Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

CITY COUNCIL AGENDA

Tuesday, January 17, 2023 at 1:00 PM

Council Chambers

City of Las Cruces®

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

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

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

CONSENT AGENDA

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

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1. OPENING CEREMONIES

1.1. Pledge of Allegiance - Councilor Corran.

1.2. Pets of the Week.

1.3. Jobs of the Week.

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

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

3. PUBLIC PARTICIPATION

4. ACCEPTANCE OF AGENDA

5. CITY COUNCIL MINUTES

5.1. Regular City Council Meeting of December 5, 2022. 4 - 44
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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). 45 - 95

Resolution No. 23-084 - Pdf

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. 96 - 108

Resolution No. 23-085 - Pdf

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. 109 - 142

Resolution No. 23-086 - Pdf

7.3. RESOLUTION NO. 23-087: A RESOLUTION ADOPTING A SMALL BUSINESS STOREFRONT REPAIR PROGRAM. 143 - 148

Resolution No. 23-087 - Pdf

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. 149 - 211

Resolution No. 23-088 - Pdf

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. 212 - 236

Resolution No. 23-089 - Pdf

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. 237 - 287

Resolution No. 23-090 - Pdf

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. 288 - 359

Ordinance No. 3022 - Pdf

8. BOARD APPOINTMENTS

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. 360 - 455

Ordinance No. 3024 - Pdf

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. 456 - 491

Ordinance No. 3025 - Pdf

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11. CITY MANAGER REPORT

12. ADJOURNMENT

City of Las Cruces®

MINUTES

City Council

Monday, December 5, 2022 @ 1:00 PM

City Council Chambers, City Hall

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

ABSENT:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR ABEYTA.

1.2 PETS OF THE WEEK.

Jennifer Martinez, Communications Office presented Pets of the Week.

1.3 JOBS OF THE WEEK.

Irene Parra, Economic Development presented Jobs of the Week.

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

There were none.

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

2.1

There was none.

3. PUBLIC PARTICIPATION

3.1

Mayor Miyagishima said I am going to give out some information, Council can't discuss this. This is for your own edification so that if you want to respond back to constituents. I know you have received a lot of emails on both of these two subjects. I wanted to kind of give you an update and that may set the stage first for perhaps someone out there that who wanted to share some comments with the council. First one is the Las Cruces Country Club, the Trost Building. I recognize that it is a Trost

building as does the owner. I was able to reach the owner today and he said he is willing to help whatever he can. In fact he is actually willing to give the building away. If the group wants to form an organization, whether it's the Save the Las Cruces Country Club LLC, whatever it may be and raise half the money I will do my best to come up with the other half, whether is some other appropriation. Let me just give you an example, the cost estimate that was given to me to move the building range anywhere from $75-$125 a square foot. The building is 2900 square feet. The current owner said he is willing to donate the amount that he was going to spend for the demolition which was $40,000 towards that $290,000. That leaves $250,000, take half of that and its $125,000. I asked if he would give me two weeks to gage the interest of those interested parties out there. He said ok but please know that he is on a strict timeline. He said if they could move it they can store it temporarily on his property until they find a place to place it. There are companies out there that can actually move a building. The second thing is the Desert Hope Apartments. Councilor Graham and I, we had a zoom call the other day with HUD officials. Keep in mind that this is a building that has special types of credit associated with it. That is why I invited HUD. I needed to find out what exactly are the parameters, we didn't want to disrupt that structure of it. They gave us three options. I want to focus on the third option. When the director of the Housing Authority came to me a few years back and he admits that he told me that this was going to be used primarily for homeless veterans. There is a structure called Oak Street Apartments on Oak Street off of South Main that does just that, houses homeless veterans and it has been ongoing for at least ten years, maybe a little bit longer and I can tell you in the last ten to fifteen years that I have been Mayor I have received only one email over there. So, I thought maybe if we can change the makeup the Desert Hope to start including more homeless veterans. There is only one there, 39 other occupants and only one homeless vet. So, HUD said we will help change some of the vouchers to allow homeless vets to be there. Sounded good, that is an option for Community of Hope to do. I thought it was a very productive meeting. Am I saying that they are going to go to that model, not at this time but that is an option and I believe that it is a very viable option and I think that is an option that we need to keep open.

Jane Bloom, Member of the Public said I am the owner of Dwell Yoga in the downtown business area here. I know this is not new to any of you but the continued concerns of some of the homeless population and the impact of downtown businesses. On November 10th of this year a letter was written to each of you from our studio and our business, I appreciate that many of you responded back personally, so thank you for that. In the last month we have had an increase in incidences that have been violent and impacting the business and our teachers. One of our teachers was attacked Wednesday, November 9th with rocks thrown at her car and including threats, "I am going to rape and kill you". At that time, she could not leave her car and had to cancel class. In October one of our teachers in her car was circled and threatened. In August in the early morning during a yoga class rocks were thrown at our windows, and during that time fortunately no rocks broke the window while the class was practicing but during that time they went to the business next door us which is Berkshire Hathaway and did break their front door with rocks. I know those rocks have been removed but that just seems to an addition of a series of different events that I won't share right now for sake of time. I have been in this community for 27 years as a practicing counselor and now as a business owner that I

purposely chose to want to be part of the downtown revitalization, so I have a very compassionate place for the bigger issue that is going on and now I am coming to you as someone with the business perspective too of wanting to find the bigger solution to a really complex layered problem.

Juan Garcia, Member of the Public said congratulations and I applaud you, and Councilor Graham for engaging with HUD in attempting to fix our chronic crime problem that we have in the city. My focus is not on the homeless, tomorrow I could be homeless myself. My focus is on crime. What I want to talk to you about today is imagine you are driving up to your residence with your headlights on reflecting the side of your home. You discover your home had been tagged, or criminally vandalized, you exit your vehicle when the stench hits you. Not paint but excrement, poop used to write on the side of the wall in large letters. Some criminals took the time to collect enough excrement to be able to able to write “little dick” and other words on the wall. Now you are left with the cleanup job of a filthy biohazard senseless criminal act which is an attempt to terrorize this and other Hispanic small business owners in the real case the business element would later return and dump a large can of trash simply because there are very little of any consequences. If there were harsh consequences the criminals would think twice. Consider the options of opening substation in CD3, lobby your state colleagues for stiffer penalties. Ask the victims that have been hit time after time if you’re moving fast enough. Many of these crimes are committed in Council District 3 but the rest of the city is also terrorized. Safe Haven, who lost about a weeks’ worth of business when the criminal element hit them, or Twice the Space on Solano who suffered over $15,000 worth the damage, or the Shell gas station, who I just met with a little while ago before I got here will now have bars in front of the door, or the Dollar Store on North Valley which is part of CD4. I meet the manager and the owners of these businesses, and I can go on and its very unfortunate but what about the rest of the city? Car thefts, break ins. It is unfortunate that CD3 is turning into a cesspool of crime while Councilor Gabe Vasquez was pushing for the ban of plastic bags. I know you have limitations, so where are our State Representatives and Senators? In my opinion fixing crime is not a politically expedient objective, you cannot protest and support “police reform” while pushing for more police on the street or ask for police substations.

Carlos Navarette, Member of the Public said my office is on the corner of Solano and Missouri. That picture that he gave you is from my building. I have lived here 65 years and I have never seen anything like this. In the past two years my store front doors have been broken three times. My electrical wiring system has been vandalized. My irrigation system has been destroyed. I constantly have to come in the morning and clean feces, vomit, urine, and needles. My life has been threatened several times just because I tell these people, move on, this is private property. Last Sunday, they lit a fire in the back of my building. I called the police, well I am still waiting for them to show up. They never showed up. On Monday when I got to work, I called the police to make the report and again they did not show up. On Wednesday a homeless were there in the rear of the building and there was a mess everywhere. On Thursday I showed up and found feces on the corners of my building. On Friday again there they were, and I caught the woman urinating on the curb and she got up and ran. That night they tagged my building, and you have that picture and if you would like I can email you the actual picture in color. I called the police, it took several hours, and they

finally made it. Finally, they sent a police aide, like a fifteen to sixteen year old man, nothing against him but he is the one that filled it. I need to know if this is something that can be fixed or will somebody have to be seriously hurt or die before you do something.

Mayor Miyagishima said I hope you all understand a few years ago there was a constitutional amendment called Bail Reform and that was passed. It put two conditions that judges have to meet before they can house the perpetrators. One is the flight risk and the other one is a danger to society. They have a long list of things as far as danger to society. I was talking with some District Judges from around the state trying to get some information, some advice from them and they said Ken if you think you can get the Legislature to add this one wording to this law, "as the courts may determine", that allows them the freedom to still maintain the flight risk or danger to society or as the courts may determine. Sounds simple but he said that would be enough for judges to be able to not circumvent the law and still be in the confines of it. We are all trying to deal with this situation. I am going to look into this a little bit more and hopefully call on many of you for help and ask them can you say please put that wording in. I don't know if this has to be a constitutional amendment, I have no idea. Not a day goes by that members of the public come, and various different ones share with us the stories. I apologize for that and Mr. Navarette if you would email me the times that you sent the call and we will research it from central dispatch and find out why they didn't respond.

Sarah Smith, Member of the Public said since you're trying to find solutions to the increasing crime in Las Cruces, I wanted to share some information with you today. I recently submitted a request for public records for the top twenty repeat offenders in Las Cruces from January 2021 to September 2022. Here are a few snapshots from that data. The man at the top of the list for most repeat offenses was charged 63 times since January 2021 with offenses including criminal trespass, possession of illegal drugs, assault, property damage, indecent exposure, shoplifting and unlawful carrying of a deadly weapon. His address was listed as 999 West Amador, which means he is a homeless person because that is the address for the Mesilla Valley Community of Hope. The next man on the list also had 63 repeat offenses since 2021, charged with criminal trespass, shoplifting and unlawful carrying of a deadly weapon. He is also listing Community of Hope as his address. The third man on the list had 56 charges including trespassing, shoplifting, assault, and battery. Meaning he actually physically harmed somebody, same address listed for him. I could go on, but I think you get the idea here. We have men committing crime after crime here in Las Cruces and they are being continually released to go out and commit further crimes. Many of these people are listed as homeless and Judge Joy Golbaum is listed as the presiding judge in almost all of these cases. If you look at the dates of when the crimes were committed, you can see there is clearly nothing deterring these men from committing further crimes as they are being picked up for the same crimes over and over and over. Sometimes they are being picked up on the same day for the same crime. For the police it must feel pointless to even show up and arrest these people since they are then quickly released, and they can go back and commit more crime. Councilor Bencomo and the Las Cruces Sun News have both previously mentioned a study about whether it would be effective to detain more people in jail until their court date. The study found that there would be a high false positive rate in detaining defendants

meaning that would not have committed further crimes in the pretrial period after being released. However, I have read the entire study and it is not actually accurate to say that the top repeat offenders here in Las Cruces would fall under this. This study is specifically looking at felonies only. It is not looking at misdemeanors and all of the top repeat offenders in Las Cruces are being pulled in for misdemeanors not for felonies. So, this paper does not actually apply to our repeat offenders here in Las Cruces. That also means that the attempts previously made at doing Bail Reform and some different crime things that the Legislature has tried to do they are always aiming at felonies they are not actually aiming at misdemeanors and that is the real problem that we are struggling with here is the misdemeanors. I hope that you the City Council and Mayor are urging the New Mexico State Legislature to take action towards reducing crime. Based on this repeat offender data, which I am going to give you, it is important to emphasize that any legislation needs to take into account misdemeanor and not just felonies if it is going to actually make any impact on what we are seeing here in Las Cruces.

Jo Ruprecht, Member of the Public said you are accustomed to me speaking regarding animals and animal care, instead today I am here to speak for a building. In a sense I am pleading for a reprieve for the historic Trost designed Clubhouse, for which a demolition permit is set to be eminent even though City policies and procedures are not currently being followed. My understanding is that you have very recently received letters regarding this building and its potential from knowledgeable local experts in historic preservation. I want to present a transformative idea for the Trost Clubhouse. New site and new life. Deb Dennis and I were on Main Street this morning heading to the Las Cruces Country Club site to look in on the clubhouse. As we came to the intersection of Main and Amador we passed the eyesore that Rob Mccorkle has been campaigning against and Deb had a transformative idea. The intersection of South Main and Amador has for years been designated by the City Council as the southern gateway to our revitalized downtown. The current building at the southwest corner of that intersection is a historical mess of little or no cultural value. On the other hand, the Trost Clubhouse is an architectural gem that has significant support in the community as a cultural touch stone and local landmark. The developers of the clubhouse’s current site have publicly expressed a desire to help that worthy building find a new location and a new life. For its part the city would love to see some resolution to both of these situations without exerting great funds or effort. The Mayor and a succession of City Managers and Councilors have often said and expressed their desire to actively engage in partnerships that advance the standing of Las Cruces as both a place to visit and a place to live. This is a case where the Mayor and City Manager and City Council can step up to that vision and act. Let’s find a way to broker a partnership among John Hoffman and Bob Pofahl who control the downtown eyesore and who have expressed their interest in developing it into a restaurant and partner that with the development group that includes Randy McMillan and Dennis Crimmins. Crimmins has spoken regarding his preference to move the building rather than demolish it in a meeting in October with the Historic Preservation Commission. With care and attention, the City of Las Cruces could bring off a winning combination that turns problems into what could be award winning solutions.

Mayor Miyagishima said I am glad you brought up about the permit because I had left that off. It is true that there is a permit for demolition. Regarding the preservation of the historic buildings that committee they cannot interfere of a private landowner from them demolishing their own building. They have the right to do that. The city cannot stop them. They are willing to give the building away, not the land, if it can be moved.

Jo Ruprecht said I have a background in Architectural History. I also worked in an architectural firm for more than two years and was privy to many practices of contractors and developers. This was in the Phoenix area in the heyday of the 80's and I have knowledge of the historic preservation limitations regarding what can be done with a private property owner and with or without their permission. On the other hand, my understanding that the city does have some procedures in place for examining alternatives and exhausting alternatives before demolition is permitted. My information coming in past Community Development, I checked with one of the clerks there and the developers have pulled a permit, they have asked for a permit to demolish it has not yet been granted. My understanding is that city procedures are actually not being followed as far as the letter of forty something. It is a document that is circulating amongst people this weekend. The other thing is I appreciate your speaking with whichever of the developers or owners you were talking with. I kind of wish you had named which one.

Mayor Miyagishima said Randy McMillan.

Jo Ruprecht said he was not at the October 3rd meeting of the Historic Preservation Commission meeting. Mr. Crimmins did attend that and spoke on behalf of that group. I was there and spoke with Mr. Crimmins afterward. I emailed him afterward and received no reply but Crimmins in that meeting and in a private conversation in the hallway after he spoke was quoting different figures to me personally about the cost of demolition and cost of moving, both in terms of the square footage and the total cost of either. Two weeks puts us very into the holidays, we are already close to the holidays. We will be two weeks closer if you set that as your deadline. This is not adequate time to reach a resolution on this. I have not seen any document that shows a site plan for this development. I haven't seen any listing even of the number of units even of any use they propose to put there and in fact Mr. Crimmins, first part of October made reference to his not even seen where the roadways are intended to be. I would hate to see the city go down a path where they are being sold something without having seen anything.

Mayor Miyagishima said I am going to let Ifo, and need be the City Attorney to respond to the interesse which I have no knowledge about, but I will tell you that even prior to Mr. McMillan I had spoken to the previous owner Zach Wiegert and he alluded to the same thing, it was right in the middle of a roadway.

Jo Ruprecht said what I would like to suggest, what I came here to do today was to put forward this idea of how to solve two problems that have been significant and have been bothersome to not only the city but to a lot of city residents and a lot of city groups as far has historical groups, preservation groups. I just wanted to put forward that idea. I don't need to talk about specifics.

Ifo Pili, City Manager said the first thing I would like to do is dispel the misinformation that is going around. The emails that we are all getting that we are not following procedure, so in Section 40, it talks about the Historic Preservation Commission and how anytime a demolition permit has been requested that it needs to be reviewed by the Historic Preservation Commission. That is what it says there. It is scheduled to go to the Historic Preservation Commission on the 14th of December. What was told to members of the group was that when it goes there, regardless of what happens there we have no legal standing to prevent this demolition permit from being approved. Now that was taken as we are just making a decision, we are just bypassing the process. I really want to dispel that because that is incorrect. There is also an argument to be made that the meeting that you had in October, a demolition permit was submitted back in early September and the fact that it went to a Work Session, there is an argument from the property owner that counted as the review.

Jo Ruprecht said that is disingenuous and you know it.

Ifo Pili said I honestly don't know it.

Jo Ruprecht said I was there, and I can speak that with confidence. That was not stated in the meeting and there is an accurate record of the meeting minutes because there was a recorder there from the city.

Ifo Pili said that is fine ma'am because we actually pushed against that. We actually said that doesn't count and so we moved it to get it on an agenda. It is on an agenda item December 14th which follows the process outlined in the ordinance. If we can please dispel that misinformation because we are not doing anything illegal here. What we are trying to prevent is liability. We can't just keep stalling and stalling. I appreciate you coming and providing solutions because we are not getting many of those and that is the argument from the property owner. Is that every time he comes to meet, even with the city we are saying don't demolish, throwing things out but offering no money, no funds to do anything about it. At some point we cannot deny the permit. So we can go through our process and we can continue to stall and do things with our process but at some point we are going to have to approve it. Unless there is an offer that can be made to the developer or to the landowner.

Jo Ruprecht asked are you indicating to me that the city never denies a demolition permit? You're stating it as if the permit has to be approved. That indicates to me that the city never denies a demolition permit.

Ifo Pili said I am not stating that ma'am.

Jo Ruprecht said it is logical jump, isn't it. Let me suggest a reason. I understand the legalities. You can speak to me about legal, but I don't see the city process being followed even if the developer claims that that was a public review of the situation because they didn't come with a plan, they didn't come with specific figures. All of that was teased out by careful questions of the audience or from commission members. It seems to me that aside from the legalities, what you say are liabilities. I talked to a

developer about one of those liabilities of having the building sitting there unused but that has been true for years. To say that it needs to be resolved within the next two weeks seems to be a little bit of a fraud because what greater liability is there in the next month that hasn't already been there for years. So, in terms of something other than legal. I could have argued years ago that it was a legal question.

Councilor Abeyta said I would like to call point of order. Mayor, point of personal privilege, I would like to call point of order on the agenda. I feel like we have gotten to a heavy conversation that is out of our agenda items and I would like to call the order.

Mayor Miyagishima said I just wanted you to hear the information that was presented, and you heard clarification from the City Manager.

Israel Chavez, Member of the Public said I just want to offer some remarks on the crime issue that has been coming up. I have served as an Assistant District Attorney in this district, and I have also served as an Assistant County Attorney in Santa Fe. I want to really get clear about what was being said about folks experiencing homelessness, being some of the top offenders, especially in misdemeanor cases. To be very clear the work that this council did on the GO Bond, in particular Mayor Pro Tem Gandara. That is going to reduce crime because what we are seeing is that people who are struggling with housing are those who are committing the most misdemeanor crimes. The issue about holding folks, on a misdemeanor you cannot, you have to dismiss the case if the person is incompetent, and I am willing to bet that I know every single name of the highest offenders on that list because I had those one thousand rolling cases at once when I was an Assistant DA. You have to dismiss them in Magistrate or Municipal Court if they are incompetent to stand trial. There is no mechanism by which we can assist these folks. We are talking about struggling folks who have mental disability, or a mental illness, who have no home. Those are the community members that we are talking about. The GO Bond is going to help that. More housing investment but I venture to say that most people in city and county government cannot get a hold of the guy who runs the Housing Authority because they tell me that. He is so hard to get a hold of. We should be focusing on increasing access to services because those folks you are listing that are homeless, who are experiencing homelessness are members of our community whether we want them to be or not. As we focus on those services, we should be finding ways to provide assisted living to folks who are struggling from mental illness, we should be finding services that can support these folks. To be clear those are the folks who are committing a lot of these crimes. I worked on these issues. I would try to require in pretrial before this case gets dismissed, I would require them to enroll in Care Coordination, Medicaid, getting them enrolled in Medicaid, right. Because I know if I could just get them additional services, that was one of fifteen cases I could resolve by getting them more services but the reality of it is the Municipal Court or Magistrate Court has no authority to hold folks who are incompetent to stand trial. Having been one of the only and maybe there is one other person in here who has actually prosecuted these cases, I watched these cases, and I watched the people struggle and the way we are going to solve this is we are going to connect them to more services, warm handoffs, housing and assisted living. That is the true reality of the situation.

Pattie Hartman, Member of the Public said I came to speak on something specific, but it has all just turned into a big theme. I was going to comment on the money for affordable housing. There is what two funds, one is from HUD, the Home ARP Plan and then the GO Bond. I have been here since 2016 and honestly and I am not saying this to be insulting but I have yet to find anything that has progressed or succeeded here. So, when I think about all of this money and I think of business as usual and I think about how I have been treated by the mental health system and I do agree with what he is saying but there is a tendency to be pitying here and care taking. What we need to do is empower people. While I have major issues with depression and trauma, I come from California and I am used to government of the people, by the people, for the people and yet what I see in Las Cruces is that there is absolutely no connection. I have been in meetings where I am just ghosted, people act like they don't even see me. This is in the Suicide Prevention Taskforce meeting. I am not even acknowledged. My point is that we need more public participation and, in the funding, the Home ARP Plan that is coming up, we have a public participation process and we have a public hearing but what stands out to me is that, what are we supposed to comment on. It is just going through the motions. This city should be engaging the public. There are groups out there that want to start working with homeless people with doing something, but they feel like they don't know what to do. What I wanted to suggest specifically was that we form a housing coalition, an affordable housing coalition. I think the public should definitely be involved in this, there is people who have lived here all their lives. I think they could be really instrumental, and it would be very empowering and it's just the democratic way to do things.

4. ACCEPTANCE OF AGENDA

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to accept the agenda as presented with removal of 9.2 in its entirety.

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

5. CITY COUNCIL MINUTES

5.1 REGULAR CITY COUNCIL MEETING OF NOVEMBER 7, 2022.

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

6.1 RESOLUTION NO. 23-060: A RESOLUTION PROVIDING FOR DETERMINATION OF REASONABLE NOTICE OF MEETINGS OF THE CITY COUNCIL AND ITS BOARDS, COMMITTEES, AND COMMISSIONS FOR CALENDAR YEAR 2023.

6.2 RESOLUTION NO. 23-061: A RESOLUTION APPROVING A HOME INVESTMENTS PARTNERSHIP (HOME) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY

FOR THE CONSTRUCTION OF TWO SINGLE-FAMILY AFFORDABLE HOUSING UNITS IN THE LOS ENAMORADOS SUBDIVISION.

6.3 RESOLUTION NO. 23-062: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO SERVE AS FISCAL AGENT FOR MESILLA VALLEY COMMUNITY OF HOPE CAMPUS FOR CAPITAL OUTLAY IN THE 2023 NEW MEXICO STATE LEGISLATIVE SESSION TO INCLUDE THE FOLLOWING AGENCIES: MESILLA VALLEY COMMUNITY OF HOPE; CASA DE PEREGRINOS/EL CALDITO SOUP KITCHEN; AND JARDIN DE LOS NINOS.

6.4 COUNCIL BILL NO. 23-009; ORDINANCE NO. 3015: AN ORDINANCE APPROVING A ZONE CHANGE FROM UR (URBAN RANCH) TO REM (RESIDENTIAL ESTATE MOBILE) FOR PROPERTY ± 1.15 ACRES IN SIZE AND LOCATED AT 5056 CARTER DRIVE. SUBMITTED BY MOY SURVEYING FOR ANGEL MERAZ, PROPERTY OWNER.

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

7.1 PUBLIC HEARING REQUIRED. RESOLUTION NO. 23-063: A RESOLUTION APPROVING THE RESTAURANT BEER AND WINE LIQUOR LICENSE WITH ON-PREMISES CONSUMPTION ONLY AND PATIO SERVICE TO VALLEY PIZZA, LLC., LOCATED AT 3100 W. PICACHO AVE., SUITE 1, LAS CRUCES, NEW MEXICO 88007.

Public hearing began at 1:55 p.m. There was no one for or against. Public hearing ended at 1:56 p.m.

Councilor Johana Bencomo moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 23-063.

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

7.2 RESOLUTION NO. 23-064: A RESOLUTION TO SUSPEND ROADRUNNER TRANSIT FARES THROUGH JUNE 30, 2023, TO CONDUCT A ZERO-FARE DEMONSTRATION PROJECT.

Mike Bartholomew, Transit Operations Administrator gave the overhead presentation.

Councilor Bencomo asked when you say we are near capacity for Dial A Ride, you do mean for drivers and buses, correct?

Mike Bartholomew said that is correct.

Councilor Bencomo said if you don't foresee a budget adjustment yet but if you do it will be I imagine for this specific right to meet capacity either of the systems. Is that what you expect to happen?

Mike Bartholomew said we are going to do our best to work with the resources that we have. We are going to definitely let administration and council know if it is an issue.

Councilor Bencomo said I will say this now that for me I don't think the option will ever be to reduce or make the Dial A Ride stricter and increase barriers to that. That is not going to be an option for me, I just want to put that out there now. The option would be to increase capacity. This is just one tiny step, one tiny piece of the puzzle for having a wider network of public transit. Public transit that people are excited to use. I would love to see public transit where we are meeting the needs of people and we are getting people from A to B in a quicker manner. The vision is never to decrease public transit but to increase it and to make it more accessible to people, so people get off their cars and into buses and hopefully more green buses as we start getting more of that infrastructure. Thank you and staff for putting the work and getting this pilot program off the ground.

Councilor Abeyta said I have a couple of questions about the specific metrics that you are going to be kind of looking at during this time to see if this type of program is successful, given that there is going to be some losses, revenue losses which is very agreeable if we are really able to serve the needs of the community and I am looking about are we going to track ridership? Have we increased?

Mike Bartholomew said ridership definitely is a big one that we will be looking at. I have been asked the question before of how much I think it will increase ridership. Just based on what my peer agencies have seen and everything and that is actually a little bit hard to tell because the dynamics of how people move around or do their work. This demonstration project is really going to tell us how much ridership is doing. Other metrics, especially on the Dial A Ride side will be our ability to meet trip request. So, we will be looking at trip denials, we will be looking at any delays, late trips for example caused by giving the driver too many trips on their schedule for example. I wouldn't anticipate that fare loss is going to change that much whether or not we had had a fare. As I mentioned fares aren't a really huge portion of budget. That is not a make or break thing. The expensive part is going to be the Dial A Ride service.

Councilor Abeyta said obviously we don't want to have service failure for this area and have to look at increasing some of the metrics on who is able to use that service. I think that would be very detrimental to have to go backwards in any sort of ways. I know for me to have to look at if this is a successful program, I want to make sure that we are serving our community in the most efficient ways possible as well and obviously our municipal government doesn't have an unlimited source of funding so as we look on were we able to meet the needs, did we increase ridership in such a way that we are able to serve a lot more people or when it comes to access to transit is it the need to have more stops, more frequent stops, that type of thing or is that more of the barriers that we are seeing in our community. So, I would love to be able to take a really wide view of all those items to see the success of it.

Councilor Gandara said metrics are very important and I would like to see not only metrics around ridership and of course gaps and barriers and those things that you are already anticipating with busses and bus drivers but I also think return on our investment. The quality of life. How are you going to weigh that in terms of, increase ridership yes, we hope so but I am thinking along the lines of how many people are we getting to work. When I think about kids getting to school and one of the things that we did with our youth, there is youth around our community right now learning this bus system. Its opening up their eyes to a little more flexibility and independence. Those are things that we should really try in terms of metrics. How are we affording people that opportunity to get to school, to get to work, to get to addressing their health care needs. I think all those are metrics that we really need to consider. I hope that there is some work being done, not only with that but with Lisa because this is going to make a difference when we see our carbon footprint and most of it is because of people riding their cars. I hope you will be looking at those things and I guess I will say that we need to have a huge campaign related to zero fare, that it is happening and we need to be in the schools with flyers and different ways of informing the public that this is happening and also how we are recruiting our bus drivers because I think those are some of the limitations as well and I don't see a lot of that coming out of the office and I want to make sure that we are thinking about and mindful that we are using our PIO, Mandy Guss and that work I think that is going to be incredibly important as we move forward.

Councilor Flores said I am so glad that another councilor brought up that we need more routes. I don't understand why we don't have a connection between Roadrunner Parkway and Sonoma Ranch Boulevard, either through Mission or Golf Club Road. There are a lot of school kids in that area now, it's not just a retirement community like some people think it is. I think that if the routes were different, then the feasibility study would reflect that there is a bigger need then we have than can be shown now because the routes that we have. I know when Gill Sorg was on the city council, he challenged each one of us to take the bus for one week and I couldn't even get on a bus one day. I think it took Mayor Pro Tem Gandara an hour or two to get to City Hall and it's a five minute drive by car to her house. Me being out in the East Mesa I probably would have gotten lost or waiting for the bus freezing to death or melting to death. So that is the one thing I have been asking for so I am glad that Councilor Bencomo also asked or raised that issue and I really hope that it is addressed Mr. Bartholomew and thank you for all your work.

Councilor Corran said similar to Councilor Bencomo we need to invest more, as much as we can, and I think we are all open to hearing the ways that we can provide additional support for public transit in our community. I also just wanted to add to the conversation about metrics. When this news came out I heard from some folks that were at a local charter school and where the school itself actually purchased bus passes for their students and they talked about what that means in their sort of budgeting and understanding of what they do to help kids. I think there are also some qualitative stories that can go into the value of this and what it means in the community and so I just hope that we can make sure that we are tracking on those things as well.

Mayor Miyagishima asked did I hear you say that Dial A Ride will also be free?

Mike Bartholomew said that is correct. Under the ADA the paratransit portion of Dial A Ride has to be free. The City opts to do senior transportation too. ADA in itself is not an ADA qualifying event but we do have our senior transportation program and even with that senior transportation program if were to go ADA only I would say a very large number of our seniors would qualify anyway for ADA and go under that particular program. One of the things we were looking at starting possibly this year was a micro transit project but fare free does throw a little bit of a kink because that is going to increase the demand on our demand response service at this time. I believe Councilor Abeyta mentioned the ways to try to improve the service. We are looking at better software that is going to interact better with our customers to make the service a bit more efficient and we will probably see how that works with the ADA paratransit. It will position us well for transitioning eventually to micro transit when the funding supports it.

Mayor Miyagishima said the reason that I ask is because usually once or twice a year a get a letter from a resident that is elderly, they struggle to have to pay for Dial A Ride so that is a good thing. Interestingly I had an interaction or discussion with a university administrator that works with international students at New Mexico State and they are extremely excited about this because they don't have a license or drive and use cabs. They say they love the grocery store that is near the university, but they would like a little bit more diversity and so why I am bringing that up was to see if Ifo and his staff, specifically I guess Barbara could note the GRT, well there is no GRT on food but things that they may be purchasing. I think we might see an increase on that because you have a lot of international students that now can explore the city who have not. They have just stayed there at the campus because they have limited funds and they would rather spend $15 and go buy some things that they need but now maybe they can spend some time exploring. So when the time comes and you need that budget adjustment I am looking to see if increasing our GRT has been also increasing over a specific parameters from the year past.

Mike Bartholomew said that has actually been an argument for zero fare in some communities. Kansas City, Kansas which is probably the largest city that is doing zero fare right now that is one of the things they made for an argument that was a lot of the money that people were paying for fares is now going back into the economy which is subject to the sales tax and helps their local economy.

Juan Garcia, Member of the Public said I submitted a public records request for this initiative and according to the PowerPoint presentation I received called "Zero Fare and Micro Transit Programs" slide number three dated 27th June 2022 and this could have been updated. The current fare is one dollar per trip or fifty cents for the elderly I believe it is for certain categories. The other question that I had is the fare loss document on slide 4 assuming the pre-pandemic revenue would be $273,000 and then operating expenses are more than pre-pandemic. So, the questions I asked were how are you going to recover that funding and if I heard this right and I may have misunderstood it was going to be absorbed, which leaves me to think if you have $273,000 that you are going to lose in revenue, but you can absorb it, then maybe you have a little bit too much of a budget. I also asked for documents that would document the expected ridership increases and I think the gentleman covered that,

apparently there is none. So right now you are doing an initiative which I applaud to help our citizens but we don't know what it's going to end like. The other question that I have is there is no document showing a fare risk analysis of such a plan to determine the pros and cons of establishing a zero fare and the answer was, there was no such document. The two questions that I have for you here is, number one, where are the funds to recover the losses coming from? That is $300,000. The next question is, why not offer zero fare on as needed basis if individuals are qualified. To me that makes perfect sense than just saying, everybody gets a free ride.

Mike Bartholomew said as far as absorbing the fare loss we do get most of our other funding from for example this particular year we are getting 100% operational funding from our ARPA grant that we got but we also do have in terms of our expenditures we have had a hard time filling positions, so we have some savings in our budget from unfilled positions. So, where we can find savings, we may put it all together and still have a balanced budget for the fund but we will just have to watch it carefully and see where our other revenues come in. We still get our revenue from NMSU and DACC. That is going up a little bit because wages have increased for our drivers and the cost of the service that we are providing for them is going up too. So, we may be seeing more revenue there than what we originally budgeted.

Mayor Miyagishima said that you might even see savings from those who are in charge of handling the various funds and making sure they are accounted for because that is one of the things, whether they are $300,000 coming in or a million I think your position are probably as such that what they are required to do and now there is not anything coming in now and dealing with the cash and all of that. I would think there would be some savings there as well normally without ARPA the city subsidizes. How much does the city give you to run the transit?

Mike Bartholomew said this year is a little different because the ARPA money we are getting most of it. It is always over fifty percent comes from other city funds such as the General Fund or the Hold Harmless Fund or the Gas Tax Fund.

Mayor Miyagishima said that is probably what you're alluding to. When you stop and think about the anti-donation clause doesn't allow us to help the resident directly, certain qualifications there are but if this is one where many residents can save fifteen dollars or fifty dollars that impacts their life a great deal and it impacts it throughout the city instead of just the select 100 people maybe or 150 people so I think that is good for the common good, and if that means that we ourselves as a city need to find those ways to reduce our spending a little bit to make sure that our residents have a little better quality of life, then we will do it.

Councilor Graham said just to answer one portion of Mr. Garcia's questions in terms of why are we doing this project if we don't know if it's going to work or not, that is the nature of a demonstration project so I was just speaking to that.

Mayor Miyagishima said we also like to see how our friends up in Albuquerque do and we learn from their mistakes. I will be real candid you the red light cameras, we learned from them.

Councilor Corran said I just wanted to speak to that underlying suggestion of that comment, which is why would we give any services to people for free from the city and I would say that the more we give for free the better. My favorite part of the city is the library, it's free and there is no means testing. We all know that we could read more and experience more of life so I would ask us to think about each of these people riding a bus instead of driving their car are an investment in our community just as someone reading a book that they got free from our library and I would ask us to look at every edge of what our services are and how we can make them more accessible and have fewer barriers for people to do it. That is fundamentally different from your prospective Mr. Garcia, but you can visit us at the ballot box.

Councilor Bencomo said we did have a discussion around means testing this, qualifying people and the reality is that it is not a simple process and that would probably require more staffing, a lot more time. So, it doesn't actually make sense to not just do it for everybody as it is a public service as much like parks are. We don't means test people to use our parks either.

Israel Chavez, Anna Age Eight Institute at NMSU said I support the eight southwestern counties of New Mexico and I want to thank the Council and you Mayor and administration for implementing zero fares. When I was in law school, I chaired the City of Albuquerque's Transit Board. The largest transit system in the state of New Mexico and introduced the first zero fare resolution to support this movement. We are going to see an increase in ridership and what that means is access to higher federal funds. What that also means is more people using a system that is better for our community and I will echo the comments of some of the councilors today. We don't charge for parks or sidewalks. We built them because they are good for people. The same is true for transit. When the city extended late night service, which it has, that means more folks on the bus when they may have had drinks. We know that in New Mexico we have a problem with DWI and when we have more accessible, less complicated transit, we have more people who will ride those buses. When ridership does go up, riders should be afforded and also the credit for reduction in accidents. Paving of roads, when more people ride, whether it is the rail runner train up into Santa Fe or the buses here in Las Cruces those are cars not on those roads. While it is difficult to pinpoint and calculate we have to allow transit to take credit for those wins. Zero fares means that when this analysis done, we have to better evaluate the efficacy. So, it is going to include those stories that Councilor Corran mentioned about students riding the buses and there should be a concerted effort on behalf of the department to help in particular middle school and high schoolers better understand their transit system and there should be a coordinated effort among the department right, to have buses arrive to school on time. Right now, we have heard stories from students who ride the bus every day to high school and are late every day to high school because the bus doesn't arrive to school on time. The last thing I will say, Albuquerque. You wanted to learn from the municipality, after they implemented zero fares or right around that time, they also implemented a dedicated transit tax and we do not have that. We do not have a designated stream of funding that acknowledges the public benefit that transit gives. When folks ride buses and make the community/environment cleaner. They make roads safer. They make the entire community better. We should be looking at that as the public good it is.

Councilor Johana Bencomo moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 23-064.

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

7.3 RESOLUTION NO. 23-065: A RESOLUTION APPROVING A 100% WAIVER TO THE REQUIRED ROAD IMPROVEMENTS TO MELODY LANE AS PART OF A PROPOSED SUBDIVISION KNOWN AS MELODY LANE SUBDIVISION ON A 1.81 ± ACRE PARCEL LOCATED AT 5332 MELODY LANE. SUBMITTED BY DONOHUE LAND SURVEY, ON BEHALF OF ERLINDA R ROGERS, PROPERTY OWNER.

Adam Ochoa, Building Inspection Supervisor gave the overhead presentation.

Councilor Corran said the folks on Melody Lane would like for the road to be improved and this is why it is represented on the Capital Improvement Project list, and I know that is date uncertain but I know that it has come from a lot of community input that Melody Lane is included on the CIP. I took a really long time to understand what was happening and all of the documents related to this and I do understand it to be if we sort of stringently applied the requirements to this property there would be a tiny sliver that the folks who are planning to add one residential unit outlined, that stretch would require them to have to do and the rest of the road would be both subject to future development. Potentially that would get torn out and not matching. That would be a hundred yards or less probably twenty-five yards of sidewalk on a road that has no other sidewalk, right.

Adam Ochoa said that would be essentially it. They would only be required to improve what is in front of their subdivision. Essentially just what is in front of this yellow line. That is what they would be required to improve, half of that section. You are correct. They will go ahead and say yea we will build it, it will just stay there until somebody else comes by and either redo it or whatever purposes. If Public Works ever has to go out there with the capital improvement projects and redo it there would be some potential of changing what was built.

Councilor Corran said that is my understanding and I appreciate you validating that. I would say that Melody Road experiences a lot of drainage, probably the biggest issues related to drainage and flooding and so I hope that is another motivating factor for having it on the CIP as a future project where it will be both more pedestrian friendly and sort of less flooding and more engineered in its nature and for that reason I just wanted to say that knowing this area and knowing this district I approve the waiver based on what I have heard from the folks in the community and from reading through the staff material.

Councilor Flores said I am not clear to exactly what the ramifications will be if this waiver is approved as to floods. It says it is not going to increase floods but it doesn't say anything about ameliorating them. I would also like to hear from Larry Nichols

about this and I want to hear what the downside is because you presented all the positives.

Adam Ochoa said essentially anything about drainage, these are relatively large lots, each lot is almost an acre in size, that being said whatever they build on the property, due to the subdivision code there are on lot ponding requirements, where they have to retain whatever drainage, additional drainage that they create on the property with any impervious area will have to retain on their properties with on lot ponding.

Larry Nichols, Community Development Director said Mr. Ochoa explained it very well. Particularly about the drainage issue we don't enable people to have their drainage go off to adjacent properties. In this case they would have to retain the developed water on site either through a small retention basin or an element of that type of design.

Councilor Flores said I'd like to know what the benefits are of the waiver. The pros and cons if we don't approve the waiver, where does it leave the subject property and what happens?

Larry Nichols said I guess you would say there are absolutely benefits to the property owner in developing this area so that they can enable themselves to carry on with their idea for developing for that site. The waiver does remove them from the cost of doing that portion of the paving that the zoning regulations do require. Benefits to the city, we have the CIP project coming forth and it is going to address the very same issue and so there would be little if any requirement of the owner to do that ahead of the CIP. That would be the two sides of the benefit for this proposal.

Councilor Flores asked how far would the improvement be or the waiver?

Larry Nichols said I will have Mr. Ochoa help me with that but basically the understanding is where the yellow line is that you see right here going across there, I believe that is a distance of about 660 feet.

Councilor Flores asked is that the only affected area, the road?

Larry Nichols said that is the area affected by this proposal.

Councilor Flores asked the CIP would apply to the entire lane? It seems like a puzzle, like it is just fragmented to me.

Adam Ochoa said currently the subdivision we have in front of us and the waiver we have in front of us is just for this piece of property that is in front of it. In the future when the CIP comes into effect it is going to take essentially the entire roadway, going up and down that road, obtaining right of way and like we said there is only roughly about a fifty foot easement there so it is not right-of-way yet so we have to obtain that progress. Going back to your other question, the other benefit with the subdivision they are dedicating their portion of the right-of-way for the future improvement of this road as well.

Councilor Gandara asked when is it up for CIP?

Adam Ochoa said I believe we do have our Public Works Department here, maybe they can shed a little more light on that for you.

Tony Trevino, Deputy Director of Public Works said this whole area has been a study. The southern end, the south half of the Hacienda Acres as well as this part as the northern half of Highway 70 this Melody between Mesa Grande and Mesa Drive has been studied. As a CIP project it is an all inclusive CIP project that includes the drainage. Drainage is the first issue of this area. Staff has been working and trying to collaborate with Parks and Rec, or other private developers where we can find some property where we can install a pond. The very western end of Melody is a drainage point where all the water kind of exits out. We are trying to find a property there. As a CIP it is all inclusive, Melody, Mesa Drive, all of these roads in the east west direction are all one CIP project. How we are going to get that and that's an issue and how we are going to convey it into a place that it won't impede any residents there. It is not calling out Melody Lane in the CIP, it is the East Mesa Road Improvements Project that is called out directly.

Councilor Gandara asked there is not a date?

Tony Trevino said for this road particular no, there is not. We are trying to find a property to put drainage, we cannot just go and construct a roadway along this.

Councilor Gandara asked how likely would the ponding help with the drainage?

Tony Trevino said the ponding would be the overall problem solver of the drainage in that area. So, we do have funding every year, Public Works does have funding for property acquisitions for drainage improvements. It is just finding a property who is willing to work with us and purchasing that property.

Councilor Gandara asked is this the right property?

Tony Trevino said no, this is in the middle of the roadway. We need something on the very west end on the lower part.

Councilor Gandara said my next question is for Utilities. Why did they deny it?

Adam Ochoa said I think the only reason they denied it is because they only had one stub out for utilities to this property and they didn't show how they would be providing a second group of stub outs for utilities for this property. That is something they can resolve when they actually construct the home. They have to have the utility hookups in order to connect to our utilities.

Councilor Gandara asked do you know how quickly that is going to happen, in terms of building out?

Adam Ochoa said I don't believe they have a timetable yet. This is the really first big step they can do before they can build a second home or have a second lot to build a second home on the property.

Mayor Miyagishima said the project is highlighted yellow, so north and south you can kind of see a little borderline there, so wouldn't that also be included as a waiver? When they split that in half they are not required to put a road there?

Adam Ochoa said if this waiver gets approved and this subdivision gets filed, that black line is essentially moves down.

Mayor Miyagishima said I was actually talking about north and south. If you look at it here you can see right there the rectangle, aren't they splitting this in half and isn't this also part of the waiver not to require a road there. Does the city require them to split it and put a road there if they are going to split it?

Adam Ochoa said essentially the two lots that they are creating there will have dedicated access to Melody Lane. No actual roadway will be required between the two since they do have direct access.

Mayor Miyagishima said so, if the city didn't do the waiver imagine half of this road, not the whole thing would have to have new pavement and then you're driving and you see this new pavement then it goes back to the old pavement again. It makes no sense because there is no plan as to when Melody Lane is going to be paved or repaved. In 1986 it belonged to the county and that is when the city annexed it and that is why you see a lot of those roads are dirt and we are slowly adding to the drainage and the different roadways and some of the water systems too.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 23-065.

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

7.4 RESOLUTION NO. 23-066: 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 AND THE FY2023 CAPITAL IMPROVEMENT PLAN (CIP).

Rocio Gamboa, Budget Analyst gave the overhead presentation.

Councilor Flores asked so does Amador Health Center funding get the money directly or do we get it and then channel it over?

Amy Johnson Bassford, Grants Manager said the funding that the Amador Health Center received was from HRSA. It is specifically for federally licensed health care facilities and because the city owns the property at the Community of Hope and there was a conflict there and HRSA would not allow us to become a party to the grant to where they subjugated the grant so that we could administer it. So, what we had to do was create a grant agreement between St. Luke's and ourselves in order for the St. Luke's Amador Health Center to contract with us to do the improvements and to allow us to own those improvements and they would be administering their federal grant. Public Works and I have worked with the Amador Health Center to figure out how most effectively to do this project in conjunction with the state funding that St. Luke's Amador has also received for the project. So, it is a much larger project than just the $511,000 we will be doing state funding as well with this project.

Councilor Flores said then I have a question for the funding on the sewer connection. Where are these funds going to be going? I think there are still some sewer line connections that are outstanding out in the southern Hacienda Acres. I don't know if that is correct. I don't know the status. Is it going to complete what we started about a year ago now? How is that going by the way? Do we have a status report on that?

Amy Johnson Bassford said I would defer that question to Adrienne, but I will tell you that is our ongoing capital project that we had with the Utilities Department to add sewer connections to the East Mesa area of the city and other areas of the city that are currently served by septic systems and that will allow the homeowners to connect to the wastewater system that we have.

Councilor Flores said with this grant money they will be able to connect.

Amy Johnson Bassford said they will be able to connect. Because this is state money the anti-donation applies and we cannot connect them to it, they have the opportunity to then connect.

Councilor Flores asked it comes out of their pocket?

Amy Johnson Bassford said it would. All we are doing is running the sewer lines through the neighborhoods that currently don't have it.

Councilor Flores said that is about an $8,000 project.

Amy Johnson Bassford said we do have other funding the Utilities Department is utilizing to aid homeowners that need that assistance. We want to be very clear, this is the running of the sewer system to neighborhoods that don't currently have it.

Councilor Flores said that is a street connection, not a connection to the homeowner.

Amy Johnson Bassford said that is street connections, correct. I believe that this funding will finish off Hacienda Acres, Estados Serenos and potentially start Brittany Estates but I will defer to Adrienne, Interim Utilities Director for a status.

Adrienne Widmer, Interim Utilities Director said this particular money is set aside to work on Brittany Estates and Serenos and with the $200,000 and that is to put main in. Connections will be taken care of in other funding mechanisms much like the one that we are working on right now. Staff has put together the matrix so that we can try get low to moderate income people first and work up from there. This continues the sewer work that you all have requested for us to get rid of.

Councilor Flores said my concern now is for those who don't qualify on the low income levels. I think the cost of everything has gone up as we all are aware. So that might mean that people might not be able to connect to the main because it will be prohibitive, the cost will be prohibitive.

Adrienne Widmer said you are correct. So, the way it is right now, it is really great. We got a lot of the ARPA funding and we are hoping to connect as many people as we possibly can, obviously that is our goal. Once the money is out if people don't want to connect whether they can afford it or not there is really not anything we can do about it except for continue to encourage them to do it. So that is why we have the matrix so that we can actually take a look at the low to moderate income. We are focusing more on the Hacienda Acres area only because that was the first one that was completed utilizing the updated ordinance where it is mandatory to hookup. We are focusing in on where it is mandatory to do that in that first phase and then move forward.

Councilor Flores asked there are areas then that don't have to which the ordinance does not apply and why would we have an ordinance like that?

Adrienne Widmer said when we were going through them and we were talking about how we were putting in lines but people weren't necessarily hooking up with it. Whenever you come up and you update an ordinance that is where those prior to that actually end up getting grandfathered in. So once an ordinance is put into place it is from then on.

Councilor Flores asked is it area specific?

Adrienne Widmer said it is not area specific.

Councilor Flores asked is it something that applies to all residents, homeowners in the city?

