead.

7
8 H-Rogers: Good evening. Katherine Harrison-Rogers for the record. Tonight we're
9 bringing to you a couple of recommended code modifications related to
10 recreational cannabis. So just a little history on this for those of you that
11 may or may not have been here. April of last, well actually April of 2021,
12 New Mexico adopted the Cannabis Regulation Act. That was the House bill
13 that put into motion recreational cannabis as an allowed use all over the
14 State of New Mexico. By September 2021 the cannabis uses were added
15 to the zoning code. Many of you were here when those were recommended
16 for approval to City Council. And then ultimately in April of 2022,
17 recreational sales were initiated in the City of Las Cruces and across the
18 state.

19
20 The Regulation Act allows jurisdictions to control the time, place, and
21 manner including density. So we can't restrict transportation or operation
22 or signage things of that nature. So again, just to sort of recap what was
23 approved and what's allowed in our code, cannabis retail and commercial
24 micro businesses are allowed in all of the commercial zones, C-1, C-2, C-
25 3. Cannabis industry, of course is allowed in our industrial zones. The
26 research labs are also allowed in our industrial zones, including the
27 industrial technology. And then the residential micro businesses are
28 allowed in EE and REM with a Special Use Permit. There are several
29 conditions that do apply to these. All of these cannabis uses have to be
30 300 feet from schools and daycares. There are some exceptions to that,
31 those would be those types of schools that teach adults such as the
32 university or commercial trade schools. Those cannabis retailers and
33 commercial micro businesses also need to be 300 feet from single-family
34 residential zones, and also 300 feet between one another. At this point in
35 time the code allows that they can be closer if a Special Use Permit is
36 obtained. And there is no consumption allowed in C-1.

37
38 Cannabis industries also have some conditions that do allow some
39 accessory retail uses. And then those residential micro businesses that
40 require a Special Use Permit have some additional conditions that they
41 have to be accessory to a primary residence, they have to be limited to no
42 more than 200 mature plants, products for sale have to be grown on site,
43 and they have to be located in a fully enclosed accessory building and 100
44 feet from other residences.
45

1 There are some issues that we've encountered over the past year related
2 to some of the buffers. One such issue is that like uses such as pharmacies
3 or bars or taverns do not have buffers that have been applied to cannabis.
4 A couple of other things to note is that staff has not identified any unique or
5 additional impacts that would otherwise be found with other retailers. So
6 for example, during my research I did contact code enforcement to see if
7 there had been any code enforcement issues related specific to cannabis
8 retail. And the answer was no, they really haven't encountered any of that.
9

10 One of the most common complaints from the industry, we have a regular
11 weekly meeting, and of course, we as staff are here to answer questions
12 via email and phone as well, is that those that are trying to enter the industry
13 specific to retail or micro businesses have had a really hard time finding a
14 location that is outside of this 300 foot buffer. It's a real challenge for people.
15

16 You all thus far this year have five Special Use Permits to reduce that 300
17 foot buffer from those types of uses to single-family residences specifically.
18 There are also several in the queue. One non-cannabis issue that was
19 discovered after the adoption of the repeal and replace having to do with
20 these sections of code is there was one table that was inadvertently omitted
21 from the code that actually has to do with some of the design standards
22 related to commercial uses, such as setbacks and height, we would like to
23 add that back to the code for obvious reasons.
24

25 I had GIS do an analysis of commercial properties that are within the 300
26 foot buffer to single-family residential zones. There are over 1,000
27 commercial properties in the City of Las Cruces that fall within that 300 foot
28 buffer. It's a little hard to see with this blue line, but you can see that a lot
29 of the big commercial corridors in town, so this one would be Telshor, we
30 have EL Paseo over here, and a number of others, there's Valley, you can
31 see that there are significant areas that are really impacted by this buffer.
32 And it's all over the City.
33

34 So what staff is recommending based on some of these issues that have
35 come up is that we restore the design standards table to Section 38-32.
36 That we eliminate the 300 foot buffer from these cannabis retailers and
37 commercial micro businesses to the single-family residential zone. And
38 also eliminate the 300 foot buffer between cannabis retailers and micro
39 businesses to other like cannabis retailers and micro businesses. Those
40 are outlined in conditional uses, which is section 38-53 of the code. And
41 then also to eliminate that Special Use Permit requirement because it would
42 no longer be needed in this case, from 38-54.
43

44 Staff has outlined the findings of course here, as well is in the staff report.
45 And with that I am open to questions. Your options tonight, of course are
46 to approve, to deny, to vote "yes" with conditions if you see fit that there be

any changes, or vote to table. And I do believe we have some members of the public here in support of some of these amendments.