Adrienne Widmer said it applies to everyone a year after a sewer project has been completed. So, for instance the Hacienda area, that one was completed after you all approved the amendment to the ordinance. So that is why the Hacienda area actually has the mandatory hook in, much like with this funding here. Once the Brittany Estates portion and Serenos is completed those particular streets that are completed also fall into the mandatory hook up. What we have been trying to do is find funding to actually provide funding for everybody else to hook into so that we can do that. We have so many septic tanks so I guess looking at it on the bright side is that we have

not gotten so far along that we are going to have thousands of septic tanks that aren't mandatory hook ins.

Councilor Flores said in terms of the anti-donation clause this is a health and safety issue because the septic tanks are emanating a lot of gases and stuff. So, I don't know if maybe we can look into that in terms of anti-donation clause not being applicable in this situation.

Adrienne Widmer said that is what is really great about the ARPA funds because it is federal funding and when I was speaking with the DFA in coming up with this type of funding and requesting they indicated to me that because it is federal funds that it's outside of the state's for the anti-donations and it is health and safety and I was told that it would be able to be utilized for that purpose. We have been talking to other funding agencies and actually tell them on some of these projects because people either don't want to or they can't afford to tie in and another funding mechanism order to do the health and safety to help protect our water resources. I know it is something that they are working on so that even potentially state funds can be used for the same thing.

Councilor Corran said I know there are a lot of folks who have septic in my district as well. Folks who are reluctant to hook up their septic tank typically fails within ten years and then the expense of a new tank typically out stretches the expense of the hook up and that ultimately seems like a big motivator for people who are reluctant for other reasons that aren't monetary.

Adrienne Widmer said that is very true, it is not a big deal until their septic and then there are like, come help me. Hopefully our projects as we go through over the next few years will continue to alleviate those issue and I appreciate it.

Councilor Corran said failing septic tanks are by far the worst. If anyone has experienced that once in their life they will never ever go back, I suspect.

Councilor Flores said if we could put that information out to the public to let them know that septic tanks do fail and when there is the opportunity to hook up to do it. We have heard from different constituents about the exorbitant utility bills and maybe that could be addressed publicly also in one of our communications in our newspapers, the Bulletin or the Sun News to explain to people why our utility bills are so high.

Mayor Miyagishima said as you recall there was that freeze last year in Texas, and we had to do some things to help make it not so big of a burden on the residents and we spread that out over a period of time.

Councilor Flores asked is that still going on?

Adrienne Widmer said the surcharge that we put on for the Storm Uri is over with. Unfortunately, what has occurred since then is because of the oil and gas increased prices and that is just a pass through cost that is not something that we get as part of

our service. Unfortunately, as soon as that part got taken off then the increase for natural gas rose up. We are expecting it to go up and down again. Just saw this morning that the rate was quite a bit higher depending on which gate we are getting it from. We do have Mario Puentes, he is our Gas Analyst, he looks at that all day long, every day just to make sure that we are getting the cheapest natural gas that we possibly can, and he gets it planned out. Those bills will continue to fluctuate and right now they are at an increased cost and it's just a pass through.

Councilor Flores said I just can't stress enough that our city keep our residents alerted. If we had just an update on what is going in that department because I am not sure that everybody reads the stuff that comes in.

Barbara De Leon, Chief Administrative Officer said with respect to the discussion about anti-donation and the provision of these types of infrastructure services for sewer just wanted to add as well that the New Mexico Constitutional Amendment 2 that just passed specifically address these types of services, so Adrienne is right at this point. We are looking at ARPA or federal funding for these types of projects but for future as we look to General Fund we were certainly have some new guidance from the state as to what we would potentially be able to spend on for these matching funds.

Liz Ellis, Chairman of Board of Amador Health Center said what an important project this is for Amador Health Care. We have been working on this for over a year and we are deeply appreciative of all of the city staff people who have put time and effort into this project. It is interesting to me today to hear the earlier comments about problems of homelessness and those issues, and I know what we do won't solve those issues for you that's a huge problem and I admire all of you and your progressive attitudes towards dealing with those issues. What we do provides one of the drops in the buckets. What we will be providing with this facility when it is completed is dental health services which are critically important to overall health for many of our patients who may be experiencing homelessness but who are capable of transitioning into housing and working with the rest of the Community of Hope. We have had many success stories and expect to continue to do that, but we do need the dental health services. The other component is going to be to expand behavioral health services and we literally don't have the physical facility to serve the needs of the our patient population and those mental health needs and behavioral health needs as you know are a huge contributing factor to the problems that are business people are experiencing. It breaks my heart to hear those stories but again we are going to deal with it one little bite at a time and this project is critically important to us, so we appreciate your support.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 23-066.

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

7.5 RESOLUTION NO. 23-067: A RESOLUTION AMENDING THE FY2023 BUDGET FOR ENVIRONMENTAL SERVICE FEES COLLECTED FOR PLASTIC SINGLE-USE CARRYOUT BAGS.

Leeanne DeMouche, Finance Director gave the overhead presentation.

Councilor Bencomo said I am curious to see if you have gotten any feedback from businesses regarding some of the revenue they have seen.

Jenny Hernandez, Sustainability Specialist said when we were setting this up and trying to make sure businesses were aware of how businesses submit the fees and all that good stuff we found out that the big box stores, the Walmarts, the Targets are the most contributing to this fund. Everything is handled at the corporate level and when we spoke with our local stores, they were always like call corporate they deal with it, not us. So, essentially that money gets sent back to corporate and they work with it and figure out what to do with it, we do not know what happens with that money after it gets sent back then because the check that gets cut comes from their corporate offices.

Councilor Bencomo asked for the local businesses?

Jenny Hernandez said the fees submitted is like two dollars. So, in totality they make like $4 and so they keep $2 and we $2 and so it is not really a big source.

Councilor Bencomo said I certainly hate to give corporations any more money than they need but I think that it goes to more public education around encouraging people to take their reusable bags.
if we can continue using any of these funds to do any of that I would highly encourage, even if it is just some sort of social media ads to remind people. I would like to see a little more public education on the matter.

Leeanne DeMouche said I would also like to follow up on Councilor Bencomo's question. So, in the ordinance if you will remember on the background this is for education. Once this is approved today, I am hoping you will approve this then the Sustainability Office will be able to start spending those funds maybe not tomorrow but sometime this week.

Councilor Corran said I sense in the community and I have been asking my students about this too that there really is an orientation toward thinking critically about how we use single use plastics in particular so I really appreciate the way you all have shepherded this and initiated it while it was the source of most angry emails I had ever gotten in my first two months as a city councilor I do think that seeing the outcomes of fewer plastic bags even in the desert by my house is measurable.

Mayor Miyagishima said my comments are along those lines. Initially I was not for it until we were able to exclude the restaurants and they are not required to do this. So a couple of days ago I was at one of the big box stores and I just bought one item and they jokingly asked if I wanted a bag, and I said no. They knew that we had passed

the ordinance, but I said you know what the place is cleaner and they said it is. We are used to it now and it actually does seem that there is not as many plastic bags.

Councilor Flores said I do want to say that it has been very effective along Highway 70 because I am part of the AARP group that picks up trash along our adoptive area there. It really has made a big impact.

Councilor Tessa Abeyta moved, seconded by Councilor Becky Corran, to Approve Resolution No. 23-067.

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

7.6 RESOLUTION NO. 23-068: A RESOLUTION APPROVING THE CITY OF LAS CRUCES' TOP CAPITAL OUTLAY PROJECT PRIORITIES FOR THE 2023 NEW MEXICO LEGISLATIVE SESSION.

Amy Johnson Bassford, Grants Administrator gave the overhead presentation.

Councilor Abeyta said I am happy to report with the Municipal League, nothing is ever set in stone 100% but I have requested that for the airport considerations that no less than $15,000,000 be allocated for the city. Hopefully that will work and I know that is one of our top priorities and one of the priorities that I will hopefully be championing during our Legislative Session for the airport. I was going to ask for the park improvements for Gomez on what the final number is that we will be looking for and if that will cover most of the phase one for Gomez Park.

Amy Johnson Bassford said I just want to let you know that Susan Gonzales from my department will be working with Larry very closely on the appropriation request. This year we did not include all of the amounts, so that you know right up front. We want to give the City Manager the leeway to adjust those amounts based on the revenue projections that are received that are coming in right before the Legislative Session. This way he and our lobbyist can work on if the request can be larger then what we are currently asking for. Right now, for Gomez Park we are looking at $600,000. The parking area is approximately $300,000-$350,000, so that would leave us another $250,000 to do some improvements.

Catherine Mathews, Landscape Architect said the $250,000 could probably go toward the plaza gathering area that is adjacent to the parking lot. That is a shade structure and a flat kind of open space to create an entry for the park something formal in that way to create a gathering space along the trail.

Councilor Abeyta said I am very thankful to the support during our conversations by my fellow councilors on these parks as well. This is one of the areas that needs the most improvement and kind of revitalization in my area.

Councilor Flores asked as far as the tourism driver what exactly is that?

Amy Johnson Bassford said this is similar to the Municipal League where they have a very similar specific kind of goal in mind with requesting appropriations outside of the normal capital outlay process. So, this doesn't really come out of the capital outlay money of each legislator it is an actual appropriations bill that goes through the legislature and goes to the New Mexico Department of Tourism. So, what we are doing this year is, they are asking for the submission of what we feel are critical projects to our infrastructure that drives tourism and so we are submitting those and depending on how much money they receive they will vet the things we have submitted and determine which ones they can fund. It is very similar to what long term aging does. Also the Municipal League is starting to do that. Other agencies at the state will begin to do these kinds of things to ensure that funding in those years that we do have a lot of funding that goes to specific things that help improve their purpose and mission.

Councilor Flores said it makes me happy to see the Branigan Cultural Center is there. What sort of data do we have to present to justify this sort of request?

Amy Johnson Bassford said for the Branigan Cultural Center I think that one of the things that we put forward is that the building has some structural integrity issues and that make it a, a facility that we might have to close if certain things happen. As you all may remember that we did have the porch kind of failure earlier in the year. We have found funding within the city to repair that. But those kinds of issues where things begin to fail mean that then the museums cannot move forward with some of their projects that they may have already scheduled and that creates an issue for space and public accessibility. So, what we are asking for this particular time is to repair the exterior stucco which is failing in several places. It is the main purpose or reason why the building has been deemed historical because of the uniqueness of the stucco that was placed on the building. Since that is one of the main drivers of the historic nature of the building, we want that to really speak to people when they come up. The department has not sent out criteria for it. I think this is the second year they have done it and they are just learning how they want to do it so that is why they are having us submit those and they will kind of vet those after the fact.

Councilor Flores said I think that the information that would be critical would be to show how many people do visit the museum and the exhibits. I know that the one on the history of the airport was fascinating and how vibrant it was at one point. Any kind of money that we are asking for we have to justify it. My point is that we always have to do a lot of selling to the Legislature. The other thing is the Veteran's Park. It will no longer be in my district come next year. I do know the veterans are very upset and continue to be upset over the use of that park area as a "park". I know that there was an agreement reached with the city and the veteran's group that the back areas you are facing behind the tables, that would be the park area and the other would be something else and that we are going to have a parking lot to the north of the park. Is that still the plan? Is this inclusive of all of that? What exactly will appropriation cover?

Amy Johnson Bassford said this is to specifically look for funding for the Visitors Center and restrooms that will be at the front of the park and the parking area is being

addressed through Public Works. It will need additional funding but I will have Cathy, or Sonya's got her light on to discuss some of the agreement, I am not familiar with that.

Councilor Flores asked the Visitor's Center, where would that be? Where the current bathrooms are now?

Amy Johnson Bassford said I am going to have to defer that to Cathy I haven't seen the floor plan for it.

Catherine Mathews said the Visitor Complex and new restroom will be where the current playground is located. The idea is that area will encompass another kind of a plaza to create an entry space into the park from the parking lot. We anticipate most people will use the new parking lot when it is constructed, and they will enter in then through according to the master plan a contemplative garden where they can slow down, leave their life behind, come into this contemplative space and enter through this Visitor's Center where the restrooms are also located. Sort of where the current playground is.

Sonya Delgado, Director of Parks and Recreation said currently at Veteran's Memorial Park we are not taking permits for any activities. We do have signage that was placed asking individuals not to ride their bikes or scooters or have any sports practices or activities in that manner. So those have just been placed and have been there for about a month and we stopped taking permits probably three to four months ago.

Councilor Flores asked are the veterans happier now?

Sonya Delgado said we are working closely with the Veteran's Advisory Board to make some of these adjustments as we go along.

Councilor Gandara said I appreciate the flexibility allowing Ifo to have that kind of negotiation opportunity with Larry Horan, but most of us go up there and go up there often at session and I would really love to have the amounts as to what each of these areas of what we are asking because I am already talking to a lot of legislators and I don't mean my husband, Senator Soules, I don't have those conversations with him. I leave it to when they are up there. Those conversations are being had. I had one Saturday specific to the airport with Senator Diamond. It is imperative that we know those totals and we are communicating when those decisions are being made. We would really like to have a cheat sheet related to what those amounts are. My questions are specific to the Pioneer Park and the airport. What are we asking for specifically for the completion of the historic gazebo and the additional infrastructure related to that master plan?

Amy Johnson Bassford said we will be sharing that information with you as Ifo and Larry have made those decisions very shortly after the first of the year. Staff has been instructed to torment Larry to then reach out to Ifo to get decisions made on what the revenue calculations look like because those change constantly as you know. We do

have to submit everything by the 12th of January. Very shortly after the holidays the decision will be made on how much it is. Then Mandy and our PIO will present and prepare our handouts that we always have. I am happy to share with you right now what the list of what we are currently asking for as our starting points. So, for Pioneer Park we are looking at $660,000. That will complete the renovation of the historic gazebo. It will add the pergola or shade structure to it and it will assist in laying the foundational infrastructure for the plaza area. It may not complete the seating area but it will complete most of the infrastructure that is required for that plaza area. On the airport, the request that we are putting into the Municipal League is $15.2 million. That is for this first grouping of things that you see on the slide. The retro-fit and expansion of existing building, the parking lot expansion, a new maintenance facility with a fuel farm, a relocated fuel farm and an expansion of that area and then the water tank rehabilitation and replacement. That totals $15.2 million for those items.

Councilor Gandara said I am assuming that a study has to be conducted in order to see if there has been any contamination.

Andy Hume, Airport Administrator said you are correct. Certainly, we will have to go through all of the FAA and EPA studies that need to be done for these. We are currently going through our master planning process which is identifying where the maintenance facility, the fuel farm, etcetera need to go and then once we firmed those up through the master planning process we can move into any FAA or EPA studies that are required.

Councilor Gandara asked is that what we are asking for the study at this point or will everything be all complete and tied up in a little bow and we say Legislature this is what we are requesting?

Andy Hume said I have learned a great deal from Amy on how to word those requests and we are doing everything from planning all the way through implementation, equipment, and full installation.

Councilor Gandara said $15.2 million and then, the master planning, that is going to be complete and what is the time frame?

Andy Hume said we anticipate bringing the master plan before City Council before the end of the fiscal year for completion.

Councilor Gandara said end of fiscal year, June. How does this interface with this particular request.

Andy Hume said if this request is approved by the Legislature, we would not be able to see these dollars until after July 1. We will have our mater plan, the timing will be perfect to be able to begin the next phase of any studies or any designs after July 1.

Councilor Gandara said Amy, I think you were going to then move into the runway 4-22 improvement.

Amy Johnson Bassford said that is a separate request that will be at the City Managers discretion to put on our capital request to legislators. That is approximately $2.2 million and that is for the rehabilitation for that particular runway. Andy can speak to the various uses that runway receives. It is currently not being funded by FAA and so this is something the city and or the state would try and need to fund. It still will be under the FAA purview because anything beyond the taxi lane is FAA purview, but it is not something it is looking to be able to fund at this time. That is why we are looking for state funding for it.

Councilor Gandara said we have been working really hard to get this particular, the airport improvements to include the runway improvements on her call list right. How will that work?

Amy Johnson Bassford said Larry will work with Ifo trying to schedule a meeting with the Governor. There was an additional request from Councilor Abeyta to try and have the Governor also help us fund some portion of the RAISE grant program that we are trying to do. We approved Highway 70 and Main and Elks intersection. We have several requests into the Governor now that the election is over. Larry is working to get a time with Ifo that we can schedule a meeting with her and her Chief of Staff. Larry is very much aware of the need to meet with the Governor and discuss several of the important projects that the city has and how she can provide support for those. I believe he is working on getting that scheduled. I have not heard back from him this week to see whether he was able to get with the Chief of Staff to get an available date.

Councilor Gandara said I appreciate that. I know that she has her sights on the Santa Teresa Airport, but I see that as a very different project. This is something that is going to stimulate economic development for us. I think this is essential in being able to separate those two out, clearly is going to be important. I have also been asked by the senators specifically Senator Diamond. Have you had these conversations? Lastly is Lift Up. The additional lighting, I know that we have done sort of an analysis of where that lighting might be appropriate. Do we have an idea of where that is?

Amy Johnson Bassford said the lighting is to be throughout the existing area of Lift Up. Where there is additional lighting needed and when we moved to LED lights, studies have been done and indicated actually more lights are needed to provide a safe environment, so $400,000 is for the lighting and that would accommodate the majority of lights in the area. This will require some sort of right-of-way acquisition or some right-of-way adjustments. That is why it is kind of a high number of $400,000 for some of that to allow for some of that acquisition that might need to be made or adjustments to the sidewalk once you put in the light. It is an area that has a lot of issues with sidewalks and ADA improvements as well as the lighting. For the roadway we wanted to ask for a total of about a million dollars for Lift Up Las Cruces and so we will put $600,000 either to the sidewalk and ADA improvements which would cover the sidewalks, including the right-of-way acquisition throughout the area or the choice may be made to do a partial reconstruction to Sacramento Street depending on what the rates are at the time. Those two requests may go higher depending on the revenue projections.

Councilor Gandara asked can you tell me, describe to me those meetings that you had with our representatives and sort of what were your focal points in addressing Lift Up Las Cruces. Obviously, it is an antipoverty program. I think there was a lot of interest, especially with that more specifically addressing our crime and being one of these ways we do that is mitigating some of this utilizing street lighting. Can you give me an idea of what those meetings were like.

Amy Johnson Bassford said this year we really asked our City Manager to kind of lead them off where normally we would talk about our priorities and what are you interested in, instead we let him lead off and talk about this is our revised strategy that we are going to pursue this year and we want to know what you will be willing to fund and then also he went in detail about Lift Up Las Cruces and what we are trying to do with this first location and how that is going to be in ongoing project. It is not leaving a specific neighborhood it is adding an additional neighborhood and so this is an ongoing project that we will ask for every year. We talked specifically about this existing location, the first location and how it was chosen, and why it was chosen. Some of the things we have already accomplished there, some of the other initiatives that have already been started from both this existing Lift Up area to the next Lift Up area and moving onward. They were very engaged about that. They felt it was a really interesting way to approach reducing poverty and improving neighborhoods, increasing neighborhood identity and pride of neighborhood and that type of thing as well as providing really substantial changes to those people who live in the neighborhoods. A lot of them felt that this was a worthwhile project to invest in every year because it does then move around the city and address many of the critical issues that we have throughout the city and but often don't get to the top of the priority list.

George Pearson, Member of the Public said I would like to thank you for the gazebo listing some of you may know that as a neighborhood association attempted to get some funding from the Legislature in the last session but we missed one checked box so it is not an easy task for an advocacy group. Having the city shepherd this through and we look forward to having the rebuilt gazebo at Pioneer Woman's Park.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Resolution No. 23-068.

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

7.7 COUNCIL BILL NO. 23-010; ORDINANCE NO. 3016: AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A FRANCHISE AGREEMENT, WHICH PERMITS NTS COMMUNICATIONS, LLC D/B/A VEXUS FIBER ("VEXUS") TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM WITHIN THE BOUNDARIES OF THE CITY.

Bob Duchen, Vice President of River Oaks Communications Corporation gave the overhead presentation.

Mayor Miyagishima said it is similar to a competitor Comcast, where they have cable tv and they also have telecommunications. You can use their lines for telephones, and it is being broken up into two because of course there is two different percentages and need two different agreements. Is that correct?

Bob Duchen said that is correct.

Mayor Miyagishima said all this does is add more to the competition and hopefully bring down the prices of other competitors.

Bob Duchen said that would be the hope Mayor that this will help on a competitor basis.

Councilor Bencomo asked can you help clarify for me what happens if we don't have one of these franchise agreements?

Tom Duchen, President of River Oaks Communications Corporation said the reason is that under federal law if Vexus chooses and elects to go ahead and provide cable television service under federal law they are required to have the cable television franchise for the use of the rights-of-way. To answer your question with respect to the cable portion, the cable franchise itself if Vexus chooses to provide television cable service they need this cable franchise to do so and regards to the telecommunications franchise in order for Vexus to utilize the city's right-of-ways they also need a franchise agreement to provide telecommunication services as well.

Councilor Bencomo said it still doesn't totally clarify for me my question.

Tom Duchen said if the City Council chose not to grant these franchises if I understand your question correctly Vexus would not be able to go out and use the city right of ways to provide telecom service or provide cable service.

Councilor Bencomo said that is much more helpful.

Bob Duchen said under their cable franchise they can provide telecommunication services. This is a little different situation because Vexus has offered to pay both franchise fees on telecommunications and information services. In order for you to collect franchise fees on telecommunications and information services for Vexus you are going to have to get a separate franchise and that is why there is second franchise.

Mayor Miyagishima asked right now let's take some of these streaming channels, whether it is Hulu or YouTube, the city receives nothing from them is that correct?

Bob Duchen said that is correct.

Mayor Miyagishima said so one of the advantages of having a franchise with Vexus is there could be some people in the market that because of financial constraints maybe could not afford it now. I don't know the pricing agreement but what I am trying to get at is if it does allow them to have other services it makes it more beneficial. The city then can benefit from the franchise agreements which I think right now we get from Comcast, it is probably a little more then half a million per year. I seem to recall something in that ballpark. Even if Vexus was to bring in one to three hundred thousand a year on its own that is money we use that just goes into the General Fund. It also allows certain residents of the community access to cable and a few other things.

Bob Duchen said the hope is that with the second telecommunications franchise is that more people will be able to afford some of the internet services, that remains to be seen. The hope is that this will generate additional revenues for the city and provide more people access and affordability to those services.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Suspend the Rules to Discuss Items 7.7 and 7.8 Concurrently.

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

Councilor Tessa Abeyta moved, seconded by Councilor Yvonne Flores, to Approve Ordinance No. 3016.

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

7.8 COUNCIL BILL NO. 23-011; ORDINANCE NO. 3017: AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A FRANCHISE AGREEMENT, WHICH PERMITS NTS COMMUNICATIONS, LLC D/B/A VEXUS FIBER ("VEXUS") TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM WITHIN THE BOUNDARIES OF THE CITY.

Councilor Becky Corran moved, seconded by Councilor Tessa Abeyta, to Approve Ordinance No. 3017.

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

8. BOARD APPOINTMENTS

8.1 COUNCILOR FLORES APPOINTED LAURA HAAS TO THE PARKS & RECREATION ADVISORY BOARD.

8.2 PAUL POMPEO

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to Appoint to the Realize Las Cruces Ad Hoc Committee.

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

8.3 ARTURO DURAN

Councilor Johana Bencomo moved, seconded by Councilor Becky Corran, to Appoint to the Realize Las Cruces Ad Hoc Committee.

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

8.4 KEN ODENHEIM

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

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

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. 23-012; ORDINANCE NO. 3018: AN ORDINANCE AUTHORIZING REPAYMENT TO THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD) FOR THE LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) PROJECT TO LASEN, INC., IN THE AMOUNT OF $750,000.00 FOR THE TERMINATION OF THE PROJECT PARTICIPATION AGREEMENT AND MATCH REQUIREMENT OF $400,000.00.

Council agreed to bring it forward.

9.2 COUNCIL BILL NO. 23-013; ORDINANCE NO. 3019: 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-1/M-2 (INDUSTRIAL STANDARD) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR A PROPERTY ENCOMPASSING 18.598 + ACRES LOCATED NORTHEAST CORNER OF BATAAN MEMORIAL WEST AND RINCONADA BOULEVARD. SUBMITTED BY UNDERWOOD ENGINEERING, REPRESENTIVE.

Removed from agenda.

9.3 COUNCIL BILL NO. 23-014; ORDINANCE NO. 3020: AN ORDINANCE APPROVING A ZONE CHANGE FROM A-2 (AGRICULTURE DISTRICT) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR PROPERTY LOCATED AT 3400 BATAAN MEMORIAL EAST. SUBMITTED BY JOHN HECK, PROPERTY OWNER.

Council agreed to bring it forward.

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

10.1 MAYOR MIYAGISHIMA

None.

10.2 COUNCILOR GANDARA

I do want to remind the public and council and staff there will be a change regarding where El Paso Electric bills will be paid. They are closing their locations. I had an opportunity to talk to Eric this morning and appreciated the reminder. There are at least forty other locations. There is a listing on their website. I would like to not only inform the public today but Ifo if we can get our PIO to probably place some information on our website and put our a press release, regarding that. We still have quite a few people that use the locations to pay their bills.

I mentioned briefly related to the resolutions that the Economic Development Policy Review Committee is working on, specific to the state legislature and how typically Ifo, there is a list of those over the year that we are sort of recognizing and staff puts it together and brings it to council. Are we going to do the same thing? I am specifically addressing, thank you Director Teeters for putting out the resolution related to the amendment to the Metropolitan Redevelopment Code. We have been talking a lot about that and as a tool right to help stimulate economic development. We know that we will be working with Albuquerque's Municipal and maybe some other smaller municipalities to bring this forward. Ifo will we be able to do that and when will we expect some of the additional resolutions to come to council that we want our legislature that we want them to pass?

Ifo Pili said I will get with staff and come up with a timeline and get that back.

Councilor Gandara said Mayor thank you for bringing up the issue related to the Trost Building. We have been receiving quite a few of emails related to that. I know I met prior to the holiday with Ifo and he informed me that it was going to demo. I of course am against the demolition. I believe whole heartedly in historic preservation. I do know that in the body of the emails there is idea that we are not following our own ordinance related to that and I thought this particular issue came in front of the commission in

October and we clearly heard that even from some of the public. I appreciate working with the property owner and looking at an opportunity for some entity to take this on. Mayor what is the amount?

Mayor Miyagishima said it is approximately $125,000. In discussion with Randy McMillan was whether this group can be formed and whether or not they move forward. I think all I was asking was some sort of skeleton, whether it is some bylaws or the fact that they are attempting to register a nonprofit or an LLC. Something to show their seriousness of it.

Councilor Gandara said I appreciate that. I have been asked to organize a meeting from a couple of people, constituents. I am happy to do that but I also don't want to muddy the water. I think that if there is a serious entity that is interested in doing this we do not have a lot of time.

The other thing, my student and I are putting a meeting together with folks in our community that address substance abuse and addiction services in hopes that we come together and organize ourselves with the help of Larry Horan our lobbyist. We will be meeting Wednesday at 9. In just hopes of bringing awareness to the seriousness of addiction in our community and sort of what to do next related to how we form or develop a twenty-eight day facility or a facility related to a piece of that puzzle in terms of providing adequate services to the community and that is something that is missing. We have had some initial conversations with our substance abuse providers and there is some deep concerns about gaps and barriers to those services. We will be organizing ourselves in hopes to have a meeting with the Governor to put it on our call and to funding related to a twenty-eight day facility. Councilor Bencomo, I copied you on that email because you have had interest in that. Wednesday at 9 here at City Hall on the second floor.

10.3 COUNCILOR FLORES

Before we started our meeting, I handed out to all council members a proposed ordinance and I asked the Mayor to place it on the agenda and he denied the item to be on the agenda. I will just read the heading. It is a draft. An Ordinance of the City Council of the City of Las Cruces creating a Police Oversight Board with Duties and Responsibilities. I did not draft this, our Legal Department did not draft this. At this point I don't know if any of you had an opportunity to even look at it but what I am asking for is a consensus to put it on the agenda. I would request that call to be made at this point.

Mayor Miyagishima said we don't take a vote. I kind of just take it as a discretionary thing.

Councilor Flores asked how do we go about it?

Mayor Miyagishima said I already see some head shaking no.

Councilor Flores said ok, there is not a consensus of four people to put it on the agenda? That goes into the record at this point.

Mayor Miyagishima said no because we didn't vote on anything.

Councilor Flores said we don't vote on anything, but it is a public comment.

Mayor Miyagishima said it is a public comment.

Councilor Flores asked does it go in our minutes?

Mayor Miyagishima said it might.

Councilor Flores said the reason is that it doesn't really read like an ordinance as far as I am concerned it reads like almost like a study on the perfect world type of thing but I think that we owe it to our constituents, the people who worked on this. I thought it a moral duty to present it to council. If there is no agreement to get it on the agenda so be it but I think that it would have been good to have it on the agenda for discussion because some of the points that were brought up is that we have an Oversight Committee but we fellow councilors who aren't on that Oversight Committee know nothing about it. Public Safety Committee, we know nothing about it unless you are on those committees. So we as a City Council, as a City are ignorant of the efforts the administration is engaging in. There are a lot of issues. We continue to have litigation. This proposed ordinance does not deal specifically with any ongoing litigation at this time and I think that it would have been a good way to have public input on the issue, to have the authors of this ordinance and the people who participated in the formation to have brought it into airing our laundry type of thing.

Mayor Miyagishima said let me just say for the record I am going to be meeting with this group next week. There is a couple of things in all fairness to the many of my colleagues who worked on getting the LIGHT, where you are having the firefighters and such help assist the police to deal with people who are in mental situations. That is one, and the second thing is as you recall Chief Dominguez came up and the Council approved these various bonuses to look at this next academy and it has been confirmed that there are people who have that background in sociology or psychology, those type of background that you want to slowly integrate into the police department, to help the fire department in dealing with those situations. They want to see if this works. Now if we can't get that to work, then ok. But I think in all fairness it is important to at least give that a try. The other thing that worries me, especially when you're dealing with issues such as this, I have heard it's never been brought up. Let's just say you have an organization, for some reason you're seeing more and more litigation, what happens when a lawsuit says you guys had reviewed something and you let it go and vice versa and now they are getting sued. The city cannot protect them. There are so many things that need to be examined and discussed. Earlier when we have our police outside forum, they are made up of people who actually none of them were former police officers. They all have the background in the very items that I think many of our colleagues like to see.

Councilor Flores said it might work, it might not work but why is it that other council don't know what is going on and that is my big question. When we get approached,

because we are the frontliners and we get approached with that and not only is it because we are councilors and we there for our entitled. Just in terms of our communication with our community because it looks like we are doing nothing. Just because we don't know what is going on.

Mayor Miyagishima said I see no reason and Jocelyn can correct me or Ifo, Christine the minutes are sent from these two different committees, Public Safety and Oversight, I don't see why the rest of the council could not be copied on that. We don't do official minutes. Is there notes that can be taken and then disseminated?

Councilor Flores asked can they be verified notes? How would that work Christine?

Christine Rivera, City Clerk said I am the one who does them. I am the Clerk for the Public Safety Committee.

Councilor Flores asked what about the Oversight and then there is the Public Safety. Do you take notes for both committees? Then who does the notes for the one?

Christine Rivera said Vanessa King does the ones for Oversight and there are official minutes but I will leave that to Jocelyn as to how those get disseminated because they are confidential. I do the ones for Public Safety.

Councilor Flores said I rest my case.

Mayor Miyagishima said Oversight deals with not just police and fire. It deals with the entire city organization.

10.4 COUNCILOR CORRAN

I think to this question I would just say that this isn't really part of my Councilor comments I would just say that just bringing forward an ordinance and having a public debate in that way is the most constructive way to talk about this I do think we do need a more robust conversation about the best practices to police accountability and I think we need to have it in the public eye and have more significant input than exist now. To that end I support Councilor Flores efforts and any community efforts that are happening toward that, and I don't think that waiting and seeing is a strategy.

The historic preservation Trost conversation I just reiterated and clarify that I appreciate the Mayor kind of brokering a deal or some potential deal that does think creatively about this but I would also say that the folks who have been emailing and I do read all of the emails and do my homework resulted in me reading very carefully through the historic preservation ordinances which clearly states that city's vestment comes when something becomes registered as a historic property which this is not in either city, state or national registry, which national registry is incredibly hard. This property isn't documented in any of those domains, and it is a very rigorous process to registered. I would urge constituents to look at Section 40.9 and read through that really carefully that talks about registration of historic properties and the role of the historic preservation committee in doing so. I definitely have some concerns about

using public money to fund monuments to a racist history so I will just put that out there as well. You can't count on me ever to support that.

Free adoptions at the Animal Shelter just as a note sponsored by Dona Ana County Humane Society. This Saturday Action Programs for Animals, an organization that I feel is very close to my heart is having an open house from 2-5. They have been around for probably ten years, but they have this new space off of Solano that they have been using.

Mayor Miyagishima said how about if we have a Work Session. I just came up with a few ideas so that the public is aware of this. I hear what you are saying, and I agree with you about transparency. We know that the Chief is in charge of the department, but I think a lot of people may not be aware that the City Manager actually is the Chief's boss and I think if we have Work Session and solely dedicated to this. Let's put a focus on this to allow various individuals so that they can share some of their concerns and see how we might be able to work better with the community and increase that transparency and their interaction and such.

10.5 COUNCILOR BENCOMO

Before getting to council, I did work around and was in communication and was in relationship with people doing a lot of work on police accountability and I came on this council feeling like that was a priority for me and it has only increased since being here. There has been very, in my opinion many high profile cases that should not have happened ever and to be really honest with all of you, I have been outspoken about my support for police reforms, police accountability, policies and it has been very alienating. People can't seem to separate that police accountability isn't the same as me deeply supporting officers and wishing they're safe and they return home. I have back and forth about supporting something like this because I have felt overwhelmed by policing issues and I have felt often that we are not doing enough to change culture and in having these conversations with advocates I realized that policies like this unfortunately are superficial and I want real change. Ordinances like this are not proven to work across the country. I still want to see real policies and real changes. I still want to have public conversations. I am incredibly open and have been for the last three years around having these conversations.

On the issue of the building, the Club House, I think we spent nearly $3,000,000 on the restoration of the Amador and more to come and in the moment where we are experiencing a serious housing crisis, growing income inequality and I just cannot see, justify the use of public dollars for something like this. For communities who are now just advocating for this. Where has the advocacy been for this building for the last three years. At this point I don't know if I would support the use of public funds for the restoration of the building. I think it is great that the owner is willing to work when we have closed the doors on them so many times honestly, and I am glad that they are willing to come to the table and talk with community members that want to take ownership of this and do the fundraising and advocacy work themselves.

I want to note that I am hoping the resolution that Mayor Pro Tem and Sergio drafted up a few weeks ago regarding hygiene stations and additional funds for an outreach person comes to City Council before the end of the year. We talked about in our

Housing PRC meeting last week and there was support by it from all of us. We are seeing hotspots in our area on Solano, downtown, on Picacho that are experiencing more violence and I would argue that it is due to trauma and people not having access to services, which is a whole other root cause that we need to address but in the meantime, I do think that hygiene stations and more funding for outreach people will go a long way.

Councilor Graham
I did not expect to be saying this, but the conversation has led me here. I am going to make a book recommendation that I am reading right now, and I am halfway through, it's called "I Never Thought of it That Way" by Monica Guzman, who is a leader with an organization called Braver Angels and they are working to depolarize a very politically polarized nation. What I was really thinking about, this book is really resonating with me so far and the underlying theme is understanding not agreement. So, we don't have to agree but we do have to do the often very hard work to try to understand one another and where we are all coming from.

In regard to the Country Club, I was also going to have a reading recommendation, the Las Cruces Municipal Code Chapter 40-09. So, when I am not City counciling or NMSUing I have done intensive technical writing and the majority of that has been on national register of historic places, nominations, state historic preservation officer recommendations. This is a language where I feel pretty fluent and just going to second everything that Councilor Corran said. And also throw it out there that whatever happens with this particular building we need to make sure that our Municipal Code is a little more locked down on historic preservation because I think this will just keep happening and happening.

The Las Cruces Bulletin is running a really excellent series of articles right now on local non-profits and charitable organizations and their very specific current needs so if you're feeling generous around the holiday season check that out. I've seen it online and I am sure it is in print too.

10.6 COUNCILOR ABEYTA

A few of the considerations that would have to be taken I think to regards to an Oversight Board, which I will just go ahead and say that I am not in favor of but we do have our Charter and there are certain provisions and prohibitions for us in Article 2 Section 2.05 and that is Appointments and Removal Limitations and administration and consideration, those are Sections B and C. These are to be placed to protect employees from Councilors, like you said we come and we go. We do things but it is to protect employees. Another section that would have to be referenced back which is an Article 5, which is the Administration and that is in Section 4.02 and that is on procedures of hearings and grievances so all those items align with our Charter really drive what we are supposed to do. That is one of the reasons why I think something like this I am not in favor of at this time. I do sit on both the Oversight Committee which looks at waste, fraud and abuse and I sit on the Public Safety Select Committee as well. I know within both of those meetings we are looking at ways to bring forth more information to council as a whole. One of the suggestions that has come out of Oversight is that when we have the OIR reports that we make time during that Work Session to include the availability to have our Public Safety to be able to give a

presentation at the same time so that we are getting information so that we can answer questions kind of concurrently.

I did reach out to Stephen Lopez, our Director of OEM to kind of ask about our vaccine taskforce, we still usually kind of have it on standby still. With the surgence of RSV, Covid and others I have asked if we should meet before the end of the year and he does think that is a good suggestion and so I will be working with everybody's calendars to try to get that on board before the end of December.

I do want to thank Sonya and Phil Catanach and all her staff for the wonderful holiday tree lighting. All the work, there was so many people having a lot of fun.

11. CITY MANAGER REPORT

11.1 IFO PILI

I know Councilor Abeyta already mentioned the tree lighting and gave kudos to Parks and all that they did for that. I just wanted to give the report back from Sonya that there was approximately 3,000 people in attendance.

From Fire Chief Smith, the academy graduation December 16th at 2 p.m. at DACC.

This just came in from Natalie, a Notice of Public Hearing and 30 day comment period from the City of Las Cruces HOME Investment Partnership American Rescue Plan Allocation. A 30 day public comment period will begin on Monday, November 14th, 2022 and end on Thursday, December 15, 2022 at 4 p.m. The draft HOME Allocation Plan will be available for public review starting on Monday, November 14th from 8 a.m. to 5 p.m. Monday to Friday at the Las Cruces City Hall, Economic Development Department 700 North Main suite 1100 or City Clerk's Office Suite 1200 and the Branigan Library 200 East Picacho. It will also be on the City's website at www.lascruces.gov under Discover Housing and Community Resources. Two public hearings to receive comments on the HOME Allocation Plan to be held this Wednesday, December 7th, 2022, from 5:30 at the City Hall 700 North Main Street Room 1158 and another hearing scheduled for Thursday, December 8th at 2:30 at the Mesilla Valley Community of Hope Resource Room, 999 West Amador Las Cruces.

12. ADJOURNMENT

12.1

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to Adjourn at 5:11 p.m.

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

Mayor

City Clerk

City of Las Cruces

City Council Action and Executive Summary

23-084

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

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	January 17, 2023
Drafter:	Donny Prosise	**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 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).**

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

PURPOSE(S) OF ACTION:

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On December 16, 2019, City Council approved Resolution 20-081, authorizing award of a contract for security guard services for the Mesilla Valley Intermodal Transit Terminal (MVITT) in an amount not to exceed $95,000 plus New Mexico Gross Receipts tax (NM GRT) annually for a term of four (4) years, to Security Concepts, Inc. (SCI) of Las Cruces. That contract resulted from procurement no. 19-20-004. The City's RoadRUNNER Transit Program initiated request for proposals 19-20-004 for federally funded security guard services specifically for the MVITT.

The Transit Program is requesting approval to increase the annual not-to-exceed amount for their contract for security guard services to $130,000 plus NM GRT for the remainder of the contract terms. Extended hours of service resumed in April 2022, after two years of reduced services during the pandemic. Hourly rate increases have been requested to align with the new minimum wage rates, resulting in a higher cost for services, and reducing the amount of services that can be requested due to the current contract limit. Transit will continue to utilize this contract on an as-needed basis, subject to annual renewals and approved budget appropriations.

SUPPORT INFORMATION:

Attachment A 19-20-004 Security Svcs for MVITT - SCI - Year 3 of 4

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 authorize the increase in the annual not-to-exceed amount for the contract for security guard services for MVITT.
2. Vote "No"; this will deny the change, which could negatively impact continued City operations and affect continuity of services.
3. Vote to "Amend"; this could modify the resolution, and Council will need to provide direction to staff.
4. Vote to "Table"; this could delay the change, which could negatively impact continued City operations and affect continuity of services.

RESOLUTION 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).

The City Council is informed that:

WHEREAS, on December 16, 2019, City Council approved Resolution 20-081, authorizing award of a contract for security guard services for the Mesilla Valley Intermodal Transit Terminal (MVITT) in an amount not to exceed $95,000 plus New Mexico Gross Receipts Tax (NM GRT) annually for a term of four (4) years, to Security Concepts, Inc. (SCI) of Las Cruces; and

WHEREAS, the City's RoadRUNNER Transit program initiated request for proposals 19-20-004 for federally funded security guard services specifically for the MVITT; and

WHEREAS, the Transit Program is requesting approval to increase the annual not-to-exceed amount for their contract for security guard services to $130,000 plus NM GRT for the remainder of the contract terms; and

WHEREAS, the Transit program resumed extended hours of service in April 2022, after two years of reduced services during the pandemic; and

WHEREAS, hourly rate increases have been requested to align with the new minimum wage rates, resulting in a higher cost for services, and reducing the amount of services that can be requested due to the current contract limit; and

WHEREAS, Transit will continue to utilize this contract on an as-needed basis, subject to annual renewals and approved budget appropriations.

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

(I)

THAT the Resolution authorizing an increase in the annual not-to-exceed amount for contract no. 19-20-004 for security guard services for the MVITT to $130,000 plus NM GRT is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

ATTACHMENT "A"

City of Las Cruces

AMENDMENT NO. 2

CLC No. 19-20-004
Security Services for the Transit Intermodal Center

This amendment made this 2nd day of December 2021 by and between the City Of Las Cruces (City) and Security Concepts, Inc. (Contractor), of 130 N. Solano, Las Cruces, New Mexico 88001.

WITNESSETH

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated January 1, 2020, the parties hereby agree as set forth below:

The following provision is modified:

1. Effective January 1, 2022, Exhibit A, Section III. Cost of Service is amended to reflect revised rates for the unarmed security guard designation equal to $21.38 and the armed security guard designation equal to $23.90.

Subject to the modification set forth in this amendment, the above referenced original agreement dated January 1, 2020 between the parties is hereby ratified and confirmed.

The City and Contractor agree to renew the Agreement's year 3 of 4 for a period of one (1) year, to begin January 1, 2022 and terminate December 31, 2022 in accordance with Section 7, EXTENSION, CHANGES AND AMENDMENTS of Agreement dated January 1, 2020 between the City and Contractor.

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

SECURITY CONCEPTS, INC.

BY: _____
Michael James Gonzales
Operations Manager

12/01/2021
Date

CITY OF LAS CRUCES

BY: _____
Chenyu "Alex" Liu
Purchasing Manager

12/2/2021
Date

APPROVED AS TO FORM

_____
City Attorney

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/11/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Higginbotham Insurance Agency, Inc. 141 Roadrunner Parkway, Suite 109 Las Cruces NM 88011 License#: 2081754	**CONTACT NAME:** Charity Tout **PHONE (A/C, No, Ext):** 817-336-2377 **FAX (A/C, No):** 817-347-6981 **E-MAIL ADDRESS:** CTout@higginbotham.net
INSURED Security Concepts Inc. PO Box 536 Las Cruces NM 88004 SECUCON-01	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** New Mexico Employer's Assurance Company 13674 **INSURER B :** Lexington Insurance Company 19437 **INSURER C :** United Financial Casualty Company 11770 **INSURER D :** Axis Surplus Insurance Company 26620 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1008177539 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X BI&PD Ded:$1000 GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			1117590	2/21/2022	2/21/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG E&O	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $ 1,000,000
C	**AUTOMOBILE LIABILITY** ANY AUTO OWNED AUTOS ONLY X SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY			03128200-1	1/28/2022	1/28/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
D	**UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED RETENTION $			P00100083195201	2/21/2022	2/21/2023	EACH OCCURRENCE AGGREGATE	$ 3,000,000 $ 3,000,000
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		19445.125	12/31/2021	12/31/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
B	Excess Liability			1170591	2/21/2022	2/21/2023	Second Layer	Occ/Agg $1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**********REVISED CERTIFICATE - THIS SUPERCEDES ANY PREVIOUSLY ISSUED CERTIFICATE**********

The General Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status (Including Completed Ops) to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The General Liability and Workers Compensation policies include a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.

See Attached...

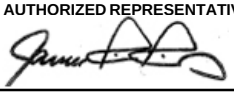
CERTIFICATE HOLDER

City of Las Cruces
PO Box 20000
Las Cruces NM 88004

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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AGENCY CUSTOMER ID: SECUCON-01

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Higginbotham Insurance Agency, Inc.	**NAMED INSURED** Security Concepts Inc. PO Box 536 Las Cruces NM 88004
POLICY NUMBER	
CARRIER / **NAIC CODE**	**EFFECTIVE DATE:**

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

The General Liability policy has a blanket Primary & Non Contributory endorsement that affords that coverage to certificate holders only where there is a written contract between the Named Insured and the certificate holder that requires such status.

The General Liability policies include an endorsement providing that 30 days notice of cancellation will be furnished to the certificate holder when required by written contract.

The Excess Liability Policy is follow form.

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b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. Cancellation

a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

e. If this policy is canceled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, earned premium will be calculated in accordance with the customary short-rate table and procedure, or the Minimum Earned Premium at Inception of the policy shown in Item 4.C. of the Declarations, which ever is greater. The cancellation will be effective even if we have not made or offered a refund.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

10. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

11. Examination of your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during this policy period and up to three years afterward.

12. Change In Control

a. If the first Named Insured designated in Item 1. of the Declarations consolidates with or merges into, or sells all or substantially all of its assets to any person or entity; or

b. If any person or entity acquires an amount of the outstanding ownership interests representing more than 50% of the voting or designation power for the election of directors of the first Named Insured designated in Item 1. of the Declarations, or acquires the voting or designation rights of such an amount of ownership interests;

ENDORSEMENT # 012

This endorsement, effective 12:01 AM 02/21/2022

Forms a part of policy no.: 011170590

Issued to: SECURITY CONCEPTS INC

By: LEXINGTON INSURANCE COMPANY

SCHEDULED ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

GUARDSECURE® SECURITY RELATED GENERAL AND PROFESSIONAL LIABILITY POLICY

SCHEDULE

Name and Address Additional Insured Person or Organization:

1. Where required by Contract

2.

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, provided that: (i) you are required to include such person or organization as an additional insured on this policy by a written contract or written agreement in effect during this policy period and (ii) the written contract or written agreement is executed prior to the "occurrence" or "wrongful act".

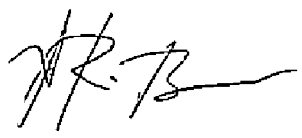
B. The insurance provided to the above described additional insured under this endorsement is limited as follows:

1. **COVERAGE A BODILY INJURY, PROPERTY DAMAGE AND PROFESSIONAL LIABILITY (SECTION I - COVERAGES)** only.
2. The scheduled person or organization is only an additional insured with respect to liability arising out of "your work" or your "professional services".
3. In the event that the Limits of Insurance provided by this policy exceed the Limits of Insurance required by the written contract or written agreement, the insurance provided by this endorsement shall be limited to the Limits of Insurance required by the written contract or written agreement. This endorsement shall not increase the Limits of Insurance shown in the Declarations pertaining to the coverage provided herein.
4. This insurance does not apply to "bodily injury", "property damage" or "professional liability" arising out of:
   a. "Your work" or your "professional services" unless you are required to provide such coverage by written contract or written agreement and then only for the period of time required by the written contract or written agreement and in no event beyond the expiration date of the policy; or

b. The sole negligence of the additional insured for its own acts or omissions or those of its employees or anyone else acting on its behalf.

5. Any coverage provided by this endorsement to an additional insured shall be excess over any other valid and collectible insurance available to the additional insured whether provided on a primary, excess, contingent or on any other basis, unless the written contract or written agreement with the additional insured specifically requires that this insurance be primary and non-contributory with any other insurance issued to the additional insured. In such case, this insurance shall be primary and non-contributory with any other insurance issued to the additional insured.

C. In accordance with the terms and conditions of the policy and as more fully explained in the policy, as soon as practicable, each additional insured must give us prompt notice of any "occurrence" or "wrongful act" which may result in a claim, forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with all of the policy's terms and conditions. Failure to comply with this provision may, at our option, result in the claim or "suit" being denied.



Authorized Representative

ENDORSEMENT # 010

This endorsement, effective 12:01 AM 02/21/2022

Forms a part of policy no.: 011170590

Issued to: SECURITY CONCEPTS INC

By: LEXINGTON INSURANCE COMPANY

CONSTRUCTION OPERATIONS EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

GUARDSECURE® SECURITY RELATED GENERAL AND PROFESSIONAL LIABILITY POLICY

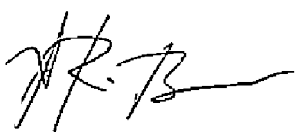
SCHEDULE

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" or a "wrongful act" or any other loss, cost, damage, expense, injury, claim or "suit", caused by, arising out of, or resulting directly or indirectly, in whole or in part, from "construction operations". This exclusion applies whether or not the "construction operations" have been completed or are ongoing.

"Construction operations" means any activity by or on behalf of any insured, in any capacity, regarding, related to, or in support of the erection, demolition, moving, remodeling, or repairing, whether or not such repairs are structural, of any building or structure, including responsibility for safety and all excavation and landscaping.

However, the term "construction operations" does not include those operations specifically described in the above Schedule. If no entries are made in the above Schedule, then no operations are excepted from the definition of "construction operations".

All other terms and conditions of the policy remain the same.



Authorized Representative

ENDORSEMENT # 013

This endorsement, effective 12:01 AM 02/21/2022

Forms a part of policy no.: 011170590

Issued to: SECURITY CONCEPTS INC

By: LEXINGTON INSURANCE COMPANY

PRIMARY/NON CONTRIBUTORY ENDORSEMENT

This endorsement modifies insurance provided by the policy:

Notwithstanding any other provision of the policy to the contrary, the insurance afforded by this policy for the benefit of the Additional Insured shall be primary insurance, but only with respect to any claim, loss or liability arising out of the Named Insured's operations; and any insurance maintained by the Additional Insured shall be non-contributing.

All other terms and conditions of the policy remain the same.

Authorized Representative OR
Countersignature (In states where applicable)

ENDORSEMENT # 014

This endorsement, effective 12:01 AM 02/21/2022

Forms a part of policy no.: 011170590

Issued to: SECURITY CONCEPTS INC

By: LEXINGTON INSURANCE COMPANY

WAIVER OF SUBROGATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

GUARDSECURE® SECURITY RELATED GENERAL AND PROFESSIONAL LIABILITY POLICY

Paragraph **8.** of **SECTION VI - CONDITIONS** is deleted in its entirety and replaced with the following:

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

However, in the event of any payment under this policy for a loss for which you have waived the right of recovery in a written contract entered into prior to the loss, we shall also waive our right of recovery. This waiver shall only apply with respect to a loss arising out of operations required of you under such written contract in which you have waived your right of recovery.

All other terms and conditions of the policy remain the same.

Authorized Representative

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

New Mexico Employer's Assurance Company (Ed. 4-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

BLANKET WAIVER/ WORK LOCATION(S):

PER CONTRACT(S) ON FILE WITH EMPLOYER - APPLIES IN NEW MEXICO AND WHILE TEMPORARILY WORKING OUTSIDE THE STATE OF NEW MEXICO

SPECIFIC WAIVER(S)

NEW MEXICO AND WHILE TEMPORARILY WORKING OUTSIDE THE STATE OF NEW MEXICO

Company Name	Address	Waiver Contact	Job Description

Nothing in this endorsement contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements, or limitations of this policy other than as above stated. Nothing elsewhere in this policy shall be held to vary, alter, waive, or limit the terms, conditions, agreements or limitations of this endorsement.

This endorsement when attached to Policy No. 19445.125 issued to Security Concepts Inc shall be valid and shall form part of said policy. The effective date of this endorsement is 12/31/2021 12:01 A.M. Mountain Standard Time.

Date Issued: 12/03/2021

THE FOLLOWING SPACES ARE TO BE COMPLETED ONLY IF THIS ENDORSEMENT IS NOT ATTACHED TO THE POLICY WHEN ISSUED

Countersignature of Licensed Resident Agent _____

WC 00 03 13

City of Las Cruces

AMENDMENT NO. 1

CLC No. 19-20-004
Security Services for the Transit Intermodal Center

This amendment, made this 29th day of December, 2020 by and between the City Of Las Cruces and Security Concepts, Inc., of 130 N. Solano, Las Cruces, New Mexico 88001.

WITNESSETH

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated December 26, 2019, the parties hereby agree as set forth below:

The following provisions are modified:

1. Section 7. EXTENSION, CHANGES AND AMENDMENTS. The Agreement is hereby extended for one (1) year, from January 1, 2021 through December 31, 2021 for year two (2) of a possible four (4) year term. All other terms and conditions, including any amendments, of the Agreement remain the same.

2. Exhibit A, Section III. COST OF SERVICE is amended to reflect a six (6) percent increase in hourly rate for the unarmed security guard designation equal to $19.20.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated December 26, 2019 between the parties is hereby ratified and confirmed.

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

SECURITY CONCEPTS, INC.

BY: _____
Michael James Gonzales
Operations Manager

12/22/2020
Date

CITY OF LAS CRUCES

BY: _____
Chenyu "Alex" Liu
Purchasing Manager

12/29/2020
Date

APPROVED AS TO FORM

_____ for JLB 12/29/20
City Attorney

City of Las Cruces

SERVICE AGREEMENT

THIS AGREEMENT made and entered into on this 26th day of December, 2019 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Security Concepts, Inc., of 130 N. Solano, Las Cruces, New Mexico 88001 hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION
Security Services for the Transit Intermodal Center.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP No.19-20-004 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 $95,000.00, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR will submit detailed invoices for all services rendered by e-mail to Disbursements@las-cruces.org.

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

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

6. TERM AND SCHEDULE
This Agreement shall become effective on January 1, 2020 for a term of one (1) year and has three (3) one-year renewal options to be exercised at the discretion of the CITY, upon mutual written consent. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

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

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

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

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

11. TERMINATION

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

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

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

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

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

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

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP

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

16. ASSIGNMENT

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

17. INSURANCE

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

1. $1,000,000 (One Million Dollars) General Liability Insurance with the City named as an Additional Insured with the same coverage as the CONTRACTOR. Coverage must include:

a. Premises / Operations
b. Products / Completed Operations
c. The City of Las Cruces must be named as an Additional Insured.

2. $100,000 (One Hundred Thousand Dollars) Property Damage Insurance.
3. In the case of any approved subcontract, the CONTRACTOR shall require the subcontractor to provide statutory Workers' Compensation and Employers' Liability Insurance, with the same limits as those required by the CONTRACTOR.
4. Auto Liability - $1,000,000 – Each Accident, and must include:
   a. Covers all owned, leased, hired, and non-owned autos or "any auto"
   b. The City of Las Cruces must be named as an Additional Insured.
5. Worker's Compensation Per New Mexico Statute (3 or more employees)
   $1,000,000 – Bodily Injury: By Accident – Each Accident
   $1,000,000 – By Disease: Policy Limit
   $1,000,000 – By Disease: Each Employee
   This coverage required for non-construction contractor with three (3) or more employees, or construction contractor with one (1) or more employees
   Exception: Not applicable to out-of-state companies unless they are hiring in New Mexico.
6. The CONTRACTOR must immediately notify the CITY if insurance is canceled or not renewed.

The City must be named as additional insured – this coverage must be as broad as the coverage provided to the insured; coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of the endorsement(s) for this coverage must be provided as a condition of this Agreement.

Waiver of Subrogation will apply and shall be noted on the certificate.

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

18. INDEMNITY AND LIMITATION

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

19. APPLICABLE LAW

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

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

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

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

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

TO CITY:	City of Las Cruces, PO Box 20000 Las Cruces, NM 88004 ATTENTION: Michael Bartholomew
With Copies to:	Purchasing Manager
TO CONTRACTOR:	Security Concepts, Inc. 130 N. Solano Las Cruces, NM 88001 ATTENTION: Michael James Gonzales

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.

SIGNATURE BLOCK FOLLOWS ON NEXT PAGE

SECURITY CONCEPTS, INC.

BY: _____
Michael James Gonzales
Operations Manager

12/26/2019
Date

CITY OF LAS CRUCES

BY: _____
Chenyu "Alex" Liu
Purchasing Manager

12/26/19
Date

APPROVED AS TO FORM

_____
City Attorney

EXHIBIT A
SERVICES

I. Scope: Patrolling of property, interaction with drivers and patrons, ban from facilities, and reporting of incident procedures applicable to the security officers on duty at Mesilla Valley Intermodal Transit Terminal (MVITT).

II. Procedure/Instructions:

- Reporting -
  - All security will report to MVITT 30 minutes prior and stay 15 minutes after Transit operating hours. Hours of operation are M-F 6:30 am — 10:30 pm, Saturday 9:30 am — 6:00 pm. Hours can change on certain holidays and will be communicated to the security company.
  - Once the Customer Service Representative (CSR) arrives, security will pick up a 2-way radio and monitor/respond while on duty. Clipboard and duty log are required throughout shift. Transit will not provide these materials.
- Patrolling —
  - Security will patrol pedestrian concourse when buses are arriving (:23 and :53 after each hour) and stay on the concourse until all buses depart from MVITT.
  - While patrolling, security will check with driver of each bus to inquire is assistance is required.
  - Upon bus departure, security will walk the entire outside of the property and building. Next, security will check the inside lobby as well as both men's and women's restrooms in the lobby. Prior notice to restroom occupant(s) shall be given by security by knocking on door and identifying itself before entering restroom. This procedure will repeat every half hour to deter bad behavior/graffiti.
  - When interacting with the public, security will maintain professionalism. Assist visitors with any questions or direct them to transit staff (bus drivers, CSRs).
  - Security shall be aware of visitors and the surrounding area for any unwelcome behaviors, such as smoking near entrances, blocking entrances/exits or walkways, no riding of bicycles/skateboards on walkways, loud music, graffiti, littering, harassment, arguing, cursing, alcohol or drug use, or any other behaviors that may interfere with others or violate transit policy.
  - Security will make sure visitors are entering/exiting and parking correctly.

- Security will escort transit staff to the parking lot during nighttime hours.

- Ban from Transit Property —
  - There may be times that the behavior of a visitor may require security to ask them to leave transit property or use pepper spray or force, when these situations arise.
  - Security will protect itself and use company training to help deal with the situation.
  - Security shall always involve the supervisor on duty (call sign "Mobile 2") by 2-way radio.
  - Detailed reports are necessary to include date, time, description, witnesses etc. Send a copy of the report to management if a person is asked to leave.
  - Security will get a picture of the person whenever possible and forward to management.
  - Whenever Las Cruces Police Department is involved, call Mobile 2 to report immediately.
  - Any action that requires the removal of a person from transit property MUST be reported to Mobile 2 and documented on security report.
- Saturday or After-Hours Patrol —
  - Security will pick up 2-way radio from staff, check with drivers when they arrive and walk the property when buses depart before returning to the lobby and checking restrooms as done Monday thru Friday.
  - Security will remain on the concourse or in the lobby when the lobby is open rather than in their personal vehicles.
  - There may be times that the lobby will not be staffed by City personnel. When the lobby is not staffed by City employees, security will patrol the lobby when citizens are inside to ensure the lobby remains safe and undamaged.
  - When operating hours are finished, security will clear the lobby, turn in the 2-way radio to Transit staff and assist with securing the doors.
  - Security will escort transit staff to the parking lot during nighttime hours.

III. Cost of Service

ITEM	DESCRIPTION	HOURLY RATE
1	Unarmed Security Guard	$18.07
2	Armed Security Guard	$19.98

NOTE: These prices do not reflect any future increases in the minimum wage.

1. Direct Costs: there are no direct costs to City of Las Cruces
2. Indirect Costs: there are no indirect costs to City of Las Cruces
3. Labor (hours) Costs/Rate Schedule

Rates for Regularly Scheduled/On-going Assignments

Unarmed Security Guard	$18.07	per hour/per guard
Rate paid to unarmed guard	$10.10-$10.95	per hour/per guard
Armed Security Guard	$19.98	per hour/per guard
Rate paid to armed guard	$11.00-$12.15	per hour/per guard
Supervisor of Security Armed	$19.98	per hour/per supervisor

Overtime bill rate	N/A	per hour/per guard
Overtime rate paid to guard	1.5 x hourly rate	per hour/per guard
Holiday bill rate (only for worked holidays)	2.0 X hourly rate	per hour/per guard

Overtime	Computed at 1.5 times the regular rate for any one guard working more than forty hours a week.
Holiday Time	Computed at 2.0 times the regular rate for any one guard working on the City's date of observance of a holiday.
Shift Differential	Not Applicable

4. Material: there are no materials costs applicable to SCI services.
5. Equipment: there are no additional charges to City of Las Cruces for standard uniform, equipment, and radios required in the RFP/Scope of Work. If there is a need for any additional equipment in the future (that was not addressed in the RFP/Scope of Work), SCI will locate the equipment at the best price and City of Las Cruces will be charged for the equipment at cost.
6. Any other proposed costs- no other proposed costs that may be incurred by the City.

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 2/22/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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

PRODUCER (505)857-2171 Market Finders, Inc Managing General Agent PO Box 90280 Albuquerque, NM 87199	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED SECURITY CONCEPTS, INC. P.O. BOX 536 LAS CRUCES, NM 88004-0536	INSURER(S) AFFORDING COVERAGE / NAIC # INSURER A : SCOTTSDALE INSURANCE COMPANY INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	X	Y	CPS2951814	02/21/19	02/21/20	EACH OCCURRENCE	$	2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$	100,000
							MED EXP (Any one person)	$	5,000
							PERSONAL & ADV INJURY	$	2,000,000
							GENERAL AGGREGATE	$	2,000,000
							PRODUCTS - COMP/OP AGG	$	2,000,000
								$	
	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)	$	
								$	
A	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $		Y	CXS0007682	02/21/19	02/21/20	EACH OCCURRENCE	$	2,000,000
							AGGREGATE	$	2,000,000
								$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					WC STATU-TORY LIMITS OTH-ER		
							E.L. EACH ACCIDENT	$	
							E.L. DISEASE - EA EMPLOYEE	$	
							E.L. DISEASE - POLICY LIMIT	$	
A	E&O		N	CPS2951814	02/21/19	02/21/20	EACH OCCURANCE		2,000,000
							GENERAL AGGREGATE		2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED WITH PRIMARY AND NONCONTRIBUTORY WORDING AND WAIVER OF TRANSER, PER FORMS CG2001, CG2010 & CG2404, WITH A 30 DAY NOTICE OF CANCELLATION.

CERTIFICATE HOLDER

CITY OF LAS CRUCES
PO BOX 20000

LAS CRUCES NM 88004

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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COMMERCIAL GENERAL LIABILITY
CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Copyright, Insurance Services Office, Inc., 2012

INSURED

POLICY NUMBER: CPS2951814

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
CITY OF LAS CRUCES PO BOX 20000 LAS CRUCES, NM 88004	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Copyright, Insurance Services Office, Inc., 2012
INSURED

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Copyright, Insurance Services Office, Inc., 2012

POLICY NUMBER: CPS2951814

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
ANY PERSON OR ORGANIZATION WITH WHOM THE INSURED HAS AGREED TO WAIVE RIGHTS OF RECOVERY, PROVIDED SUCH AGREEMENT IS MADE IN WRITING AND PRIOR TO THE LOSS.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV - Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

Copyright, Insurance Services Office, Inc., 2008

SECUCON-01 ICHAVEZ

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 6/18/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Irene Chavez
Pat Campbell Insurance 141 Roadrunner Pkwy, Ste.109 Las Cruces, NM 88011	PHONE (A/C, No, Ext): FAX (A/C, No):
	E-MAIL ADDRESS: ichavez@campbell-ins.com
	INSURER(S) AFFORDING COVERAGE — NAIC #
	INSURER A : New Mexico Business Insurance Company — 15995
INSURED	INSURER B :
Security Concepts, Inc PO Box 536 Las Cruces, NM 88004	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	☐ OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		X	19445.121	12/31/2018	12/31/2019	X PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐ N/A						E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

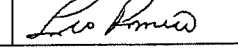
CERTIFICATE HOLDER

City of Las Cruces
P. O. Box 20000
Las Cruces, NM 88004

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

New Mexico Business Insurance Company (Ed. 4-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

BLANKET WAIVER/ WORK LOCATION(S):

PER CONTRACT(S) ON FILE WITH EMPLOYER - APPLIES IN NEW MEXICO AND WHILE TEMPORARILY WORKING OUTSIDE THE STATE OF NEW MEXICO

SPECIFIC WAIVER(S)

NEW MEXICO AND WHILE TEMPORARILY WORKING OUTSIDE THE STATE OF NEW MEXICO

Company Name	Address	Waiver Contact	Job Description

City of Las Cruces

AMENDMENT NO. 1

CLC No. 19-20-004
Security Services for the Transit Intermodal Center

This amendment, made this 29th day of December, 2020 by and between the City Of Las Cruces and Security Concepts, Inc., of 130 N. Solano, Las Cruces, New Mexico 88001.

WITNESSETH

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated December 26, 2019, the parties hereby agree as set forth below:

The following provisions are modified:

1. Section 7. EXTENSION, CHANGES AND AMENDMENTS. The Agreement is hereby extended for one (1) year, from January 1, 2021 through December 31, 2021 for year two (2) of a possible four (4) year term. All other terms and conditions, including any amendments, of the Agreement remain the same.

2. Exhibit A, Section III. COST OF SERVICE is amended to reflect a six (6) percent increase in hourly rate for the unarmed security guard designation equal to $19.20.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated December 26, 2019 between the parties is hereby ratified and confirmed.

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

SECURITY CONCEPTS, INC.

BY: _____
Michael James Gonzales
Operations Manager

12/22/2020
Date

CITY OF LAS CRUCES

BY: _____
Chenyu "Alex" Liu
Purchasing Manager

12/29/2020
Date

APPROVED AS TO FORM

_____ for JLB 12/29/20
City Attorney

City of Las Cruces

SERVICE AGREEMENT

THIS AGREEMENT made and entered into on this 26th day of December, 2019 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Security Concepts, Inc., of 130 N. Solano, Las Cruces, New Mexico 88001 hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION
Security Services for the Transit Intermodal Center.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP No.19-20-004 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 $95,000.00, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR will submit detailed invoices for all services rendered by e-mail to Disbursements@las-cruces.org.

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

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

6. TERM AND SCHEDULE
This Agreement shall become effective on January 1, 2020 for a term of one (1) year and has three (3) one-year renewal options to be exercised at the discretion of the CITY, upon mutual written consent. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

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

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

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

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

11. TERMINATION

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

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

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

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

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

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

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP

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

16. ASSIGNMENT

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

17. INSURANCE

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

1. $1,000,000 (One Million Dollars) General Liability Insurance with the City named as an Additional Insured with the same coverage as the CONTRACTOR. Coverage must include:

a. Premises / Operations
b. Products / Completed Operations
c. The City of Las Cruces must be named as an Additional Insured.

2. $100,000 (One Hundred Thousand Dollars) Property Damage Insurance.
3. In the case of any approved subcontract, the CONTRACTOR shall require the subcontractor to provide statutory Workers' Compensation and Employers' Liability Insurance, with the same limits as those required by the CONTRACTOR.
4. Auto Liability - $1,000,000 – Each Accident, and must include:
   a. Covers all owned, leased, hired, and non-owned autos or "any auto"
   b. The City of Las Cruces must be named as an Additional Insured.
5. Worker's Compensation Per New Mexico Statute (3 or more employees)
   $1,000,000 – Bodily Injury: By Accident – Each Accident
   $1,000,000 – By Disease: Policy Limit
   $1,000,000 – By Disease: Each Employee
   This coverage required for non-construction contractor with three (3) or more employees, or construction contractor with one (1) or more employees
   Exception: Not applicable to out-of-state companies unless they are hiring in New Mexico.
6. The CONTRACTOR must immediately notify the CITY if insurance is canceled or not renewed.

The City must be named as additional insured – this coverage must be as broad as the coverage provided to the insured; coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of the endorsement(s) for this coverage must be provided as a condition of this Agreement.

Waiver of Subrogation will apply and shall be noted on the certificate.

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

18. INDEMNITY AND LIMITATION

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

19. APPLICABLE LAW

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

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

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

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

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

TO CITY:	City of Las Cruces, PO Box 20000 Las Cruces, NM 88004 ATTENTION: Michael Bartholomew
With Copies to:	Purchasing Manager
TO CONTRACTOR:	Security Concepts, Inc. 130 N. Solano Las Cruces, NM 88001 ATTENTION: Michael James Gonzales

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.

SIGNATURE BLOCK FOLLOWS ON NEXT PAGE

SECURITY CONCEPTS, INC.

BY: _____
Michael James Gonzales
Operations Manager

12/26/2019
Date

CITY OF LAS CRUCES

BY: _____
Chenyu "Alex" Liu
Purchasing Manager

12/26/19
Date

APPROVED AS TO FORM

_____
City Attorney

EXHIBIT A
SERVICES

I. Scope: Patrolling of property, interaction with drivers and patrons, ban from facilities, and reporting of incident procedures applicable to the security officers on duty at Mesilla Valley Intermodal Transit Terminal (MVITT).

II. Procedure/Instructions:

- Reporting -
  - All security will report to MVITT 30 minutes prior and stay 15 minutes after Transit operating hours. Hours of operation are M-F 6:30 am — 10:30 pm, Saturday 9:30 am — 6:00 pm. Hours can change on certain holidays and will be communicated to the security company.
  - Once the Customer Service Representative (CSR) arrives, security will pick up a 2-way radio and monitor/respond while on duty. Clipboard and duty log are required throughout shift. Transit will not provide these materials.
- Patrolling —
  - Security will patrol pedestrian concourse when buses are arriving (:23 and :53 after each hour) and stay on the concourse until all buses depart from MVITT.
  - While patrolling, security will check with driver of each bus to inquire is assistance is required.
  - Upon bus departure, security will walk the entire outside of the property and building. Next, security will check the inside lobby as well as both men's and women's restrooms in the lobby. Prior notice to restroom occupant(s) shall be given by security by knocking on door and identifying itself before entering restroom. This procedure will repeat every half hour to deter bad behavior/graffiti.
  - When interacting with the public, security will maintain professionalism. Assist visitors with any questions or direct them to transit staff (bus drivers, CSRs).
  - Security shall be aware of visitors and the surrounding area for any unwelcome behaviors, such as smoking near entrances, blocking entrances/exits or walkways, no riding of bicycles/skateboards on walkways, loud music, graffiti, littering, harassment, arguing, cursing, alcohol or drug use, or any other behaviors that may interfere with others or violate transit policy.
  - Security will make sure visitors are entering/exiting and parking correctly.

- Security will escort transit staff to the parking lot during nighttime hours.

- Ban from Transit Property —
  - There may be times that the behavior of a visitor may require security to ask them to leave transit property or use pepper spray or force, when these situations arise.
  - Security will protect itself and use company training to help deal with the situation.
  - Security shall always involve the supervisor on duty (call sign "Mobile 2") by 2-way radio.
  - Detailed reports are necessary to include date, time, description, witnesses etc. Send a copy of the report to management if a person is asked to leave.
  - Security will get a picture of the person whenever possible and forward to management.
  - Whenever Las Cruces Police Department is involved, call Mobile 2 to report immediately.
  - Any action that requires the removal of a person from transit property MUST be reported to Mobile 2 and documented on security report.
- Saturday or After-Hours Patrol —
  - Security will pick up 2-way radio from staff, check with drivers when they arrive and walk the property when buses depart before returning to the lobby and checking restrooms as done Monday thru Friday.
  - Security will remain on the concourse or in the lobby when the lobby is open rather than in their personal vehicles.
  - There may be times that the lobby will not be staffed by City personnel. When the lobby is not staffed by City employees, security will patrol the lobby when citizens are inside to ensure the lobby remains safe and undamaged.
  - When operating hours are finished, security will clear the lobby, turn in the 2-way radio to Transit staff and assist with securing the doors.
  - Security will escort transit staff to the parking lot during nighttime hours.

III. Cost of Service

ITEM	DESCRIPTION	HOURLY RATE
1	Unarmed Security Guard	$18.07
2	Armed Security Guard	$19.98

NOTE: These prices do not reflect any future increases in the minimum wage.

1. Direct Costs: there are no direct costs to City of Las Cruces
2. Indirect Costs: there are no indirect costs to City of Las Cruces
3. Labor (hours) Costs/Rate Schedule

Rates for Regularly Scheduled/On-going Assignments

Unarmed Security Guard	$18.07	per hour/per guard
Rate paid to unarmed guard	$10.10-$10.95	per hour/per guard
Armed Security Guard	$19.98	per hour/per guard
Rate paid to armed guard	$11.00-$12.15	per hour/per guard
Supervisor of Security Armed	$19.98	per hour/per supervisor

Overtime bill rate	N/A	per hour/per guard
Overtime rate paid to guard	1.5 x hourly rate	per hour/per guard
Holiday bill rate (only for worked holidays)	2.0 X hourly rate	per hour/per guard

Overtime	Computed at 1.5 times the regular rate for any one guard working more than forty hours a week.
Holiday Time	Computed at 2.0 times the regular rate for any one guard working on the City's date of observance of a holiday.
Shift Differential	Not Applicable

4. Material: there are no materials costs applicable to SCI services.
5. Equipment: there are no additional charges to City of Las Cruces for standard uniform, equipment, and radios required in the RFP/Scope of Work. If there is a need for any additional equipment in the future (that was not addressed in the RFP/Scope of Work), SCI will locate the equipment at the best price and City of Las Cruces will be charged for the equipment at cost.
6. Any other proposed costs- no other proposed costs that may be incurred by the City.

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 2/22/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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

PRODUCER (505)857-2171 Market Finders, Inc Managing General Agent PO Box 90280 Albuquerque, NM 87199	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED SECURITY CONCEPTS, INC. P.O. BOX 536 LAS CRUCES, NM 88004-0536	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : SCOTTSDALE INSURANCE COMPANY INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	X	Y	CPS2951814	02/21/19	02/21/20	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 100,000 $ 5,000 $ 2,000,000 $ 2,000,000 $ 2,000,000
	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)	$ $ $ $
A	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $		Y	CXS0007682	02/21/19	02/21/20	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
A	E&O		N	CPS2951814	02/21/19	02/21/20	EACH OCCURANCE GENERAL AGGREGATE	2,000,000 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED WITH PRIMARY AND NONCONTRIBUTORY WORDING AND WAIVER OF TRANSER, PER FORMS CG2001, CG2010 & CG2404, WITH A 30 DAY NOTICE OF CANCELLATION.

CERTIFICATE HOLDER

CITY OF LAS CRUCES
PO BOX 20000

LAS CRUCES NM 88004

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Copyright, Insurance Services Office, Inc., 2012
INSURED

POLICY NUMBER: CPS2951814

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
CITY OF LAS CRUCES PO BOX 20000 LAS CRUCES, NM 88004	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Copyright, Insurance Services Office, Inc., 2012

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Copyright, Insurance Services Office, Inc., 2012

POLICY NUMBER: CPS2951814

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
ANY PERSON OR ORGANIZATION WITH WHOM THE INSURED HAS AGREED TO WAIVE RIGHTS OF RECOVERY, PROVIDED SUCH AGREEMENT IS MADE IN WRITING AND PRIOR TO THE LOSS.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV - Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

Copyright, Insurance Services Office, Inc., 2008
INSURED

SECUCON-01 ICHAVEZ

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 6/18/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Irene Chavez
Pat Campbell Insurance 141 Roadrunner Pkwy, Ste.109 Las Cruces, NM 88011	PHONE (A/C, No, Ext): FAX (A/C, No):
	E-MAIL ADDRESS: ichavez@campbell-ins.com
	INSURER(S) AFFORDING COVERAGE / NAIC #
	INSURER A : New Mexico Business Insurance Company / 15995
INSURED	INSURER B :
Security Concepts, Inc PO Box 536 Las Cruces, NM 88004	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	☐ OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐	N/A	X	19445.121	12/31/2018	12/31/2019	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

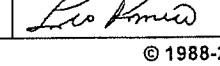
CERTIFICATE HOLDER

City of Las Cruces
P. O. Box 20000
Las Cruces, NM 88004

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

New Mexico Business Insurance Company (Ed. 4-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

BLANKET WAIVER/ WORK LOCATION(S):

PER CONTRACT(S) ON FILE WITH EMPLOYER - APPLIES IN NEW MEXICO AND WHILE TEMPORARILY WORKING OUTSIDE THE STATE OF NEW MEXICO

SPECIFIC WAIVER(S)

NEW MEXICO AND WHILE TEMPORARILY WORKING OUTSIDE THE STATE OF NEW MEXICO

Company Name	Address	Waiver Contact	Job Description

23-085

City of Las Cruces

City Council Action and Executive Summary

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

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	January 17, 2023
Drafter:	Jenny Hernandez	**Department:**	City Manager's Office
Program:	Sustainability	**Line of Business:**	Sustainability

Title: **A RESOLUTION TO SUPPORT STATE OF NEW MEXICO LEGISLATIVE ACTIONS THAT ADVANCE SUSTAINABILITY AND CLIMATE ACTION.**

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

PURPOSE(S) OF ACTION:
To support 2023 New Mexico Legislative actions that advance sustainability and climate action.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
In the upcoming New Mexico 2023 Legislative Session, at least 12 bills have the potential to advance that sustainability and climate action work to create resilient, equitable, and prosperous communities for current and future generations.

These proposed bills address the energy sector, (e.g., local choice energy, geothermal, and electric vehicle tax credits); the environment sector, (e.g., water conservation, plastic pollution, climate action, climate and health resiliency); and financing, (e.g., Public Bank and Clean Energy Fund Act.)

This collection of legislation awaits final details and formal language that come with filing. Yet at this early date, it is clear that NM state leaders are committed to advancing the City's objective of creating resilient, equitable, and sustainable communities now and for the future.

SUPPORT INFORMATION:
Exhibit A - Full Bill Summary

PLAN(S):
Elevate Las Cruces

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?
☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes" to adopt the support of 2023 New Mexico Legislative actions that advance sustainability and climate action.
2. Vote "No" not to adopt the support of 2023 New Mexico Legislative actions that advance sustainability and climate action.
3. Vote to "Amend" to change the resolution to support the 2023 New Mexico Legislative actions that advance sustainability and climate action.
4. Vote to "Table" the resolution to support the 2023 New Mexico Legislative actions that advance sustainability and climate action.

RESOLUTION 23-085

A RESOLUTION TO SUPPORT STATE OF NEW MEXICO LEGISLATIVE ACTIONS THAT ADVANCE SUSTAINABILITY AND CLIMATE ACTION.

The City Council is informed that:

WHEREAS, the City recognizes that sustainability and climate action work to create resilient, equitable, and prosperous communities for current and future generations; and

WHEREAS, the City seeks to increase its knowledge of and influence in resource conservation, renewable energy, social equity and engagement, and sustainable practices in New Mexico; and

WHEREAS, the City supports collaborative opportunities with New Mexico's cities, counties, and Native American Pueblos, Nations and Tribes and organizations such as the Coalition of Sustainable Communities of New Mexico provides a structure to support the aforementioned goals; and

WHEREAS, the 60-day Legislative Session of the 2023 New Mexico State Legislature is bringing forward many important sustainability and climate protection legislation.

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

(I)

THAT the City of Las Cruces supports legislation to promote clean fuel standards, financing commercial clean energy, electric vehicle and charging tax credit, climate security, water conservation, environmental rights amendment, and other sustainable legislation as outlined 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

Bill Summaries
First Session of the State of New Mexico's 56th Legislature

This document was prepared by Coalition of Sustainable Communities New Mexico staff for its members: the Cities of Albuquerque, Santa Fe, and Las Cruces, the Town of Taos, and the Counties of Santa Fe, Los Alamos, and Taos. These summaries are shared in November 2022 with elected officials and members' staffs to aid in decision making regarding Legislative Priorities Resolutions in advance of the 56th Legislature. The listings are not prioritized, and no recommendations are made.

Energy

Local Choice Energy

- Sponsor: Unknown at this time.
- Key Points:
  - A bill to allow municipalities the option to choose their electricity generation sources, expand energy options for tribal nations, and lower the costs to customers.
  - Authorizes a municipality, county, tribe or pueblo to pool the electricity demand of multiple customers and procure power from an alternative supplier while still receiving transmission and distribution service from the existing utility.
  - Accelerates New Mexico's transition to renewable energy. Of the 72 cities around the nation that have reached their clean energy goals as of 2021, 67 employed the Local Choice option.
  - Rates can be lowered by aggregating demand as municipalities and tribes leverage for better rates either by owning the resources or purchasing from competitive suppliers, or both.
  - Local Choice now authorized in ten states: CA, IL, MD, MA, NH, NJ, NY, OH, RI, and VI.

Geothermal Energy Development

- Sponsor: Senator Gerald Ortiz y Pino
- Key Points:
  - A bill to support a two-phase development of geothermal (GT) energy.
    - Phase 1: in the 2020s expand known existing resources – heat pumps for green houses, hot springs, and spas.
    - Phase 2: through the 2030s, promote longer term development of advanced GT electricity to gain the final 10% of clean grid electricity.
  - Create a State geothermal central authority to apply for federal grants.
  - Fund a university Geothermal Center of Excellence and a geothermal consortium.
  - Add incentives for development with production tax credits, corporate income tax credits, and GRT deductions.
  - Encourage use of heat pumps for new government buildings.

Geothermal Ground-Coupled Heat Pump Tax Credit

- Sponsor: Unknown at this time.
- Key Points:
  - Restores and extends the termination date of the tax credit likely to December 31, 2033. The previous credit expired on December 31, 2020.
  - Credit is against personal and corporate income tax liability for 30% of purchase and installation of an eligible system.
  - The 2022 version of this bill, HB35, called for a $9,000 credit, refundable to the taxpayer, and with credits capped at $16 million annually, while the expired credit was $2 million annually.

Environment

Climate Action Act

- Sponsors: Unknown at this time.
- Key Points:
  - Implements aspects of the Governor's Executive Order #3 on Climate Change Action.
  - Creates a comprehensive statutory framework for addressing climate change in New Mexico.
  - Requires 50% reduction in GHG emissions of 2005 levels by 2030 and 90% by 2050.
  - Grants broad authority to all state agencies to promulgate any rule deemed necessary to achieve reduction targets and mitigate climate change impacts.
  - Establishes a consultation requirement to support climate policies for overburdened communities and tribal nations.
  - Creates a Just Transition Office to coordinate financial resources and government programs to support economic transition of fossil fuel dependent communities.
  - Creates a Resiliency Office and a Climate Crisis Infrastructure Fund to address climate-related emergencies.
  - Regarding the federal Inflation Reduction Act and Infrastructure Act, codifies state policy vehicles to ensure efficient allocation of federal dollars including energy efficiency and methane reduction programs, environmental justice block grants, and clean heavy-duty vehicles.

Conservation Fund

- Sponsors: Unknown at this time.
- Key Points:
    - Establishes a new conservation fund to help protect New Mexico's communities from the threat of wildfire, flood, and drought while growing the outdoor economy in rural and urban areas.
    - State investments must be made in the 2023 session to unlock millions of dollars in federal support. Federal funds from the Inflation Reduction Act (IRA) cannot be brought to New Mexico without a substantial state fund or consistent conservation investment.
    - Over $3 billion available nationally in the IRA for forest health, wildfire resilience, and conservation.

Climate and Health Resiliency Act

- Sponsors: Representative Liz Thomson
- Key Points:
    - A bill designed to protect the health of New Mexicans, especially those in underserved communities, from the expanding impacts of climate change.
    - Creates a Climate and Public Health Program in the Department of Heath with six staff positions.
    - Establishes a Public Health and Climate Resiliency Fund to assist local communities respond to health emergencies related to climate change.
    - Ensures coordinated action plans supporting communities in building health resiliency to future climate impacts.
    - Provides both climate and health expertise to assist communities in emergency preparedness programs and accessing federal funds for climate adaptation.

Water Conservation

- Sponsors: Unknown at this time
- Key Points:
    - As of this writing, the Coalition staff has no insight into the number or the specific content of water conservation bills to be filed for the 2023 legislation session.
    - Briefings, however, on drought in New Mexico featured prominently at 2022 meetings of the Interim Committee on Water and Natural Resources.
    - Multiple water conservation, management, and funding bills anticipated.

New Mexico Reforestation Center Act

- Sponsors: Unknown at this time.
- Key Points:
    - A possible bill to create the NM Reforestation Center to address the impacts of climate change on the state's forests. Creates a governing board. Directs establishment of a funding account and makes an appropriation.
    - Responsibilities shared across NM Highlands University, NMSU, UNM, and the Forestry Division of EMNRD.
    - Designed to access impacts of climate change on state's current and future reforestation needs via seed bank, nursery, and planting programs.
    - Likely to be modeled after HB101 introduced in the 2022 legislative session.

Center for Dryland Resilience

- Sponsors: Unknown at this time.
- Key Points:
    - A possible bill to create a Center for Dryland Resilience located at NMSU while working in collaboration with UNM, ENMU, and NMIMT.
    - Center would focus on research into resiliency including best irrigation practices and drought-tolerant crop varieties.
    - Additional programs would develop a statewide ecological monitoring network, computer modeling to predict dryland vulnerabilities, and resilience strategies for sustainable management.
    - Likely to be modeled after SB72 introduced in the 2022 legislative session.

Plastic Pollution Reduction Act

- Sponsors: Unknown at this time.
- Key Points:
    - A bill designed to address the issue of single-use disposable plastics which break down contaminating New Mexico's land and water.
    - Contains a proposed ban on single use plastic bags at point of sale with a 10 cent fee for paper bags as a funding mechanism for local communities to support recycling and education.
    - Contains a proposed ban on Styrofoam food containers, a substance not recyclable in New Mexico.
    - Contains a proposed limit to the use of single-use plastic takeout containers: plates, cups, and stirrers with exemptions as necessary for entities such as pre-packaged food, food pantries, soup kitchens, etc.
    - The bill would not preempt local communities from enacting more stringent restrictions on single use plastic.

Electric Vehicle (and) Charging Unit Tax Credit

- Sponsor: Unknown at this time.
- Key Points:
    - A likely bill proposing a pair of personal income tax credits to incentivize purchase or lease of electric or plug-in hybrid vehicles and the purchase and installation of an EV charging unit.
    - Sets vehicle credit of $3,250 for all taxpayers who purchase a qualifying EV registered or purchased in New Mexico.
    - Eligible EVs are only those with a before-tax manufacture suggested retail price of $55,000 or less.
    - Sets the EV charging unit credit maximum at $300.
    - Sets an annual vehicle registration fee of $54 for EVs and $27 for plug-in hybrids.
    - A 2023 bill will likely be modeled after SB21from the 2022 session whose details are shown above.

Clean Energy Fund ("green bank") Act

- Sponsor: Senator Liz Stefanics
- Key Points:
    - Create enabling legislation for a statewide Clean Energy Fund ("green bank"), an independent nonprofit, which would expand the Santa Fe Clean Energy Fund (Fund), seen as a pilot project, to statewide scope and reach.
    - Allow for a portion of the federal IRA funding (e.g., $7 billion is allocated to support states' "green banks") to be used in New Mexico to finance the statewide Clean Energy Fund.
    - Appropriate state funds to bridge operations before federal funds are released.
    - Develop financial loan programs to support low-income households reduce their energy burden through energy efficiency, electrification, onsite and community solar.
    - Expand the Fund to eventually include other environmental infrastructure developments such as EV infrastructure, EV fleets, and resiliency projects.
    - A tested model with 23 green banks in 17 states.

Distributed Energy Generation Act

- Sponsors: Senator Liz Stefanics
- Key Points:
    - A bill to amend the Renewable Portfolio Standards in the Renewable Energy Act to require a portion of renewable energy come from Distributed Energy Resources (DER) (rooftop solar, community solar, and behind the meter storage) and achieve the cleanest, most resilient, and least cost grid for NM electric customers.
    - Objectives of the legislation include:

- Balance the grid by locating DER close to electricity consumption.Reduce need for costliest investment in bulk power systems and ease transmission line congestion.
- Reduce system loss by locating DER nearest to electricity consumption.
- Leverage private dollars to modernize the grid and support electrification without having to use ratepayer funds.
- Ensure energy equity, that all New Mexicans have access to electricity.

  - Seeks to take advantage of millions of dollars available through the federal Inflation Reduction Act specifically focused on distributed energy projects.
  - Renewable Energy Act amendment would require that a percentage of IOU total average annual retail sales, measured in kWh, come from DER which is no larger than 5MW (measured in AC) and is either located behind a customer's meter, or allocates at least 30% of the resource's nameplate capacity directly to low-income. Phased program would increase over time from 3% today to an optimized percentage of 15% by 2032.

Utility Legal Fee Act

- Sponsors: Unknown at this time.
- Key Points:
  - A bill to amend the Public Utilities Act to disallow IOUs from recovering legal costs through customer rates.
  - Designed to create a more equitable playing field for stakeholders which engage in policy efforts and protect rate payers from IOUs using ratepayer funds for hearings and cases that may not be in the ratepayer's best interest.

Appliance Efficiency Standards

- Sponsor: Unknown at this time.
- Key Points:
  - A possible bill to set a minimum level of energy and water efficiency standards for certain household and commercial appliance products.
  - Designed to create utility bill savings for both individuals and businesses.
  - Impact will be to further reduce statewide GHG emissions.

Finance

Public Bank for New Mexico

- Sponsor: Unknown at this time.
- Key Points:
  - Authorizes a public bank owned by the state of New Mexico to finance New Mexico's infrastructure projects, energy projects, small businesses, and economic development.
  - Will invest public funds (taxes and fees) and keeps them circulating in the state.
  - Seeks a non-recurring appropriation to launch the Public Bank.
  - Works in partnership with community banks, credit unions, and Community Development Financial Institutions to make loans enhancing local communities.
  - Keeps money in New Mexico for reinvestment that currently goes to debt service on bonds with out-of-state banks and to their investors.
  - In advance of the 2021 legislative session where a previous version of Public Bank was introduced, the Cities of Albuquerque and Las Cruces and Santa Fe County passed specific resolutions supporting the Public Bank. The City of Santa Fe also cited their support referring to a resolution passed in a previous year.
  - Additional Information: https://aflep.org/what-is-a--bank/

Grants Opportunities Council

- Sponsor: Unknown at this time.
- Key Points:
  - A possible bill to create a Grants Administration Council attached to the NM Department of Finance and Administration. Would advise on identifying, procuring, using, and maintaining federal and other grants.
  - Would identify barriers to procuring grants and share best practices on managing and accounting for grants.
  - Will report activities and recommendations to the Governor, the Department, and the Legislature annually by December 1.
  - Establishes a "Grants Matching Fund" to receive appropriations, gifts, grants, and donations.
  - Intent is to assist with grant matching funds particularly for projects serving rural and frontier communities, other underserved populations, and smaller counties and municipalities.
  - In the 2022 legislative session, HB62 "Grants Opportunities Council" passed both the House and Senate and was pocket vetoed by the Governor.

Governance

Reform of the NM State Legislature

- Sponsor: Unknown at this time.
- Key Points:
    - A proposed Amendment to provisions of the 1912 New Mexico Constitution.
    - Increase the duration of legislative sessions from today's alternating 30 day and 60 day sessions with a goal of improved quality and efficiency by allowing additional time to propose, address, and improve legislation.
    - Provide a salary for legislators increasing the opportunity of citizens to become a legislator and expanding diversity of those elected.
    - Authorize year-long and permanent staff assigned to each legislator. Outside of the sessions, staff could provide greater services, support, and availability to constituents.
    - Current estimates suggest a cost of approximate $4 million/year, less than 1% of the state budget.

Environmental Rights (Green) Constitutional Amendment

- Sponsor: Senator Antoinette Sedillo Lopez
- Key Points:
    - A proposed Amendment to the New Mexico Constitution adding a new section to Article II, the Bill of Rights.
    - Language would include, but not be limited to, "The people of the state shall be entitled to clean and healthy air, water, soil, and environment; a stable climate; and self-sustaining ecosystems, for the benefit of public health, safety and general welfare. The state shall protect these rights equitably for all people regardless of race, ethnicity, tribal membership status, socioeconomics, or geography." And, "The state, counties and municipalities shall serve as the trustee of the natural resources of New Mexico and shall conserve, protect and maintain these resources for the benefit of all the people, including present and future generations." And, "The provisions of this section are self-executing. Monetary damages shall not be awarded for a violation of this section. This section is enforceable against the state, counties and municipalities."
    - Establishes a constitutional mandate recognizing a healthy environment as an inherent and generational right of New Mexicans.
    - Additional Information: https://www.ncel.net/green-amendment/

Budgets

Support for NMED, EMNRD, and OSE/ISC Budget

- Sponsor: Governor Lujan Grisham's budget proposal to be brought forward by the Department of Finance and Administration (DFA)
- Key Points:
    - Departments charged with climate action policies and programs are requesting FY2024 budgets commensurate with their expanding roles to combat climate change. Staff increases are needed to manage programs especially where federal dollars are available through the Inflation Reduction Act.
    - NMED seeks a budget expansion to expand climate-related work including reducing carbon emissions from the transportation sector, develop a surface water discharge program, clean up contaminated groundwater sites, implement water reuse strategies, etc.
    - EMNRD seeks budget approval to meet its statutory authorities, expand staff, and access anticipated federal climate change funding. For example, the proposed budget would add staff to the Oil Conservation Division (regulating and permitting oil and gas industries, expanding oil and gas inspections, remediating polluted land, etc) and to the Forestry Division (increase initial attack capacity for wildfires, expand firefighter training, improve post-fire watershed recovery, etc.)
    - OSE/ISC seeks expanded capacity to address needs from persistent drought and climate change impacts and to prepare communities so as to assure resilient water supplies across the state.

City of Las Cruces

City Council Action and Executive Summary

23-086

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

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	January 17, 2023
Drafter:	Rocio Gamboa	**Department:**	Financial Services
Program:	Budget	**Line of Business:**	Fiscal Management

Title: **A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT VARIOUS GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023 BUDGET.**

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

PURPOSE(S) OF ACTION:
To adjust the FY23 budget and CIP.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City relies on grant funding for many of the critical programs provided each year for the residents of Las Cruces. Grant funding awards are received throughout the fiscal year and are not budgeted during the normal fiscal year budgeting process. Funds are not budgeted until the City has received a grant award agreement due to the unpredictable nature of funding levels and timing.

Per the City's Grants Administration Program Policy, the City Manager, or his designee, may execute grant agreements with funding agencies. Upon receipt of the fully executed agreement from the funding agency, the Council may adjust the budget.

The request for City Council is to accept the budget adjustments to be used by the departments for the scope of work as defined by each grant agreement.

SUPPORT INFORMATION:
Exhibit "A" Fund Summary
Attachment "A" Grant Listing 1-17-2023
Attachment "B" - FY23 Fire Marshal Award Ltr
Attachment C - HIDTA Mod 2 - 3 Executed
Attachment D - FY23_State_Aid_Grant_Agreement_for_Thomas_Bra (1) Executed

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

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☒ Yes

☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Exhibit "A"	**AVAILABLE AMOUNT:** Exhibit "A"	**EXPENDITURE AMOUNT:** Exhibit "A"

Funding Source(s):

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote “Yes”; this will approve the Resolution to accept the budget adjustments as presented and adjust the City’s FY2023 budget.
2. Vote “No”; this will not approve the Resolution to adjust the budget as presented and return the funds to the granting agency.
3. Vote to “Amend”; this could delay the Resolution and the process of spending the grant funds within the predetermined grant schedule and require direction to staff.
4. Vote to “Table”; this will delay the Resolution and will impact the implementation of the grant agreement, the City department’s ability to utilize the funds and return the grant funds to the granting agency.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

RESOLUTION 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.

The City Council is informed that:

WHEREAS, the City has received notice of grant awards for various City departments; and

WHEREAS, the grants will be used as designated in the scope of work and within the specified time period as shown in the grant agreements executed by the City Manager, or his designee; and

WHEREAS, the grant agreements that are the subject of this budget adjustment will be attached to the Resolution with a Summary, as Attachment "A"; and each agreement will be attached as subsequent attachments.