Guerrero: Yes, absolutely. Thank you very much for that presentation. Before we move on to the public, do we have any comments or questions from the Commission? We can always do it afterwards, too. Because I know they've been waiting for a while. So yes, we were going to have members from the public come up.

Nichols: Mr. Chairman. If I may.

Guerrero: Yes.

Nichols: Not a member of the commission, but a member of staff. I do have a couple of comments that impact this proposal that's before you or this item this evening. Right now we have about 37 applications that have been filled out for cannabis businesses of various types, retail, storage, growth, some of those of those. Of those 37, 17 have been issued. What we're finding and I don't know that it was anticipated necessarily, but what we're finding is that most of the businesses are not building new facilities. They're trying to find an existing building or a structure to locate in. And that's what brings a problem of this distancing and buffering, because those available as Ms. Harrison-Rogers mentioned, they don't always have that distancing. What's available to them doesn't have that distancing. So that is really kind of what's impacting a lot of this proposal. But I thought maybe it would be informational to you to realize how many are already in business. How many are pending approval from the state or other recommendations, then to what is being considered here today.

Guerrero: Yes. Thank you very much for sharing that. Let's come up. Can I get your first and last name, sir?

Krahling: Scott Krahling.

Guerrero: All right. And do you swear and affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Krahling: I do.

Guerrero: All right. Go ahead, you have three minutes.

Krahling: Thank you very much, Mr. Chair and Commissioners. We appreciate the opportunity to talk. My name is Scott Krahling. I'm the director of public outreach, public engagement for High Horse Cannabis Company. We actually don't have stores here in Las Cruces right now, because of some of these buffers. I can tell you that we would have stores open and running.

1 And we're not necessarily in the list yet because we're kind of waiting to see
2 what happens to make good business decisions. I think that the one thing
3 that I want to say is that it's important as we move forward in this new
4 industry, that we treat cannabis the same way that we treat other
5 businesses. I don't think that any of us are going to pretend like it wasn't
6 illegal in the recent past, but it's no longer illegal. And so with prohibition
7 over it's important for us to move into a new world where we're talking about
8 cannabis not in terms of being bad but in terms of being good, because
9 there's a lot of value that it offers to a lot of people, including myself. And
10 so we wanted to be here to thank the staff for their approach to cannabis,
11 to cannabis zoning and all the ways that the City staff has approached this
12 industry I think is a model for other communities to follow. And so thank
13 you for that. And please know that there are people in the industry who will
14 positively benefit from this, obviously, right, you're opening up a lot more
15 opportunities. And one thing that I noticed when I considered what that map
16 looked like and what types of areas that the current restrictions are
17 eliminating. And they're you know, Solano, North Main, communities or
18 neighborhoods, not neighborhoods, commercial districts that could use
19 some revitalization. And so I think opening it up is going to contribute to
20 social equity. And I think that it's going to be a good thing for the City of Las
21 Cruces. And so thanks for bringing this forward. I certainly hope that we
22 can count on your support. Thanks.

23
24 Guerrero: Thank you very much. Is there any other member of the public that would
25 like to speak? Come ahead. If I could get your first and last name, please.

26
27 Pacheco: I am Derrick Pacheco for the record.

28
29 Guerrero: All right. And do you swear and affirm that the testimony you're about to
30 give us the truth and nothing but the truth under penalty of law?

31
32 Pacheco: I do.

33
34 Guerrero: All right. Go ahead, you have three minutes as well.

35
36 Pacheco: All right. Thank you Mr. Chair and Commissioners. Excellent job tonight. I
37 know you've had a long night. I'll make a brief.

38
39 Guerrero: I think just real quick if you could speak a little closer to the mic so that she
40 can hear you.