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

(I)

THAT the City hereby amends the FY2023 City Budget to accept all grant awards as shown in the Fund Summary, Exhibit "A", attached hereto and made part of this Resolution.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2022-23

	2100 SPECIAL REVENUE 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	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	0	182,000
Federal Grants	5,358,202	16,465,589	0	16,465,589
State Grants	1,120,000	9,774,421	320,509	10,094,930
Local Grants	46,440	35,865	0	35,865
Debt Service	0	0	0	0
Total Revenues	**6,706,642**	**26,458,134**	**320,509**	**26,778,643**
TOTAL RESOURCES	**$ 6,706,642**	**26,458,134**	**320,509**	**26,778,643**
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	629,443	6,124,308	0	6,124,308
Las Cruces Fire Department	85,478	1,078,030	300,000	1,378,030
Utilities	0	875,000	0	875,000
Economic Development	2,798,662	13,511,171	0	13,511,171
Internal Audit	0	0	0	0
Assistant City Manager-400	468,870	1,229,603	0	1,229,603
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	11,030	459,980	0	459,980
Community Development	337,980	791,665	0	791,665
Quality of Life	2,375,179	2,023,377	20,509	2,043,886
Public Works	0	365,000	0	365,000
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 6,706,642**	**26,458,134**	**320,509**	**26,778,643**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**0**	**0**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 0**	**0**	**0**	**0**

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	7492 HIDTA-CLC 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ (6,268)	(6,268)	1,000	(5,268)
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	273,983	1,175,623	9,140	1,184,763
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**273,983**	**1,175,623**	**9,140**	**1,184,763**
TOTAL RESOURCES	**$ 267,715**	**1,169,355**	**10,140**	**1,179,495**
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
METRO	129,998	566,442	9,140	575,582
HIDTA	143,985	609,181	0	609,181
Total Expenditures	**$ 273,983**	**1,175,623**	**9,140**	**1,184,763**
Other Resources				
Operating Transfers In	0	5,268	0	5,268
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**5,268**	**0**	**5,268**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ (6,268)**	**(1,000)**	**1,000**	**0**

ATTACHMENT A

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 1/17/2023

Attachment #: B

Grant Title: **FY23 NM STATE FIRE MARSHAL EQUIPMENT GRANT**

Department: Fire Department

Grant/Agreement #: Invoice # 20221121 *Grant Type:* State Capital

Granting Agency: NM Dept of Homeland Security & Emergency Management

Grant Amount: $300,000.00 *Cash Match Amount:* $0.00

Total Grant Project Amount: $300,000.00

Cash Match Source: N/A *Match Fund #:* N/A

Grant Start Date: 11/21/2022 *Grant End Date:* 5/31/2023

Amendment Needed: ***CIP****:* NO ***VAF:*** NO

Project Code #: 23015

Use of Funds Description:

To purchase Self Contained Breathing Apparatus for the Fire Department. Funding from the 2022 NM Capital Outlay for Fire and the FY23 Fire Fund will be used to complete the project.

ATTACHMENT A

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 1/17/2023

Attachment #: C

Grant Title: **HIDTA FY23 Modification #2 & 3**

Department: JPA – HIDTA

Grant/Agreement #: G22SN0006A *Grant Type:* Federal Operating

Granting Agency: Ex Office of the President – Office of National Drug Control Policy

Grant Amount: $9,140.00 *Cash Match Amount:* $0.00

Total Grant Project Amount: $1,229,584.00

Cash Match Source: N/A *Match Fund #:* N/A

Grant Start Date: 1/1/2023 *Grant End Date:* 12/31/2023

Amendment Needed: ***CIP****:* NO ***VAF:*** NO

Project Code #: 22030

Use of Funds Description:

The City is the fiscal agent for the High Intensity Drug Trafficking Area for Southern New Mexico. The agency funds law enforcement activities with state, local and federal law enforcement agencies throughout southern New Mexico. This action accepts two modifications, the first is to reduce the awarded amount for the Fugitive/Violent Offender Task Force; and the second increases the awarded amount for the NM Crime Gun Intelligence and Enforcement. The resulting adjustments provide a total grant award of $1,229,584.00.

ATTACHMENT A

GRANT ACCEPTANCE SUMMARY

COUNCIL MEETING DATE: 1/17/2023

Attachment #: D

Grant Title: **FY23 NM STATE GRANTS IN AID – THOMAS BRANIGAN LIBRARY**

Department: Quality of Life - Library

Grant/Agreement #: N/A *Grant Type:* State Capital

Granting Agency: NM State Library

Grant Amount: $20,509.44 *Cash Match Amount:* $0.00

Total Grant Project Amount: $20,509.44

Cash Match Source: N/A Match Fund #: N/A

Grant Start Date: 7/1/2022 *Grant End Date:* 6/30/2023

Amendment Needed: ***CIP****:* NO VAF: NO

Project Code #: 23093

Use of Funds Description:

To support Recipient's library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of library services as defined in Section 4.5.2.7(B)NMAC.

ATTACHMENT B

Michelle Lujan Grisham
Governor

Kelly Hamilton
Deputy Cabinet Secretary

David Dye
Cabinet Secretary

Carla Walton
Deputy Cabinet Secretary

Randy Varela
NM State Fire Marshal

DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

November 21, 2022 INVOICE NO. 20221121 FY 23 GRANT AWARD

Las Cruces Fire Department
845 N. Motel Blvd.
Las Cruces, NM 88007

Reference: FY 23 New Mexico Fire Protection Grant Council Award Notice

Congratulations! Your grant application on behalf of the **Las Cruces Fire Department** has been reviewed and an award has been granted. Over 179 grant applications were submitted and over $42,709,554.70 million in needs were considered. The Fire Department has met the minimum requirements and is clearly addressing a critical need affecting the ISO fire protection classification. The equipment purchased with this grant shall meet the requirements of the latest Editions of NFPA.

A voucher or ACH deposit, in the amount of **$300,000.00** for the purchase of the approved project request, will be sent to your local governing body Treasurer on or near **November 21, 2022.**

The deadline to encumber the money by contract with the vendor is **May 31, 2023**. If the bid amount exceeds the awarded amount plus the required matching amount, the additional cost shall be the responsibility of the local government. If the specified equipment may be purchased for less than the grant amount, **the remaining money shall be returned to the grant fund**. All equipment purchased with grant funds must be inspected by this office upon receipt and the attached Project Close-Out Checklist completed and submitted immediately thereafter.

Failure to meet deadlines will result in the loss of funds. If you need additional time to complete your project, your request for an extension must be made in writing, explaining the need for additional time. Grant recipients also need the Council's written permission, to make changes to their projects. Project modifications must be requested in writing, and the modification shall not significantly alter the original purpose of the approved application. Extension and modification requests are reviewed on a case- by-case basis and are not automatically granted.

If further information is required, please contact Randy Varela, State Fire Marshal, at (505) 709-8150.

Sincerely,

Randy Varela
State Fire Marshal

Sincerely,

Robert Larranaga
Grant Council Chair

FY23 NEW MEXICO FIRE PROTECTION GRANT AWARD
PROJECT CLOSEOUT CHECKLIST
PART 1

Upon completion of the funded project, this checklist must be submitted to the NM State Fire Marshal's Office, Fire Services Support Bureau.

COUNTY	
FUNDED PROJECT	
AMOUNT AWARDED	

PROJECT CHECKLIST			
Benchmark	**Deadline**	**Date**	**Name of SFMO Representative**
Project specifications submitted to State Fire Marshal's Office for Review/Approval	August 31, 2022	Submittal Date	Submitted to:
Approval from SFMO to proceed with project specifications		Approval Date	Approved by:
Funds Encumbered by Procurement Code	May 31, 2023	Encumbrance Date	Encumbrance Method Contract/Purchase Order #
Project Completed		Goods/Services Received Date	
SFMO Inspection		Requested Date	Requested of whom:
SFMO Inspection Completed		Inspection Date	By Whom:
SFMO Check of NFIRS Compliance			Submitted to:
Project specifications submitted to State Fire Marshal's Office for Review/Approval		Submittal Date	Approved by:
Approval from SFMO to proceed with project specifications		Approval Date	Encumbrance Method Contract/Purchase Order #

October 4, 2022

Mayor Ken Miyagishima
City of Las Cruces
700 N. Main St.
Las Cruces, NM 88007-8100

Dear Mayor Miyagishima:

Grant number G22SN0006A has been decreased and now totals $1,204,584.00.

The original of Modification 2 is enclosed. If you accept this Modification, sign the Modification and return a copy to the Assistance Center in Miami. Keep the original Modification for your file.

All terms and conditions of the original award apply to the Modification. If you have any questions pertaining to this grant award, please contact Jayme Delano at (202) 395 - 6794.

Sincerely,

Shannon Kelly
National HIDTA Director

Enclosures

NEW MEXICO HIDTA

HIGH INTENSITY DRUG TRAFFICKING AREA

555 SOUTH TELSHOR, STE. 200 * LAS CRUCES, NM 88011 * PH (575) 541-7501 * FAX (575) 541-7510

November 8, 2022

Mayor Ken Miyagishima
City of Las Cruces
700 North Main Street
Las Cruces, NM 88001-1120

Dear Mayor Miyagishima:

High Intensity Drug Trafficking (HIDTA) FY 22 funds have decreased by $15,860.00 as indicated on Modification 2 for the City of Las Cruces Fugitive/Violent Offender Task Force Initiative. The enclosed grant award modification should be completed and **returned to the NM HIDTA Director's Office** as soon as possible.

Detailed information is provided in a letter to you from Shannon Kelly, National HIDTA Director. *In her letter she does ask that you send the signed Award Modifications to Miami;* ***however, I am asking that you return this paperwork to our office.*** We will forward this information to the Miami Assistance Center to ensure that we have the same records.

If you have any questions, please contact Sandra A. Russell, Finance Director at (575) 541-7503.

Sincerely,

Will R. Glaspy
Executive Director

Attachments

WRG:sar

Budget Detail

2022 - New Mexico

Initiative - Fugitive/Violent Offender Task Force **Investigation**

Award Recipient - City of Las Cruces (G22SN0006A)

Resource Recipient - City of Las Cruces

Indirect Cost: 0.0%

Current Budget (net of reprogrammed funds)		***($15,860.00)***
Overtime	**Quantity**	**Amount**
Overtime		($12,720.00)
Total Overtime		**($12,720.00)**
Total Budget		**($12,720.00)**

Budget Detail

2022 - New Mexico

Initiative - Fugitive/Violent Offender Task Force — Investigation

Award Recipient - City of Las Cruces (G22SN0006A)

Resource Recipient - Dona Ana County

Indirect Cost: 0.0%

Current Budget (net of reprogrammed funds)		***($15,860.00)***
Overtime	**Quantity**	**Amount**
Overtime		($3,140.00)
Total Overtime		**($3,140.00)**
Total Budget		**($3,140.00)**

Executive Office of the President **Office of National Drug Control Policy**	AWARD Grant	Page 1 of 1
1. Recipient Name and Address Mayor Ken Miyagishima City of Las Cruces 700 N. Main St. Las Cruces, NM 88007-8100	4. Award Number: G22SN0006A 5. Grant Period: From 01/01/2022 to 12/31/2023	
1A. Subrecipient IRS/Vendor No. Subrecipient Name and Address	6. Date: 10/4/2022 8. Supplement Number 2	7. Action Initial [X] Supplemental
2A. Subrecipient IRS/Vendor No.:	9. Previous Award Amount:	$1,220,444.00
3. Project Title Multiple	10. Amount of This Award:	($15,860.00)
	11. Total Award:	$1,204,584.00
12. • The above grant is approved subject to such conditions or limitation as are set forth in the original Grant.		
13. Statutory Authority for Grant: Public Law 117-103 H.R. 2471-206		
AGENCY APPROVAL	**RECIPIENT ACCEPTANCE**	
14. Typed Name and Title of Approving Official Shannon Kelly National HIDTA Director	15. Typed Name and Title of Authorized Official Ken Miyagishima Mayor	
16. Signature of Approving ONDCP Official Shannon J. Kelly	17. Signature of Authorized Recipient/Date	
AGENCY USE ONLY		
18. Accounting Classification Code UEI: J3ZLWA2K1X47 DUNS: 077609279 EIN: 1856000147A2	19. HIDTA AWARD OND1070DB2223XX ONDG113 OND2000000000 OC 410001 JID: 80816	

October 13, 2022

Mayor Ken Miyagishima
City of Las Cruces
700 N. Main St.
Las Cruces, NM 88007-8100

Dear Mayor Miyagishima:

Grant number G22SN0006A has been increased and now totals $1,229,584.00.

The original of Modification 3 is enclosed. If you accept this Modification, sign the Modification and return a copy to the Assistance Center in Miami. Keep the original Modification for your file.

All terms and conditions of the original award apply to the Modification. If you have any questions pertaining to this grant award, please contact Jayme Delano at (202) 395 - 6794.

Sincerely,

Shannon Kelly
National HIDTA Director

Enclosures

NEW MEXICO HIDTA

HIGH INTENSITY DRUG TRAFFICKING AREA

555 SOUTH TELSHOR, STE. 200 * LAS CRUCES, NM 88011 * PH (575) 541-7501 * FAX (575) 541-7510

November 8, 2022

Mayor Ken Miyagishima
City of Las Cruces
700 North Main Street
Las Cruces, NM 88001-1120

Dear Mayor Miyagishima:

High Intensity Drug Trafficking (HIDTA) FY 22 funds have increased by $25,000.00 as indicated on Modification 3 for the City of Las Cruces EE-NM Crime Gun Intelligence and Enforcement Initiative. The enclosed grant award modification should be completed and **returned to the NM HIDTA Director's Office** as soon as possible.

Detailed information is provided in a letter to you from Shannon Kelly, National HIDTA Director. *In her letter she does ask that you send the signed Award Modifications to Miami;* ***however, I am asking that you return this paperwork to our office.*** We will forward this information to the Miami Assistance Center to ensure that we have the same records.

If you have any questions, please contact Sandra A. Russell, Finance Director at (575) 541-7503.

Sincerely,

Will R. Glaspy
Executive Director

Attachments

WRG:sar

Executive Office of the President **Office of National Drug Control Policy**	AWARD Grant	Page 1 of 1
1. Recipient Name and Address Mayor Ken Miyagishima City of Las Cruces 700 N. Main St. Las Cruces, NM 88007-8100	4. Award Number: G22SN0006A 5. Grant Period: From 01/01/2022 to 12/31/2023	
1A. Subrecipient IRS/Vendor No. Subrecipient Name and Address	6. Date: 10/13/2022 8. Supplement Number 3	7. Action Initial [X] Supplemental
2A. Subrecipient IRS/Vendor No.:	9. Previous Award Amount:	$1,204,584.00
3. Project Title Multiple	10. Amount of This Award:	$25,000.00
	11. Total Award:	$1,229,584.00
12. • The above grant is approved subject to such conditions or limitation as are set forth in the original Grant.		
13. Statutory Authority for Grant: Public Law 117-103 H.R. 2471-206		

AGENCY APPROVAL	**RECIPIENT ACCEPTANCE**
14. Typed Name and Title of Approving Official Shannon Kelly National HIDTA Director	15. Typed Name and Title of Authorized Official Ken Miyagishima Mayor
16. Signature of Approving ONDCP Official Shannon J. Kelly	17. Signature of Authorized Recipient/Date
AGENCY USE ONLY	
18. Accounting Classification Code UEI: J3ZLWA2K1X47 DUNS: 077609279 EIN: 1856000147A2	19. HIDTA AWARD OND1070DB2223XX OND6113 OND2000000000 OC 410001

Budget Detail

2022 - New Mexico

Initiative - EE - NM Crime Gun Intelligence and Enforcement — Intelligence

Award Recipient - City of Las Cruces (G22SN0006A)

Resource Recipient - City of Las Cruces

Indirect Cost: 0.0%

Current Budget (net of reprogrammed funds)		***$25,000.00***
Services	**Quantity**	**Amount**
Subscriptions - database		$25,000.00
Total Services		**$25,000.00**
Total Budget		**$25,000.00**

Initiative Cash by HIDTA

FY 2022

Current Budget (net of reprogrammed funds)

HIDTA	Agency Name	Initiative	Cash	
New Mexico	**City of Las Cruces**	EE - NM Crime Gun Intelligence and Enforcement	25,000.00	Int
		Fugitive/Violent Offender Task Force	0.00	Inve
		Management and Coordination	223,458.55	Admin
		NM Forensic Laboratories	87,900.00	
		NM HIDTA Information Technology	125,996.00	
		NM HIDTA Training	44,201.00	
		NM Investigative Support Center	140,995.00	Int
		Regional Interagency Drug Task Force	582,033.45	Int
	Agency Total : City of Las Cruces		**1,229,584.00**	
Total			**1,229,584.00**	

10/4/2022 1:27:22 PM

NEW MEXICO STATE LIBRARY

1209 CAMINO CARLOS REY • SANTA FE, NEW MEXICO 87507-5166 • (505) 476-9700
A Division of the Department of Cultural Affairs • http://www.nmstatelibrary.org/

Library Director,

Attached to this email are five (5) important documents regarding State Grants-in-Aid for FY23. Ensure *all* are reviewed thoroughly, as they contain critical information and/or instructions. It is worthwhile to save and/or print copies for your records.

Per the 4.5.2 New Mexico Administrative Code (NMAC) *(4.5.2.10 D)*, eligible libraries have *60 days* to return a signed copy of the grant agreement. *If a library does not submit the grant agreement within 60 days of receipt, it forfeits the grant award. We must receive a signed copy of the grant agreement by January 23, 2023.*

The person who electronically signs the grant agreement, must be an authorized agent who has authority to enter into a legal contract with the State of New Mexico. If you are not the person authorized to sign the grant agreement, click **REVIEW DOCUMENTS**, click **OTHER ACTIONS** and select ***Assign to Someone Else*** to enter the *New Signer's Name, Email, and reason for assigning to someone else* and click the yellow **ASSIGN** button.

Please closely review the following attached documents:

- State Grants-in-Aid Checklist and Instructions (for next steps)
- 4.5.2 New Mexico Administrative Code (NMAC) (for requirements to remain eligible for state grants-in-aid)
- State Grants-in-Aid Expenditures Guidance Sheet (for allowable expenditures)

This State Grants-in-Aid allocation is intended to supplement the delivery of local public library services. As these are state funds, *ALL* FY23 State Grants-in-Aid funds *must be spent in its entirety (down to the penny) by June 30, 2023.*

Please note, since the State of New Mexico has begun Fiscal Year 2023 (FY23), the State is applying the 50% Rule for distributing State Grants-in-Aid funds. This occurs in odd-numbered fiscal years, limiting the release of funds to 6-month increments. For further information see *NMSA 6-3-6 State Budget Division; Periodic Allotments.*

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As a result, the New Mexico State Library must distribute the FY23 State Grants-in-Aid allocations in two parts. Please plan on the following funds distribution:

1. 50% of FY23 State Grants-in-Aid allocation in November/December 2022.

2. 50% of FY23 State Grants-in-Aid allocation in January 2023.

This email is being sent only to you, the Library Director. *PLEASE* provide the financial officer and any other interested persons with all pertinent information contained in this email.

Please let me know if there are any questions.

Sincerely,

Carmelita Aragon
State Data Coordinator
New Mexico State Library
Library Development Bureau
Carmelita.Aragon@dca.nm.gov

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FY23 State Grants-in-Aid Checklist and Instructions

Documents attached to this email	What to do with it
Grant Allocation Notification	- Check that all information is correct. - ***SAVE*** and/or ***PRINT*** a copy for your records.
FY23 State Aid Grant Agreement	- Have authorized agent who has authority to enter into a legal contract with the State of New Mexico electronically sign the FY23 Grant Agreement via DocuSign. - *Grant agreements* must be electronically signed via DocuSign by ***January 23, 2023***.
4.5.2 New Mexico Administrative Code (NMAC) - *Revised June 1, 2016*	- ***SAVE*** and/or ***PRINT*** a copy for your records. - Ensure compliance with all requirements this year, to remain eligible for funding in FY24.
State Grants-in-Aid Expenditures Guidance Sheet -*Revised October 2022*	- ***SAVE*** and/or ***PRINT*** a copy for your records. - Refer to this document for how state aid funds can be spent – note: this is not an exhaustive list; contact us with any questions. - Provide financial officer with a copy.
State Aid Expenditures Tracking Sheet – *This will arrive in a separate email labeled as such*	- When received, ***SAVE*** the spreadsheet, and use to track/maintain accurate records for FY23 state aid expenditures. - This spreadsheet *is required and must* be completed and returned *(in Excel format)* to the Development Bureau by June 30, 2023.
What Happens Next?	- The State Librarian will electronically sign the grant agreement with a copy sent *via* email to the library director. - Once the grant agreement is fully executed, a request for payment will be made. - The library's financial agent will receive a check *or* ACH payment. - **Spend *ALL*** FY23 state aid funds in compliance with the 4.5.2 NMAC ***by June 30, 2023***. - Questions? Email: Carmelita.Aragon@dca.nm.gov

DocuSign Envelope ID: CB320CF5-09A6-4D5E-9C3B-7B6F920601CD

NEW MEXICO STATE LIBRARY

1209 Camino Carlos Rey • Santa Fe, NM 87507

FY2023 STATE GRANTS-IN-AID ALLOCATION NOTIFICATION

1.	**Recipient Name**:	Thomas Branigan Memorial Library
2.	**Remit to Name and Address**:	City of Las Cruces, Thomas Branigan Mem Library PO Box 20000 Las Cruces, NM 88001
3.	**State of NM Vendor #**:	54342
4.	**Project Title and Legal and Fiscal Data**:	State Grants-in-Aid to Public Library Statute/Administrative Code NMSA 1978 Section 18-2-4 B, 4.5.2 NMAC
5.	**State Library Contact**:	Carmelita Aragon New Mexico State Library Carmelita.Aragon@state.nm.us
6.	**Source of Funding**:	*State of N.M. Legislature – General Appropriation Act of 2023*
7.	**Grant Type and Amount Received**:	Library Type Grant: Public Library Total Grant Amount: $20,509.44 *(Includes share(s) for any eligible library branches)*
8.	**Allocation Period**:	Fiscal Year 2023 ***ALL* STATE AID FUNDS MUST BE SPENT BY *JUNE 30, 2023*.**
9.	**Terms and Conditions of Allocation**:	The state aid program is intended to supplement and encourage local effort in providing local library service. A library's local budget *shall not* be reduced by its governing body because of eligibility for the state aid program. Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds from the library grants award for one year after the reduction has occurred. State Aid funds ***may be used*** for: 1) library collections; 2) library staff salaries; 3) library staff professional development; 4) library equipment; or 5) other operational expenditures associated with delivery of library services. Libraries must report how all FY23 state aid funds were spent in the FY23 Annual Report.
10.	**Date**:	11/21/2022

State Grants-in-Aid to Public Libraries Agreement For FY2023

This Agreement is entered into on the date of last signature, below, by and between the **New Mexico State Library**, hereinafter called **NMSL**, and **Thomas Branigan Memorial Library** , located in **Las Cruces, NM** , hereinafter called the **Recipient**.

WHEREAS, the State Librarian, the division director of NMSL, is required to administer grants-in-aid and encourage local library service and generally promote an effective statewide library system under NMSA 1978, Section 18-2-4;

WHEREAS, Section 18-2-4 also requires the State Librarian to make rules and regulations necessary to administer NMSL statutory provisions and the State Librarian has adopted such rules for distributing state grants-in-aid to public libraries, codified as 4.5.2 NMAC; and

WHEREAS, NMSL has determined that Recipient qualifies for a state grant-in-aid under 4.5.2 NMAC.

THEREFORE, the Parties agree to the following terms and conditions:

I. NMSL agrees to pay the Recipient a grant in an amount not to exceed **Twenty Thousand Five Hundred Nine Dollars and Forty Four Cents** (**$20,509.44**) to support Recipient's library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of *library services* as defined in Section 4.5.2.7(B) NMAC.

II. The Recipient agrees to:

1. Use the grant only for library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of *library services*, as those services are defined in 4.5.2.7(B) NMAC;
2. Continue to comply with 4.5.2 NMAC and other statutes and rules applicable to developing libraries or public libraries;
3. Engage in good communication and the exchange of information with NMSL regarding library activities and the grant's use;
4. Expend the grant according to the rules outlined in 4.5.2 NMAC, attached hereto as Attachment A;
5. Expend *all* grant funds before June 30, 2023;
6. No later than August 14, 2023, provide NMSL with a report on how the grant was expended as part of the Recipient's annual report for the fiscal year; and
7. Sign and return this Agreement to NMSL ***within 60*** days from receipt of the Agreement, which shall be calculated from the date of postmark or electronic postmark. **If Recipient does not submit this Agreement within the required time period, Recipient forfeits the grant allocation.**

III. If the parties dispute the terms of this Agreement, the Recipient and NMSL hereby agree to and consent to New Mexico state court jurisdiction to address the dispute.

IV. The Laws of New Mexico shall govern this Agreement.

V. Termination for Lack of Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by NMSL to the Recipient. NMSL's decision as to whether sufficient appropriations are available shall be accepted by the Recipient and shall be final.

The Recipient by its signature below certifies that the Recipient will use the grant money only for the uses specified in this Agreement and will comply with all other applicable requirements of this Agreement.

Recipient Signature

DocuSigned by:
Signed: Ifo Pili **Date:** 12/14/2022
761165D6CFB7489...

Print Name and Title: Ifo Pili, City Manager Authorized Agent of Recipient

X My signature above verifies that I am an authorized agent who has authority to enter into a legal contract with the State of New Mexico.

NMSL Signature

DocuSigned by:
Signed: **Date:** 12/21/2022
55F31E9436424FA...

Print Name and Title: Eli Guinnee, New Mexico State Librarian, Authorized Agent of NMSL

Attachment A

Administrative code is subject to change. Please always check for the most up-to-date version online.

STATE AID FOR PUBLIC LIBRARIES

TITLE 4 CULTURAL RESOURCES
CHAPTER 5 STATE LIBRARY
PART 2 STATE GRANTS IN AID TO PUBLIC LIBRARIES

4.5.2.1 ISSUING AGENCY: Department of Cultural Affairs, New Mexico State Library Division.
[4.5.2.1 NMAC - Rp, 4.5.2.1 NMAC, 6/1/2016]

4.5.2.2 SCOPE: Public libraries and developing public libraries.
[4.5.2.2 NMAC - Rp, 4.5.2.2 NMAC, 6/1/2016]

4.5.2.3 STATUTORY AUTHORITY: Subsection I of Section 18-2-4 NMSA 1978 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Subsection B of Section 18-2-4 NMSA 1978 directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system.
[4.5.2.3 NMAC - Rp, 4.5.2.3 NMAC, 6/1/2016]

4.5.2.4 DURATION: Permanent.
[4.5.2.4 NMAC - Rp, 4.5.2.4 NMAC, 6/1/2016]

4.5.2.5 EFFECTIVE DATE: June 1, 2016 unless a later date is cited at the end of a section.
[4.5.2.5 NMAC - Rp, 4.5.2.5 NMAC, 6/1/2016]

4.5.2.6 OBJECTIVE: The objective of this rule is to describe the state grants in aid to public libraries program (hereinafter "the state aid program") and to establish criteria for reviewing and awarding the grants. The purpose of the state aid program is to provide financial assistance that encourages and supports public library service by public libraries and developing public libraries. The state aid program is intended to supplement and encourage local effort in providing local library service. The state aid program consists of developing library grants and public library grants that may be used for: library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of library services.
[4.5.2.6 NMAC - Rp, 4.5.2.6 NMAC, 6/1/2016]

4.5.2.7 DEFINITIONS:

A. "Annual report" means a report sent once a year from a public library or developing library to the state library. An annual report shall at least accomplish the following tasks:

(1) provide information in the time, manner, and form prescribed by the state library;

(2) describe prior fiscal year's activities, including income, expenditures, statistics on collections and services, and compliance with state aid program criteria;

(3) be certified by the library as to the accuracy, completeness, and truthfulness of the information provided; and

(4) be approved by and on file at the state library.

B. "Basic library services" means free services provided in a library's legal service area, including library collections with circulating materials; reference services; a catalog of library holdings accessible by the public; educational programs; interlibrary loan services; public access computers connected to the internet; and internet connectivity for patrons and staff. Basic library service may include any technology or service that relates to the access to information for patron use.

C. "Bookmobile" means a mobile branch that offers basic library services with the exception of computers and internet connectivity.

D. "Branch" means an auxiliary service administered by a public or developing library that provides the following public services:

(1) separate quarters from the main library;

(2) a permanent library collection and reference services;

(3) offers basic library services;

(4) staff present during open hours; and

(5) at least 20 hours of public access to physical quarters per week on an annual basis.

E. **"Circulating materials"** means items from library collections that are checked out by patrons for use outside of the library.

F. **"Collection development policy"** means guidelines used by library staff for making decisions about the budget for and selection, management, and preservation of library collections.

G. **"Community analysis and needs assessment"** means an evaluation of a library's legal service area, its current and future needs, and the library's role in meeting those needs.

H. **"Developing library"** means a New Mexico organization that has initiated and is progressively implementing basic library services within its legal service area.

(1) A developing library is established through one of the following mechanisms:
- (a) through an ordinance or legal resolution of a subdivision of state government;
- (b) by a contract between a private entity and a subdivision of state government;
- (c) by an Indian nation; or
- (d) as a non-profit corporation.

(2) A developing library provides the following public services:
- (a) staff present during open hours;
- (b) at least 15 hours of public access to physical quarters per week on an annual basis;
- (c) at least two days of public access to physical quarters per week on an annual basis; and
- (d) hours of operation posted on or near the library.

I. **"Fiscal year"** means July 1 through June 30.

J. **"Legal service area"** means the geographic area for which a library has been established to offer services and from which, or on behalf of which, the library derives income. The legal service area may be defined by a written agreement with a political subdivision of the state for which the library is the primary service provider. The most recent United States or tribal census determines the population of the legal service area if the population figures are given separately for that area. If the census does not report a discreet population figure for the legal service area, then the state library in its sole discretion shall determine the population for the library's legal service area.

K. **"Library board"** means an administrative or advisory group comprised of representative members of the library's community.

L. **"Library collections"** means library items for public use. Library collections may include such items as books, videos, sound recordings, licensed databases, and equipment. A portion of the collections must be circulating materials.

M. **"Library equipment"** means equipment associated with the delivery of library services.

N. **"Library staff"** means salaried employees or volunteers whose time is regularly dedicated to delivery of library services.

O. **"Matching funds"** means the amount expended in a fiscal year for library collections from any source other than the state. Sources for matching funds may include municipal funds, county funds, tribal funds, or money acquired through donations, fund-raising, or grants. In-kind contributions are not matching funds. Matching funds do not include funds used for operating costs, administrative costs, or regular staff salaries.

P. **"Public library"** means a New Mexico organization that offers basic library services within its legal service area.

(1) A public library is established through one of the following mechanisms:
- (a) through an ordinance or legal resolution adopted by a subdivision of state government;
- (b) by a contract between a private entity and a subdivision of state government;
- (c) by an Indian nation; or
- (d) as a non-profit corporation.

(2) A public library provides the following public services:
- (a) staff dedicated to the library
- (b) year-round public access to the physical location at least 25 hours per week;
- (c) at least two days of public access to physical quarters per week on an annual basis; and
- (d) hours of operation posted on or near the library.

Q. **"Reference services"** means the provision of library staff to answer reference questions during all the hours the library is open.

R. **"Strategic plan"** means a detailed program to ensure that library services meet the current and future needs of the library's legal service area. The strategic plan shall include a vision and mission statement as well as goals and objectives, and it shall cover a period of at least the next three years and not exceed five years.

[4.5.2.7 NMAC - Rp, 4.5.2.7 NMAC, 6/1/2016]

4.5.2.8 DEVELOPING LIBRARY GRANT:

A. Purpose: To supplement an eligible developing library's budget for up to five years until it meets the minimum requirements for a public library grant.

B. Description: The developing library grant funds shall be used for library collections, library staff salaries, library staff training, library equipment, or other operational expenditures associated with delivery of basic library services.

C. Criteria for reviewing and awarding developing library grants: The state library shall award developing library grants to developing libraries that meet or exceed the following criteria.

(1) timely submission of an annual report with the state library;

(2) receipt of no more than five, consecutive, awards of developing library grants;

(3) continuous operation for at least nine months;

(4) demonstration of receipt of financial support from sources other than the state. In particular, matching funds in relation to the population of the library's legal service shall be at least $0.25 per person in its first year and any non-consecutive years of developing library grant application participation; $0.50 per person in its second consecutive year; $0.75 per person in its third consecutive year; $1.00 per person in its fourth consecutive year; and $1.25 per person in its fifth consecutive year;

(5) maintenance of adequate financial and other records to support the library's eligibility for receiving library grants; the state library may audit such records annually, or as needed, as determined in the state library's sole discretion;

(6) compliance with all state statutes and rules;

(7) compliance with requirements for developing library grants;

(8) employment of a designated director;

(9) creation of a library board that meets at least two times a year and adheres to the state's open meetings law; and

(10) successful expenditure of all developing library grant funds during the prior fiscal year, if applicable.

[4.5.2.8 NMAC - Rp, 4.5.2.8 NMAC, 6/1/2016]

4.5.2.9 PUBLIC LIBRARY GRANT:

A. Purpose: To supplement eligible public libraries' budgets.

B. Description: The public library grant funds shall be used for library collections, library staff salaries, library staff training, library equipment, or other operational expenditures associated with delivery of basic library services.

C. Criteria for reviewing and awarding public library grants: The state library shall review and award public library grants to public libraries that have met the following criteria:

(1) timely submission of an annual report with the state library for the current year and a minimum of two years prior;

(2) continuous operation for at least one year;

(3) receipt of a minimum of three consecutive developing library grants;

(4) demonstration of receipt of financial support from sources other than the state; in particular, matching funds in relation to the population of the library's legal service area shall be at least $1.50 per person;

(5) maintenance of adequate financial and other records to support the public library's eligibility for receiving library grants; the state library may audit such records annually, or as needed, as determined in the state library's sole discretion;

(6) compliance with all state statutes and rules;

(7) compliance with all requirements for public library grants;

(8) Formation of a strategic plan that the public library reviews, updates, and files with the state library every three years, and a community analysis and needs assessment, and a collection development policy that the public library reviews, updates, and files with the state library every five years;

(9) maintain a library board that meets at least two times a year and adheres to the state open meetings law;

(10) employment of a designated director; and

(11) successful expenditure of all public library grant funds during the prior fiscal year.

[4.5.2.9 NMAC - Rp, 4.5.2.9 NMAC, 6/1/2016]

4.5.2.10 DISTRIBUTION OF FUNDS: The library division shall distribute state grants in aid in the following manner:

A. Application: The annual report submitted for the immediate prior year shall serve as the developing or public library's application for state grants-in-aid.

B. Allocation: For state grants-in-aid, the state library shall award at least a quarter of a share (0.25) of the annual allocation to developing libraries, one (1) share of the allocation to each public library, and one half (.50) of a share of the allocation to each branch and bookmobile.

C. Notification: Following the end of the application period, the state library shall calculate the grant award for each library. The state library shall notify all eligible public libraries informing them of the amount of their grant.

D. Request for payment: Each library shall return the signed grant agreement to the state library within 60 days of receipt of the agreement measured from the postmark or electronic postmark. Upon timely receipt of the grant agreement, the state library shall process a payment request form. If a library does not submit the grant agreement within the required time period, it forfeits the grant award.

E. Maintenance of effort: A library's local budget shall not be reduced by its governing body as a result of eligibility for the state aid program. Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds from the library grants award for one year after the reduction has occurred.

[4.5.2.10 NMAC - Rp, 4.5.2.11 NMAC, 6/1/2016]

4.5.2.11 LIMITATION ON FUNDS:

A. The grant amounts may vary by year, depending on the amount of the appropriation to the state library by the state legislature and the state library's other budgeted expenses.

B. Libraries shall not use grant funds for administrative or indirect expenses such as budgeting, accounting, financial management, information systems, data processing, and legal services

C. Public and developing libraries shall expend all grant funds during the fiscal year in which they are awarded.

D. Should a library cease providing basic library services prior to or within thirty days of funding; grant funds shall revert to the state library.

[4.5.2.11 NMAC - Rp, 4.5.2.12 NMAC, 6/1/2016]

4.5.2.12 APPEAL OR VARIANCE:

A. In the event that any library is denied a grant by the state library or does not meet a requirement of this rule, that library may appeal the decision of the state library or request a variance from the requirement.

B. Such appeal or variance shall be made in writing to the state librarian within 10 days of notification of denial of funds or within 10 days of discovery of non-compliance with a requirement. The appeal or variance shall state all relevant facts and conditions.

C. The state librarian shall consider each appeal or request for variance and respond in writing to the appealing or requesting party with a decision within 30 days. The state librarian's decision is the department of cultural affairs' final action on the matter.

[4.5.2.12 NMAC - Rp, 4.5.2.14 NMAC, 6/1/2016]

HISTORY OF 4.5.2 NMAC:

Pre-NMAC History:

NMSL 67-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, Revised April 19, 1967, filed 5/3/67.
NMSL 67-2, State Grants-In-Aid To Public Libraries, Rules and Regulations, Amended August 28, 1967, filed 8/30/67.
NMSL 68-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, Amended August 28, 1967, filed 12/19/68.
NMSL 69-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, Revised May 26, 1969, filed 6/20/69.
NMSL 69-2, State Grants-In-Aid To Public Libraries, Rules and Regulations; Revised September 16, 1969, filed 10/9/69.
NMSL 70-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, Revised February 26, 1970, filed 4/27/70.
NMSL 73-4, State Grants-In-Aid To Public Libraries, Rules and Regulations, June 1973, filed 7/10/73.
NMSL 74-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, July 19, 1974, filed 8/16/74.
NMSL 75-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, 1975, filed 6/9/75.
NMSL 76-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, March 31, 1976, filed 4/27/76.
NMSL 77-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, January 21, 1977, filed 2/4/77.
NMSL Rule 79-1B, State Grants-In-Aid To Public Libraries, Rules and Regulations, June 11, 1979, filed 6/25/79.
NMSL 79-3, State Grants-In-Aid To Public Libraries, Rules and Regulations, July 1, 1979, filed 7/27/79.
NMSL 81-2, State Grants-In-Aid To Public Libraries, Rules and Regulations, May 11, 1981, filed 5/12/81.
NMSL 89-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, filed 10/23/89.
NMSL 93-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, filed 1/28/93.

History of Repealed Material:

NMSL 93-1, State Grants-In-Aid To Public Libraries, Rules and Regulations (filed 1/28/93), repealed 7/1/2000.
4.5.2 NMAC, State Grants-In-Aid To Public Libraries (filed 6/19/2000), repealed 7/1/2009.
4.5.2 NMAC, State Grants-In-Aid To Public Libraries (filed 7/1/2009), repealed 6/1/2016.

Other History:

NMSL 93-1, State Grants-In-Aid To Public Libraries, Rules and Regulations (filed 1/28/93) was replaced by 4.5.2 NMAC, State Grants In Aid To Public Libraries, effective 7/1/2000.

Attachment A

4.5.2 NMAC, State Grants-In-Aid To Public Libraries (filed 6/19/2000) was replaced by 4.5.2 NMAC, State Grants In Aid To Public Libraries, effective 7/1/2009.
4.5.2 NMAC, State Grants-In-Aid To Public Libraries (filed 7/1/2009) was replaced by 4.5.2 NMAC, State Grants In Aid To Public Libraries, effective 6/1/2016.

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State Grants-in-Aid Expenditures Guidance Sheet

The 4.5.2 New Mexico Administrative Code (NMAC) governs State Grants-in-Aid to public libraries. To receive state aid, recognized New Mexico public libraries must meet all eligibility requirements as outlined in the 4.5.2 NMAC. *All* state grants-in-aid funds received must be expended or encumbered during the fiscal year in which they are given (i.e., before June 30 each year).

This informational guidance sheet is not an exhaustive list of all allowable and non-allowable expenditures. If there are questions as how to expend state aid funds, contact the Library Development Bureau for clarification *prior* to making purchases, 1-800-340-3890/SL.Development@state.nm.us.

Allowable Purchases - State aid funds *can* be used for:

- Library Collections
  - Items traditionally available at the library and intended for public use, such as books, e-books, audiobooks, DVDs, CDs, electronic and digital media, licensed databases (e.g., ancestry.com, mango languages), etc. Non-traditional circulating/educational programming items may also be allowable. Contact the Development Bureau for more information, *prior* to making such purchases.
- Library Staff Salaries
  - State aid funds can be used to pay regular library staff for their work within the library. Paying a part-time/substitute library staff member/summer intern may also be allowable.
- Library Staff Professional Development
  - Travel (including meals & lodging) for attending in-state (e.g., NMLA) *and* out-of-state library conferences (e.g., ALA, MPLA, PLA, ARSL), and trainings/workshops provided to library staff on library related services/issues, which are organized and held at the library, or held at another location, e.g., state library or other library, etc.
- Library Equipment
  - Items associated with meeting the information needs of library patron's such as public computers, printers, wireless routers, scanners, software, and related peripherals, etc.
- Other Operational Expenditures Associated with Delivery of Library Services
  - Expenditures associated with the delivery of library services, such as the library's catalog, library programming supplies, electric bills, phone bills, directional signage, copy paper, security costs, etc.
  - Contracts directly related to the delivery of basic library services to patrons, including educational program subject matter experts, etc.

Non-Allowable Purchases - State aid funds *cannot* be used for:

- Administrative and/or indirect expenses such as budgeting, accounting, financial management, information systems, data processing, legal services, fringe benefits, etc.
- Food, giveaways/incentives/prizes, college classes for library staff (i.e., tuition reimbursement), library decorations, library staff furniture, recreational rentals/purchases (e.g., bouncy houses, party supplies, pony rentals), etc.
- Operational expenditures that do not directly relate to the delivery of basic library services to library patrons, including the cost of parties, receptions, fund-raising events, other social functions, building maintenance/cleaning supplies, toilet paper, paper towels, cleaning equipment, vacuums, paint, etc.
- Capital improvements and construction.

23-087

City of Las Cruces

City Council Action and Executive Summary

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

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	January 17, 2023
Drafter:	Chris Faivre	**Department:**	Economic Development
Program:	Business Development	**Line of Business:**	Business Development

Title: **A RESOLUTION ADOPTING A SMALL BUSINESS STOREFRONT REPAIR PROGRAM.**

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

PURPOSE(S) OF ACTION:

To assist businesses who have experienced direct economic disruption related to the effects and impacts of the COVID-19 pandemic.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces, through the Economic Development Department, is leveraging up to $400,000 in federal ARPA funding to support the economic recovery of small businesses that experienced property damage related to the effects and impacts of the COVID-19 pandemic. Through the Small Business Storefront Repair Program, small businesses can apply for up to $2,500 in grants to help repair storefront property damages that occurred on or after January 1, 2021.

Storefront Repair funds will help cover costs to repair current property damage or reimburse business owners for costs paid out of pocket for past damages. Eligible property damages include broken windows, broken doors, broken locks, and etching on windows. This grant will not cover the loss of stolen goods or damages such as graffiti.

The City of Las Cruces will accept applications from small businesses on a continuous basis until all funding has been spent.

SUPPORT INFORMATION:

Exhibit "A" 2023 Las Cruces Small Business Store Front Repair Program

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Economic Development PRC

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: $400,000 **AVAILABLE AMOUNT:** $400,000 **EXPENDITURE AMOUNT:** $400,000

Funding Source(s):
2100-20435011-721080-ARPAM

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and establish the Small Business Store front Repair Program.
2. Vote "No"; this will not approve the Resolution and will not establish the Small Business Store front Repair Program.
3. Vote "Amend"; this could modify the Resolution and would need further direction from Council to staff.
4. Vote "Table"; this will postpone consideration of the Resolution and would need further direction from Council to staff.

RESOLUTION 23-087

A RESOLUTION ADOPTING A SMALL BUSINESS STOREFRONT REPAIR PROGRAM.

The City Council is informed that:

WHEREAS, the City of Las Cruces, through the Economic Development Department, is leveraging up to $400,000 in federal ARPA funding to support the economic recovery of small businesses who experienced property damage as economic disruption related to the effects and impacts of the COVID-19 pandemic; and

WHEREAS, through the Small Business Storefront Repair Program, small businesses can apply for up to $2,500 grants to help repair storefront property damages that occurred on or after January 1, 2021; and

WHEREAS, storefront repair funds will help cover costs to repair current property damage or reimburse business owners for costs paid out of pocket for past damages; and

WHEREAS, eligible property damages include broken windows, broken doors, broken locks and etching on windows; and

WHEREAS, this grant will not cover loss of stolen goods or damages such as graffiti; and

WHEREAS, the City of Las Cruces will accept applications from small businesses on a continued basis until all funding has been spent; and

WHEREAS, if all funds are not expended by February 1, 2024, the City will consider a second round of funding which would be open to previous grant recipients; and

WHEREAS, the applications will open on February 1, 2023.

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

(I)

THAT the “City of Las Cruces Small Business Store Front Repair Program” as shown in Exhibit “A,” attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT staff are hereby authorized to update the City of Las Cruces Small Business Store Front Repair Program for changes in dates, non-substantive and substantive issues that may be a result of public health orders, funding, staff capacity, and number of applications.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

City of Las Cruces Small Business Store Front Repair Program

The City of Las Cruces, through the Economic Development Department, is leveraging up to $400,000 in federal ARPA funding to support the economic recovery of small businesses who experienced property damage. Through the Small Business Storefront Repair Program, small businesses can apply for up to $2,500 grants to help repair storefront property damages that occurred on or after January 1, 2021.

Storefront Repair funds will help cover costs to repair current property damage or reimburse business owners for costs paid out of pocket for past damages. Eligible property damages include broken windows, broken doors, broken locks and etching on windows. This grant will not cover loss of stolen goods or graffiti.

Applications will open on February 1, 2023.

The City of Las Cruces will accept applications from small businesses on a continued basis until all funding has been spent. If all funds are not expended by February 1, 2024, the City will consider a second round of funding which would be open to previous grant recipients.

Applicants are encouraged to review the eligibility, required documentation, selection process and additional information below before applying.

Minimum Funding Eligibility Requirements

To be eligible for a Storefront Repair Fund grant, your business must:

- Have experienced direct economic disruption because of COVID-19.
- Provide proof of repairs to broken doors, windows, and/or locks. For damage caused be between January 1, 2021, and February 1, 2023, please provide proof of payment for repairs. For damage caused after February 1, 2023, provide a quote for repairs, and photos of the damage, and photos demonstrating repairs have been completed.
- Have a current City of Las Cruces Business License and be in good standing with the City and State of New Mexico.
- Provide proof of current non-profit status license and be in good standing with the City and State of New Mexico (if applicable).
- Be in compliance with all federal, state and city laws and regulations.
- If applicable, schedule and pass inspections related to repairs.
- Be located in Las Cruces city limits.
- Have no more than 40 full-time equivalent (FTE) employees or fewer as of March 15, 2020.
- Have been in business since at least March 15, 2020.
- Be an independently owned, non-corporate franchise, or non-corporate chain business.
- Have experienced physical damage to storefront on or after January 1, 2021.
- Be a for profit business or nonprofit 501(c)(3), 501(c)(6) or 501(c)(19).
- Be currently open to the public and active for business.
- Only one application may be submitted per business, business owner, EIN, SSN, UBI number, Business License number, home and/or business address.
- Operate from a physical location and/or mobile truck that serves the general public.

- All ARPA funding is subject to municipal, state and federal audit requirements.

Businesses that are not eligible:

- Short- or long-term rental or investment property (Personal real estate, independent realtors and short-term rentals that include Airbnb, Vrbo, etc.).
- Taxis, rideshares, or food delivery services (e.g., Uber, Lyft, Yellow Cab, Door Dash, Uber Eats, etc.).
- "Adult entertainment" businesses as defined in City of Las Cruces Municipal Code.
- “Home-based” businesses as defined in City of Las Cruces Municipal Code.
- Business located outside the Las Cruces city limits.

City of Las Cruces

City Council Action and Executive Summary

23-088

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

District:	☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	January 17, 2023
Drafter:	Jan Lauterbach	**Department:**	Economic Development
Program:	Housing and Neighborhood Services	**Line of Business:**	Housing and Neighborhood Services

Title: **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.**

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

PURPOSE(S) OF ACTION:

Approve agreements and budget adjustment.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Three Sisters CIC, LLLP, a New Mexico limited liability limited partnership is the developer for The Three Sisters Apartments, a 70-unit affordable housing complex for families with children, to be located at 130 N. Walnut. The partnership consists of CC The Three Sisters LLC, as General Partner (Catholic Charities Housing Inc.) and CIC The Three Sisters LLC, as Class B Limited Partner (Chelsea Investment Corporation).