41
42 Pacheco: My apologies. I'll make it brief. I have a commercial building within the
43 zoning buffers that are allowed for cannabis retail and other verticals. And
44 to give a brief viewpoint of a similar business and a similar setup that is
45 being proposed, I fully support neighboring businesses within the buffers
46 and to disable the buffer zones I think will be a good thing for the City, a

1 good thing for free enterprise. And I think the market will dictate who stays
2 and who goes. And I think that this is a good move. Free Enterprise. Thank
3 you.
4
5 Guerrero: Thank you. Thank you very much. Do we have any other member from the
6 public that would like to speak? I think seeing none. Let's move on to our
7 committee. Does anybody in the committee have any comments or
8 questions for staff? Let's see. Okay, go ahead, Commissioner Acosta.
9
10 Acosta: So just to be clear here. Any other additional recommendations and
11 conditions are still being accepted right now, Is that correct, or?
12
13 H-Rogers: So members of the Commission, Commissioner Acosta. The other
14 conditions would still apply. The one buffer that would remain of course, is
15 the distancing between the schools and the daycares. That's not one that
16 we've explored removing and it's pretty standard across the state.
17
18 Acosta: Sure, I guess my clarification on that specific one would just be the definition
19 of school. I do see higher learning serving those 18 and older and so I
20 guess the definition of higher learning and stuff like that, and kind of how
21 those may be interpreted, and 18 years and older as that is a big exception
22 to particular schools in this town as well.
23
24 H-Rogers: So we have had early in the process actually the legal department did
25 provide us some guidance in terms of how schools were defined. There still
26 were several state statutes that actually outline the definition of a school.
27 And we would be happy to provide you some of that documentation if need
28 be. I don't have that with me currently. I apologize.
29
30 Acosta: That, no I mean just clarification on that in terms of you know before being
31 completely I guess, satisfied on that on my end. That's all. Thanks.
32
33 H-Rogers: Sure.
34
35 Guerrero: Thank you very much. Commissioner Vega. Did you have a comment?
36
37 Vega: Yes, just a quick comment. I think if this is approved it'll save a lot of time
38 for the Commission and for staff as well. Just to put on the record I think
39 the growth opportunities for Las Cruces are great. I'd like to see more
40 actually homegrown. You know we have a lot of businesses coming in from
41 out of state and it'd be really wonderful to see some startups here in Las
42 Cruces. So that's all.
43
44 Guerrero: Thank you Commissioner.
45

- 1 Smith: And I have one quick comment. I just want to commend staff for just
2 reviewing the various categories as far as bars and pharmacies and
3 (*inaudible*) that comparison and the impact they will have. You know as
4 Commissioner Vega stated you know the industry is growing, and to be able
5 to have you know local, homegrown businesses established here and
6 having an opportunity to use existing buildings I think it's very important.
7 You know we've had you know companies outside of New Mexico express
8 very extreme interest in establishing businesses here. So I think having the
9 opportunity for local business people to kind of have first crack at some of
10 these buildings that are available, it's good for just I think our local economy.
11
- 12 Guerrero: Yes, thank you.
- 13
- 14 Nichols: Mr. Chairman. If I may.
- 15
- 16 Guerrero: Of course.
- 17
- 18 Nichols: I just want, for a point of clarification, the code amendment that is before the
19 Commission this evening is specific to 300 foot buffer between retailers and
20 single-family residential zone, and not to do with schools. So those are the
21 two items that you're considering this evening. Just those two.
22
- 23 Guerrero: Thank you very much.
- 24
- 25 H-Rogers: Just a point of order. In addition to that of course, then there's also the land
26 use, the design standards table that was omitted inadvertently.
27
- 28 Guerrero: Thank you very much for clarifying. Commissioner Kaiser.
- 29
- 30 Kaiser: Yes, I just want to echo my fellow Commissioners comments towards staff,
31 I definitely appreciate you guys seeing an opportunity to improve the
32 process. You know obviously it will save time on your end as well as ours.
33 But I think this is a good example of recognizing something that might not
34 be working out well and being nimble enough to accommodate it and adjust
35 and it's appreciated.
36
- 37 Guerrero: Absolutely, thank you. I also have a comment as well, just expressing
38 things to the staff too. We have heard so many cases in the last I mean,
39 year really, you know for various requests and I know this is not going to fix
40 all of it. But it's definitely going to make a big difference. I was actually kind
41 of surprised when I saw the map of the like eligible business areas.
42 Because you know as it stands right now it seems very limited as one of the
43 speakers said as well I mean this opens up Solano, North Main, you know
44 areas where there is higher amount of population that can have access to
45 these businesses. So just want to thank you all. Well, in that case, can we

1 get a motion from the Commission or is there any other questions? No,
2 then perfect. Could we get a motion from the Commission?

3
4 Vega: I make a motion to vote on item 9.8.

5
6 Bennett: I'll second.

7
8 Guerrero: All right.

9
10 Baum: Board Member Vega.

11
12 Vega: Yes, based on ...

13
14 Nichols: Sorry. Point of order again. We need to clearly state what the vote is to be
15 about, which is the amendment to the buffering 300 foot buffer between
16 retailers and from single-family dwelling residential zones.

17
18 H-Rogers: I would recommend ...

19
20 Guerrero: To redo the motion then.

21
22 H-Rogers: I would recommend that specifically you would refer to this slide.

23
24 Vega: So I'll start over.

25
26 Guerrero: Okay.

27
28 Vega: I make a motion to vote on item 9.8 with the recommended amendments,
29 which include sections 38-32 to restore the design standards, sections 38-
30 53 on conditional uses which eliminate the 300 foot buffer from cannabis
31 retailers, micro businesses to the SFR zone and eliminate the 300 foot
32 buffer between cannabis retailers, micro businesses, as well as eliminate
33 the SCP requirements to reduce cannabis buffer. Please let me know if I
34 missed anything.

35
36 Bennett: I'll second.

37
38 Nichols: And Mr. Chairman. If I may again please. It's been brought to my attention
39 that there may be Commissioners that want to vote on one and not the
40 other. So rather than to combine them under one, then we probably should
41 say first consider the separation, eliminating the separation 300 foot buffer
42 between retailers. And then have a separate motion to consider for
43 separation from single-family residential zones. That will enable you to vote
44 one way or the other on each of these specifics.
45

1 Vega: Okay. So we'll start with the motion to approve, vote on 9.8 to restore the
2 design standards table.
3
4 Bennett: I'll second.
5
6 Guerrero: All right.
7
8 Baum: Board Member Vega.
9
10 Vega: Yes based on staff recommendation.
11
12 Baum: Board Member Smith.
13
14 Smith: Yes based on staff recommendation and it meets character and
15 compatibility.
16
17 Baum: Board Member Kaiser.
18
19 Kaiser: Yes. Based on staff recommendation.
20
21 Baum: Board Member Bennett.
22
23 Bennett: Yes based on staff recommendation.
24
25 Baum: Board Member Acosta.
26
27 Acosta: Yours based on staff recommendation.
28
29 Baum: Board Member, sorry Chairman Guerrero.
30
31 Guerrero: Yes based on staff recommendation as well. Perfect. So this motion
32 passes. So now can I get a motion for the next item?
33
34 Vega: I make a motion to vote on item 9.8. on eliminating the 300 foot buffer from
35 cannabis retailers and micro businesses to the SFR zone.
36
37 Kaiser: I second.
38
39 Baum: Board Member Vega.
40
41 Vega: Yes based on staff recommendation.
42
43 Baum: Board Member Smith.
44
45 Smith: Yes. Based on staff recommendation and meeting character and
46 compatibility.

1
2 Baum: Board Member Kaiser.
3
4 Kaiser: Yes based on staff recommendation.
5
6 Baum: Board Member Bennett.
7
8 Bennett: Yes based on staff recommendation.
9
10 Baum: Board Member Acosta.
11
12 Acosta: Yes based on staff recommendation and compliance with Elevate Las
13 Cruces Comprehensive Plan.
14
15 Baum: Chair Guerrero.
16
17 Guerrero: Yes, based on staff recommendation and as well wanting to see more
18 businesses flower in New Mexico. This motion passes. We have one more
19 left. Commissioner Vega do you want to do this one also? Right we still
20 have one more right.
21
22 Vega: The Special Use Permit and then.
23
24 Guerrero: Yes.
25
26 Vega: So we'll go next with I'll make a motion to vote on item 9.8 on eliminating
27 the 300 foot buffer between the retailers and micro businesses.
28
29 Kaiser: Second.
30
31 Baum: Board Member Vega.
32
33 Vega: Yes based on staff recommendation
34
35 Baum: Board Member Smith.
36
37 Smith: Yes based on staff recommendation.
38
39 Baum: Board Member Kaiser.
40
41 Kaiser: Yes based on staff recommendation.
42
43 Bam Board Member Bennett.
44
45 Bennett: Yes based on staff recommendation
46

Agenda Item #10.1.