On December 20, 2021, City Council approved Resolution #22-072 committing to loan $2.4M to support The Three Sisters Low Income Housing Tax Credit (LIHTC) project (The Project), subject to the project being awarded LIHTC funding from the New Mexico Mortgage Finance Authority (MFA). The project was awarded federal LIHTC funding and is expected to begin construction in February 2023. The allocations of City funding for affordable housing development are in compliance with the State of New Mexico Affordable Housing Act (Act), the City's Affordable Housing Ordinance and support the goals and objectives of the City's adopted Affordable Housing Plan.

With the award of funding, and in order to comply with regulatory requirements of the Act, a Housing Trust Fund Loan Agreement, along with a Mortgage and Security Agreement including a Note, and Restrictive Real Estate Covenants between the City and The Three Sisters CIC, LLLP as shown in Exhibits "A", "B", and "C" are required to be executed with City Council approval, as indicated under the proposed Resolution.

A budget adjustment as shown in Exhibit "D" will allow the developer to request building permits and begin construction within the time frame set by MFA and meet LIHTC regulations.

SUPPORT INFORMATION:

Exhibit A Housing Trust Fund Loan Agreement
Exhibit "B" Mortgage Security Instrument
Exhibit "C" Three Sisters Restrictive Real Estate Covenants
Exhibit "D" Budget Adjustment Fund Summary

PLAN(S):
City Council Strategic Plan, Department Strategic Business Plan, 2021-2025 Consolidated Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:
Housing PRC

DOES THIS AMEND THE BUDGET?:
☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: $0 **AVAILABLE AMOUNT:** $0 **EXPENDITURE AMOUNT:** $2,400,000

Funding Source(s):
Affordable Housing Fund (2705) 20435017-721080-11907

Overall Budget Impact:
Res. 22-072 approved match be taken from the Telshor Facility Fund (2705) and transferred to the Affordable Housing Fund (2013)

Does this action amend the Capital Improvement Plan (CIP)?
☐ Yes
☒ No

Does this action align with Elevate Las Cruces?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this action will approve the Resolution and approve the loan agreements between with City and The Three Sisters CIC, LLLP, for affordable housing development at Three Sisters apartment complex, including the applicable budget adjustment.
2. Vote "No"; this action will not approve the Resolution and will not approve the funding agreements between the City and The Three Sisters CIC, LLLP for affordable housing development at the Three Sisters apartment complex, including applicable budget adjustment.
3. Vote to "Amend"; this could delay the Resolution and would require further direction from City Council.
4. Vote to "Table"; this could delay the start of construction on the project and violate LIHTC project regulations.

REFERENCE INFORMATION:
1. Resolution 22-072

RESOLUTION 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.

WHEREAS, the City of Las Cruces (City) is subject to the State of New Mexico Affordable Housing Act (Act) which identifies specific requirements to ensure governmental entities can assist with land, building, infrastructure, and financing of affordable housing projects; and

WHEREAS, the City desires to assist Low Income Housing Tax Credit (LIHTC) applicants in submitting highly competitive applications to the New Mexico Mortgage Finance Authority (MFA) which can be made up of cash, land buildings, or fee waivers from local governments; and

WHEREAS, the allocations of City funding for affordable housing development are in compliance with the Act, the City's Affordable Housing Ordinance and supports the goals, and objectives of the City's adopted Affordable Housing Plan; and

WHEREAS, City Council approved Resolution #22-072 allocating $2.4M in funding from the Telshor Facility Fund to subsidize the development of the Three Sisters LIHTC project; and

WHEREAS, in order to comply with regulatory requirements of the Act, an Housing Trust Fund Loan Agreement between the City and The Three Sisters CIC, LLLP, as shown in Exhibit "A" is required to be executed; and

WHEREAS, in order to comply with regulatory requirements of the Act, the Mortgage and Security Agreement, including the note between the City and The Three Sisters CIC, LLLP, as shown in Exhibit "B" is required to be executed; and

WHEREAS, in order to comply with regulatory requirements of the Act, the Restrictive Real Estate Covenants, between the City and The Three Sisters CIC, LLLP, as shown in Exhibit "C" is required to be executed; and

WHEREAS, the budget adjustment as shown in Exhibit "D" will allow for the developer to request building permits and begin construction within the timeframe set by by MFA and meet LIHTC regulations.

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

(I)

THAT the Housing Trust Fund Loan Agreement between the City and The Three Sisters CIC, LLLP, as shown in Exhibit "A" is required to be approved for execution.

(II)

THAT the Mortgage and Security Agreement, between the City and The Three Sisters CIC, LLLP, as shown in Exhibit "B" attached hereto and made a part of this Resolution, is hereby approved for execution.

(III)

THAT the Restrictive Real Estate Covenants, between the City and The Three Sisters CIC, LLLP, as shown in Exhibit "C" attached hereto and made a part of this Resolution, is hereby approved for execution.

(IV)

THAT the Budget Adjustment Request as shown in Exhibit "D" attached hereto and made a part of this Resolution, is hereby approved.

(V)

THAT the City Manager as the official representative of the City is hereby authorized to execute the Housing Trust Fund Loan Agreement, and approve the Mortgage and Security Agreement, and the Restrictive Real Estate Covenants Agreement on the City's behalf.

(VI)

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

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES
HOUSING TRUST FUND LOAN AGREEMENT
THE THREE SISTERS APARTMENTS

This Housing Trust Fund Loan Agreement ("Loan Agreement") is entered into as of _____, 2023 by and between the **City of Las Cruces**, a New Mexico municipal corporation (the "City") with a principal address of 700 N. Main St., Las Cruces NM 88001, and **The Three Sisters CIC, LLLP ("Three Sisters CIC"),** a New Mexico limited liability limited partnership ("Borrower") with a principal address of 6339 Paseo Del Lago, Carlsbad, CA 92011, with reference to the following facts:

A. Borrower is acquiring certain real property located at 130 N. Walnut Street in the City of Las Cruces, State of New Mexico, as more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"). The Property is vacant and the Borrower desires to construct the improvements located on the Property in order to construct new affordable housing for low to extremely-low income households, to include sixty-nine (69) restricted units and one (1) manager's unit.

B. Borrower wishes to borrow from the City and the City wishes to extend to Borrower a loan of Two Million Four Hundred Thousand Dollars ($2,400,000) in Local Housing Trust Fund ("Trust Fund") Loan Funds to assist in the construction of the Development. The Loan will be evidenced by a promissory note executed by Borrower in favor of City and secured by a Mortgage and Security Agreement and Restrictive Real Estate Covenants.

C. The Loan is being made to finance construction costs associated with the Development in order to help achieve financial feasibility for the Development and to increase the supply of affordable rental housing in the City of Las Cruces.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Agreement" shall mean this City of Las Cruces Housing Trust Fund Loan Agreement.

(b) "Approved Development Budget" shall mean the proforma development budget, including sources and uses of funds, as approved by the City, and attached hereto and incorporated herein as Exhibit B.

(c) "Approved Financing" shall be limited to the following funds acquired by the Borrower and approved by the City for the purposes of financing the Development, in addition to the City Loan:

i. "First Mortgage Loan" means the first mortgage loan which will constitute the permanent first mortgage financing for the Apartment Complex in the anticipated principal amount of $2,320,000 to be made or deemed made to the Partnership by Rocky Mountain Community Reinvestment Corporation at the Final Closing, and which is to be secured by the Fist Mortgage and other related security documents and financing statements.

ii. "Second Mortgage Loan" means the second mortgage loan which will constitute the permanent second mortgage financing for the Apartment Complex in the anticipated principal amount of $1,000,000 to be made or deemed made to the Partnership by Loan from the New Mexico Mortgage Finance Agency ("MFA") with a HOME CHDO rental award, at Initial Closing, and which is to be secured by the Second Mortgage and other related security documents and financing statements.

iii. "Third Mortgage Loan" means the mortgage loan which will constitute the permanent third mortgage financing for the Apartment Complex in the aggregate principal amount of $400,000, to be made to the Partnership by CC Housing, Inc., with National Housing Trust Funds, at Initial Closing, and which is to be secured by the Third Mortgage and other related security documents and financing statements.

iv. "Fourth Mortgage Loan" means the mortgage loan which will constitute the permanent fourth mortgage financing for the Apartment Complex in the anticipated principal amount of $2,400,000, to be made to the Partnership by City of Las Cruces at Initial Closing, and which is to be secured by the Fourth Mortgage and other related security documents and financing statements.

v. Low Income Housing Tax Credit investor limited partner, the Richmond Group (TRG) capital contribution in the approximate amount of Twelve Million Eight Thousand Nine Hundred Eleven Dollars ($12,008.911) (the "Tax Credit Investor Equity"); and

vi. Capital contribution from the Borrowers' general partner in the approximate amount of One Hundred Dollars ($100.) (the General Partner Equity").

(d) "Borrower" shall have the same meaning set forth in the first paragraph of this Agreement.

(e) "City" shall have the same meaning set forth in the first paragraph of this Agreement.

(f) "Restrictive Real Estate Covenants" shall mean the Restrictive Real Estate Covenants Agreement dated _____, 2023 among the borrower and the City, that will encumber the development to secure performance of covenants of the Loan Documents. The Restrictive Real Estate Covenants Agreement shall be provided by the City and recorded against the property.

(g) "Default" shall have the meaning set forth in Section 6.1 below.

(h) "Default Rate" shall have the meaning set forth in Section 6.2(c).

(i) "Development" shall mean the Property and the sixty-nine (69) multi-family apartment units, and one (1) manager's unit, and attendant site improvements.

(j) "Hazardous Materials" shall have the meaning set forth in Section 4.5.

(k) "Hazardous Materials Claim" shall have the meaning set forth in Section 4.5

(l) "Hazardous Materials Law" shall have the meaning set forth in Section 4.5

(m) "Lender" means collectively, (a) Rocky Mountain Community Reinvestment Corporation in its capacity as the maker of the First Mortgage Loan; (b) New Mexico Mortgage Finance Authority in its capacity as the maker of the Second Mortgage Loan: (c) City of Las Cruces in its capacity as the maker of the Third Mortgage Loan; and (d) CC Housing, Inc., in its capacity as the maker of the Fourth Mortgage Loan; or any of their successors(s) and assign(s) in such capacities.

(n) "Loan" shall mean the City loan to the Borrower pursuant to this Agreement in the total principal amount of Two Million Four Hundred Thousand Dollars ($2,400,000)

(o) "Loan Documents" shall mean this Agreement, the Mortgage and Security Agreement and Note, and the Restrictive Real Estate Covenants agreement.

(p) Mortgage and Security Agreement" shall mean the Mortgage and Security Agreement dated _____, 2023 between the borrower and the City that will encumber the development to secure repayment of the Loan and performance of covenants of the Loan Documents. The Deed Restrictions and Restrictive covenants Agreement shall be provided by the City and recorded against the property.

(q) "Note" shall mean the promissory note dated _____, 2023 between the Borrower and the City evidencing Borrower's obligation to repay the Loan. The form of the Note shall be provided by the City.

(r) "Parties" shall mean the City and the Borrower.

(s) "Property" shall have the same meaning set forth in paragraph A of the Recitals.

(t) "Restricted Units" shall mean the Sixty-Nine ([69) units whose occupancy and rental charges are restricted pursuant to the Approved Financing and Loan Documents.

(u) "Retention Amount" shall mean the One Hundred Thousand Dollars ($100,000) of Loan funds set forth in Section 2.7 below

(v) "Term" shall have the meaning set forth in Section 2.8a below.

(w) "Transfer" shall have the meaning set forth in Section 4.11 below.

(x) "Unit" means (1) of the seventy (70) apartment units to be constructed on the Property.

Section 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Approved Development Budget

ARTICLE 1 LOAN PROVISIONS

Section 2.1 Loans.

The City shall loan to the Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. The obligation to repay the Loan shall be evidenced by the Note in the form provided by the County.

Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2 (b) below, the outstanding principal balance of the Loan Funds shall accrue simple interest at the rate of Three percent (3 %) per annum, commencing on the date of disbursement.

(b) In the event of a default, interest on the loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan is repaid in full or the Default is cured, at the default rate of twelve percent (12%), compounded annually.

Section 2.3 Use of Loan Funds.

(a) The Borrower shall use the Loan funds to fund development soft costs of architecture, engineering, legal expenses and hard construction costs of the property consistent with the Approved Development Budget and the Scope of Work.

(b) The Borrower shall not use the Loan for any other purposes without the prior written consent of the City

Section 2.4 Security.

(a) Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement and recording them as a lien against the Property.

Section 2.5 Subordination

The Mortgage and Security agreement and Restrictive Real Estate Covenants agreement may be subordinated to other Approved Financing (in each case, a "Senior Lender"), but only on condition that all following conditions are satisfied:

(a) All proceeds of the proposed Senior Loan(s), less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Development.

(b) The proposed lender (each, a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(c) Borrower must demonstrate to the City's reasonable satisfaction that subordination of the Mortgage and Security Agreement and the Restrictive Real Estate Covenants agreement is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the city, in addition to any other information reasonably required by the city, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate construction and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(d) The subordination agreement(s) must be structured to minimize the risk that the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder (s) of Senior Loans. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by Borrower, including: (i) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the City with a cure period of at least sixty (60) days to cure any default.

(e) The subordination(s) described in this section may be effective only during the original term of the Senior Loan (s) and any extension of its term approved in writing by the City.

(f) No subordination may limit the effect of the Mortgage and Security Instrument agreement and Restrictive Real Estate Covenants agreement before a foreclosure, nor require consent of.

(g) Upon determination by the City's City Manager that the conditions in this Section have been satisfied, the City Manager or their designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

(h) In the event there is a foreclosure of the Property, the Restrictive Covenants shall be revived according to its original terms if, during the original Mortgage and Security agreement term, the owner of record before foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or Property.

Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

The maximum amount of funds to be disbursed pursuant to this Section shall not exceed the amount of the Loan less the Retention Amount. The City shall not be obligated to make any disbursements of Loan funds for construction of the Development or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each disbursement of Loan funds:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement

(b) The Borrower holds title to the Property or is acquiring title simultaneously with the disbursement of the Loan proceeds;

(c) The Borrower has furnished the City with evidence of the insurance coverage meeting the requirements of this Agreement.

(d) Borrower has caused to be executed and delivered to the City all City Loan Documents and any other instruments, and policies required under the Loan Documents.

(e) The Mortgage and Security agreement and Restrictive Real Estate Covenants agreement has been recorded against the Property in the County Clerk of Doña Ana County.

(f) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of the title insurance insuring the Priority of the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the City, and containing such endorsements as the City may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety that is reasonably required by the title company in order for the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement to be senior lien priority to any mechanics liens in connection with any early start of construction.

(g) The city has received and approved all applicable environmental reviews under local, State, and NEPA, as necessary and application for the construction of the Development, and Borrower has provided the city evidence of compliance with all approved applicable environmental requirements;

(h) The City has determined that the undisbursed proceeds of the Loan, together with the funds or firm commitments for funds that the Borrower has obtained in connection with the Development, are not less than the amount that is necessary to pay for development of the Development and to satisfy all of the covenants contained in this Agreement and the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement;

(i) Borrower has obtained all permits and approvals necessary for the construction of the Development, as required by Section 3.1, and the City has received a copy of the building permits required to construct the Development (required for disbursements for construction costs only);

(j) The City has received and approved the final plans and specifications for the Development, as required pursuant to Section 3.2 below;

(k) The City has received and approved the general contractor's construction contract that the Borrower has entered or proposed to enter for construction of the Development as required pursuant to Section 3.3 below;

(l) The City has receive copies of labor and material (payment) bonds and performance bonds as required pursuant to Section 3.4 below;

(m) Borrower has closed all Approved Financing described in Section 1.1 (d)(i) through (iii) and is eligible to receive proceeds thereof;

(n) Borrower has obtained a commitment letter from a tax credit equity investor, in form, substance, and amount consistent with the Approved Development Budget, and acceptable to and approved by the City in its reasonable exercise of discretion;

(o) The City has received a written draw request from the Borrower, including certification that the condition set forth in Section 2.6(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, the amount of funds needed, and where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification by the Borrower's architect reasonably acceptable to the City that the work for which disbursement is requested has been completed (although the City reserves the right to inspect the Property and make an independent evaluation); and (ii) lien release and/or mechanics lien title insurance endorsements reasonably acceptable to the City.

Section 2.7 Conditions Precedent to Disbursement of Retention.

The City shall not be obligated to disburse the Retention Amount unless the following conditions precedent are satisfied:

(a) The City has received a completion report from the Borrower setting forth (i) the income, household size, and ethnicity of tenants of the Development, (ii) the Unit size, rent amount and utility allowance for all Units in the Development, and (iii) designation of the accessible and/or adaptable Units in the Development.

(b) The City has received a cost certification for the Development from the Borrower showing all uses and sources.

(c) The City has received from the Borrower copies of the final certificate of occupancy for the Development, or other equivalent document.

(d) The City has received for the Borrower current evidence of the insurance coverage meeting the requirements of Section 4.12 below.

(e) The City has received from Borrower a form of lease and marketing plan for the Development.

(f) The City has received from Borrower a final management plan for the Development and contact information for the property manager of the Development and the name and phone number of the on-site property manager.

(g) If the Borrower was required to comply with relocation requirements, the City has received from the Borrower evidence of compliance with all applicable relocation requirements.

(h) If, as result of the City's funding, the Borrower was required to pay prevailing wages under the Davis- Bacon Act (40 USC 3141-3148), the City has received from Borrower a written certification from the Borrower that they are in compliance with all certified payrolls, and any identified payment issues have been resolved, or the Borrower is working diligently to resolve any such issues. The City reserves the right to confirm with MFA on status of prevailing wage throughout duration of construction.

(i) The City has received a written draw request from the Borrower, including certification that the condition set forth in this Agreement and continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

(j) Borrower shall apply the disbursement for the purpose(s) requested.

Section 2.8 Repayment Schedule.

The Loan shall be repaid as follows:

(a) Term. The Loan and this Agreement shall have a term that expires on the date 20 years from the date City of Las Cruces issues a final certificate of occupancy, or comparable document, for the Development as set forth in the Certificate Notice, but in any event no later than June 30, 2045.

(b) Annual Payments. Commencing on July 1, 2025, and on July 1 of each calendar year thereafter through the end of the Loan Term, and subject to Section 2.8 (c) below, Borrower shall make repayments of the Loan from Residual Receipts, as follows:

An amount equal to the City's Prorata Percentage of the Lender's Share of Residual Receipts (all as defined in Section 2.8 (f)(iv) below). Payments made shall be credited first against accrued interest and then against outstanding principal. The Borrower shall provide the City with any documentation reasonably requested by the City to substantiate the Borrower's determination of Residual Receipts.

(c) Special Repayment from Net Proceeds.

Borrower shall make special repayments on the City Loan of any Net Proceeds of Financing. "Net Proceeds of Financing" shall mean the portion of the Approved Financing that is not required to pay the costs of acquisition and construction of the Development (including but not limited to the funding of reserves). The amount of the Net Proceeds of Financing shall be determined by the Borrower and submitted to the City for approval on the date the Borrower submits the final cost audit for the Development to the Approved Financing lenders on or no later

than 365 days following receipt of a certificate of occupancy for the Development. The amount of the Net Proceeds of Financing shall be calculated using the actual amount of the permanent Approved Financing realized by the Borrower, provided that Borrower provides sufficient evidence that the actual amount of permanent Approved Financing realized by Borrower is the maximum amount that Borrower could secure for the Development applying reasonable underwriting standards. The Borrower shall also submit to the City any additional documentation sufficient to verify the amount of the Net Proceeds of Financing. The City shall approve or disapprove Borrower's determination of the amount Net Proceeds of Financing in writing within thirty (30) days of receipt of Borrower's cost audit and supplemental documentation. If Borrower's determination is disapproved by the City, Borrower shall re-submit documentation to the City until City approval is obtained. The Net Proceeds of Financing shall be due to the City from the Borrower no later than five (5) business days following the date Borrower receives its final capital contribution from the Borrower's limited partner investor or 60 days after receipt of the certificate of occupancy for the Development.

(d) Payment in Full. All principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the City, (ii) the date of any Default, and (iii) the expiration date of the Term.

(e) Prepayment. The Borrower shall have the right to prepay the Loan at any time without premium or penalty. However, the Agreement shall remain in effect for the entire Loan Term and the Regulatory Agreement, and the Deed Restriction and Restrictive Covenants agreement shall remain in effect for the entire Term, regardless of any prepayment.

(f) Special Definitions. Except as otherwise noted, the following definitions shall apply for purposes of this Section 2.8:

(i) " Annual Operating Expenses" shall mean with respect to a particular calendar year the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments imposed on the Development; debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans associated with construction of the Development and approved by the City; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the City; partnership management fees payable to any partner or affiliate of any partner of the Developer, if any, which are standard in the industry and approved by the City; premiums for property damage and liability insurance; utility services not paid for directly by tenants, including water, sewer, and trash collection; maintenance and repair; any annual license or certificate of occupancy fees required for operation of the Development; security services; advertising and marketing; cash deposited into reserves for capital replacements of the Development in an amount not to exceed [ ] percent (%) of the total development cost of the Development; cash deposited into an operating reserve in an amount not to exceed percent (%) of Annual Operating Expenses or the amount required in connection with the permanent financing, whichever is greater (or any greater amount approved by the City)

but with the operating reserve capped at ( ) months gross rent from the Development (as such rent may vary from time to time); payment of any previously unpaid portion of the development fee (without interest) not exceeding a cumulative development fee in the maximum amount One Million Four Hundred Thirty-Two Thousand Five Hundred Dollars and No Cents($1,432,500) as set forth in this Agreement; extraordinary operating costs specifically approved in writing by the City; payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses; any amount expended from a reserve account; and any capital cost with respect to the Development, as determined by the accountant for the Development.

(ii) "Net Proceeds of Permanent Financing" shall mean the portion of the Approved Financing (as defined in this Agreement) that is not required to pay the costs of acquisition and development of the Development (including but not limited to the funding of reserves). Net Proceeds of Permanent Financing, if any, shall be determined pursuant to the procedure set forth in Section 2.8(c) above.

(iii) "Gross Revenue" shall mean with respect to a particular calendar year all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development or Property. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8, or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and condemnation awards for a taking of part of all of the Development for a temporary period. Gross Revenue shall not include tenants' security deposits, loan proceeds, or similar advances.

(iv) "Residual Receipts" means in a particular calendar year the amount by which Gross Revenue exceeds Annual Operating Expenses.

Section 2.9 Non-Recourse.

Except as provided below, neither the Borrower, nor any general or limited partner of the Borrower, shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Loan or the performance of the covenants of the Borrower under the Deed Restriction and Restrictive Covenants agreement. Following recordation of the Deed Restriction and Restrictive Covenants agreement, the sole recourse of the City with respect to the principal of, and interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed Restriction and Restrictive Covenants agreement shall be to the property described in the Deed Restriction and Restrictive Covenants agreement; provided, however, that nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the City thereunder, or (ii) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Note as demand for

money within the meaning and intendment of the New Mexico Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Borrower's obligations under the Deed Restriction and Restrictive Covenants agreement, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under Sections this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed Restriction and Restrictive Covenants agreement (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed Restriction and Restrictive Covenants agreement; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Permits and Approvals

All permits and approvals necessary for the construction of the Development on the Property must be received no later than March 1, 2023, or such later date that the City may approve, or the City, at its option, and with forty-five (45) days' written notice and opportunity to cure, may declare Borrower in default hereunder.

Section 3.2 Construction Plans.

(a) Simultaneously with submission to the City of Las Cruces Community Development Department ("Development Department") the Borrower shall submit to the City a copy of the Construction Plans for the Development. As used in this Agreement, "Construction Plans" shall mean all construction documentation upon which Borrower and Borrower's contractor shall rely in constructing all the improvements on the Property (including the Units, the community building, landscaping, parking, and common areas) and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, and building plans and specifications (also known as "working drawings").

(b) The City shall, if the Construction Plans submitted to the City Development Department conform to the provisions of this Agreement, approve in writing the Construction Plans. Such approval of the Construction Plans by the City shall not relieve Borrower's Obligation to obtain any and all approvals required by the City Departments.

(c) If rejected by the City in whole or in part, Borrower shall submit new or corrected Construction Plans within fifteen (15) business days after notification of the City's rejection and the reasons therefor. The City shall then have fifteen (15) days to review and approve Borrower's new or corrected Construction Plans. The provisions of this Section relating to time periods for

approval, rejection, or resubmission of a new or corrected Construction Plans shall continue to apply until the Construction Plans has been approved by the City.

Section 3.3 Construction Contract.

(a) Not later than thirty (30) days prior to the proposed commencement of construction of the Development, the Borrower shall submit to the City a copy of its proposed construction contract for the Development. All construction work and professional services shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of New Mexico.

Section 3.4 Construction Bonds.

Prior to commencement of construction of the Development, the Borrower shall deliver to the City copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the Development. Such bonds shall name the City as a co-obligee. Possible removal of this sec

Section 3.5 Commencement of Construction.

Borrower shall cause the commencement of construction of the Development no later than March 1, 2023 or such later date that the City may approve.

Section 3.6 Completion of Construction.

Borrower shall diligently prosecute construction of the Development to completion, and shall cause the completion of the construction of the Development no later than June 30, 2025, or such later date that the City may approve.

Section 3.7 Construction Pursuant to Plans and Laws; Prevailing Wages.

(a) The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act in connection with the construction pursuant to this Agreement, of the Development or any other work undertaken or in connection with the Property and shall indemnify and hold the City harmless against damages, compensation, fines, penalties or other amounts resulting from the successful prosecution of such claim. The requirements in this Subsection shall survive repayment of the Loan and the reconveyance of the Deed Restriction and Restrictive Covenants agreement.

(b) To the extent required by applicable law, the Borrower shall cause construction of the Development to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act (40 USC 3141-3148).

(c) Borrower shall construct the Development in conformance with the plans and specifications approved by the City's Development Department. Borrower shall notify the City in

a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the City.

Section 3.8 Marketing Plan.

(a) No later than three (3) months prior to the projected date of the completion of the Development, Borrower shall submit to the City, its plan for marketing the Development to income-eligible households, including information on affirmative marketing efforts and compliance with fair housing laws, including, but not limited to the information required under 24 C.F.R. Section 92.351(a) (the "Marketing Plan").

Section 3.9 Equal Opportunity.

During the construction of the Development there shall be no discrimination on the basis of race, color, religion, age, disability, sex, sexual orientation, marital status, genetic information, gender identity, serious medical condition, domestic abuse leave, source of income, ancestry or national origin or any other characteristic protected by federal, state or local law in the hiring, firing, promoting, or demoting of any person engaged in the construction of work.

Section 3.10 Minority and Women-Owned Contractors

Borrower will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Development. Borrower shall, at a minimum, notify applicable minority- owned and women-owned business firms located in the City of Las Cruces or surrounding areas of bid opportunities for the construction of the Development. Documentation of such notifications shall be maintained by Borrower and available to the City as requested.

Section 3.11 Progress Reports.

Until such time as Borrower has received a certificate of occupancy from the City for the Development, Borrower shall provide the City with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time.

Section 3.12 Construction Responsibilities.

(a) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement.

(b) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement.

(c) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction or work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with

reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the City and should not be relied upon by Borrower or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 3.13 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the City or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the City may require Borrower to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such a deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction on the Development for a continuous period of thirty (30) days or more and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

Section 3.14 Inspections.

Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

Section 3.15 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the City has approved the Approved Development Budget. Borrower shall submit any required amendments to the Approved Development Budget to the City for approval within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the City shall be required to amend the Approved Development Budget.

Section 3.16. Developer Fee

The maximum cumulative developer fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, shall not exceed the amount allowed by MFA's Low Income Housing Tax Credit requirements.

Section 3.17 NEPA Mitigation Requirements

Borrower shall comply with any and all applicable NEPA mitigation requirements attached as Exhibit D to Agreement and incorporated by this reference, if applicable.

ARTICLE 4 LOAN REQUIREMENT

Section 4.1 Financial Accountings and Post- Completion Audits.

No later than sixty (60) days following completion of construction of the Development, Borrower shall provide to City a financial accounting of all sources and uses of funds for the Development. No later than one hundred fifty (150) days following completion of construction of the Development, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the Development.

Section 4.2 Annual Operating Budget.

At least 150 days prior to the end of each year of the Term, Borrower shall provide to the City an annual budget for the operation of the Development. Unless rejected by the City in writing within fifteen (15) business days after receipt of the budget, said budget shall be deemed accepted. If rejected by the City in whole or in part, Borrower shall submit a new or corrected budget within thirty (30) calendar days of notification of the City's rejection and the reasons therefor. The provisions of this Section relating to time periods for resubmission of new or corrected budgets shall continue to apply until such budget has been approved by the City.

Section 4.3 Records.

(a) The Borrower shall keep and maintain at the Development, or elsewhere with the City's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's compliance with the terms and provisions of this Agreement. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied and shall be consistent with requirements of this Agreement. All such books, records, and accounts shall be open to and available for inspection and copying by the Approved Financing lenders, the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish to any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts of the Borrower are kept. All supporting documents shall be maintained in accordance with the requirements of 24 CFR §85.20. The Borrower shall preserve such records for a period of not less than five (5) years after the creation of such records in compliance with all HUD records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then the Borrower shall retain such records until such action and all related issues are resolved. Such records shall include all invoices, receipts, and other

documents related to expenditures from the Loan funds. Such records shall include but not be limited to:

(i) Records providing a full description of the activities undertaken with the use of the Loan funds;

(ii) Records demonstrating compliance with the HUD property standards and lead-based paint requirements;

(iii) Records demonstrating compliance with the affordability and income requirements for tenants;

(iv) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;

(v) Records demonstrating compliance with applicable relocation requirements which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments;

(vi) Records demonstrating that tenant leases comply with the applicable funding requirements

(vii) Records demonstrating compliance with Section 3, and labor requirements, including certified payrolls from the Borrower's general contractor evidencing that applicable prevailing wages have been paid, if applicable;

(viii) Financial records as required by 2 CFR 200 subpart F et seq, as amended from time to time.

(b) The City shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 4.4 City Audits.

Each year, Borrower shall provide the City with a copy of Borrower's annual audit, which shall include information on all of Borrower's activities and not just those pertaining to the Development. In addition, the City or any designated agent or employee of the City at any time shall be entitled to audit all of Borrower's books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to Borrower.

Section 4.5 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Borrower shall not use,

generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances", " hazardous wastes", "hazardous materials", or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the City and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the City in connection with clauses (i) and (ii), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property: and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify shall survive termination of this Agreement.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, Borrower shall not take any remedial action in response to the presence of any Hazardous Materials

on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the City's reasonable judgment, impair the value of the City's security hereunder; provided, however, that the City's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's consent before taking such action, provided that in such event Borrower shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action which would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

(e) Borrower hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by state, local, and federal regulations and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of state, local, and federal regulations.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" or to be an "affected parcel", then, without otherwise limiting or in any way affecting the City's or the trustee's rights and remedies under the Deed Restriction and Restrictive Covenants agreement, the City may (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law. The Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by local and State laws, to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) and the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed Restriction and Restrictive Covenants agreement and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

Section 4.6 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of senior lenders, and if economically feasible in the City's reasonable judgment after consultation with the Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the City with such changes as have been approved by the City.

(c) Such work or repair shall be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the City in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds and shall be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not make repairs, then any insurance proceeds collected for such damage or destruction shall be distributed as if such proceeds were Residual Receipts (as defined in this Agreement subject to the rights of the Senior Lenders.

Section 4.7 Fees and Taxes.

Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Borrower and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the City, Borrower deposits with the City any funds or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful.

Section 4.8 Notice of Litigation.

Borrower shall promptly notify the City in writing of any litigation which has the potential to materially affect Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 4.9 Operation of Development as Affordable Housing.

(a) Promptly after completion of construction or rehabilitation, the Borrower shall operate the Development as an affordable housing development consistent with requirements for use of all Approved Financing and the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement.

(b) Before leasing any Unit in the Development, the Borrower shall submit its proposed form of lease agreement for the City's review.

(c) Before leasing the Development, the Borrower must provide the City, for its review, with the Borrower's written tenant selection plan. Borrower's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253 and any modifications thereto.

(d) The Borrower must determine the income eligibility of each tenant household in pursuant to the MFA's tenant selection procedures within sixty (60) days before the household's expected occupancy of one of the Development's Restricted Units. The Borrower shall comply with tenant certification requirements of any and all applicable Approved Financing.

(e) The maximum household income of a household occupying a Restricted Unit in the Development, and the total charges for rent, utilities, and related services to each household occupying a Restricted Unit shall be maintained as provided in the Restrictive Covenants.

Section 4.10 Nondiscrimination.

(a) The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, age, disability, sex, sexual orientation, marital status, genetic information, gender identity, serious medical condition, domestic abuse leave, source of income, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant shall run with the land.

Section 4.11 Transfer.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. "Transfer" shall exclude the leasing of any single unit in the Development to an occupant in compliance with the Restrictive Covenant. The City Manager is authorized to execute assignment and assumption agreements on behalf of the City to implement any approved Transfer.

(b) No Transfer shall be permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the City.

(c) The City approves the grant of the security interests in the Property described in this Agreement.

Section 4.12 Insurance Requirements.

The Borrower shall maintain the insurance set forth in Exhibit C and the following insurance coverage throughout the Term of the Loan:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars ($1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(d) Builders' risk insurance during the construction and, upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) The Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with the Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars ($1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (f), (g), and (h) below, including, without limitation, the requirement of subsection (g). Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the City, its officers, agents, employees and members of the City Council.

(f) Comprehensive and General Liability, Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the City and its officers, agents, employees and members of the City Council.

(g) All policies and bonds shall contain (i) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the City; (iii) a provision that no act or omission of the Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

Section 4.13 Anti-Lobbying Certification

The Borrower certifies, to the best of Borrower's knowledge or belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will notify the City prior to execution of Loan Agreement and documents.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars ($10,000) and no more than One Hundred Thousand Dollars ($100,000) for such failure.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties

Borrower hereby represents and warrants to the City as follows:

(a) Organization. Borrower is in existing and in good standing under the laws of the State of New Mexico and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the City pursuant hereto.

(h) Title to Land. At the time of recordation of the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement , Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the City fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property and the construction of the Development in accordance with the plans and specifications approved by the City.

(k) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principals. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Borrower and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of Borrower to perform under any Loan Document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

ARTICLE 6 DEFAULT AND REMEDIES

Section 6.1 Evidence of Default.

Each of the following shall constitute "Default" by Borrower under this Agreement.

(a) Failure to Construct. Failure of Borrower to commence and complete construction of the Development within the times set forth in Article 3 above;

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days after receipt of written notice from the City that such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the City to the Borrower and to any limited partner of the Borrower who has requested written notice from the City of such failure ("Permitted Limited Partner") or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control. The Permitted Limited Partner shall have thirty (30) additional days to cure a breach beyond the cure periods for the Borrower described in this subsection. If a Permitted Limited Partner cannot cure a Default because the Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of the Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of the Borrower in order to effect a cure of the Default, the cure period shall be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than one hundred eighty (180) days after the date of receipt by the Permitted Limited Partner of written notice of Default.

(d) Default Under Other Loans. A default is declared under any other financing for the Development by the lender of such financing.

(e) Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the City) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the City.

(f) Suspension; Termination. Borrower shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(g) Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the City) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the City.

(h) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development.

(i) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made. After issuance of the certificates of occupancy for the Development, Default may be declared under this subsection only if the failure of representation or warranty also has a material adverse effect on the operation of the Development.

Section 6.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the City or automatically where so specified, relieve the City of any obligation to make or continue the Loan and shall give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The City shall have the right to cause all indebtedness of the Borrower to the City under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under all applicable laws, including foreclosure under the Deed Restriction and Restrictive Covenants agreement. The Borrower shall be liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The City shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Borrower upon demand therefor, together with interest of twelve (12%) per annum (the "Default Rate") from the date of expenditure until the date of reimbursement.

Section 6.3 Right to Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and, in a manner, unprejudicial to the City or the rights of the City hereunder.

Section 6.4 Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regard to the construction and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the City by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the [construction or rehabilitation] or operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the [construction or rehabilitation] or operation of the Development.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties. The City Housing Director is authorized to execute on behalf of the City amendments to the Loan Documents or amended and restated Loan Documents as long as any material change in the amount or terms of this Agreement is approved by the City Board of Supervisors, or in the event the amounts or terms of financing provided by other parties for the Development is revised, requiring conforming amendments to the City Loan documents.

Section 7.4 Indemnification.

The Borrower shall indemnify, defend and hold the City harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the City, its agents, and its employees. The provisions of this Section shall survive the expiration of the Term and the reconveyance of the Deed Restriction and Restrictive Covenants agreement.

Section 7.5 Non-Liability of City Officials, Employees and Agents.

Pursuant to applicable local, state, and federal statutes and regulations, no member, official, employee or agent of the City shall be personally liable to Borrower in the event of any default or breach by the City or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third-Party Beneficiaries

There shall be no third-party beneficiaries to this Agreement.

Section 7.7 Discretion Retained by City.

The City's execution of this Agreement in no way limits the discretion of the City in the permit and approval process in connection with the development of the Development.

Section 7.8 Conflict of Interest.

(a) *Disclosure upon assumption of office.* Each candidate for councilor and mayor shall within five (5) working days after filing their nomination petition, file a disclosure statement identifying the following:

1. All business and civic group interests, including both policy and financial interests, of the councilor or mayor.
2. All trusts of the which the councilor or mayor is a beneficiary.
3. All investments of the councilor or mayor including real estate holdings. In this respect, the real estate holdings shall include a legal description or other description sufficient to identity the location and extent of the property.

The council shall determine the format of the disclosure statement. The disclosure statement shall not require valuation of the assets owned by the councilor or mayor nor the number of shares of ownership in limited partnerships or corporations wherein that individual is an owner. The disclosure statement shall be filed with the city clerk and shall be updated annually thereafter by the councilor or mayor during his or her term of office. This report shall be a public record. It is intended that this section be broadly construed.

(b) *Disclosure at council meeting.* A councilor or mayor who has any private financial interest, direct or indirect, in any matter pending before or within the city or council shall disclose such private interest immediately. The council then shall determine if that councilor or mayor shall be disqualified from participating in any debate, decision or vote related thereto. Violation of this section shall render the contract, sale or purchase voidable at the option of the council.

(c) *Employees' conflicts of interest.* The city shall adopt, by ordinance or resolution, a policy for municipal employees prohibiting employees' conflicts of interest and dealing with violations of such policy.

Section 7.9 Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

City:

City of Las Cruces
700 N Main
Las Cruces, NM 88001
Attn: Housing and Neighborhood Services Administration

Borrower:

The Three Sisters CIC, LLLP, a New Mexico LLLP
6339 Paseo Del Lago, Carlsbad, CA 92011
Attn: Cheri Hoffman, President

With a copy to:

CC Housing Inc.,
3301 Candelaria Road, NE, Suite B
Albuquerque, NM 87107
Attn: Adam Saber, Executive VP & COO

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

7.10 Applicable Law

This Agreement shall be governed by and construed in accordance with applicable local, state, and federal statutes and regulations.

7.11 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof shall inure to the benefit of the City and its successors and assigns.

7.12 Attorney Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party

7.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 City Approval.

The City has authorized the City Manager to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel

certificates concerning the status of the Loan and the existence of Borrower defaults under the Loan Documents. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by Borrower made in connection with this Agreement.

Section 7.16 Waivers.

Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 7.17 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 7.18 Entire Understanding of the Parties.

This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

Section 7.19 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

WHEREAS, this Agreement has been entered into by the undersigned as of the first above written.

SIGNATURES ON THE NEXT PAGE

APPROVED AS TO FORM:

12/9/2022

City Attorney, Acting

CITY:

City of Las Cruces, a New Mexico Municipal Corporation

_____

By: Ifo Pili
Its: City Manager

BORROWER:

The Three Sisters CIC, LLLP
a New Mexico limited liability limited partnership

By: **CC The Three Sisters, LLC,**
a New Mexico limited liability company
its General Partner

By: CC Housing, Inc.,
a New Mexico non-profit corporation, as Manager

By:_____
Adam Saber, Executive VP & COO

By: **CIC The Three Sisters, LLC,**
a New Mexico limited liability company,
its Class B Limited Partner

By: Chelsea Investment Corporation,
a California corporation, as Manager

By:_____
Cheri Hoffman, President

EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land situate in the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico in Section 17, T.23S., R.2E., NMPM of the USRS Surveys and more particularly described as follows, to wit:

Beginning at a City of Las Cruces aluminum cap on the easterly line of Walnut Street for the Southwest corner of the parcel herein described;

Whence a 1/2 inch rebar found for the Northeast corner of Block 13, Hermosa Addition Plat thereof filed September 19, 1914, in Plat Book 1, Page 11, records of the County Clerk, Dona Ana County, New Mexico, bears S.01deg.00'48"VV., a distance of 186.00 feet,

THENCE FROM THE POINT OF BEGINNING along the easterly line of Walnut Street N.14deg.36'38"W., 31725 feet to a City of Las Cruces aluminum cap for the Northwest corner of the parcel herein described;

Thence leaving Walnut Street N.61deg.03¹16"E., 584.97 feet to a City of Las Cruces aluminum cap for the Northeast corner of the parcel herein described;

Thence S.14deg.58'20"E., 316.44 feet to a 1/2 inch rebar for the Southeast corner of the parcel herein described; Thence S.61deg.01'32"W., 587.11 feet to the Point of Beginning.

Save and excepting the following portion of land granted to the City of Las Cruces under Warranty Deed filed of record on October 13, 1999, recorded in Book 197, Pages 816-818, Records of Dona Ana County, New Mexico, and being more particularly described as follows, to wit:

A tract of land situate within the corporate limits of the city of Las Cruces, Dona Ana County, New Mexico being in Section 17, T.23S., R.2E., NMPM of the USRS Surveys. Being a part of that property described in warranty deed filed in Deed Record 333, page 519 of the Dona Ana county record and being more particularly described as follows, to wit:

BEGINNING at the southwest corner of the above described property being identical to the southwest corner of this tract;

THENCE FROM THE POINT OF BEGINNING along Walnut Avenue, N14°36'36"W, 149.86 feet to a % inch rebar with a City of Las Cruces identification cap set for the northwest corner of this tract;

THENCE leaving said Walnut Avenue, N75°23'24"E, 1.87 feet to a % inch rebar with a City of Las Cruces identification cap set for the northeast corner of this tract;

THENCE S16°59'59"E, 122.92 feet to a'/2 inch rebar with a City of Las Cruces identification cap set for an angle point of this tract;

THENCE S14°36'36"E, 25.12 feet to a % inch rebar with a City of Las Cruces identification cap set for the southeast corner of this tract;

THENCE 560°01'54"W, 7.26 feet to the point of beginning.

EXHIBIT " B"

Approved Development Budget

PROJECT SUMMARY

Three Sisters Las Cruces

10/19/2022
Modified by: EAM

SOURCES AND USES SUMMARY

Development Costs		
Acquisition		
Land Cost	$5,714/unit	400,000
Basis Eligible Acquisition Cost	$0/unit	0
Subtotal Acquisition	$5,714/unit	400,000
Hard Costs		
Design Assist	$0/unit	0
Offsites	$0/unit	0
Sitework	$0/unit	0
Parking	$0/unit	0
Vertical	$188,365/unit	13,185,578
GC Contingecy	$0/unit	0
Overhead, Profit, General Conditions	$0/unit	0
Owner Contingency	$9,418/unit	659,279
Subtotal Hard Costs	$197,784/unit	13,844,857
Soft Costs		
A&E	$8,279/unit	579,500
Financing Fees and Interest	$12,501/unit	875,035
Legal Fees	$2,786/unit	195,000
Reserves	$2,621/unit	183,471
Development Impact and Permit Fees	$0/unit	0
Developer Fee	$20,464/unit	1,432,500
Misc (Acctg, Marketing, Reports, Studies, Etc)	$6,443/unit	451,038
Contingency	$1,042/unit	72,947
Subtotal Soft Costs	$54,136/unit	3,789,491
Total Development Costs	$257,634/unit	18,034,348

Sources		
Federal LIHTC Equity	67%	12,008,911
Perm Loan	11%	1,970,000
HOME	6%	1,000,000
Deferred Developer Fee	18%of total Fee	255,436
NHTF	2%	400,000
City of Las Cruces	13%	2,400,000
Soft Loan Interest	0%	0
GP Equity	0%	0
Total Development Sources	100%	18,034,348

FINANCING ASSUMPTIONS

Equity

	Closing	Completion	Conversion	8,609
Equity Pay In	20.00%	0.00%	77.00%	3.00%
Federal Tax Credit Price				$ 0.8950
State Tax Credit Price				
Solar Tax Credit Price				$ 0.8000
9% Credit Rate				9.00%
LP Interest				99.99%
10 Yr Federal Tax Credits				12,008,911
Solar Credits				0
Capital Contribution				12,008,911

Debt

Opr. Exp./Unit/Year		4,763
Replacement Reserves/Unit/Year		300
Vacancy Rate		5.00%
DCR		1.20
Perm Loan Amort		40
Interest Rate - Permanent Loan	per RMCRC	6.42%
Interest Rate - Construction Loan	10/17/2022	6.00%
		0.00%
Construction Loan		10,719,777

Tax Credit Considerations

DDA/QCT Boost	y
Housing Set Aside	Family
Prevailing Wage (State, Federal, Both):	Federal

PRELIM DEVELOPMENT PROGRAMMING SUMMARY

City:	Las Cruces
MSA:	Las Cruces NM MSA
4 Person 50% AMI:	$30,500
Site (acres):	4.130
Construction Type:	V
No. of Stories:	2
Parking Type:	On grade
No. of Stalls:	TBD
Extraorindary Cond:	None
Impact Fees per Unit:	0
Financing Sources:	

PROJECT UNIT & INCOME MIX

AMI	Studio	1BR	2BR	3BR	Totals
Sq. Ft.		579	881	1,048	55,950
UA		$60	$76	$96	
80%					0
70%					0
60%	0	18	11	12	41
55%	0	0	0	0	0
50%	0	10	7	7	24
45%	0	0	0	0	0
40%	0	0	0	0	0
35%	0	0	0	0	0
30%	0	2	1	1	4
Mgr.	0	0	1	0	1
Totals	0	30	20	20	70

Re Serves

PROJECTED SOURCES AND USES OF FUNDS

Three Sisters Las Cruces

			Pre-Dev	Close	Construction Period Quarter 1	Quarter 2	Quarter 3	Quarter 4	Construction Subtotal	Stabilization 6 months	Paydown/ Conversion	309/Tax Retu	Total
					27%	27%	27%	19%					
	SOURCES OF FUNDS												
1	Federal LIHTC and Solar Equity			2,401,782	-	-	-	-	2,401,782	-	9,246,862	360,267	12,008,911
5	Construction Loan		723,498	-	446,070	3,301,492	3,401,265	2,293,312	10,165,638	554,139	(10,719,777)	-	-
6	Perm Loan			-	-	-	-	-	-	-	1,970,000	-	1,970,000
7	HOME			900,000	-	-	-	-	900,000	-	100,000	-	1,000,000
8	Deferred Developer Fee			-	-	-	-	-	-	-	255,436	-	255,436
9	Other			-	-	-	-	-	-	-	-	-	-
10	Local			-	600,000	600,000	600,000	600,000	2,400,000	-	-	-	2,400,000
11	NHTF			360,000					360,000	-	40,000	-	400,000
22	**Total Sources of Funds**		723,498	3,661,782	1,046,070	3,901,492	4,001,265	2,893,312	16,227,420	554,139	892,521	360,267	18,034,348
23													
24													
25	**USES OF FUNDS**												
26	ACQUISITION												
27	Land Cost			400,000	-	-	-	-	400,000	-	-	-	400,000
33	Other: Closing Costs			-	-	-	-	-	-	-	-	-	-
34	**Subtotal Site Acquisition**			400,000	-	-	-	-	400,000	-	-	-	400,000
35													
53	NEW CONSTRUCTION												
56	Solar			-	-	-	-	-	-	-	-	-	-
57	Site Work			-	-	-	-	-	-	-	-	-	-
59	Vertical			-	3,304,606	3,654,606	3,654,606	2,571,760	13,185,578	-	-	-	13,185,578
60	GC Contingency	0.0%		-	-	-	-	-	-	-	-	-	-
61	General Requirements	0%		-	-	-	-	-	-	-	-	-	-
62	Contractor Overhead	0%		-	-	-	-	-	-	-	-	-	-
63	Contractor Profit	0%		-	-	-	-	-	-	-	-	-	-
65	Other:	0%		-	-	-	-	-	-	-	-	-	-
66	**Total New Construction**		-	-	3,304,606	3,654,606	3,654,606	2,571,760	13,185,578	-	-	-	13,185,578
67		$188,365/unit											
68	ARCHITECTURAL												
69	Building		389,000	-	10,800	10,800	10,800	7,600	429,000	-	-	-	429,000
70	Landscape		20,000	-	20,000	-	-	-	40,000				40,000
71	Other		0	-	-	-	-	-	-				-
74	Other:								-	-	-	-	-
75	**Total Architectural**		409,000	-	30,800	10,800	10,800	7,600	469,000	-	-	-	469,000
76													
77	SURVEY & ENGINEERING												
78	Civil		91,500	-	8,000	-	-	-	99,500	-	-	-	99,500
79	Energy Consultant		0	-	-	-	-	-	-	-	-	-	-
80	Traffic Study		0	-	-				-	-	-	-	-
81	Structural Testing		0	-	-	-	-	-	-	-	-	-	-
82	Soils Report		11,000	-	-	-	-	-	11,000	-	-	-	11,000
84	Dry Utilities Consultant		0	-	-	-	-	-	-	-	-	-	-
85	Dry Utilities Relocation		0	-	-	-	-	-	-	-	-	-	-
86	**Total Survey & Engineering**		102,500	-	8,000	-	-	-	110,500	-	-	-	110,500
87													
88	CONTINGENCY COSTS												
89	Hard Cost Contingency	5%		-	165,230	182,730	182,730	128,588	659,279		-	-	659,279
90	Soft Cost Contingency	5%	25,000	24,116	3,407	3,055	7,806	9,563	72,947	-	-	-	72,947
91	**Total Contingency**		25,000	24,116	168,637	185,785	190,536	138,151	732,226	-	-	-	732,226
92													
93	CONSTRUCTION PERIOD EXPENSES												
94	Construction Loan Interest	6.00%		-	13,083	34,051	84,072	129,551	260,757	293,455	0	-	554,212
95	C Bond Loan Interest			-	-	-	-	-	-	-	-	-	-
96	Soft Loan Interest			-	-	-	-	-	-	-	-	-	-
97	Origination/Processing Fee	1.00%		110,698	-	-	-	-	110,698	-	-	-	110,698
100	Lender Inspection Fees			-	8,750	8,750	8,750	8,750	35,000	-	-	-	35,000
101	Taxes During Construction			15,000	-		-	-	15,000	-	-	-	15,000
102	Predevelopment Loan Fees/Interest		10,000	-	-	-	-	-	10,000	-	-	-	10,000
103	Insurance During Construction			60,000	-	-	-	-	60,000	-	-	-	60,000

PROJECTED SOURCES AND USES OF FUNDS

Three Sisters Las Cruces

			Pre-Dev	Close	Construction Period Quarter 1	Quarter 2	Quarter 3	Quarter 4	Construction Subtotal	Stabilization 6 months	Paydown/ Conversion	309/Tax Retu	Total
					27%	27%	27%	19%					
104	Title and Recording Fees			30,000	-	-	-	-	30,000	-	-	-	30,000
105	Construction Mgmt. and Monitoring			-	-	-	-	-	-	-	-	-	-
107	Other: Lender Due Diligence		15,000	-	-	-	-	-	15,000	-	-	-	15,000
108	Other: Investor Due Diligence/Legal		0	-	-	-	-	-	-	-	-	-	-
109	**Total Construction Period Expense**		**25,000**	**215,698**	**21,833**	**42,801**	**92,822**	**138,301**	**536,455**	**293,455**	**-**	**-**	**829,910**
110													
111	PERMANENT FINANCING EXPENSES												
112	Loan Origination Fees	1.25%	5,500	24,625	-	-	-	-	30,125	-	-	-	30,125
113	Credit Enhancement & Application Fee			-	-	-	-	-	-	-	-	-	-
114	Title and Recording Fees			-	-	-	-	-	-	-	15,000	-	15,000
115	Property Taxes			-	-	-	-	-	-	-	-	-	-
116	Insurance			-	-	-	-	-	-	-	-	-	-
117	Other:			-	-	-	-	-	-	-	-	-	-
118	Other:			-	-	-	-	-	-	-	-	-	-
119	**Total Permanent Financing**			**24,625**	**-**	**-**	**-**	**-**	**24,625**	**-**	**15,000**	**-**	**45,125**
120													
121	LEGAL FEES												
122	Construction Lender Legal		5,000	50,000	-	-	-	-	55,000	-	-	-	50,000
123	Permanent Lender Legal		5,000	15,000	-	-	-	-	20,000	-	-	-	20,000
124	Sponsor Legal		10,000	80,000	-	-	-	-	90,000	-	-	-	90,000
128	Other: GP Legal		0	30,000	-	-	-	-	30,000	-	-	-	30,000
129	**Total Legal Fees**		20,000	175,000	-	-	-	-	195,000	-	-	-	195,000
130													
131	CAPITALIZED RESERVES												
132	Operating Reserve	6 months			-	-	-	-	-	-	183,471	-	183,471
137	Other: Capitalized LP Fee			-	-	-	-	-	-	-	-	-	-
138	**Total Reserves**		-	-	-	-	-	-	-	-	183,471	-	183,471
139													
140	REPORTS & STUDIES												
141	Market Study		10,000	-	-	-	-	-	10,000	-	-	-	10,000
142	Relocation Plan & Consulting			-	-	-	-	-	-	-	-	-	-
143	Appraisal		8,000	-	-	-	-	-	8,000	-	-	-	8,000
144	Environmental		20,000	-	-	-	-	-	20,000	-	-	-	20,000
148			0	-	-	-	-	-	-	-	-	-	-
149	**Total Reports & Studies**		38,000	-	-	-	-	-	38,000	-	-	-	38,000
150													
151	OTHER												
152	TCAC App./Alloc/Monitoring Fees		103,998	-	-	-	-	-	103,998	-	28,290	-	132,288
159	Furnishings			-	-	-	-	30,000	30,000	-	-	-	30,000
160	Final Cost Audit Expense			-	-	-	-	-	-	12,500	-	-	12,500
161	Marketing			-	-	-	45,000	-	45,000			-	45,000
164	Accounting/Finance/Admin		0	20,000	7,500	7,500	7,500	7,500	50,000	-	-	-	50,000
165	MGP Services fee			71,625	-	-	-	-	71,625	71,625	-	-	143,250
166	Bond Performance Deposit			-	-	-	-	-	-	-	-	-	-
167	**Total Other Costs**		103,998	91,625	7,500	7,500	52,500	37,500	300,623	84,125	28,290	-	413,038
168													
169	DEVELOPER COSTS												
170	Developer Fee			235,413			-	-	235,413	176,559.53	660,260	360,267	1,432,500
176	Construction Oversight & Mgmt			-	-	-	-	-	-	-	-	-	-
177	**Total Developer Costs**		-	235,413	-	-	-	-	235,413	176,560	660,260	360,267	1,432,500
178													
179													
180	**Total Uses of Funds**		**723,498**	**1,166,477**	**3,541,376**	**3,901,492**	**4,001,265**	**2,893,312**	**16,227,420**	**554,139**	**887,021**	**360,267**	**18,034,348**

OPERATING BUDGET & INCOME ANALYSIS

Three Sisters Las Cruces

Year	2022
MSA	Las Cruces NM MSA
4 Person 50% AMI	$30,500

UA: 2022

Rent:	Restriction	%AMI	Units	Square Feet/Unit	Total Sq. Ft.	Gross Rents	Rent Adjustment	Utility Allowance	Monthly Net Rent	Annual Rent
1BR/1BA	LIHTC	60%	18	579	10,422	$ 686	$ -	$ 60.00	$ 626	$ 135,270
1BR/1BA	LIHTC	50%	10	579	5,790	$ 571	$ -	$ 60.00	$ 511	$ 61,305
1BR/1BA	LIHTC	30%	2	579	1,158	$ 343	$ -	$ 60.00	$ 283	$ 6,795
2BR/2BA	LIHTC	60%	11	881	9,691	$ 823	$ -	$ 76.00	$ 747	$ 98,604
2BR/2BA	LIHTC	50%	7	881	6,167	$ 686	$ -	$ 76.00	$ 610	$ 51,240
2BR/2BA	LIHTC	30%	1	881	881	$ 411	$ -	$ 76.00	$ 335	$ 4,020
3BR/2BA	LIHTC	60%	12	1,048	12,576	$ 951	$ -	$ 96.00	$ 855	$ 123,102
3BR/2BA	LIHTC	50%	7	1,048	7,336	$ 793	$ -	$ 96.00	$ 697	$ 58,559
3BR/2BA	LIHTC	30%	1	1,048	1,048	$ 475	$ -	$ 96.00	$ 379	$ 4,544
2BR/2BA	LIHTC	MGR	1	881	881	$ -	$ -	$ 96.00	$ -	$ -
					0	$ -				
Total Rents			70		55,950					543,438
Community Room/Office					2,530					
% Loss to Efficiency				15%	11,894					
Construction Square Feet					70,374					

Income from Operations	PUPM	
Laundry	$ 20.00	16,800
Other Income (App. Fees, Late, etc.)	$ -	0
Rental Assistance		**0**
Cable & Highspeed Data Income	$ -	0
Telephone Income	$ -	0
Sub-Total	**$ 20.00**	560,238
Less: Vacancies @	5%	28,012
Total Income		**532,226**

Operating Expenses	PUPA	Notes	
Admin	$ 611		42,750
Management Fee	$ 380		26,611
Utilities	$ 873		61,100
Payroll	$ 1,371		96,000
Repair & Maintenance	$ 571		39,980
Insurance	$ 300		21,000
Taxes (HOA, CFD)	$ 300		21,000
Other	$ -		0
Total Expenses	**$ 4,406**		**308,441**
Net Operating Income			**223,785**
Reserves	$300/unit		21,000
Services	$357/unit		25,000
Issuer and Monitoring Fee	*0.000%*	(Min $10k or 0.125% + $150/unit for SDHC)	0
Mandatory Debt Service	*0.000%*		12,500
Net Income Available for Debt Service			**165,285**
			1.20566

Loan Sizing	**Tranche A**	**Tranche B**
Loan Amount	1,970,000	0
Interest	6.42%	5.75%
Term	15	15
Amortization	40	35
Debt Service Coverage	1.20	1.15
Monthly Payment	11,424	0
Annual Payment	137,090	0
Cash Flow After D/S	28,194	28,194
Max Loan Amount	4,750,000	2,960,800

TAX CREDITS & BASIS CALCULATION

Three Sisters Las Cruces

DESCRIPTION OF COSTS	ACTUAL OR EST. OF COSTS	30% ELIGIBLE BASIS	70% ELIGIBLE BASIS
ACQUISITION			
Land Cost	$ 400,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Demolition	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Legal & Carrying Costs	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Land Lease Rent Prepayment	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Verifiable Carrying Costs	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Existing Improvement Costs	$ -	XXXXXXXXXXXX	$ -
Other: Closing Costs	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
TOTAL LAND/AQUISITION COSTS	**$ 400,000**	$ -	$ -
NEW CONSTRUCTION			
Design Assist	$ -		$ -
Off-site Improvements	$ -		$ -
Solar	$ -		$ -
Site Work	$ -		$ -
Parking Garage	$ -		$ -
Vertical	$ 13,185,578		$ 13,185,578
GC Contingency	$ -		$ -
General Requirements	$ -		$ -
Contractor Overhead	$ -		$ -
Contractor Profit	$ -		$ -
Contractor General Liability Insurance	$ -		$ -
Other:	$ -		$ -
TOTAL CONSTRUCTION	**$ 13,185,578**	$ -	$ 13,185,578
ARCHITECTURAL FEES			
Building	$ 429,000		$ 429,000
Landscape	$ 40,000		$ 40,000
Other	$ -		$ -
Other:	$ -		$ -
TOTAL ARCHITECTURAL COSTS	**$ 469,000**	$ -	$ 469,000
SURVEY & ENGINEERING			
Civil	$ 99,500		$ 99,500
Energy Consultant	$ -		$ -
Traffic Study	$ -		$ -
Structural Testing	$ -		$ -
Soils Report	$ 11,000		$ 11,000
0	$ -		$ -
Dry Utilities Consultant	$ -		$ -
Dry Utilities Relocation	$ -		$ -
TOTAL SURVEY & ENGINEERING	**$ 110,500**	$ -	$ 110,500
CONTINGENCY COSTS			
Hard Cost Contingency	$ 659,279		$ 659,279
Soft Cost Contingency	$ 72,947		$ 72,947
TOTAL CONTINGENCY COSTS	**$ 732,226**	$ -	$ 732,226
CONSTRUCTION PERIOD EXPENSES			
Construction Loan Interest	$ 554,212		$ 260,757
Origination Fee	$ 110,698		$ 73,799
Credit Enhancement & Application Fee	$ -		$ -
Owner Paid Bonds	$ -		$ -
Lender Inspection Fees	$ 35,000		$ 35,000
Taxes During Construction	$ 15,000		$ 10,000
Prevailing Wage Monitoring	$ 10,000		$ 10,000
Insurance During Construction	$ 60,000		$ 40,000
Title and Recording Fees	$ 30,000		$ 20,000
Construction Management & Testing	$ -		$ -
Predevelopment Loan Interest	$ -		$ -
Other: Lender Due Diligence	$ 15,000		$ 15,000
Other: Investor Due Diligence/Legal	$ -		$ -
TOTAL CONSTRUCTION PERIOD EXPENSE	**$ 829,910**	$ -	$ 464,556
PERMANENT FINANCING EXPENSES			
Loan Origination Fee	$ 30,125	XXXXXXXXXXXX	XXXXXXXXXXXX
Credit Enhancement & Application Fee	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Title and Recording Fees	$ 15,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Property Taxes	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Insurance	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Other:	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Other:	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
TOTAL PERMANENT FINANCING COSTS	**$ 45,125**	$ -	$ -

LEGAL FEES			
Construction Lender Legal	$ 50,000		$ 33,333
Permanent Lender Legal	$ 20,000		XXXXXXXXXXXX
Sponsor Legal	$ 90,000		$ 45,000
Organizational Legal	$ -		XXXXXXXXXXXX
Bond Legal	$ -		XXXXXXXXXXXX
CPA, Opinion	$ -		$ -
Other: GP Legal	$ 30,000		$ 30,000
TOTAL LEGAL	**$ 190,000**	**$ -**	**$ 108,333**
CAPITALIZED RESERVES			
Operating Reserve	$ 183,471	XXXXXXXXXXXX	XXXXXXXXXXXX
Replacement Reserve	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Rent-up Reserve	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Transition Reserve	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
TOTAL RESERVE COSTS	**$ 183,471**	**$ -**	**XXXXXXXXXXXX**
REPORTS & STUDIES			
Appraisal	$ 8,000		$ 8,000
Market Study	$ 10,000		$ 10,000
Relocation Plan & Consulting	$ -		$ -
Environmental Studies	$ 20,000		$ 20,000
TOTAL REPORTS & STUDIES	**$ 38,000**	**$ -**	**$ 38,000**
OTHER EXPENSES			
TCAC Application/Allocation/Monitoring Fees	$ 132,288	XXXXXXXXXXXX	XXXXXXXXXXXX
CDLAC/CDIAC Fees	$ -		XXXXXXXXXXXX
Local Permit Fees	$ -		$ -
Local Development Impact Fees	$ -		$ -
Other Costs of Bond Issuance	$ -		$ -
Syndicator/Investor Fees & Expenses	$ -	XXXXXXXXXXXX	XXXXXXXXXXXX
Furnishings	$ 30,000		$ 30,000
Final Cost Audit Expense	$ 12,500		XXXXXXXXXXXX
Marketing	$ 45,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Real Estate Taxes	$ -		$ -
Accounting/Finance/Admin	$ 50,000		XXXXXXXXXXXX
TOTAL OTHER COSTS	**$ 413,038**	**$ -**	**$ 173,250**
DEVELOPER COSTS			
Developer Fee Limit - Per Application	$ 1,432,500	$ -	$ 1,432,500
Developer Fee Calculation	$ 2,139,402	$ -	$ 2,139,402
Developer Fee	$ 1,432,500	$ -	$ 1,432,500
Consultants/Processing Agent	$ -		$ -
Project Administration	$ -		$ -
Syndication Consultant	$ -		$ -
Guarantee Fees	$ -		$ -
Broker Fees Paid to Related Party	$ -		$ -
Construction Oversight & Mgmt	$ -		$ -
TOTAL DEVELOPER FEE	**$ 1,432,500**	**$ -**	**$ 1,432,500**
TOTAL RESIDENTIAL COSTS	**$ 18,029,348**	**$ -**	**$ 16,713,943**
TOTAL COMMERCIAL COSTS	**$ -**		**$ -**
TOTAL PROJECT AND BASIS COSTS	**$ 18,029,348**	**$ -**	**$ 16,713,943**
Adjustment for Solar Credits			$ -
Additional Amount Voluntarily Excluded From Basis			$ -
Requested Undadjusted Eligible Basis		$ -	$ 16,713,943
130% DIFFICULT DEVELOPMENT FACTOR?	Tract #: Not Avail.	y	$ 21,728,126
Credit Reduction		0.00%	$ -
Total Adjusted Qualified Basis			$ 21,728,126
TX CREDITS @ % LI Eligible@ Tx Credit Rt	**100.00%**	**9.00%**	**9.00%**
TX CREDITS @ % LI Eligible		**$ -**	**$ 1,341,912**
TX CREDITS OVER TEN YEARS		**$ -**	**$ 13,419,120**
TX CREDIT EQ'TY@$/Credit@% Investment	$ 0.8950	**99.9900%**	**$ 12,008,911**

OPERATIONAL CASH FLOW

Three Sisters Las Cruces

				2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Gross Revenue	Inflation @		2.00%	560,238	571,443	582,872	594,529	606,420	618,548	630,919	643,537	656,408	669,536	682,927	696,586	710,517	724,728	739,222	754,007
Vacancy			5%	(28,012)	(28,572)	(29,144)	(29,726)	(30,321)	(30,927)	(31,546)	(32,177)	(32,820)	(33,477)	(34,146)	(34,829)	(35,526)	(36,236)	(36,961)	(37,700)
Net Revenue				532,226	542,871	553,728	564,803	576,099	587,621	599,373	611,360	623,588	636,059	648,781	661,756	674,991	688,491	702,261	716,306
Operating Expenses	Inflation @		3.00%	308,441	317,695	327,225	337,042	347,153	357,568	368,295	379,344	390,724	402,446	414,519	426,955	439,764	452,956	466,545	480,542
Net Operating Income				**223,785**	**225,176**	**226,503**	**227,760**	**228,945**	**230,053**	**231,078**	**232,017**	**232,863**	**233,614**	**234,261**	**234,801**	**235,228**	**235,535**	**235,716**	**235,765**
Replacement Reserves			3.00%	21,000	21,630	22,279	22,947	23,636	24,345	25,075	25,827	26,602	27,400	28,222	29,069	29,941	30,839	31,764	32,717
Services	Inflation @		3.00%	25,000	25,750	26,523	27,318	28,138	28,982	29,851	30,747	31,669	32,619	33,598	34,606	35,644	36,713	37,815	38,949
Cash Available to Debt Service				**177,785**	**177,796**	**177,701**	**177,495**	**177,172**	**176,726**	**176,152**	**175,442**	**174,592**	**173,594**	**172,441**	**171,127**	**169,643**	**167,982**	**166,137**	**164,098**
Principal and Interest		1,970,000	6.42%	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090	137,090
Mandatory Debt Service			0.00%	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500
Tranche B Loan Payments				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Project Cash Flow				**28,194**	**28,206**	**28,111**	**27,905**	**27,581**	**27,136**	**26,561**	**25,852**	**25,002**	**24,003**	**22,851**	**21,536**	**20,052**	**18,392**	**16,546**	**14,508**
			DSCR	1.19	1.19	1.19	1.19	1.18	1.18	1.18	1.17	1.17	1.16	1.15	1.14	1.13	1.12	1.11	1.10
TCAC Gross Revenue Tes	no more than 2% in year 15 if DSCR > 125% or 8% test		8%	5.03%	4.94%	4.82%	4.69%	4.55%	4.39%	4.21%	4.02%	3.81%	3.59%	3.35%	3.09%	2.82%	2.54%	2.24%	1.92%
TCAC Debt Service Test			125%																
UMR Operating Expense Tes	<= 1.20 DSCR or 12% cash flow to expense ratio		12%	9.14%	8.88%	8.59%	8.28%	7.95%	7.59%	7.21%	6.81%	6.40%	5.96%	5.51%	5.04%	4.56%	4.06%	3.55%	3.02%
Distributions:																			
Refinance Proceeds																			0
Debt Service Coverage Reserve				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Resident Services			3.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
LP Fee		3,500	3.00%	3,500	3,605	3,713	3,825	3,939	4,333	4,463	4,597	4,735	4,877	5,365	5,526	5,691	5,862	6,038	6,219
Deferred Dev Fee		100% of Avail Cashflow	1.00%	24,694	24,601	24,398	24,080	23,642	22,802	22,098	21,255	20,267	19,126	17,486	16,010	11,504	0	0	0
Cash Available After Deferred Fee Payment				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**2,856**	**12,529**	**10,508**	**8,289**
Cash Available For Soft Loans		50% of Avail Cashflow		**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1,428**	**6,265**	**5,254**	**4,144**
NHTF		14.3% of Avail Cashflow	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	204	895	751	592
City of Las Cruces		85.7% of Avail Cashflow	3.00%	0	0	0	0	0	0	0	0	0	0	0	0	1,224	5,370	4,504	3,552
0		0.0% of Avail Cashflow	3.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0		0.0% of Avail Cashflow	3.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0		0.0% of Avail Cashflow	3.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Check		100.0% of Avail Cashflow																	
Cash Flow Available After Soft Loan Loans				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1,428**	**6,265**	**5,254**	**4,144**
Partnership Admin Fee (90% of Cash Flow)			90.00%	0	0	0	0	0	0	0	0	0	0	0	0	1,285	5,638	4,729	3,730
CIC CF			*90.00%*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*1,285*	*5,638*	*4,729*	*3,730*
CC CF			*0.00%*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
Cash Flow Available after Partnership Admin Fee				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**143**	**626**	**525**	**414**
LP Distribution			99.99%	0	0	0	0	0	0	0	0	0	0	0	0	143	626	525	414
GP Distribution			0.01%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Remaining Cash Flow After Partnership Distribution				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the "Agreement") is made this _____ day of _____, 2023, between the Mortgagor, The **Three Sisters CIC., LLLP,** a New Mexico limited liability limited partnership, whose address is 6339 Paseo Del Lago, Carlsbad, CA 92011 (hereinafter referred to as "Mortgagor"), and the Mortgagee, **CITY OF LAS CRUCES**, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico, with a principal address of 700 N Main Street, Las Cruces, New Mexico 88001 (hereinafter referred to as "Mortgagee").

WHEREAS, the Mortgagor and Mortgagee have entered into a City of Las Cruces Housing Trust Fund Loan Agreement (hereinafter referred to as "Loan Agreement"), a copy of which is on file in the City Clerk's Office for the City of Las Cruces, New Mexico, and the definitions and terms of which are incorporated herein by this reference as if fully set forth herein, and which provides, among other things, that the Mortgagee will use Mortgagor Housing Trust Funds on their behalf for the development and new construction of the Property, and being more particularly described in **Exhibit "A,"** and upon construction completion and occupancy, the Mortgagor will utilize the property for the rental of the Property to low-income income households at affordable rents; and

WHEREAS, to ensure that the new construction of the Property is completed and the Property is leased to Low Income households at affordable rents, the Mortgagor has executed a note in favor of Mortgagee in the principal sum of Two Million Four Hundred Thousand Dollars and No Cents ($2,400,000.00), which indebtedness is evidenced by the Mortgagor's promissory note dated of even date herewith (hereinafter referred to as "Note"), a copy of which is attached hereto as **Exhibit "B",** due and payable as provided in the Note.

This Mortgage secures the performance of the following obligations: (1) the indebtedness evidenced by the City Note as disbursed by the City on behalf of the Mortgagor in accordance with the provisions set forth in this City Note and all renewals, extensions and modifications thereof, and the performance of all covenants contained therein, and the payment of such amounts, if any, advanced, or costs incurred by Mortgagee in accordance herewith to protect the security of this Mortgage or in connection with the enforcement of this Mortgage or City Note; and (2) the performance of the covenants, agreements and obligations of Mortgagor herein contained and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law.

For consideration paid, Mortgagor does hereby MORTGAGE, GRANT, BARGAIN, SELL, ASSIGN, GRANT A SECURITY INTEREST IN and CONVEY TO Mortgagee, its successors and assigns, all of Mortgagor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter held or acquired, with mortgage covenants.

(a) All of Mortgagor's fee simple estate and interest in that certain parcel of real property situated in the City of Las Cruces, County of Dona Ana, and State of New Mexico, and being more particularly described on **Exhibit "A"** attached hereto and made a part hereof.

(b) All and singular the buildings and improvements, structures, additions, tenements, easements, hereditaments, and appurtenances belonging or in anywise appertaining to the aforesaid real property ("Real Property"), now

existing or hereafter acquired, installed, or constructed and the revision or reversions, remainder and remainders rents, issues, and profits thereof and also all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor of, in, and to the same, and of, in and to every part and parcel thereof;

(c) All right, title and interest of Mortgagor, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Real Property to the centerline thereof;

(d) All right, title and interest of Mortgagor in all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and other articles of personal property and replacements thereof, now or at any time hereafter affixed to, attached to, placed upon or used in anyway in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property or the Project, together with any proceeds realized from the sale, transfer or conversion of any of the above (subject to the right of replacement described in the City Note);

(e) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards or judgments, and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Mortgagor;

(f) To the extent assignable, any and all plans, specifications, site plans, drawings, renderings and schematics; however, characterized, from time to time prepared for use in connection with the construction and operation of the Project;

(g) To the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, the rendering of any services, the supply of any materials or the conduct of operations in the management of the Real Property and/or the Project including without limitation, construction contracts, architect agreements, development agreements, management agreements with respect to operations, franchise agreements and other similar agreements;

(h) To the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, whether necessary or not, for the operation and use of the Real Property and/or the Project, including, without limitation, building permits, environmental certificates, certificates of occupancy, certificates of operation, room permits, elevator licenses, warranties and guaranties; and

(i) All municipal or utility deposits made by or on behalf of Mortgagor or made in connection with the Real Property and/or the Project, together with all escrow accounts or reserves maintained or required to be maintained by Mortgagor hereunder, and any and all other assets, revenues and profits of any kind of the Project.

All of the property described in the foregoing subparagraphs (a) through (i) shall sometimes hereinafter be collectively referred to as the "Property". All of the assignments hereinabove referenced are subject to the right of the Mortgagor to collect, receive, apply, manage, and use the rights assigned until the occurrence of an event of default hereunder. The maximum amount of unpaid indebtedness, exclusive of interest thereon, which may be outstanding at any time, is Two Million Four Hundred Thousand Dollars and No Cents ($2,400,000.00).

In addition to the other debt or obligation secured hereby, this Mortgage shall secure unpaid balances or advances made for the payment of taxes, tax increment payments, assessments,

insurance premiums, and other costs incurred for the protection of the Real Property or the Project, if not paid by Mortgagor as required by law or this Mortgage.

Mortgagor represents and warrants that it has full right and authority to grant this Mortgage, and that it shall warrant and defend the lien and interest of the Mortgagee in the Property against all claims and demands whatsoever, except any encumbrances acceptable to Mortgagee, and that Mortgagor shall maintain the priority of the lien of and the security interest granted by this Mortgage upon the property until the Mortgage is defeased as provided herein.

The Mortgagor, at its expense, shall cause this Mortgage and instruments supplemental hereto and financing statements and all necessary supplements appropriate continuation statements, to be recorded, registered, and filed in such manner and in such places as may be directed from time to time by Mortgagee as required in order to establish, preserve, and protect the lien of this Mortgage as a lien on all real property, fixtures, and interests therein included in the Property, and a valid security interest in all personal property, fixtures and interest therein included in the Property, including in each such case and without limitation, any such properties acquired after the execution hereof.

All property of every kind acquired by the Mortgagor after the date hereof which, by the terms hereof, is intended to be subject to the lien of this Mortgage, shall immediately upon the acquisition thereof by the Mortgagor, and without further mortgage or assignment, become subject to the lien of this Mortgage as fully as though now owned by the Mortgagor and specifically described herein. Mortgagor shall take such actions and execute such additional instruments as the Mortgagee shall reasonably require to further evidence or confirm the subjection to the lien of this Mortgage of any such after-acquired property.

Upon notification of the pending sale of any parcel comprising the Project, Mortgagee shall release and reconvey such parcel from the charge and lien of this mortgage subject to the condition concurrent of the consummation of such sale and the payment of principal from the proceeds of such sale as required by the City Note. Further, Mortgagor shall modify the Mortgage, if required, to amend the legal description of the Real Property to conform to any replating of the Real Property. Further, Mortgagee shall execute all documents and instruments necessary to subordinate this Mortgage to any mortgage securing the construction loan(s) for the Project.

This Mortgage constitutes a security agreement as to all or any part of the Property, which is of a nature that a security interest therein can be perfected under the Uniform Commercial Code. This Mortgage also constitutes a financing statement with respect to any and all property included in the Property, which is or may become fixtures.

Mortgagor shall pay promptly when due all taxes, tax increment payments, assessments, and other governmental charges on the property which, if not paid, may become a lien on the Property or any part thereof.

During construction of the Project, until issuance of Certificates of Occupancy for each unit and, if applicable, a letter of acceptance by the City for public infrastructure, Mortgagor, at its expense, shall keep or cause to be kept, the Property fully insured by a policy or policies of Builder's Risk and Fire Insurance (in an amount not less than the outstanding balances of the Loan evidenced by the City Note and of any mortgage to which this Mortgage is subordinate) against fire with extended coverage and in good order and condition, ordinary wear and tear excepted, and shall make all necessary or appropriate repairs, replacements, and renewals

thereof. All policies of insurance required by this paragraph shall be endorsed to indicate Mortgagee as an insured Mortgagee.

In the event of any damage or injury to the Project, the Mortgagor agrees that it shall either repay its obligations under the City Note in full, or it shall take any and all actions necessary to restore the Project substantially to its condition prior to the damage or injury and shall apply any proceeds of such insurance coverage to the extent necessary to the costs of such restoration.

If the Mortgagor shall fail to make any payments or perform any act required to be paid or performed hereunder or under the City Note, Mortgagee may (but shall be under no obligation to do so), upon five (5) days written notice to the Mortgagor and to the Lender of any mortgage loan to which this Mortgage is subordinate, make such payment or perform such act for the account of and at the expense of Mortgagor. All payments so made by the Mortgagee and all costs, fees and expenses incurred in connection therewith shall, together with interest thereon as provided herein, be additional indebtedness secured by this Mortgage, to the extent permitted by law, and shall be paid by the Mortgagor to the Mortgagee on demand. In any action brought to collect such indebtedness, or to foreclose this Mortgage, the Mortgagee shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision rendered in any such proceedings.

Notwithstanding any other provisions of this Mortgage, the City Note, or the Loan Agreement, upon any failure by Mortgagor to pay when due any obligation under the City Note, or failure to pay any other obligation under the City Note, and such failure is not cured as provided in the lease agreement, after receipt of written notice from the Mortgagee, such failure to pay or cure shall constitute an immediate default entitling the Mortgagee to exercise any remedy hereafter described in this paragraph, or elsewhere in this Mortgage or the Loan Agreement. Upon any failure to observe or perform any other obligation under this Mortgage, which has not been remedied or cured within ten (10) days after receipt of written notice thereof from Mortgagee, or for such longer period as the Mortgagee shall agree to in writing, then the Mortgagee at its option may declare a default to have occurred hereunder. Subject to the foregoing provisions, with respect to either a default in failure to make payment or any other default, the remedies available to Mortgagee include its ability at any time at its election to exercise any or all or any combination of the remedies conferred upon or reserved to it under this Mortgage, the City Note, the Loan Agreement, or now or hereafter existing at law or in equity. Without limitation, the Mortgagee may declare the entire Loan Amount of the City Note immediately due and payable without notice or demand, the same being expressly waived by the Mortgagor; may proceed at law or equity to collect all amounts secured by this Mortgage and due hereunder, whether at maturity or by acceleration; may foreclose the lien of this Mortgage as against all or any part of the Property; and may exercise any rights, powers, and remedies it may have as a secured party under the Uniform Commercial Code, or other similar laws in effect from time to time.

Each right, power, and remedy of the Mortgagee provided for in the Loan Agreement, the City Note, and Mortgage, or now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Mortgage, the Loan Agreement, or the City Note, now or hereafter existing at law or in equity, and the exercise or beginning of exercise or partial exercise by the Mortgagee of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Mortgagee of any or all such rights, power or remedies.

No failure by the Mortgagee to insist upon the strict performance of any term whereof to exercise any right, power, or remedy consequent upon a breach hereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, and the Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach.

PROVIDED, however, that if the Mortgagor shall well and truly pay to Mortgagee, its successors and assigns, not less than the total of the indebtedness secured hereby and shall fully keep and perform all the conditions, covenants and agreements to be kept and performed by Mortgagor under this Mortgage, then this Mortgage shall be void; otherwise to remain in full force and effect in law and equity forever.

The existence and lien of this Mortgage shall not impede or affect the right of Mortgagor from time to time with respect to all or a portion of the Real Property, to dedicate public areas by subdivision plat or otherwise, including streets, easements and park areas, grant to public utilities and other agencies entitled thereto ordinary and necessary easements, and apply for and obtain zoning acceptable to Mortgagor.

Unless Mortgagee or Mortgagor gives written instructions to the other party of a change in the person or address set forth below, all notices, demands or requests permitted or required to be given under the provisions of this Mortgage or the Loan Agreement shall be hand-delivered or mailed, registered or certified mail, return receipt requested to the following addresses:

Mortgagee:

City of Las Cruces
Attn: Director, Economic Development or Administrating Department Director
700 N. Main St.
Las Cruces, New Mexico 88001

Mortgagor:

The Three Sisters CIC., LLLP, a New Mexico limited liability limited partnership
6339 Paseo Del Lago
Carlsbad, NM 92011

See notice in the Loan Agreement
In the event of foreclosure of this Mortgage, the period of redemption shall be one month in lieu of the statutory redemption period of nine months.

IN WITNESS, WHEREOF, Mortgagor, The Three Sisters CIC., LLLP, hereunto duly authorized, has caused this instrument to be executed on this the _____ day of _____, 2023.

SIGNATURES ON NEXT PAGE

THE THREE SISTERS CIC, LLLP,
a New Mexico limited liability limited partnership

By: **CC The Three Sisters, LLC,**
a New Mexico limited liability company,
its General Partner

By: CC Housing, Inc.
a New Mexico nonprofit corporation, as Manager

By: _____
Adam Saber, Executive VP & COO

By: **CIC The Three Sisters, LLC,**
a New Mexico limited liability company,
its Class B Limited Partner

By: Chelsea Investment Corporation,
a California corporation, as Manager

By: _____
Cheri Hoffman, President

STATE OF)
) ss.
COUNTY OF)

This instrument was acknowledged before me on this _____ day of _____, 2023, by Adam Saber, Executive VP & COO, of CC Housing Inc., a non-profit corporation on behalf of said corporation.

_____
Notary Public

My commission expires:

_____

STATE OF)
) ss.
COUNTY OF)

This instrument was acknowledged before me on this _____ day of _____, 2023, by Cheri Hoffman, President of Chelsea Investment Corporation, a California corporation on behalf of said corporation.

My commission Expires: _____
Notary Public

_____

Exhibit “A”

A parcel of land situate in the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico in Section 17, T.23S., R.2E., NMPM of the USRS Surveys and more particularly described as follows, to wit:

Beginning at a City of Las Cruces aluminum cap on the easterly line of Walnut Street for the Southwest corner of the parcel herein described;

Whence a 1/2 inch rebar found for the Northeast corner of Block 13, Hermosa Addition Plat thereof filed September 19, 1914, in Plat Book 1, Page 11, records of the County Clerk, Dona Ana County, New Mexico, bears S.01deg.00'48"VV., a distance of 186.00 feet,

THENCE FROM THE POINT OF BEGINNING along the easterly line of Walnut Street N.14deg.36'38"W., 31725 feet to a City of Las Cruces aluminum cap for the Northwest corner of the parcel herein described;

Thence leaving Walnut Street N.61deg.03[1]16"E., 584.97 feet to a City of Las Cruces aluminum cap for the Northeast corner of the parcel herein described;

Thence S.14deg.58'20"E., 316.44 feet to a 1/2 inch rebar for the Southeast corner of the parcel herein

described; Thence S.61deg.01'32"W., 587.11 feet to the Point of Beginning.

Save and excepting the following portion of land granted to the City of Las Cruces under Warranty Deed filed of record on October 13, 1999, recorded in Book 197, Pages 816-818, Records of Dona Ana County, New Mexico, and being more particularly described as follows, to wit:

A tract of land situate within the corporate limits of the city of Las Cruces, Dona Ana County, New Mexico being in Section 17, T.23S., R.2E., NMPM of the USRS Surveys. Being a part of that property described in warranty deed filed in Deed Record 333, page 519 of the Dona Ana county record and being more particularly described as follows, to wit:

BEGINNING at the southwest corner of the above described property being identical to the southwest corner of this tract;

THENCE FROM THE POINT OF BEGINNING along Walnut Avenue, N14°36'36"W, 149.86 feet to a % inch rebar with a City of Las Cruces identification cap set for the northwest corner of this tract;

THENCE leaving said Walnut Avenue, N75°23'24"E, 1.87 feet to a % inch rebar with a City of Las Cruces identification cap set for the northeast corner of this tract;

THENCE S16°59'59"E, 122.92 feet to a'/2 inch rebar with a City of Las Cruces identification cap set for an angle point of this tract;

THENCE S14°36'36"E, 25.12 feet to a % inch rebar with a City of Las Cruces identification cap set for the southeast corner of this tract;

THENCE 560°01'54"W, 7.26 feet to the point of beginning.

Exhibit “B”

PROMISSORY NOTE
(CITY OF LAS CRUCES HOUSING TRUST FUND)

THE THREE SISTERS APARTMENTS

$2,400,000.00 Las Cruces, NM
_____, ___, 2023

FOR VALUE RECEIVED, the undersigned The Three Sisters CIC, LLLP, a New Mexico limited liability limited partnership ("Borrower") with a principal address of 6339 Paseo Del Lago, Carlsbad, CA, 92011, hereby promises to pay to the order of the City of Las Cruces, a New Mexico municipal corporation, with a principal address of 700 N. Main St., Las Cruces, NM 88001 ("Holder"), a principal amount of Two Million Four Hundred Thousand Dollars and No Cents ($2,400,000.00), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to pay Holder the principal amount of up to Two Million Four Hundred Thousand Dollars and No Cents ($2,400,000.00), for the funds loaned to Borrower by Holder pursuant to the City of Las Cruces Housing Trust Fund Loan Agreement between Borrower and Holder of even date herewith (the "Loan Agreement"). All capitalized terms not otherwise defined in this Note have the meanings set forth in the Loan Agreement.

2. Interest.

a. Subject to the provisions of Subsection (b) below, this Note bears simple interest at a rate Three percent (3%) per annum from the date of disbursement until full repayment of all principal.

b. If a Default occurs, interest will accrue on all amounts due under this Note at the Default Rate until such Default is cured by Borrower or waived by Holder.

3. Term and Repayment Requirements. Payments here under shall be made in the amount of the greater of: (i) 42.85% of any positive annual Net Cash Flow as defined in the Borrowers Amended and Restated Agreement of Limited Partnership dated on or about the date hereof (the Partnership Agreement”) after payments of items 11.01 (b)(i) through (vi) of the Partnership Agreement, as determined and certified by the independent accounting firm preparing Borrower’s annual audited financial statements; or (ii) $500.00 per year. Any repayment required by this paragraph shall be due withing 180 days after the close of the Project’s fiscal year. Any and all amounts of principal or interest outstanding upon the maturity of the Loan shall be then due and payable.

   Payments received by the city be credited first against accrued interest and then against outstanding principal. The Borrower shall provide the City with any documentation reasonably requested by the City to substantiate the Borrower's determination of Residual Receipts.

4. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of Holder, except as provided in the Loan Agreement.

5. Security. This Note is secured by the Mortgage and Security Instrument wherein the Borrower is the Mortgagor and the City is the Mortgagee.

6. Terms of Payment.

a. All payments due under this Note must be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

b. All payments on this Note must be paid to Holder at the City of Las Cruces, 700 N. Main St., Las Cruces, NM 88001, Attention: Economic Development or Administering Department Director, or to such other place as the Holder of this Note may from time to time designate.

c. All payments on this Note must be without expense to the Holder, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees and other professional service fees and costs of the Holder, incurred in connection with the payment of this Note and the release of any security hereof.

d. Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Holder may legally charge under the laws of the State of New Mexico, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

e. Upon recordation of the Mortgage and Security Instrument and the Restrictive Real Estate Covenants Agreement, this Note will be nonrecourse to the Borrower, pursuant to and except as provided in Section 2.9 of the Loan Agreement.

7. Default.

a. Upon the occurrence of a Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed Restriction and Restrictive Covenants Agreement will, at the option of Holder, become immediately due and payable without further demand.

b. Holder's failure to exercise the remedy set forth in Subsection 7(a) above or any other remedy provided by law upon the occurrence of a Default does not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Default. The acceptance by Holder of any payment that is less than the total of all amounts due and payable at the time of such payment does not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

8. Waivers.

a. The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. The Borrower expressly agrees that this Note, or any payment hereunder may be extended from time to time, and that the Holder may accept further security or release any security for this Note, all without in any way

affecting the liability of the Borrower.

b. No extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note will operate to release, discharge, modify, change, or affect the original liability of Borrower under this Note, either in whole or in part.

c. The obligations of the Borrower under this Note shall be absolute, and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

a. All notices to the Holder or the Borrower shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as the Holder and the Borrower may therein designate.

b. The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by the Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

c. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

d. This Note shall be governed by and construed in accordance with the laws of the State of New Mexico.

e. The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

f. This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year first above written.

BORROWER:

THE THREE SISTERS CIC, LLLP,
a New Mexico limited liability limited partnership

By: **CC The Three Sisters, LLC,**
a New Mexico limited liability company,
its General Partner

By: CC Housing, Inc.
a New Mexico non-profit corporation, as Manager

By: _____
Adam Saber, Executive VP & COO

By: **CIC The Three Sisters, LLC,**
a New Mexico limited liability company,
its Class B Limited Partner

By: Chelsea Investment Corporation,
a California corporation, as Manager

By: _____
Cheri Hoffman, President

RESTRICTIVE REAL ESTATE COVENANTS

Made in Las Cruces, New Mexico Date: _____

This Agreement is made by **The Three Sisters CIC, LLLP ("Three Sisters CIC")**, a New Mexico limited liability limited partnership (Owner) with a principal address of 6339 Paseo Del Lago, Carlsbad, CA 92011, in favor of the **CITY OF LAS CRUCES**, a municipal corporation (City) with a principal address of 700 N. Main Street, Las Cruces, NM 88001.

1. Recitals

A. The Owner will develop a 70 unit Low-Income Housing Tax Credit (LIHTC) complex.
B. The Owner is the owner in fee simple of that certain real estate ("Real Property") in Dona Ana County, New Mexico, which is more particularly described in **Exhibit "A"** attached hereto and made a part hereof.
C. The City has loaned funds under a Housing Trust Fund Loan agreement to the owner to benefit the Real Property of the Owner.
D. In consideration for the assistance given by the City for the benefit of the Owner, the City and Owner have agreed to restrictions on the use and rental of the real property in order to implement the policies and obligations of City's Affordable Housing General Oversight Ordinance and Affordable Housing Trust Fund.

2. Definitions

"Affordability Period" means the 20 years from the date City of las Cruces issues a final certificate of occupancy that the property shall be designated as affordable housing for extremely low and low-income households.

"Annual Gross Income" means the anticipated total income from all sources, as defined in 24 CFR Part 5.609 to be received by the Family Head and spouse and by each additional member of the household during a twelve-month period.

"City's Median Income" means the median income for the City of Las Cruces, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development from time to time and published in the Federal Register.

"City Assisted Units" means the 69 revenue producing units at The Three Sisters Apartments.

"Housing Quality Standards" means the standards set forth in 24 CFR Part 887 to maintain a decent, safe and sanitary living environment.

"Project" means "The Three Sisters" Apartment complex.

"Section 8 Fair Market Rent" means that rent established by the U.S. Department of Housing and Urban Development as authorized under 24 CFR Part 882.

Except as otherwise expressly provided herein, all capitalized terms shall have the meaning given in the Housing Trust Fund Loan Agreement.

3. Restrictive Covenants

During the term of this Agreement as set forth in Paragraph 5 below:

A. Use of Property. The Real Property shall be used as, and only for, residential rental purposes.

B. Income Qualification. The Owner or their assignee shall determine the annual income of a household occupying or seeking to occupy one of the 69 revenue producing units prior to occupancy. Tenants occupying units shall meet the minimum/maximum income targeting criteria:

1. 4 units will be for households with annual gross incomes at or below 30% of Area Median Income (AMI),
2. 24 units will be for households with annual gross incomes at or below 50% of AMI.
3. 41 units will be for households with annual gross incomes at or below 60% AMI.
4. LIHTC Income levels are published annually by the New Mexico Mortgage Finance Authority.

C. Rent Determination. All 69 revenue producing units will be rent restricted units with rents amounts based on the Housing Credit Maximum Rents published annually by the New Mexico Mortgage Finance Authority:

If utilities are not included in the rent, an allowance must be made using HUD approved established utility allowance levels.

D. Tenant Selection and Re-Certification. The Owner or its Assignee shall undertake the initial review of income eligibility of prospective tenants for all 69 revenue producing units. In determining income eligibility, the Owner acknowledges that the City shall examine rent and income calculations and tenant files on up to 10% of the units on an annual basis for monitoring compliance. All documentation including, but not necessarily limited to, a tenant's application, verifications, proposed rent and lease terms shall be kept in tenant files for monitoring compliance.

E. During the 20-year Affordability Period, the Owner shall re-verify tenant eligibility annually with similar documentation as submitted at initial lease-

up. This information must be maintained in the tenants' files and made available for review by the city.

F. Lease Provisions. Each household in a revenue producing unit will have an executed lease with the Owner.

G. Property Standards Requirements. The Project will meet all Uniform Physical Condition Standard (UPCS) inspection protocol as developed by the U.S. Department of Housing & Urban Development to ensure that housing is decent, safe, sanitary and in good repair during the affordability period.

4. Reporting Requirements

Upon issuance of the Certificate of Occupancy by the City of Las Cruces, the Owner shall submit annual reports by the last business day of July. These reports shall include, but not be limited to, the financial statements for the Project, and a certified rent roll showing household size, tenant's race and ethnicity, whether the occupant is a female head of household, date of execution of the occupants current lease, adjusted gross annual income, and rental rates.

5. Term

The term of this Agreement shall commence and the restrictions set forth herein shall automatically commence to apply, on the day and time that the Mortgage securing permanent financing for the residential apartment complex on the Real Property is recorded in the Office of the County Clerk of Dona Ana County, New Mexico. This Agreement and the Restrictive Covenants set forth herein shall automatically terminate at 5:00 p.m., New Mexico time on the twentieth (20^{th}) anniversary of such recordation.

6. Covenants Running with Real Property

This Agreement shall be and constitute covenants running with the Real Property during the term of this Agreement and shall be enforceable by the City by legal and equitable action, including an action for injunctive relief.

7. Binding Effect

Upon execution of this Agreement by the Owner and the City, the terms, conditions and covenants of this Agreement shall be binding upon and inure to the benefit of the parties and of their representatives.

SIGNATURES ON THE NEXT PAGE

Signed on this _____ day of _____, 2023.