1 Baum: Board Member Acosta.
2
3 Acosta: Yes based on staff recommendation.
4
5 Baum: Chair Guerrero.
6
7 Guerrero: Yes based on staff recommendation as well. So this motion passes. Now
8 we have one left.
9
10 Vega: All right.
11
12 Guerrero: Go ahead
13
14 Vega: I make a motion to vote on item 9.8 to eliminate the Special Use Permits
15 required to reduce the cannabis buffer.
16
17 Kaiser: Second.
18
19 Baum: Board Member Vega.
20
21 Vega: Yes based on staff recommendation and comments shared today.
22
23 Baum: Board Member Smith.
24
25 Smith: Yes based on staff recommendation and meeting character and
26 compatibility.
27
28 Baum: Board Member Kaiser.
29
30 Kaiser: Yes based on the staff recommendation.
31
32 Baum: Board Member Bennett.
33
34 Bennett: Yes based on staff recommendation.
35
36 Baum: Board Member Acosta.
37
38 Acosta: Yes based on staff recommendation.
39
40 Baum: Chair Guerrero.
41
42 Guerrero: Yes, based on staff recommendation.
43
44 Baum: All four votes passed six to zero. Thank you.
45
46 Guerrero: Perfect. Thank you very much. That concludes the cases in the agenda

1
2 **10. DISCUSSION**

3
4 Guerrero: Next item is, is there any further discussion on anything tonight? Looking
5 like there's not. Then we have we moved the realized Las Cruces update
6 to the front, which I'm really glad we did.
7

8 **10.1 Realize Las Cruces Development Code Update**
9

10 **11. STAFF ANNOUNCEMENTS**
11

12 Guerrero: Next up is do we have any announcements from staff?
13

14 H-Rogers: I will try to take a stab at it and Larry can correct me if I'm wrong. We have
15 a couple of announcements in terms of maybe some staff changes you may
16 see at these meetings, David Weir and I will still be very much involved, but
17 we're really shifting our focus to trying to finalize the Realize Las Cruces
18 project. So you will be seeing some people who've been here for a long
19 time, but many of you may not know, Adam Ochoa, who was a planner with
20 the department for a long, long time and is now plans examiner and now
21 he's acting senior planner. So he will be showing up from time to time. And
22 then Dr. Tim Pitts, who is one of our deputy directors, who is now assisting
23 sort of with those duties as well. Larry, is there anything else you wanted
24 to add?
25

26 Nichols: Mr. Chairman and Members Commission. Thank you Katherine. No, you
27 covered it very well. I just would briefly say that this was brought on by the,
28 there was a restructuring from the City Manager office for the long range
29 planning that was in the Community Development Department. They've
30 established, it's called Long Range Planning and Implementation to the
31 Elevate Comprehensive Plan. That brought a restructuring and we made
32 appointments to several acting positions. And then we'll be recruiting for
33 those vacancies that were created by that restructuring. So, yes you'll be
34 seeing some new faces, but there'll be those that have had past experience
35 in planning and zoning activities. I have no further announcements for the
36 Commission. Thank you.
37

38 Guerrero: Excellent. Thank you. Change is good. Somebody had ...
39

40 Bennett: Can I jump in there?
41

42 Guerrero: Yes. I just wanted to, I don't think Harvey Gordon's here, but I just wanted
43 to thank him for his years of public service and he will be sorely missed.
44

45 Guerrero: Absolutely. Great guy.
46

12. ADJOURNMENT (9:17)

Guerrero: Well, with that being said, can I get a motion to adjourn the meeting?

Vega: I make a motion to adjourn.

Bennett: I'll second.

Guerrero: All righty. Perfect.

Baum: Board Member Vega.

Vega: Yes.

Bam Board Member Smith.

Smith: Yes.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Bennett.

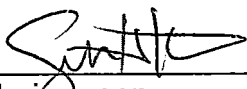
Bennett: Yes.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Chair Guerrero.

Guerrero: Yes. Perfect. Well, this meeting is adjourned. Thank you everybody.


Chairperson