THE THREE SISTERS CIC, LLLP,
a New Mexico limited liability limited partnership

By: **CC The Three Sisters, LLC,**
a New Mexico limited liability company,
its General Partner

By: CC Housing, Inc.
a New Mexico non-profit corporation, as Manager

By: _____
Adam Saber, Executive VP & COO

By: **CIC The Three Sisters, LLC,**
a New Mexico limited liability company,
its Class B Limited Partner

By: Chelsea Investment Corporation,
a California corporation, as Manager

By: _____
Cheri Hoffman, President

Exhibit “A”

A parcel of land situate in the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico in Section 17, T.23S., R.2E., NMPM of the USRS Surveys and more particularly described as follows, to wit:

Beginning at a City of Las Cruces aluminum cap on the easterly line of Walnut Street for the Southwest corner of the parcel herein described;

Whence a 1/2 inch rebar found for the Northeast corner of Block 13, Hermosa Addition Plat thereof filed September 19, 1914, in Plat Book 1, Page 11, records of the County Clerk, Dona Ana County, New Mexico, bears S.01deg.00'48"VV., a distance of 186.00 feet,

THENCE FROM THE POINT OF BEGINNING along the easterly line of Walnut Street N.14deg.36'38"W., 31725 feet to a City of Las Cruces aluminum cap for the Northwest corner of the parcel herein described;

Thence leaving Walnut Street N.61deg.03[1]16"E., 584.97 feet to a City of Las Cruces aluminum cap for the Northeast corner of the parcel herein described;

Thence S.14deg.58'20"E., 316.44 feet to a 1/2 inch rebar for the Southeast corner of the parcel herein

described; Thence S.61deg.01'32"W., 587.11 feet to the Point of Beginning.

Save and excepting the following portion of land granted to the City of Las Cruces under Warranty Deed filed of record on October 13, 1999, recorded in Book 197, Pages 816-818, Records of Dona Ana County, New Mexico, and being more particularly described as follows, to wit:

A tract of land situate within the corporate limits of the city of Las Cruces, Dona Ana County, New Mexico being in Section 17, T.23S., R.2E., NMPM of the USRS Surveys. Being a part of that property described in warranty deed filed in Deed Record 333, page 519 of the Dona Ana county record and being more particularly described as follows, to wit:

BEGINNING at the southwest corner of the above described property being identical to the southwest corner of this tract;

THENCE FROM THE POINT OF BEGINNING along Walnut Avenue, N14°36'36"W, 149.86 feet to a % inch rebar with a City of Las Cruces identification cap set for the northwest corner of this tract;

THENCE leaving said Walnut Avenue, N75°23'24"E, 1.87 feet to a % inch rebar with a City of Las Cruces identification cap set for the northeast corner of this tract;

THENCE S16°59'59"E, 122.92 feet to a'/2 inch rebar with a City of Las Cruces identification cap set for an angle point of this tract;

THENCE S14°36'36"E, 25.12 feet to a % inch rebar with a City of Las Cruces identification cap set for the southeast corner of this tract;

THENCE 560°01'54"W, 7.26 feet to the point of beginning.

CITY OF LAS CRUCES *Exhibit "D"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2022-23

	2705 TELSHOR FACILITY 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 33,855,988	33,855,988	0	33,855,988
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	**$ 33,855,988**	**33,855,988**	**0**	**33,855,988**
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	2,400,000	2,400,000
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	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 0**	**0**	**2,400,000**	**2,400,000**
Other Resources				
Operating Transfers In	0	1,999,111	0	1,999,111
Operating Transfers Out	(3,181,112)	(3,181,112)	0	(3,181,112)
Total Other Resources	**$ (3,181,112)**	**(1,182,001)**	**0**	**(1,182,001)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 30,674,876**	**32,673,987**	**(2,400,000)**	**30,273,987**

23-089

City of Las Cruces

City Council Action and Executive Summary

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

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	January 17, 2023
Drafter:	Alma Ruiz	**Department:**	Utilities
Program:	Administration	**Line of Business:**	Office of the Director

Title: **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.**

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

PURPOSE(S) OF ACTION:

For City Council to authorize the City Manager to negotiate the leasing of Las Cruces Utilities Property to Ameresco, Inc., for a Community Solar project.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces ("City") is committed to transitioning to 100% renewable electricity for all City government operations by 2050 as outlined in Resolution No. 18-117, and as amended by Resolution No. 19-089, Attachment "A" and "B", respectively.

During its 2021 session, the New Mexico Legislature passed Senate Bill No. 84, the Community Solar Act ("Act"), which was signed into law by the Governor on April 5, 2021, and codified by the New Mexico Compilation Commission of 62-16B-1 et seq., NMSA 1978 on June 18, 2021.

The Act establishes a community solar program, allowing for the development of community solar facilities and providing customers of qualifying utilities with the option to access solar energy produced by a community solar facility in accordance with specific standards intended to provide equitable access and consumer protections to subscribers.

In accordance with the Act, the Public Regulation Commission is seeking up to 200 Megawatt ("MW") Alternating Current ("AC") in this initial solicitation for community solar facility developers. Ameresco, Inc., of Phoenix, Arizona, has requested to lease property from the City's Las Cruces Utilities Department, for a 5 MW Community Solar project and they propose to finance, design, construct, and operate the project. The City would be a subscriber for 40% of the electricity produced, in accordance with the Act.

SUPPORT INFORMATION:

Attachment "A" R 18-117
Attachment "B" R 19-089
Attachment C - LCU BOARD RES NO. 22-23-LCU016

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Utilities Board

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes" - Will approve this Resolution, and approve the City Manager to negotiate a lease for Las Cruces Utilities property with Ameresco for a Community Solar project.
2. Vote "No" - Will not approve this Resolution, and not approve the City Manager to negotiate a lease for Las Cruces Utilities property with Ameresco for a Community Solar project, and City Council will need to provide staff with alternative direction and LCU Board approval.
3. Vote to "Amend" - This could modify the Resolution based on City Council direction to staff.
4. Vote to "Table" - Will require a Special City Council meeting be held due to the NM PRC application due date of January 31, 2023.

RESOLUTION 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.

The City Council is informed that:

WHEREAS, the City of Las Cruces ("City") is committed to transitioning to 100% renewable electricity for all City government operations by 2050 as outlined in Resolution No. 18-117, and as amended by Resolution No. 19-089, Attachment "A" and Attachment "B", respectively; and

WHEREAS, during its 2021 session, the New Mexico Legislature passed Senate Bill No. 84, the Community Solar Act ("Act"), which was signed into law by the Governor on April 5, 2021, and codified by the New Mexico Compilation Commission at 62-16B-1 et seq., NMSA 1978 on June 18, 2021; and

WHEREAS, the Act establishes a community solar program, allowing for the development of community solar facilities and providing customers of qualifying utilities with the option to access solar energy produced by a community solar facility in accordance with specific standards intended to provide equitable access and consumer protections to subscribers; and

WHEREAS, in accordance with the Act, the Public Regulation Commission is seeking up to 200 Megawatt ("MW") Alternating Current ("AC") in this initial solicitation for community solar facility developers; and

WHEREAS, Ameresco, Inc., of Phoenix, Arizona, has requested to lease property from the City's Las Cruces Utilities Department, for a 5 MW Community Solar project; and

WHEREAS, Ameresco, Inc., proposes to finance, design, construct, and operate the Community Solar project; and

WHEREAS, the City would be a subscriber for 40% of the electricity produced, in accordance with the Act; and

WHEREAS, the Las Cruces Utilities Board of Commissioners approved the recommendation for City Council to authorize the City Manager to negotiate a lease for Las Cruces Utilities property with Ameresco for a Community Solar project, under Resolution No. 22-23-LCU016, on January 12, 2023, as Attachment "C".

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

(I)

THAT negotiations between the City Manager and Ameresco, Inc. for the leasing of Las Cruces Utilities property is approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

RESOLUTION NO. 18-117

A RESOLUTION SUPPORTING LAS CRUCES' RENEWABLE ENERGY FUTURE.

The City Council is informed that:

WHEREAS, the State of New Mexico emits more than 50 million metric tons of carbon pollution from fossil fuel combustion as of 2015; and

WHEREAS, solar and wind power are two of the cleanest sources of energy with which New Mexico can power its homes, businesses, and cars to achieve better air quality and reduce carbon pollution; and

WHEREAS, the State of New Mexico has world class renewable energy resources; and

WHEREAS, the State of New Mexico receives more than 300 days of sunshine per year, providing it with the second greatest solar potential in the nation; and

WHEREAS, the State of New Mexico is the twelfth windiest of the fifty states in the country; and

WHEREAS, the Intergovernmental Panel on Climate Change (IPCC) reported, with 95 percent certainty, that anthropogenic carbon pollution is causing global temperatures to rise, exacerbating extreme weather events such as droughts, floods, and wildfires; and

WHEREAS, burning fossil fuels releases carbon, while solar and wind energy production do not; and

WHEREAS, producing one kilowatt-hour of energy via solar photovoltaic (PV) systems requires approximately one-ninth as much water as producing one kilowatt-hour

of energy from a combined cycle fossil gas plant, and one-seventeenth as much as from a coal-fired plant; and

WHEREAS, producing a kilowatt-hour of energy via wind energy uses 1/250th as much water as combined cycle gas plant and 1/500th as much as coal; and

WHEREAS, El Paso Electric expressed its commitment to support the development of renewably energy projects in West Texas and Southern New Mexico, stating that "every time energy is used, the natural environment can be affected. The more carefully energy is developed and used, the more the earth is protected. One way to protect the natural environment is to promote the use of energy from renewable energy resources,"; and

WHEREAS, climate change, exacerbated by fossil fuels, is predicted by the Environmental Protection Agency (EPA) to have serious negative public health effects as a result of heat waves, extreme weather, and reduced air quality; and

WHEREAS, fossil fuel-burning power plants frequently release toxic pollutants, including mercury, acidic gases, and particulate matter that directly damage the health of nearby residents; and

WHEREAS, the market price for fossil fuels does not account for the costs of negative environmental and health effects caused by burning fossils fuels; and

WHEREAS, the solar industry currently provides 2,522 jobs to New Mexicans, a 57 percent increase from 2015 to 2017; and

WHEREAS, the wind industry currently employs 1,000 to 2,000 New Mexicans; and

WHEREAS, nationally, between 2009-2016, rooftop solar costs fell 54 percent,

utility scale solar costs fell 85 percent, and wind costs fell 66 percent; and

WHEREAS, there are multiple funding mechanisms to support renewable energy production such as private-public partnerships, energy bonds, and other incentives.

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

(I)

THAT the City is the second largest municipality in the State of New Mexico and one of the State's fastest growing cities, home to a population of more than 101,000 residents, and represents one of the state's largest bases of concentrated utility customers.

(II)

THAT the City recognizes the above assets of solar and wind power, looks to innovative opportunities and new technology to meet its future energy demands; has built conservation and sustainability into its short-term and long-term planning documents; and plans to invest its resources to deliver a maximum return to taxpayers and the environment.

(III)

THAT the City of Las Cruces desires to establish its commitment to this important clean energy solution by setting the target of generating 25 percent of the Las Cruces' municipal electrical consumption from solar by the end of 2022 from its 2017 baseline, 50 percent of its electricity from wind and solar by 2030, and 100 percent of its energy from wind power and solar power by 2050.

(IV)

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

DONE AND APPROVED this 2 day of April, 2018.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima:	Aye
Councillor Gandara:	Aye
Councillor Smith:	Aye
Councillor Vasquez:	Aye
Councillor Eakman:	Aye
Councillor Sorg:	Aye
Councillor Flores:	Aye

Moved by: Sorg

Seconded by: Smith

APPROVED AS TO FORM:

City Attorney

City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 1 **Ordinance/Resolution#** 18-117

For Meeting of _____ (Ordinance First Reading Date) **For Meeting of** April 2, 2018 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: A RESOLUTION SUPPORTING LAS CRUCES' RENEWABLE ENERGY FUTURE.

PURPOSE(S) OF ACTION:

To establish renewable energy policy.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Robert A. Cabello	**Department/Section:** Legal/City Attorney	**Phone:** 541-2019
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

As of 2015, the State of New Mexico emits more than 50 million metric tons of carbon pollution from fossil fuel combustion. The Intergovernmental Panel on Climate Change (IPCC) reported, with 95 percent certainty, that anthropogenic carbon pollution is causing global temperatures to rise and is exacerbating extreme weather events such as droughts, floods, and wildfires. The Environmental Protection Agency (EPA) concluded that climate change, affected by fossil fuels, will have serious negative public health effects as a result of heat waves, extreme weather, and reduced air quality.

Burning fossil fuels releases carbon, while solar and wind energy production do not. Solar and wind power are two of the cleanest sources of energy with which New Mexico can power its homes, businesses, and cars to achieve better air quality and reduce carbon pollution. The State of New Mexico has world class renewable energy resources, receiving more than 300 days of sunshine per year, providing it with the second greatest solar potential in the nation. The State of New Mexico is also the twelfth windiest of the fifty states in the country.

Pursuing solar and wind energy is economically efficient. The market price for fossil fuels does not account for the costs of negative environmental and health effects caused by burning fossil fuels. In contrast, between 2009 and 2016, rooftop solar costs fell 54 percent, utility scale solar costs fell 85 percent, and wind costs fell 66 percent nationally.

(Continue on additional sheets as required)

The City of Las Cruces, the second largest city and one of the fastest growing cities in the State of New Mexico, recognizes the above assets of solar and wind power and desires to establish its commitment to this important clean energy solution by setting the goal of generating 25 percent of Las Cruces' municipal electricity from solar power by the end of 2022 from the 2017 baseline, 50 percent of its electricity from wind and solar power by 2030, and 100 percent of its energy from wind and solar power by 2050.

SUPPORT INFORMATION:

1. Resolution.

SOURCE OF FUNDING:

Is this action already budgeted? N/A			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the *(# and Fund Name)* Fund.
Does this action create any revenue? N/A			
	Yes	☐	Funds will be deposited into this fund: *(Fund #)* in the amount of $_____ for FY__.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will adopt the proposed Resolution and establishes the City's goals and support of our renewable energy future.
2. Vote "No"; this will reject the proposed Resolution and not establish the City's goals and support of our renewable energy future.
3. Vote to "Amend"; this would allow the City Council to modify the proposed Resolution.

(Continue on additional sheets as required)

4. Vote to "Table"; this would allow the City Council to further direct staff.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

City of Las Cruces®
PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____ **For Meeting of** **April 2, 2018**
(Ordinance First Reading Date) (Adoption Date)

TITLE: **A RESOLUTION SUPPORTING LAS CRUCES' RENEWABLE ENERGY FUTURE.**

Purchasing Manager's Request to Contract (PMRC) {Required?} **Yes** ☐ **No** ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Robert A. Cabello		2019	03.26.18
Department Director			
Budget	Suzanne DeMunck	2107	3/26/18
Assistant City Manager /William F. Studer, Jr.		2506	3-24-18
Assistant City Manager/David P. Dollahon		X-2078	3/26/2018
City Attorney		2010	3/26/18
City Clerk		2115	3/27/18

RESOLUTION NO. 19-089

A RESOLUTION TO AMEND RESOLUTION 18-117 LAS CRUCES' RENEWABLE ENERGY FUTURE.

The City Council is informed that:

WHEREAS, the State of New Mexico emits more than 50 million metric tons of carbon pollution from fossil fuel combustion as of 2015; and

WHEREAS, climate change, exacerbated by fossil fuels, is predicted by the Environmental Protection Agency (EPA) to have serious negative public health effects as a result of heat waves, extreme weather, and reduced air quality; and

WHEREAS, the market price for fossil fuels does not account for the costs of negative environmental and health effects caused by burning fossils fuels; and

WHEREAS, the State of New Mexico has world class renewable energy resources; and

WHEREAS, the renewable energy industry currently provides 5,000 jobs to New Mexicans; and

WHEREAS, the City is the second largest municipality in the State of New Mexico and one of the State's fastest growing cities, home to a population of more than 101,000 residents, and represents one of the state's largest bases of concentrated utility customers.

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

(I)

THAT the City recognizes the above assets of solar and wind power, looks to innovative opportunities and new technology to meet its future energy demands; has built

conservation and sustainability into its short-term and long-term planning documents; and plans to invest its resources to deliver a maximum return to taxpayers and the environment.

(II)

THAT the City of Las Cruces desires to establish its commitment to this important clean energy solution by setting the target of generating 25% of Las Cruces' Municipal electricity consumption from renewable energy, including but not limited to solar, wind, bioenergy, and other renewable resources, by the end of 2022 from its 2011 baseline, 50% by 2030, and 100% by 2050.

(III)

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

DONE AND APPROVED this 7 day of January, 2019.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

(SEAL)

VOTE:

Mayor Miyagishima:	Aye
Councilor Gandara:	Aye
Councilor Smith:	Aye
Councilor Vasquez:	Aye
Councilor Eakman:	Aye
Councilor Sorg:	Aye
Councilor Flores:	Aye

Moved by: Sorg

Seconded by: Gandara

APPROVED AS TO FORM:

City Attorney

Amended by Smith

RESOLUTION NO. 19-089

A RESOLUTION TO AMEND RESOLUTION 18-117 LAS CRUCES' RENEWABLE ENERGY FUTURE.

The City Council is informed that:

WHEREAS, the State of New Mexico emits more than 50 million metric tons of carbon pollution from fossil fuel combustion as of 2015; and

WHEREAS, climate change, exacerbated by fossil fuels, is predicted by the Environmental Protection Agency (EPA) to have serious negative public health effects as a result of heat waves, extreme weather, and reduced air quality; and

WHEREAS, the market price for fossil fuels does not account for the costs of negative environmental and health effects caused by burning fossils fuels; and

WHEREAS, the State of New Mexico has world class renewable energy resources; and

WHEREAS, the renewable energy industry currently provides 5,000 jobs to New Mexicans; and

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

(I)

THAT the City is the second largest municipality in the State of New Mexico and one of the State's fastest growing cities, home to a population of more than 101,000 residents, and represents one of the state's largest bases of concentrated utility customers.

(II)

THAT the City recognizes the above assets of solar and wind power, looks to innovative opportunities and new technology to meet its future energy demands; has built conservation and sustainability into its short-term and long-term planning documents; and plans to invest its resources to deliver a maximum return to taxpayers and the environment.

(III)

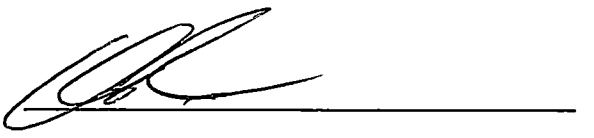
THAT the City of Las Cruces desires to establish its commitment to this important clean energy solution by setting the target of generating 25% of Las Cruces' Municipal electricity consumption from renewable energy, including but not limited to solar, wind, bioenergy, and other renewable resources, by the end of 2022 from its 2011 baseline, 50% by 2030, and 100% by 2050.

(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 _____, 20___.

APPROVED:



Mayor

ATTEST:

_____
City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima: _____
Councilor Gandara: _____
Councilor Smith: _____
Councilor Vasquez: _____
Councilor Eakman: _____
Councilor Sorg: _____
Councilor Flores: _____

APPROVED AS TO FORM:

Deputy City Attorney
City Attorney

City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 19-089

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of January 7, 2019 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: A RESOLUTION TO AMEND RESOLUTION 18-117 LAS CRUCES' RENEWABLE ENERGY FUTURE.

PURPOSE(S) OF ACTION:

To establish renewable energy policy.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Lisa LaRocque	**Department/Section:** Economic Development/Sustainability	**Phone:** 541-2177
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On April 2, 2018 the Council passed Resolution 18-117: Supporting Las Cruces' Renewable Energy Future. This Resolution established the City's commitment to clean energy solutions by setting the goal of generating 25% of Las Cruces' municipal electricity from solar power by the end of 2022 from the 2017 baseline, 50% of its electricity from wind and solar power by 2030, and 100% of its energy from wind and solar power by 2050.

This Resolution, if approved, proposes amendments as follows: Renewable energy solutions will be expanded from solar and wind across all years to include but not be limited to solar, wind, bioenergy, and other renewable resources. This allows the City to use various clean energy technologies to reach its goals. The second change shifts the baseline from 2017 to 2011 when the City began investing in renewable energy. Between 2011 and 2017, the City has installed over 1.1 Megawatts (MW) of solar energy replacing 6% of the City's electricity use with clean energy. The baseline shift will allow the City to include this contribution to the City's final target of 20 MWs of renewable energy.

SUPPORT INFORMATION:

1. Resolution.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: ____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: ____ in the amount of $_____ for FY__.
N/A	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and amend Resolution 18-117 to support of our renewable energy future.
2. Vote "No"; this will not approve the Resolution, nor will it amend Resolution 18-117 to support our renewable energy future.
3. Vote to "Amend"; this would allow the City Council to further direct staff.
4. Vote to "Table"; this would allow the City Council to further direct staff.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution 18-117.

(Continue on additional sheets as required)

City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of January 7, 2019 (Adoption Date)

TITLE: A RESOLUTION TO AMEND RESOLUTION 18-117 LAS CRUCES' RENEWABLE ENERGY FUTURE.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes ☐ No ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		X2177	12.18.18
Department Director		216	12-19-18
Budget		2107	12/26/18
Assistant City Manager /William F. Studer, Jr.		2504	12-20-18
Assistant City Manager/David P. Dollahon		2078	12/20/2018
City Attorney		2011	12/27/2018
City Clerk		2115	12-27-18

Rev. 5/2017

Attachment "C"

22-23-LCU016

City of Las Cruces

Utilities - Regular Meeting Action and Executive Summary

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

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	January 12, 2023
Drafter:	Adrienne Widmer	**Department:**	Utilities
Program:	Energy Management	**Line of Business:**	Natural Gas and Energy Operations and Maintenance

Title: **A RESOLUTION RECOMMENDING CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO NEGOTIATE THE LEASING OF LAS CRUCES UTILITIES PROPERTY FOR A COMMUNITY SOLAR PROJECT TO AMERESCO, INC., OF PHOENIX, ARIZONA.**

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

PURPOSE(S) OF ACTION:
To approve the recommendation to Council for the authorization of the City Manager to negotiate the leasing of Las Cruces Utilities Property to Ameresco, Inc., for a Community Solar project.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City) is committed to transitioning to 100% renewable electricity for all City government operations by 2050 as outlined in Resolution 18-117, and as amended by Resolution 19-089, Attachment A and B, respectively.

During its 2021 session, the New Mexico Legislature passed Senate Bill 84, the "Community Solar Act," (Act) which was signed into law by the Governor on April 5, 2021, and codified by the New Mexico Compilation Commission at 62-16B-1 et seq., NMSA 1978 on June 18, 2021.

The Act establishes a community solar program, allowing for the development of community solar facilities and providing customers of qualifying utilities with the option to access solar energy produced by a community solar facility in accordance with specific standards intended to provide equitable access and consumer protections to subscribers.

In accordance with the Act, the Public Regulation Commission is seeking up to 200 MW AC in this initial solicitation for community solar facility developers. Ameresco, Inc., of Phoneix, Arizona, has requested to lease property from the City of Las Cruces, Las Cruces Utilities, for a 5 Megawatt (MW) Community Solar project and they propose to finance, design, construct, and operate the project. The City of Las Cruces would be a subscriber for 40% of the electricity produced, in accordance with the Act.

SUPPORT INFORMATION:

DRAFT

Attachment "A" R 18-117
Attachment "B" R 19-089

PLAN(S):
Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:
Utilities Board

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?
☐ Yes
☒ No

Does this action align with Elevate Las Cruces?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:
1. Vote "Yes" - Will approve Resolution No. 22-23-LCU016, and recommend to Council to approve the City Manager to negotiate a lease for Las Cruces Utilities property with Ameresco for a Community Solar project.
2. Vote "No" - Will not approve Resolution No. 22-23-LCU016, and not recommend to Council to approve the City Manager to negotiate a lease for Las Cruces Utilities property with Ameresco for a Community Solar project. Staff will require strategic guidance.

REFERENCE INFORMATION:
CL-19.2.3

DRAFT

RESOLUTION 22-23-LCU016

A RESOLUTION RECOMMENDING CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO NEGOTIATE THE LEASING OF LAS CRUCES UTILITIES PROPERTY FOR A COMMUNITY SOLAR PROJECT TO AMERESCO, INC., OF PHOENIX, ARIZONA.

The Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

WHEREAS, the City of Las Cruces (City) is committed to transitioning to 100% renewable electricity for all City government operations by 2050 as outlined in Resolution 18-117, and as amended by Resolution 19-089, Attachment A and B, respectively; and

WHEREAS, during its 2021 session, the New Mexico Legislature passed Senate Bill 84, the "Community Solar Act," (Act) which was signed into law by the Governor on April 5, 2021, and codified by the New Mexico Compilation Commission at 62-16B-1 et seq., NMSA 1978 on June 18, 2021; and

WHEREAS, the Act establishes a community solar program, allowing for the development of community solar facilities and providing customers of qualifying utilities with the option to access solar energy produced by a community solar facility in accordance with specific standards intended to provide equitable access and consumer protections to subscribers; and

WHEREAS, in accordance with the Act, the Public Regulation Commission is seeking up to 200 MW AC in this initial solicitation for community solar facility developers; and

WHEREAS, Ameresco, Inc., of Phoenix, Arizona, has requested to lease property from the City of Las Cruces, Las Cruces Utilities, for a 5 Megawatt (MW) Community Solar project; and

WHEREAS, Ameresco, Inc. Proposes to finance, design, construct, and operate the Community Solar project; and

WHEREAS, the City of Las Cruces would be a subscriber for 40% of the electricity produced, in accordance with the Act.

NOW, THEREFORE, Be it Resolved by the Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

(I)

THAT negotiations between the City Manager and Ameresco, Inc. for the leasing of Las Cruces Utilities property is recommended to the City of Las Cruces Council.

(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

DRAFT

APPROVED

_____
LCU BOARD CHAIR

ATTEST:

_____
LCU BOARD SECRETARY

Moved by:

Seconded by:

AYES

NAYS

DRAFT

City of Las Cruces

City Council Action and Executive Summary

23-090

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

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	January 17, 2023
Drafter:	Vince Banegas	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **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.**

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

PURPOSE(S) OF ACTION:

Appeal of Special Use Permit approval.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

This case is an appeal of an approval decision by the Planning and Zoning Commission involving a Special Use Permit (SUP) request to allow a cannabis retailer within the prescribed buffer distance to a single-family residential zoning district. As called for in the 2001 Las Cruces Zoning Code, as amended (Section 38-53 Conditional Uses, 38-53G Cannabis Retailer (C-1, C-2, C-3), said use is a conditional use requiring compliance with the 300-foot buffer distance to a single-family zoning district boundary. If the distance separation cannot be achieved, a special use permit is necessary pursuant to Section 33-34 of the code. Triggering the special use permit process subjects the request to greater scrutiny in order to determine the appropriateness and impacts the use may have on the surrounding neighborhood. Issues considered often involve impacts that stem from noise, traffic, odor, lighting, etc.

The proposed cannabis location is a ± 0.498-acre lot at the intersection of S. Main Street, Alameda Boulevard and El Paseo Road (750 S. Main Street). This parcel has been zoned C-2 and has been developed since 1970. The property has been used extensively as a gasoline/service station and more recently, as a retail car dealership.

The subject property is located within an area containing a mix of zoning districts. These districts include DDC-DT (Downtown Development Code - Downtown), C-1 (Commercial Low Intensity), C-3 (Commercial High Intensity), O-1 (Office, Neighborhood-Limited Retail Service), and R-1a (Single-Family Medium Density). The single-family uses within the R-1a district are located directly west of the subject property. Between the residential neighborhood and the subject property are commercially zoned lots used for office and retail purposes. These non-residential properties serve as a buffer between the proposed cannabis retail use and the R-1a zoned neighborhood.

The subject property will have ingress/egress to both Alameda Boulevard (minor arterial) and South Main Street (major arterial). The area along both roadways is well traveled as they provide primary access to the commercial/service-related businesses in the area.

On July 19, 2022, staff received a letter of protest from a local attorney which was included in the case packet to the Planning and Zoning Commission. The protest letter discusses a concern regarding a perceived procedural error in the review of the application as a Special Use Permit rather than a Variance. The letter further stipulates that as a result, consideration is not based on any standard defined in the variance process potentially resulting in an arbitrary and capricious decision. In response, please consider the introductory paragraph wherein the case must be processed as a special use permit due to the proposed location being within the 300-foot buffer to a Single-family zoning district boundary. As such, it is the impacts that the proposed use may have on the surrounding neighborhood that is considered, not whether or not the distance to the single-family development/boundary should be approved or denied based on hardships defined per code.

On July 26, 2022, the Planning and Zoning Commission heard the SUP case. Discussion on the request was fairly robust in the context of neighborhood concerns regarding cannabis sales in the area. Concerns cited primarily spoke to a procedural error, increased safety/crime in the area, precedent-setting in terms of allowing the use within 300' of the residential zoning district, potential conflicting uses in the area, and the need to establish the downtown area gateways with more attractive uses. Those that spoke favorably for the SUP cited the existing business buffer along Alameda Boulevard protecting the residential uses, proposed site redevelopment beautifying the corner, 24-hour security measures on-site that discourage crime in the surrounding area, and reinvestment back into the community in the form of employment and social programs. Following discussion, the Commission voted 6-0-0 (one Commissioner absent) in favor of the SUP.

This case was publicly noticed in accordance with the City's notification provision. The input received was the letter previously discussed and the comments received during the meeting.

SUPPORT INFORMATION:

Attachment "A", Vicinity Map
Attachment "B", Findings
Attachment "C", Staff Report to P&Z for Case 22ZO1000081
Attachment "D", Approved 07-26-22 PNZ Minutes Abbreviated
Attachment "E", Appeal Letter

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and overturn the Planning and Zoning Commission's decision to approve the SUP. The proposed SUP will not be allowed to operate at the subject location as requested.
2. Vote "No"; this will deny the Resolution thus affirming the Commission's SUP approval decision. The SUP as proposed will be allowed to operate at the subject location.
3. Vote to "Amend"; this could allow the City Council to modify the Resolution and stipulate conditions as deemed appropriate.
4. Vote to "Table"; this could allow the City Council to table/postpone the Resolution and direct staff accordingly.

RESOLUTION 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.

The City Council is informed that:

WHEREAS, Norman Yousif (Mayflower Enterprises, LLC), applicant, has submitted a request for a Special Use Permit (SUP) to allow a cannabis dispensary within the designated buffer distance to a Single-Family Medium Density (R-1a) zoning district boundary; and

WHEREAS, cannabis dispensaries require consideration of 300-foot buffer distances from qualifying schools/daycares, other cannabis locations, and single-family zoning districts pursuant to adopted cannabis regulation; and

WHEREAS, the proposed dispensary location is compliant to all buffer distances except the distance related to single-family zoning districts; and

WHEREAS, the proposed dispensary is considered a conditional use with the condition requiring compliance to the specified buffer distance, and if compliance cannot be achieved, submittal, review and consideration of the proposed use can be made subject to the SUP process; and

WHEREAS, the subject property is ± 0.498 acres, zoned C-2 (Commercial Medium Intensity); and

WHEREAS, on July 26, 2022, the Planning and Zoning Commission (P&Z), after conducting a public hearing approved the SUP request by a vote of 6-0-0 (one Commissioner absent); and

WHEREAS, on August 8, 2022, an appeal of the P&Z decision was submitted for further processing to City Council.

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

(I)

THAT The Commission's approval of the SUP at 750 South Main Street is hereby reversed resulting in the proposed dispensary not being allowed to operate at this location.

(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:

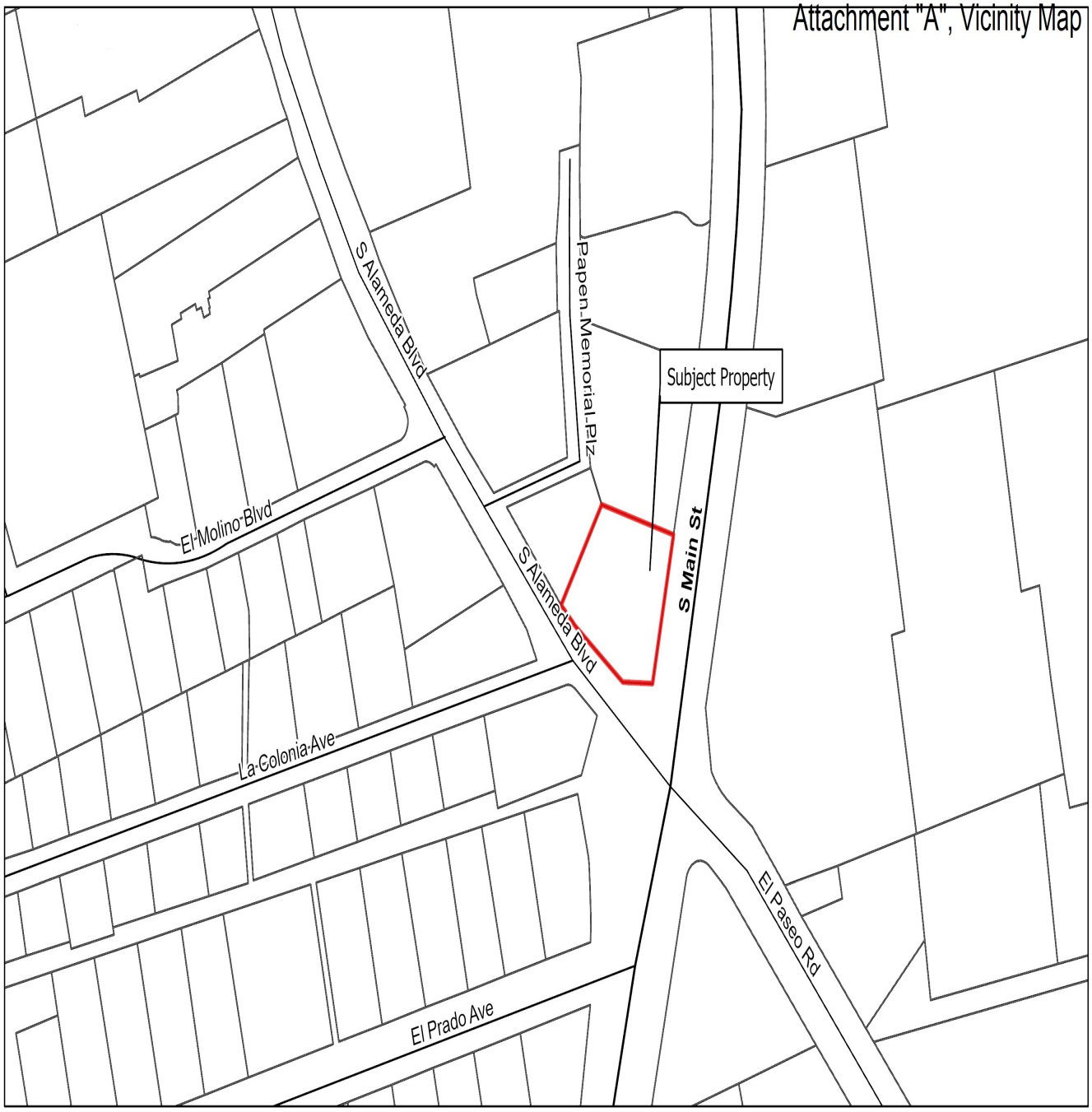
_____

Moved by:

Seconded by:

AYES

NAYS



Note: Subject property is outlined in red.

Legend

City-Limits
DAC_Parcel
parcel
RoadCenterline
Road Class
Major Arterial
Minor Arterial
Local Streets

0 0.01 0.03 0.05 0.08 0.1 Miles

N
W E
S

Attachment “B”, Findings

FINDINGS

1. The subject property meets the distance separation requirements from any school, nursery/day care, or other cannabis retail establishments.
2. The subject parcel has been commercially zoned since pre-1970 and seems to have met all applicable codes at the time of construction.
3. The subject parcel as it exists is surrounded by several other uses and non-residential zoning that provide adequate buffer/screening to the R-1a (Single-Family Medium Density) zoned properties in question.
4. The subject parcel has been commercial in use since its development and thus is compatible with other commercial/office related properties in the surrounding neighborhood.
5. The site has direct access from Main Street and Alameda Boulevard resulting in little to no traffic impact to the residentially zoned neighborhood.
6. The proposed SUP meets the purpose and intent requirements of Section 38-2 of the 2001 Zoning Code, as amended.
7. All applicable requirements as outlined in the 2001 Las Cruces Zoning Code, as amended and those stipulated by the State of New Mexico must be adhered to for subsequent operation of the proposed business.
8. Several goals, policies and actions support the SUP request and the proposed use consistent with the Downtown Place Type. Policy speaks to mixed-use neighborhoods, expanding economic opportunities (regional/national competitiveness), increased employment opportunities, economic security, and provisions for a wide range of business types along key corridors and thoroughfares.

SPECIAL USE PERMIT

City of Las Cruces
MOUNTAINS OF OPPORTUNITY

Planning & Zoning Commission 7/23/2022

CASE 22ZO1000081: SPECIAL USE PERMIT

STAFF CONTACT:	Vincent Banegas, (575) 528-3085, vbanegas@las-cruces.org
OWNER:	Norman Yousif, Mayflower Enterprises, LLC
REPRESENTATIVE:	Gary Sandler, Gary Sandler Inc. Realtors
DISTRICT:	District #4
SITE ADDRESS:	750 S. Main Street
EXISTING ZONING:	C-2 (Commercial Medium Intensity)
REQUEST:	Special Use Permit (SUP) to allow a Cannabis Retail establishment within the required 300-foot buffer distance of a Single-Family Zoning District.
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF REQUEST CASE 22ZO1000081: The proposed Special Use Permit (SUP) is to allow for a deviation of ± 82 feet to the required 300-foot buffer distance for Cannabis Retail establishments from a Single-Family Residential Zoning District. The subject property encompasses ± 0.498 acres and is zoned C-2 (Commercial Medium Intensity).

SUMMARY OF RECOMMENDATION: Staff is recommending **APPROVAL** based on the findings listed below:

- The subject property meets the distance separation requirements from any school, church, nursery/day care (under interpretation), and other cannabis retail establishments.
- The subject parcel as it exists is surrounded by several other uses and non-residential zoning that provide adequate screening to the R-1a (single-family zone) properties in question.

- The subject parcel has been commercial in use since its development and thus is compatible with other commercial/office related properties in the surrounding neighborhood.
- The site has direct access from Main Street and Alameda Boulevard resulting in little to no traffic impact to the residentially zoned neighborhood.
- The proposed SUP meets the purpose and intent requirements of Section 38-2 of the 2001 Zoning Code, as amended.
- All applicable requirements as outlined in the 2001 Las Cruces Zoning Code, as amended and those stipulated by the State of New Mexico must be adhered to for subsequent operation of the proposed business.

PROPOSAL AND LAND USE HISTORY

The applicant is seeking the development of a Cannabis Retail Establishment which requires a Special Use Permit (SUP) in that it encroaches ± 82 feet into the required 300 ft buffer distance required of a Cannabis Retail Establishment to a Single-Family Zoning District. The building located at 750 S. Main Street was built in 1970 and is ± 2,046 square feet in size. The property is currently zoned C-2 (Commercial Medium Intensity).

In general terms, a Special Use is a use that is not permitted by right but may be approved upon consideration of potential impacts to the surrounding area by the Planning and Zoning Commission. Impact consideration may include factors related to traffic, development compatibility, mitigation technique implementation, etc. SUP decisions made by the Planning and Zoning Commission are final unless appealed to City Council.

LAND USE HISTORY:
The ± 0.498 property was commercially zoned prior to 1970. This lot is located at the corner of Alameda Boulevard and S. Main Street. For several years, the property operated as a gas/service station until its' conversion to an auto dealership.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Elevate Las Cruces Comprehensive Plan	Yes
Purpose and Intent of the Code: Section 38-2	Yes
Criteria for Decisions: Section 2-382	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:
The property is located within an area containing a mix of zoning districts. These districts include DDC-DT (Downtown Development Code–Downtown), C-1 (Commercial Low Intensity), C-3 (Commercial High Intensity), O-1 (Office, Neighborhood-Limited Retail Service), and R-1a (Single-Family Medium Density). The single-family uses within the R-1a district are located directly west of the subject property. Between these properties are commercially zoned properties used for office and retail purposes. In essence, those properties serve as a buffer between the proposed cannabis retail use and the R-1a district.

The two roads providing ingress/egress to the property are Alameda Boulevard (Minor Arterial) and South Main Street (Major Arterial). From the staff perspective, the proposed use is compatible with the area and would pose no greater impact to surrounding properties than any other retailer seeking to locate on-site.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

- Community Environment:
  - Goal CE-2: Areas of Special Consideration
    - Policy CE-2.2 – Continue to promote downtown as the mixed-use core of the city.
  - Goal CE-3: Centers and Corridors – Support community growth through concentrated development at activity centers and along key corridors.
    - Policy CE-3.2 – Allow for a mix of development type and intensity along major thoroughfares that reflects surrounding urban, suburban, and rural contexts.
  - Goal CE-4: Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
    - Policy CE-4.2 – Incorporate employment and shopping nodes into new and redeveloping neighborhoods to provide residents with convenient access to services.
- Community Prosperity
  - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.
    - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
      - Action CP -2.2.2 – Identify and promote places of employment to minimize commutes and increase accessibility to other transportation modes to create a job-housing balance.
      -
  - Goal CP-4: Diversification - Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.
    - Policy CP-4. - Support efforts to be regionally and nationally competitive in regard to retaining and growing businesses, jobs, and students.

CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:

Per Section 38-2: The intent of the Zoning Code is to

encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed SUP include:

A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
B. Encourage innovations in land development and redevelopment.
C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
D. Encourage mixed land uses to decrease the length of trips for work and/or shopping and encourage the consolidation of trips and alternative modes of travel.
L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
M. Foster a more rational relationship between different land uses for the mutual benefit of all.
N. Conserve the value of buildings and land.

CRITERIA FOR DECISIONS:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth;
- Impairment of the public health, safety, or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, designstandards and other companion codes.

Based upon a review of the proposal and applicable regulations and policies, City Staff did not consider any of the criteria as a significant concern in context to the subject request. Additionally, several comprehensive plan goals, policies and actions support the proposal in that the policies speak to provisions for mixed-use neighborhoods, expanding economic opportunities to remain competitive both regionally and nationally, locating business along key corridors and major thoroughfares, and expanding employment opportunities to increase resident economic security. In terms of the proposed use, the business will function as any other retailer selling goods within the city. Operation of the business will be compliant with all applicable zoning and building codes and should not be a detriment to the public's health, safety, and general welfare. The use must also meet all State of New Mexico regulations as they pertain to cannabis sales. As such, the proposed use will be in harmony with the purpose and intent of the 2001 Zoning Code, as amended and the Elevate Las Cruces Comprehensive Plan.

DEVELOPMENT STANDARDS

The subject property is currently zoned C-2 (Commercial Medium Intensity) and is ± 0.498 acres. A building designed to accommodate the proposed retail use is currently developed on the property.

At the time of construction, the site met all required development standards and building codes. Any deficiencies found today, will be rectified through subsequent permitting and business registration processes as applicable.

SITE SUITIBILITY FOR PROPOSED USE:
A SUP is required to follow all procedures of Section 38-54A of the 2001 Zoning Code, as amended. The SUP will allow for a retail cannabis establishment on the subject property. The proposed use will be in keeping with several other commercial properties in the vicinity. The site should serve the proposed use well in that it was developed as a commercial building with all necessary access, parking, and related development requirements in place at the time of its construction. Furthermore, with exception of the buffer distance to a single-family residential district, all other cannabis related requirements will be met. This includes the buffer distance to any daycare or qualifying school.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:
City water, gas and sewer already serve the site and are adequate for the proposed use. Both Alameda Boulevard and South Main Street are designated as arterials and serve as access points for the subject property. Both roadways include all applicable street design elements.

FLOOD PLAIN: The subject property is not located within the Flood Zone.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT: Notice of a Public Hearing was mailed to all property owners within 500 feet of the subject property. To date, there has been no input received.

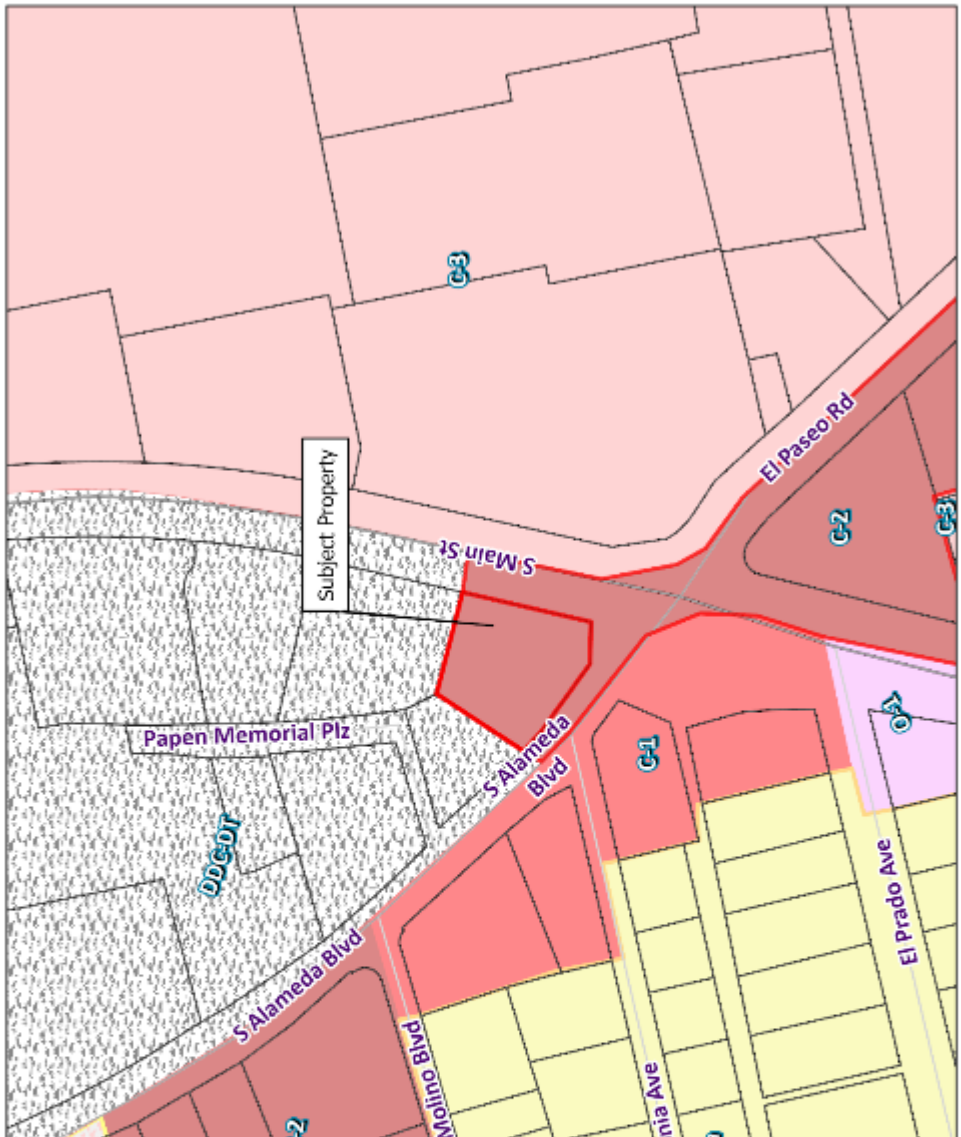
STAFF COMMENTS: The proposed use meets all the requirements for a SUP including the distancing requirements from any school, day care/nursery (per interpretation), or other cannabis retailer. In that the City has adopted retail cannabis regulations that mandate requirements similar to other retail goods like tobacco, liquor etc., the subject property which is zoned C-2 should serve the proposed use well. As such, staff recommends approval of the SUP.

ATTACHMENTS:
1. Zoning Map
2. Aerial Map
3. Site Plan/Floor Plan
4. Development Review Comments

5. Public Input

ATTACHMENT 1

Zoning Map

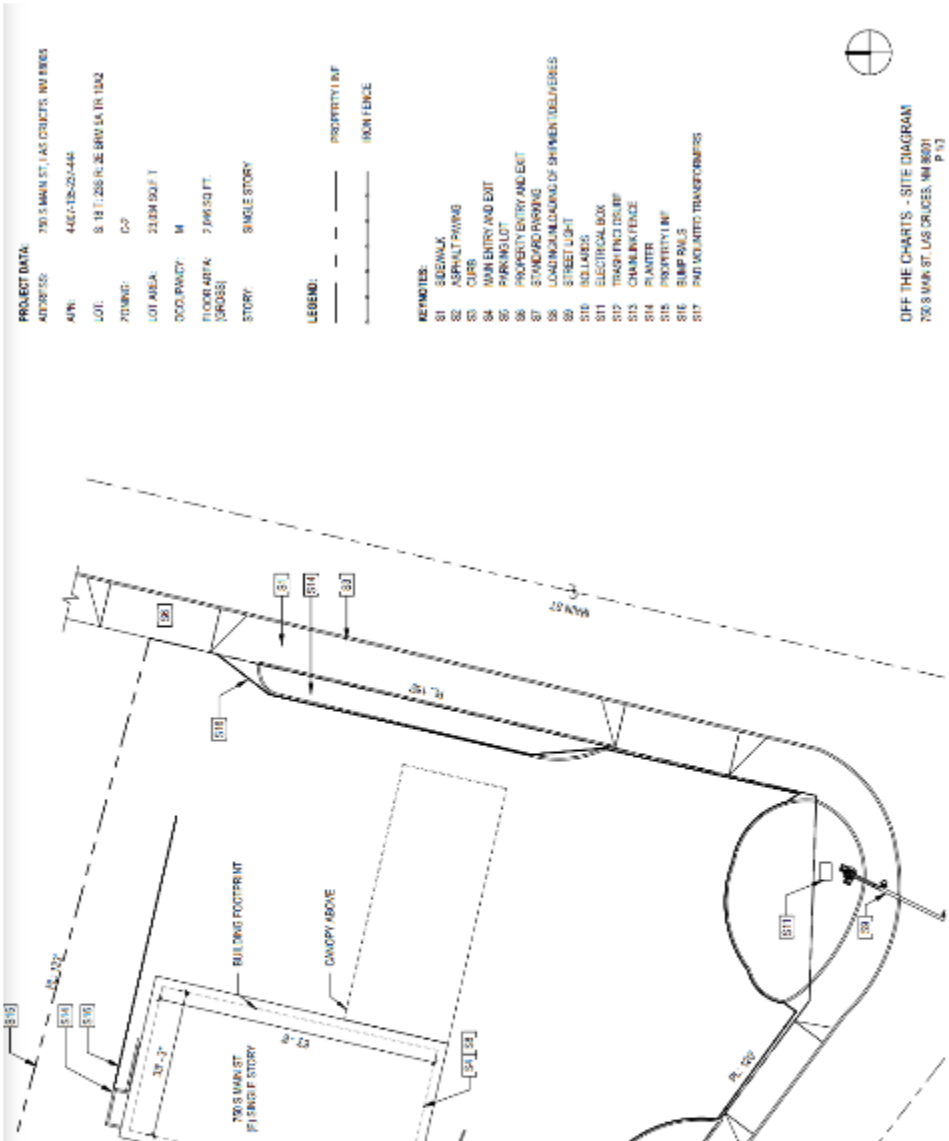


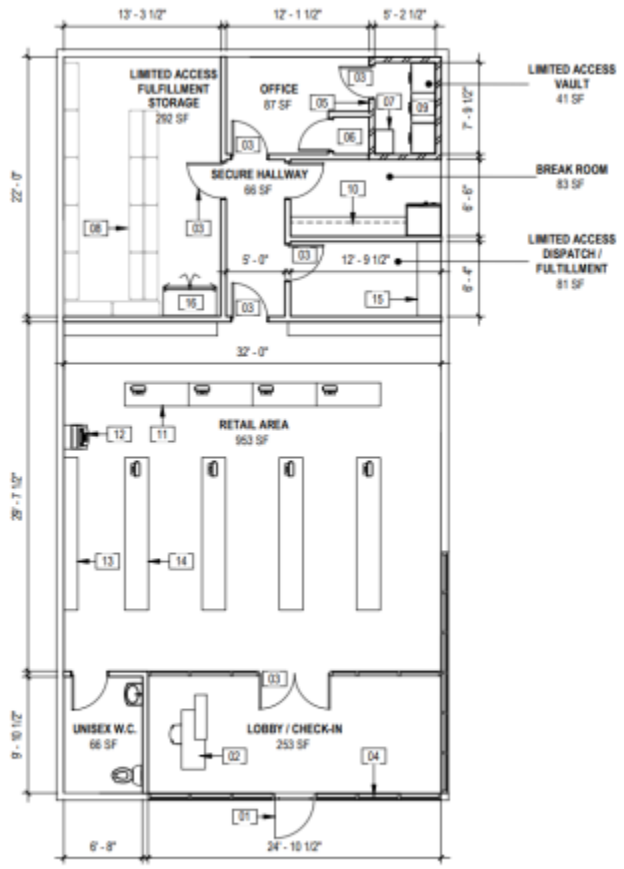
Note: Subject property is outlined in red.

ATTACHMENT 2 Aerial Map

Note: Subject property is outlined in red.

ATTACHMENT 3 Site Plan/ Fl





PROJECT DATA:

ADDRESS:	750 S MAIN ST, LAS CRUCES, NM 88005
APN:	4-007-135-237-444
LOT:	S: 18 T: 23S R: 2E BRM 9A TR 10A2
ZONING:	C-2
LOT AREA:	23,034 SQ.F.T
OCCUPANCY:	M
FLOOR AREA: (GROSS)	2,046 SQ.FT.
STORY:	SINGLE STORY

KEYNOTES:

01	RETAIL CUSTOMER ENTRY/EXIT
02	CHECK-IN
03	ACCESS CONTROLLED DOOR (SELF CLOSING, SELF LATCHING W/ COMMERCIAL GRADE LOCKS AS PERMITTED BY GOVERNING BUILDING AND ACCESSIBILITY CODES)
04	SECURITY REINFORCED STOREFRONT GLAZING
05	SECURITY MESH REINFORCED WALLS AND CEILING
06	VIDEO SURVEILLANCE AND MONITORING STORAGE
07	RECORD STORAGE
08	WIRE SHELVES
09	FIREPROOF SAFE
10	UPPER/LOWER CASEWORK
11	POINT OF SALE
12	ATM
13	WALL DISPLAY
14	DISPLAY CASES
15	LOADING/UNLOADING OF SHIPMENT/DELIVERIES
16	REFRIGERATOR

OFF THE CHARTS - PREMISE DIAGRAM

750 S MAIN ST, LAS CRUCES, NM 88001

P 3/3

AT

ATTACHMENT 4

Department Review Comments

Department: Engineering

Status: NOT REQUIRED

Department:

Planning

Status:

APPROVED

Department:

Fire

Status: APPROVED W/

CONTINGENCY:

1. Review IFC Section 1010.1.9.8 and 1010.1.9.9 for door system and component requirements. Provide information as applicable.
2. Knox box required outside front door

Department: City Utilities

STATUS: APPROVED

Department: Flood Zone

ATTACHMENT 4
Public Input

ATTACHMENT "D", Approved Minutes

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
July 26, 2022 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Harvey Gordon, Chair
Luis Armando Guerrero, Vice-Chair
Joaquin Acosta, Member (arrived 6:11)
James Bennett, Member
Enrico Smith, Member
Vanessa Vega, Member

BOARD MEMBERS ABSENT:

Scott Kaiser, Secretary

STAFF PRESENT:

David Weir, Deputy Director Community Planning
Katherine Harrison-Rogers, Senior Planner
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Adrian Guzman, CLC Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Gordon: Good evening and welcome to the July 26, 2022 meeting of the Planning and Zoning Commission. I'd like to call this meeting to order.

2. CONFLICT OF INTEREST

Gordon: Is there anybody on the Commission at this time who has any conflict of interest? No. All right.

3. APPROVAL OF MINUTES – June 28, 2022

Gordon: Can I get a, is there anybody who has any corrections to the minutes? No. All right, then I need a motion to approve the minutes.

Bennett: I make a motion to approve the minutes.

Gordon: I need a second.

E. Smith: I second.

Baum: Board Member Vega

Vega: Yes.

Baum: Board Member Smith.

E. Smith: Yes.

Baum: Board Member Guerrero.

Guerrero: I wasn't here so I abstain from voting.

Baum: Thank you. Board Member Bennett.

Bennett: Yes.

Baum: Chair Gordon.

Gordon: Yes.

Baum: Thank you.

4. POSTPONEMENTS

Gordon: Okay. There were no postponements.

8. NEW BUSINESS

8.1 750 S. Main Street Special Use Permit: A Special Use Permit (SUP) to allow a Cannabis Retail establishment within the required 300-foot buffer distance of a R-1a (Single-Family Medium Density) residential zoning district. The subject property is located at 750 S. Main Street, is zoned C-2 (Commercial Medium Intensity), within Council District 4, and is ± 0.498 acres in size. Submitted by Norman Yousif on behalf of Mayflower Enterprises LLC, property owner. (22ZO1000081)

Gordon: Okay, so then we'll go to new business. Mr. Banegas.

Banegas: Mr. Chairman, Commissioners. Vincent Banegas, Interim Planner. I'll be presenting the following case involving 750 South Main Street. It is a Special Use Permit request for Case 22ZO1000081. Current conditions involve the following: the property is presently zoned C-2. Originally developed as a gasoline service station back in the day, it now exists and has existed for several years now as a used car dealership. It's my understanding that the current owner is seeking retirement and hence the opportunity to acquire the property is taking place, which now triggers the need for this request.

The property is located at the northeast corner of South Main Street and Alameda Boulevard and involves roughly, just shy of half an acre size. The surrounding neighborhood is primarily retail and office. And those are the immediate properties that surround the subject property. The R-1a zone which is the zoned single-family residential zoning in question which triggers the need to come before you, is located a little bit further to the west. And the supporting zoning districts that involve all these uses, both retail, or I should say residential and nonresidential, involve the R-1a which is our medium density residential zone, our O-1, which is our low intensity office with limited residential, our C-1, which is our low intensity commercial, C-2 is medium, C-3 is high intensity commercial, and then of course our Downtown Development Code with a subzone of downtown. That downtown district basically surrounds the subject property on the north and falls within our downtown area or CBD.

Here is a zoning map that illustrates what I have spoken to. This is the DT and designation for the Downtown. Subject property is outlined here in red. You do have

C-1 zoning immediately adjacent along Alameda Boulevard, more or less serving as a land use buffer if you will to the R-1a or the single-family development located here. Farther north you have C-2 zoning, and you also have some C-3 zoning further south of the subject property, some O-1 here. So there is a distinct band of nonresidential zoning that exists along Alameda Boulevard, again serving to buffer the subject property in question.

This is the aerial view of the subject property, once again. This to the east you have a lot of state and of course Las Cruces Public School offices, administration building here. You do have a lot of retail and office in the Downtown District, and some low intensity retail, some office, and some medical office located in this proximity in the band along Alameda. At the El Molina Boulevard, Alameda Boulevard intersection on this subject property, there does exist a medical marijuana facility that is grandfathered in that was allowed pursuant to previous requirements or regulations that were in effect prior to our cannabis regulations, meeting state standards at the time. And a lot of those throughout the City, those that came in as medical marijuana, some are opting to do the retail cannabis much like what is being requested here at this intersection.

So some history with the subject property, the building that sits there was constructed in 1970. At the time it appears to have met all the building requirements and zoning requirements of the time. And it has been commercially zoned since pre-1970 which serves as our base year for zoning designations in our research. It is presently C-2 as indicated. The proposal that has been submitted is to place a retail cannabis store at this location. The site meets all of the distance requirements except for those involving the single-family residential zoning district boundary. What you may find is the applicant for the cannabis business who has a presentation this evening may show a

different distance, buffer distance from the perimeter of their proposed building to the single-family residential district. It appears as if they took their dimension from footprint to actual single-family footprint as opposed to district boundary. So my measurement comes to 218 feet. It's approximately 82 feet of a shortfall to the required 300 foot distance. Again, all other buffer distances are met and those are from cannabis to cannabis, and other requirements such as schools and daycares.

Ultimately, if approved this evening, the use will have to follow both CLC and State in New Mexico regulations governing cannabis and related retail activity. These are a couple of snapshots of the information they provided, to the left is a site plan showing the proposed layout, the building with the canopy, that is existing It certainly does appear based on the snapshot on the right that there will be some interior work in order to make it compliant with necessary cannabis regulations. You do have some of the parking outlined here which would indicate ingress egress along Alameda Boulevard at this location. And they do specify a shared ingress/egress point as another primary point of access for the property indicating access from there to these 90 degree stalls along this area. It's my understanding, at least at present there are some gates that close off this entry and this entry, and certainly as the permit gets reviewed for any and all interior work, those will be identified as areas of concern in that they're in very close proximity to one another, and certainly at the intersection of the two arterial roadways. So I don't see those being an issue. They're certainly not now because they're not used, but I think that'll continue in the future, if again this is approved.

A couple of photos showing the site. Currently again, used car dealership, and these are a little dated but nonetheless show the property as it is relative to some of the other retail

establishments along Main Street. This here is Alameda Boulevard. And of course off to my right or to the right of the slide is Main Street. A lot of the properties once again along Alameda are nonresidential in nature. And the same goes for those along Main Street. This is looking more down Main Street at the corner property here. Certainly, busy roadway, arterial designation for both roadways, so you do see quite a bit of activity. It's unlikely that any of the traffic pattern that gets generated by the proposed use is going to have a significant impact to the residential area in question. I think you're going to see much of the same in terms of use and traffic demand that the proposed use may generate. And then bottom slide is just showing from the Alameda side the subject property, and you'll notice that immediately adjacent to the subject property off to the north, it used to be a car repo lot. So for the most part it's vacant,, it's used to little degree, just for the purpose of storage if you will of the vehicles. And they shot down Alameda Boulevard, again showing some of the area in question. Here's that lot that I was just talking about. The old City offices are down aways, and a lot of offices in this area.

So from a public input, notice requirement, staff did send out letters as required pursuant to code to the surrounding property owners. As a result of that effort, staff I did receive two phone calls, one of general inquiry, and one certainly from a protest slant. They indicated that there was already crime in the immediate area in the neighborhood, and they were fearful that this use might generate some additional concern. And then they did cite a cannabis location already in the proximity of the neighborhood and that's off of that El Molino location that I specified. Again, nonconforming in nature in that it was a medical marijuana establishment pursuant to State law.

The City did receive a protest letter. I did include that in your packet. The attorney who represented a client indicated that there was some procedural conflict with this process. They talked to both the Special Use Permit process and the variance process and their concern was that the SUP process, Special Use Process was circumventing that of the variance steps if you will, in terms of consideration of distances, buffered distances specifically. So from a recommendation and findings of fact perspective, staff does recommend approval. The findings for approval are as follows, except for the distance to the single-family district boundary, all other buffer distances are met. The subject property was developed pursuant to the applicable codes at the time and met said codes. And the property has been commercially zoned since pre-1970. And the property has retail, or I should just say compatibility with several other properties immediately adjacent to Alameda Boulevard. Those properties provide that buffer that I mentioned from a land use perspective between the subject property and the residential zoned area. And the ingress and egress to the subject property along South Main and Alameda should not pose any significant impact to the residential neighborhood. And the application, the proposal meets the purpose and intent of Section 38-2 of the Zoning Code. And it's also a known fact that these type of uses along with the you know Special Use request will meet all the requirements both within the Zoning Code, Building Code when permits are submitted for any interior work, and those of the State that they will follow all provisions, as necessary.

There were several goals and policies and actions of the comprehensive plan that supported this type of request, this type of use, in that it's a retail oriented use. This area falls within the Downtown Place type, which is suggestive of a mix of residential and nonresidential land uses associated with a

thriving central business district. The predominant land uses include residential, civic, commercial, lodging, and retail. And from a goal policy perspective, the supporting language speaks to mixed use neighborhoods, expanding economic opportunities, increase in employment opportunities and economic security, and the provisions for wide range of business types along key corridors and thoroughfares.

So your options with this request this evening are as follows; you can vote "yes" and approve the request, vote "no" and deny it. If you take that route please provide your findings of fact in that the ones presented this evening are in favor of the request. You can vote "yes" with conditions and make that a part of your motion, or you can vote to table. And once again, Mr. Chairman, I believe the prospective business owner has a presentation. And I also believe Mr. Gary Sandler, who's a representative for both seller and buyer may be in attendance this evening and may also have a few words. So that concludes staff's presentation.

Gordon: Thank you Mr. Banegas. Is there anybody from the Commission who has any questions? Okay, Mr. Acosta.

Acosta: And perhaps it's going to be addressed here in the presentation, I just wanted to clarify if this space is going to be used for consumption as well.

Banegas: Mr. Chairman, Commissioner Acosta. I'll let the applicant speak to that issue. It's my understanding based on the application that it was just retail.

Gordon: All right. Anyone else? I have a question just before you sit down. Just so we, this is just for clarification so everyone understands, your measurement is from the property line and not the edge of the building, correct.

Banegas: Mr. Chairman. My measurement as required by the code is from the building footprint of the proposed use, the cannabis use, to the zoning code district boundary. Those boundaries are typically middle of the right-of-way.

Gordon: So it doesn't go from the edge of the building is that what you're saying, all the way across the street.

Banegas: So in this case, my measurement was right where the arrow is pointing to, which is the corner of the building.

Gordon: Right.

Banegas: And then it goes to that location to the nearest point which happened to be right here in the right-of-way. That's the R-1a district boundary that is closest to the edge of the building.

Gordon: And that's within 300 feet.

Banegas: That's within 300 feet.

Gordon: All right. Thank you. Okay, is the applicant have anything to add, would like to speak? If you come forward and give your name and address and let me swear you in please.

Maddox: Good evening. My name Sean Maddox. Address 455 Linden Street, which is actually in Laguna Beach, California.

Gordon: All right, let me swear you in please. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Maddox: I do.

Gordon: All right. Thank you. Go ahead sir.

Maddox: Want to try to get this presentation up. Before I do, I'd like to thank the Commission and Chair for having me here tonight. I'd also like to

clarify the question with regard to consumption, no consumption is planned on site. Just want to give a quick presentation and breakdown of the site and our proposed business.

So again, my name is Sean Maddox. I'm here on behalf of Off The Charts and our request for a Special Use Permit for the location at 750 South Main Street. As brought up earlier, the special use parameters are really based off of the Cannabis Regulation Act which gives local jurisdictions the right to decide time, place, and manner rules. The Las Cruces Municipal Code for cannabis retailers in the C-1, C-2, and C-3 zone require buffers from school, daycares, and commercial schools, which we meet. It also requires a buffer from single-family residential zones, as well as other cannabis retailers. In our scenario, we meet all buffers except for the single-family residential zone. I do want to call attention to the bolded which lays out the fact that the municipal code makes an express exception for a Special Use Permit when any of the single-family residential zone is impinged on.

Just a quick background, Off The Charts has been looking at Las Cruces since the beginning of the year. We want to be in this community. It's a great fit for our store, and kind of our business ethos. It's been very hard to find property because of the buffers and zoning, and we've actually passed up on multiple locations because of being closer to residential or impinging on one of the other buffers. This location seemed to be unique in that it was pretty far distant. As mentioned, there's actually a kind of land use buffer, as well as a four lane you know arterial thoroughfare which provides a buffer between this location and the residences. Once we found this location, we immediately reached out to City planning to have a preapplication meeting to discuss a request for a Special Use Permit to see whether or not they agreed with and would support it. Based off of that

preapplication meeting, we submitted a permit as quickly as possible. And that led to us being here in front of you today.

Just a quick slide on the site and context. As was mentioned in the staff report, this actually measures from the edge of building to edge of building, not from edge of building to edge of zoning district, and these measurements show that it's approximately 261 feet away. We're not here to debate the distance, we know that we're within the 300 feet, but we do feel you know again based off of the site map that South Alameda Boulevard and the C-1 buffer kind of creates I think a special case where we're not next door to residential. And many of the concerns that would be related to proximity to residential are abated.

On the next slide, I want to bring up just kind of path of travel distances as another way to kind of contextualize the distance between the site and the nearest residential. The closest pedestrian path of travel is over 638 feet. And then the closest path of travel for vehicle is over 315 feet. So in both cases, over 300, and again kind of shows that the accessibility to residential from the site is pretty attenuated.

Just want to give a quick background of the business for the sake of the Commissioners, I think to provide context on the economic benefit of approval. Off The Charts is a cannabis retailer that's been in operation since 2018. They have six current operational facilities in California, and have expansions at about one per month over the next year with more locations in California as well as locations in New Jersey, Ohio, and Albuquerque, New Mexico. We did look for Las Cruces before Albuquerque, but again hard to find the property, so prolonged that getting us here.

All of Off The Chart stores feature robust community integration initiatives. It's part of being a sensitive use. We're coming to a

neighborhood we want to be good actors, we want to fit in, as opposed to stick out. Part of these integration measures include an open house. Anytime we open a facility about two to three weeks before opening our doors, we send out notices to surrounding neighbors, City staff, police department, and have people come and voice their concerns, get to know us, get to meet our community liaison, and know that we're here to serve the community and appease any concerns that they may have. Another unique thing that we do is we have employee volunteer participation. So we actually pay employees to go participate in community outreach and do community service initiatives.

We're focused on local hiring to create economic opportunities for the cities that we operate in. If granted, the SUP will immediately join the Chamber of Commerce here. And then another kind of unique thing is that we do host on site workshops and events, and these are things that are just kind of outreaches to the community. You know we provide information on cannabis use, responsible use, you know warnings about usage, dangers of usage, and all of those things. In addition to our general outreach, we have robust nuisance mitigation procedures. We have a robust odor control plan, which we'll hit on on the next slide. We typically have a traffic control plan for all of our sites to make sure that our traffic doesn't impede on the surrounding neighborhoods. And then a unique feature, some cities require it but we do it at all of our locations is having a 24/7 community liaison. It's usually a local manager who's available to City staff and neighbors if any concerns or complaints come up surrounding the business.

Typically, the site's security is a big concern. I saw one of the phone in communications was relating to security. Studies have actually shown that cannabis businesses increase

security in surrounding neighborhoods. We will be having 24 hour security and monitoring. There will be surveillance on site, which has exterior license plate reading capability, interior facial recognition capability. Everything on site, you know will be locked up at the end of the day and is heavily secured. But you know inclusion of roving security patrol, 24 hour security, and alarm and monitoring with live feed to local law enforcement actually makes these facilities safer than the businesses that preceded them. More neighborhood compatibility, again, odor control I think typically comes up with these facilities and wants to make sure that you don't have a stinky pot shop on the corner of your big business district. We do implement best in practice procedures for odor mitigation, that includes negative pressurization of an HVAC with our activated carbon filtration. Essentially, we have an HVAC system that pulls more air out of the facility than is let in so if somebody opens an exterior door, air comes in, anything that gets pulled through our HVAC system is filtered through these activated carbon filters to ensure that no odors escape the facility. Additional measures you know we implement green practices and design of our buildings as well as our standard operating procedures.

Lastly, just a quick summary of our community impact. Our current six locations are averaging around or over $10 million in revenue at each location. We think that we can do similar numbers here in Las Cruces if we do it right. That would allow us to create robust local employment opportunities. We're projecting over a million dollars in annual salary, wages, and benefits to the local community. At all of our locations we give wages at or above the local living wage, which means that a starting hourly would be at least $15.32 to any employee on site. We also emphasize local hiring and social equity hiring. Local hiring and promoting within is a key of all of our stores. I think we have over 75% local hiring in all the

cities and counties that we operate in. And we also focus on hiring socioeconomically affected communities. This includes veterans, immigrant communities, as well as focusing on communities that were impacted by the war on drugs. You know kind of as a last point, we have looked at the site, we do plan some pretty hefty renovations to the interior as well as the exterior. We'll be doing exterior rehabilitation. We plan on doing some landscaping, when we work through the planning process. You know, we're looking at over a half million dollars in investment to the site, which will bring up the aesthetic of the exterior and the community. And then in addition to that, you know based off of revenue we do proportion a percentage of our funds to local associations. And as mentioned earlier, we work with our staff to make sure that we're felt within the community through servicing local community organizations.

That's the end of the slide show. Again, I'd like to thank staff for the recommendation. And we ask that the Commission follow staff's recommendation. But really we're looking at this as a unique opportunity to be here in your community. We view it as a relationship with the community. We're not coming in here trying to impose our will, we're trying to come in here, be a good neighbor, create economic opportunities, and do something that's going to better your community. So I hope staff takes that into consideration. And I appreciate your time. And if you guys have any questions, I'm happy to answer them.

Gordon: Thank you very much for your presentation. Is there anyone on the Commission that has any questions? Commissioner Vega.

Vega: Thank you. Thanks for the presentation. I like that you mentioned reaching out to veterans, people that have been affected by war on drugs. What does that actually look like in

terms of hiring and bringing those individuals into your establishment?

Maddox: So usually we'll look for local veterans associations and make sure that we're posting to any job boards and things like that. We prioritize it in the hiring process, but at the end of the day for equal opportunity employment reasons we can't ,say you're a veteran, we're going to hire you. But you know it's taken into consideration. And we usually work with just local veterans organizations to ensure that they're given access and reached out to when we're bringing on new employees.

Vega: And as far as individuals that have been affected by you know misdemeanor crimes, and now can you know, how do I want on to say this, *(inaudible)* the war on drugs. How do you find and what are your hiring practices, like if you have someone that had like a misdemeanor or something that was related to small amount of marijuana?

Maddox: So we do run background checks on the majority of our employees just based off being a sensitive use in general. In most states that we operate in, we're not allowed to hire felons and people of know higher convictions. But again this kind of goes back to the local community and working with local associations. Most communities have some type of social justice initiative or organization that we'd reach out to and place job placements. In other states and cities we've also hosted expungement clinics. So anybody who would show up, we would say, hey look you know we're looking to hire people like you who have been wronged by the war on drugs and try to bring them into the interview process and make sure that they've got a shot at getting a job with us.

Vega: That's all I have. Thank you.

Gordon: Anyone else? Just put your light on and I'll know. Commissioner Acosta.

Acosta: Got it right here, so just wanted to ask how much you were aware or if you are aware of the Elevate Las Cruces plan?

Maddox: We are not.

Acosta: Okay. And other than that, I just, any sort of experience working with any of your other you know planning and zoning committees in any of your other various cities on what you guys have done to help develop some of the character of the neighborhoods that you're entering?

Maddox: Yes, I mean we've got extensive experience because we've opened six, and we've got another 12 in process right now. So you know, this is a collaborative process. We look to planning and zoning. We accept conditions of approval when asked upon us. You know in designing the building, and building it out, you know obviously there's some interior things that we need to do. But beyond that again it's a collaborative process with the City and their commissioners and anybody on their review boards. So we've got extensive experience there. And then you know our community relations and community liaison outreach is typically the one that's going to be reaching out to Elevate Las Cruces or some of these organizations to make sure that we're finding the right people within the community to work with and emphasize our efforts on.

Acosta: Thank you. And I just do think it'd be great for you to you know make yourself aware of it as you're going to be at one of the most highly trafficked corridors here you know in town. If that's the case El Paseo road right there between Alameda and El Paseo is a big part of some of that future Elevate development plan here for the City. So I think as a big time company coming in and something like that,

that'd be some considerations that I'd like to see on my side if we were to push those things through.

Maddox: Absolutely.

Gordon: Anyone else?

E. Smith: I just have a comment.

Gordon: Commissioner Smith.

E. Smith: I've been living just a few blocks away from the current business for 23 years. And I just wanted to address the concern that one of the public had about increasing crime. I don't know how many are you are familiar with the Kilby Hotel. It's been a real problem with crime in that area for a long, long time. I just want to state that I don't think having a cannabis business here will have any increase or negative impact on crime in that area. If anything, as the applicant stated, you know it may be even less crime. But I just want to just state that. I'm very familiar with that area after living here for such a long time.

Gordon: Anyone else? I have a question. How many employees do you think you're going to have?

Maddox: If all goes to plan we're hoping over 30 employees, and upwards of 40 to 50. And a lot of that just depends on you know revenue and flow rate and how many people we're seeing, but we think at least 25, more likely in the 35 range.

Gordon: And you're going to be local hiring.

Maddox: Absolutely.

Gordon: Is this a publicly owned company or is this all private?

Maddox: It's a family owned. And I love working for them. It's a husband/wife team. They started

modestly. They haven't taken any big investors yet and they've you know expanded on the fruits of their labor. And they've been really successful. And you know part of this is treating their staff right and being proper in the communities that they work in. I've loved working for them. I have ownership in a few of their shops and plan to here, but it's definitely not a public. You know we're one of the bigger operators in California, but we don't operate like a public company.

Gordon: All right. Thank you. Is there anyone else from the applicant who wishes to speak? If not, is there anyone from the audience who wishes to speak? You have to, just please wait, wait a minute, hold on a second, just let's do this in order. There to be three people. Please raise your hand again. Three people. Okay, so let's start here on the right with the gentleman in the front. I'll give you three minutes. That's a long enough time I think. If you will please give us your name and address and let me swear you in.

Sandler: My name is Gary Sandler. And my address is 201 North Church Street here downtown in my business.

Gordon: Okay. Do you swear or affirm the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Sandler: I do.

Gandara: All right sir. Go ahead,

Sandler: Commissioner and, Chairman. I really appreciate the opportunity to talk to you all here tonight. I just wanted to touch on about three points that were previously touched on from a real estate perspective, since I'm representing the buyer and the seller. And I have been in real estate for, I don't even want to say, almost 50 years. I started when I was seven. I want to talk about the family business.

I know these folks. I've been interacting with them for a number of months. And as this process began, and I hear the kids in the background, and it really is truly a family business. And I appreciate what they're doing. They're really doing it on their own from the ground up and they're really successful at it.

The second point I want to make is about the distance, the buffer there. If you all are familiar with that particular area, you can't even see the housing, really you have to make an effort to see where the houses are. There's quite a bit of retail and commercial around that area. But I think the last point I want to make and probably the most important is I've been talking with the owners about their plans for the physical location itself, and they have a plan to turn that corner into something that Las Cruces could be proud of. And if you look at it now I mean it's a 40 year old, 50 year old gas station. This metal sticking out all over the place. And I think what they're going to do with landscaping, and the building itself is going to really enhance the gateway to downtown Las Cruces. And that's all I have.

Gordon: All right. Thank you. Then I believe the gentleman in the rear on that side. Thank you. Will you come forward and state your name and address and let me swear you in please. I'll give you the same three minutes.

Fanning: Yes, my name is Jed Fanning, and I'm representing Citizens Bank. Addresses is 505 South Main.

Gordon: Okay. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth of the penalty?

Fanning: I do.

Gordon: Go ahead, sir. Thank you.

Fanning: Mr. Chairman, Commissioners. The existing zoning requirement for a 300 foot buffer distance between a cannabis retail establishment and single-family residential zoning district is based on standards and guidance initially laid out for retail cannabis sales. With retail cannabis sales new to Las Cruces community and New Mexico deviation should not be considered until long term data shows the impact to residential zoning close to this 300 foot buffer. Making deviations now cannot be supported by any statistical data. Most importantly, deviations dilute the intended purpose of the original zoning buffer. Said another way, granting this Special Use Permit would set a precedent that runs the risk of negatively impacting the intent and the benefits of having a defined buffer area between residences and retail cannabis. Not only do residential properties fall within this 300 foot buffer as has been pointed out, but two entities that cater to minors are within or very close to that 300 foot buffer. The Tutti Bambini Children's clothing store is one, and then across the street to the east and southeast is the Challenger Learning Center of Las Cruces. So therefore, I would encourage you to take this into consideration and not approve a Special Use Permit. Thank you for your consideration

Gordon: Okay. Thank you. I believe the gentleman on the back, yes sir. You can have the same three minutes, just please give us your name and address and let me swear you in.

Thank you Commissioner. I speak a little bit English but I'm understand most of what you guys talking about.

Gordon: Okay, but please first I need your name.

Rivera: My name is Jose Antonio Rivera, a.k. Tulsi.

Gordon: Okay let me swear you in first. Do you swear, raise your hand, and affirm that the testimony

you're about to give is the truth and nothing but the truth and penalties of law?

Rivera: Yes sir.

Gordon: Fine. Go ahead.

Rivera: Okay. I live in 375, close to the other dispensary and now they could open another dispensary. And I'm going to be victim of many, many crimes in the apartments that I live. And I think it's not benefits for the community to open another dispensary close to what we got another one. We have the other one. So broke my car many times, in my apartment windows get broke and I think so it's just not me, it's a lot of people is having a lot of complaints about this other new business that's coming to town. And this is my concern. That is not a safe for the neighbors. It's not safe for the people who's going to eat to the Denney's restaurant in there, and to the community. That's my concern.

Gordon: Okay. Thank you. Is there anyone else? Ma'am. Please state your name and your address and let me swear you in please.

Taylor: Okay. My name is Billy Taylor. My address is 5740 Vista Verde Road.

Gordon: Okay. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Taylor: Yes.

Gordon: And you have the same three minutes, ma'am.

Taylor: Okay. I represent Tutti Bambini with the children's thrift store on the corner of El Molino and Alameda. I'm president of the board of directors of this organization, which was started by Sister Beth approximately 10 years ago. We've been located on that corner for 10 years. We have children coming with their

parents, especially mothers and grandmothers coming to our store. And we have some concerns about having another dispensary. Sister Beth was unable to be here this evening, so she asked me to read a short letter from her.

"I had planned to join Billies Taylor at this hearing, but I'm in quarantine because being exposed to COVID. I'm not opposed to cannabis dispensaries in our town. However, I'm not in favor of having another dispensary close to our children's thrift store on the corner of El Molino and Alameda. We're located directly south of Sacred Garden dispensary. A major concern is the safety of our customers, mostly women and children, due to the increase in traffic. The area around EL Paseo and Main and Alameda is so congested much of the time. My opinion is that adding this business will further compromise this area and create hazardous conditions for customers entering and leaving our parking lot." And that's from Sister Beth.

So and I concur with her concerns about having this business, especially if they're going to be using Alameda to go in and out of their business. So thank you.

Gordon: All right. Thank you. Is there anyone else? Gentleman, yes, sir. You'll have the same three minutes, and please give us your name and your address and let me swear you in also.

R. Smith: Reuben Smith.

Gordon: All right. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

R. Smith: Yes, I do.

Gordon: Go ahead. Thank you.

R. Smith: First of all, let me say when I left office here some 20 years ago as mayor I told them I would never be attending meetings to give input, my views on anything, unless somebody were to ask me to come on their behalf. Unfortunately, or maybe fortunately, I happen to own property that's within the residential area. And that's where Sister Beth lives. I purchased that property years ago so that she could live there in case she got to the point, she's 80 plus years old, I hope she doesn't get to upset about that. I've only got three seconds left.

Gandara: He didn't reset the timer. Go ahead sir.

R. Smith: Thank you David. I appreciate that. Hit it again when we hit two seconds. So I purchased that property in order for her to live there in case she couldn't walk, she couldn't drive anymore. She probably shouldn't be driving now. But so she could be easy accessible. I want you to know that it's important. Billie just talked to you about Tutti Bambini. When we, the City, created Community of Hope it was Sister Beth who came with her partner Sister Anna to create the Jardin de los Niños which is part of Community of Hope. After that several years, they started and took over the Tienda which is referred to as on Alameda right now, across from this proposed development. They proceeded to give back to this community hundreds of thousands of dollars, back to the community to help the homeless, in particular, the children. When she left the Jardin, the tienda, she moved across the street and began to Tutti Bambini. And has been there ever since. Those are the kinds of things that are important to our community. And she never comes out against anything. This is the first I've known she would ever do that. She's coming out against it for legitimate reasons.

I began the downtown development over 20 years ago. And I can tell you after 20 years

we've just begun to see what downtown development can be, the redevelopment. Now we're into the Elevate Las Cruces. And we're talking about from that corner clear on down to El Paseo. It is imperative I feel that we initiate and start this particular project on the right foot. There are hundreds of locations that other well intentioned big family cannabis operations can locate in Las Cruces. I don't think we need to begin to create the perception that if you meet the requirement, oh we'll give you a little adjustment of 80 feet, no problem. And then who's to say that that empty lot next door could conceivably come for the same kind of issue. And then you'd be hard pressed, the City would be hard pressed, to deny him. I just asked you to think what is it that we want this community to look like in terms of creating a cannabis business right there in a very prime location that I am sure other retail establishments are going to jump at. I would just say, think about what you want this community to look like. And the perception, it's a perception as many times as reality, what that would create. They already have one just right across the street from them literally. I thank you. And I hope you will take that into consideration.

Gordon: All right. Thank you. Is there anybody on the Commission who wishes to ask any questions or make any comments at this point? All right. Seeing none. I'm so sorry. Turn your light on and I'll see it.

E Smith: You know once again I go back to you know my sensitivity to opposition to this business. As I stated early, I've lived just a couple of blocks away from this proposed business for 23 years. And I really, really love that neighborhood. And I have known the owner of the car dealership for many years. And I know how hard he has worked over the past decades to keep his business established there. And the growth that has happened downtown that I've been very excited about because of my time here and being a resident

there. And I understand as far as giving you know 82 foot variance on this. We've already previously made you know decisions in other businesses downtown and you know this business does meet all of you know the requirements. And this waiver is, it's actually as far as access and proximity to residences, it's actually you know it doesn't appear to have an impact. And if I wasn't so you know invested in that neighborhood about safety and crime and how it appears you know as far as having this type of business there, I would definitely be concerned about it. But I don't feel that having this business here will have that significant of an impact. So it's something that I'm taking into consideration as I think about my vote. Thank you.

Gordon: All right. Thank you. Is there anyone else? Commissioner Acosta.

Acosta: All right, and I'm just circling back here one more time. I think this is a great opportunity to come together and offer some, possibly even help with, you know Sister Beth's situation and the thrift store, and the children's thrift store that's happening there, the mom and children, women and children traffic. I think this is a great time for you and your business coming in here to align and do some great things for the community if you had that you know choice, especially in an extremely prime location where you know the 200 feet is, just looks different when it's flowing all the time, at least in my own opinion. However, I'd really, really, really encourage taking that community engagement opportunity here that you pitched in your you know very, very good cookie cutter planning and zoning presentation that you have here, but to take that time and do some tailoring to Las Cruces is going to benefit us. And I think that would you know be what we're looking for from the cannabis businesses going forward in terms of safety and stuff like that, and things that are going on in the El Paseo corridor, and in our district here and what we're trying to

have downtown look like. So I mean you're looking at you know probably stuff you've probably done before, trees, lights, neon, art, directly working with Sister Beth and that children's thrift store and coming up with something to actually help them as a local business owner here too. And you know even considerably a future competitor in that regard. I still think you have a great opportunity to look at how to make this a better place as you enter. And I think that's something that the community could benefit from if considerably, if approved. So I'd like some conditions. That's it. Thanks.

Gordon: All right. Thank you. Anyone else? All right. We're at the point now where unless there's someone else now who wishes to speak, all right if not we're at a point here where we're going to vote. But before we vote I want to apprise everybody here in the auditorium that there were two options here. If the Commission votes to approve this then the neighborhood would have 15 days to appeal to City Council. All right. If we deny it, then the applicant has 15 days in which to appeal to City Council. So knowing that, these are your options. So it's not, if in some cases it's not the end, but you do have that choice. So I think we're ready for a vote. Do I have a motion?

Bennett: I make a motion to approve 8.1.

Vega: I second.

Baum: Board Member Vega.

Vega: I vote yes, based on site visit and staff recommendation.

Baum: Board Member Smith.

E. Smith: I vote yes, based on site visit and staff recommendation.

Baum: Board Member Guerrero.

Guerrero: I vote yes as well based on staff recommendation and the comprehensive plan as well.

Baum: Board Member Acosta.

Acosta: I vote yes, but I'd like to add in the conditional of actually directly coming up with a solution with Sister Beth and making them feel taken care of and making sure their efforts here in our community have not ever feel threatened.

Weir: Mr. Chairman. Point of order. You're voting on a motion. There's been no motion made to add an amendment to that. So you'll have to go through with the voting.

Acosta: Forgive me. Motion, I vote yes based on the other motion.

Baum: Board Member Bennett.

Bennett: Vote to approve based on staff recommendations, site survey, and Elevate Las Cruces.

Baum: Chair Gordon.

Gordon: Based on findings and my site visit, when I actually found it, sorry Vince, staff recommendation, and it does follow Elevate Las Cruces, I think this really is a wonderful opportunity. I think what they're planning on doing is going to make this look very nice on that corner. So I think that with what is down the road, where the Sacred Garden I think is the name of the facility, and they've been there I think for a long time, and I don't think that this is going to make any difference in terms of what your concerns are for. So in that case, I also vote no. Therefore we have a vote of seven to nothing to approve.

Weir: So you voted yes.

Gordon: I voted yes. Excuse me. I'm sorry. I vote yes. Then we have seven to nothing.

Baum: Six to nothing sir.

Gordon: We have two, four, who are we missing?

Weir: Kaiser.

Gordon: Oh yes, I'm sorry. That's it. I'm getting there, in vote we have to six to nothing. Commissioner Kaiser is absent.

9. DISCUSSION

Gordon: Is there any discussion from the Commission? Is there anything they'd like to say? All right.

10. STAFF ANNOUNCEMENTS

Gordon: If now, how about from staff?

Weir: Mr. Chairman and Commissioners. Staff doesn't have any comments this evening either.

11. ADJOURNMENT (7:32)

Gordon: All right, then I'd like to get a motion to adjourn.

Guerrero: I make a motion to adjourn.

Bennett: I'll second.

Gordon: All in favor.

MOTION PASSES UNANIMOUSLY.

Gordon: Thank you, everyone.

_____

Chairperson

Received 8-12-22

Karen E. Wootton
Legal Services, P.C.
300 N. Main Street, 2nd Floor
Las Cruces, New Mexico 88001

575-526-9695
karen@woottonlegal.com

August 8, 2022

Via Hand-Delivery

Community Development Director
City of Las Cruces, New Mexico

Re: Case 22ZO1000081 SUP Application

Dear Community Development Director:

I'm writing on behalf of the parties identified below, to collectively appeal the decision of the Planning and Zoning Commission to approve a Special Use Permit to allow a cannabis retail establishment closer than 300' to residential properties, at issue in the above-referenced case.

The City's Ordinance provisions allowing a Cannabis Retailer in a location that would otherwise violate the minimum distance requirements provide no standard, other than that the Commission is "to determine impacts on the surrounding area." This vague standard is constitutionally questionable, as it invites the Commission "to engage in arbitrary and discriminatory enforcement" of the distance requirements. *See City of Albuquerque v. Pangaea Cinema, LLC*, 2012-NMCA-075, ¶ 12. Further, the City's zoning authority is limited by State law, pursuant to NMSA 1978, §§ 3-21-1 et seq. In particular, § 3-21-8(C) limits "variances or special exceptions" in zoning regulations to conditions that satisfy the requirements in § 3-21-8(C)(1): "(a) that are not contrary to the public interest; (b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; (c) so that the spirit of the zoning ordinance is observed and substantial justice done; and (d) so that the goals and policies of the comprehensive plan are implemented [.]" The provision to allow a particular use otherwise in violation of the Cannabis Retail conditions without any legal standard is contrary to the provisions of § 3-21-8(C)(1). Calling the process a "Special Use Permit" seems to to evade the statutory requirements for variances or special exceptions. I find nothing in the publicly available materials that provides any substantive reason for granting what is effectively a variance to the zoning requirements, consistent with my analysis that the "SUP" is actually a variance request subject to a standard that should be held to be unconstitutionally vague.

Appellants disagree that the SUP is appropriate factually, or legally, and are concerned f the City approves the above-referenced Application, it will have effectively voided the 300' distance requirements for Cannabis Retail. Any future denial in any other location would be arbitrary and capricious.

I look forward to receiving notice of the date for the hearing on this appeal.

Cordially,

Karen E. Wootton

Karen E. Wootton

AKA, LLC

By: Brad Beasley

Tutti Bambini

Billie Taylor, President

Sister Beth Daddio, Manager, Tutti Bambini,
Founder, Jardin de los Niños, and area resident

Ruben Smith

City of Las Cruces

City Council Action and Executive Summary

3022; Council Bill 23-016

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

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5 ☐ 6 ☐ N/A		
1st Reading:	January 3, 2023	**Adopted:**	January 17, 2023
Drafter:	John Castillo	**Department:**	Community Development
Program:		**Line of Business:**	

Title: **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.**

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 for multiple parcels/properties from A-2 (Agricultural, 1981 Zoning Code), M-2 (Industrial Standard), C-3C (Commercial Medium Intensity-Conditional) and C-2 (Commercial Medium Intensity) to M-1/M-2/C-3 and C-2 (Commercial Medium Intensity) on several parcels of land located at the corner of Rinconada Boulevard and Bataan Memorial West that are associated with a preliminary plat and master plan amendment. The purpose for the proposed zone change is to allow for an expansion of land uses pertaining to commercial and industrial land uses and bring the property into compliance with the 2001 Las Cruces Municipal Code, as amended.

The property currently has multiple zones which are: A-2 (Rural Agriculture, 1981 Zoning Code) which is a zoning district that has been eliminated from the 2001 Zoning Code and is no longer in existence, which does not permit the aforementioned land uses, as well as, being zoned M-2, C-3C and C-2. The proposed zone change request will allow for the attraction and retention of businesses at this location through the expansion of potential uses while in keeping with the standards of the Commercial and Industrial Zoning Districts and bringing the property into compliance with the 2001 Las Cruces Municipal Code, as amended. The subject properties are surrounded by commercial and industrial land uses and includes various residential-type dwelling units to the north. Based on the existing neighborhood and development pattern, the proposed zone changes are 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 elements of Elevate Las Cruces including the Future Development Map and its Goal(s), Policy(s), and Action(s). Rinconada Boulevard and Bataan Memorial West are in the Suburban Place Type Overlay and adjacent to the Regional Commercial Place Type Overlay as illustrated on Future Development Map. These two roadways are major thoroughfares that are classified as minor arterials according to the Mesilla Valley MPO Future Thoroughfare Map. The Regional Commercial Place Type is defined by large areas of retail and professional services, which are of a scale and character to serve as a city-wide and regional draw.

On July 27, 2021, 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 6-0-1 (one Commissioner absent) based on the following findings, also reflected in Exhibit "B":
•Based upon staff's analysis, the proposal meets the intent of the Elevate Las Cruces Comprehensive Plan; 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 38-2.
•The proposed rezoning is consistent with submittal requirements outlined in Section 38-2 of the 2001 Zoning Code, as amended
•The proposed rezoning is harmonious with and not out of character with the uses and existing zoning districts of the surrounding area.

The case was publicly noticed in accordance with the City's notification provisions; staff received no phone calls in support or opposition for the zone change prior or during the P&Z hearing.

SUPPORT INFORMATION:
EXHIBIT A-RINCONADA INDUSTRIAL PARK ZONE MAP
EXHIBIT B-FINDINGS
Attachment A - Staff report
Attachment B-07-27-21 PNZ 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:
1. Vote "Yes" this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject properties located at northwest corner of Rinconada Blvd. and Bataan Memorial West will be rezoned from A-2 (Rural Agriculture, 1981 Zoning Code) to C-3C (Commercial High Intensity-Conditional), and M-1 (Industrial

Standard) to M-1/M-2/C3 (Industrial Standard/Commercial High Intensity) and 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 A-2 (Rural Agriculture, 1981 Zoning Code), M-1 (Industrial Standard) and C-3C (Commercial High Intensity-Conditional) 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 3022; COUNCIL BILL 23-016

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.

The City Council is informed that:

WHEREAS, Underwood Engineering, representative, has submitted a request for a zone change from A-2 (Rural Agriculture, 1981 Zoning Code), C-3C (Commercial High Intensity-Conditional), and M-1 (Industrial Standard) to C-2 (Commercial Medium Intensity), M-1/M-2/C-3 (Industrial Standard/Commercial High Intensity) and C-2 (Commercial Medium Intensity) for multiple parcels located at the northwest corner of Bataan Memorial West and Rinconada Boulevard; and

WHEREAS, the proposed zoning designations will allow for the attraction and retention of businesses through the expansion of potential uses, as well as, bring the property into compliance with the 2001 Las Cruces Municipal Code, as amended; and

WHEREAS, the proposed site is located within an area that is designated as a Regional Commercial Place Type as shown on the Future Development Map within Elevate Las Cruces Comprehensive Plan which supports commercial development and the placement of non-residential uses along uninterrupted arterial thoroughfares or high traffic intersections; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on July 27, 2021, recommended that said zone change request be approved by a vote of 6-0-1 (one Commissioner absent).

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

(I)

THAT the land, as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-2 (Commercial Medium Intensity), C-3 (Commercial High Intensity), and M-1/M-2 (Industrial Standard)

(II)

THAT the zoning of said properties be shown accordingly on the City Zoning Atlas.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT A

ZONE MAP

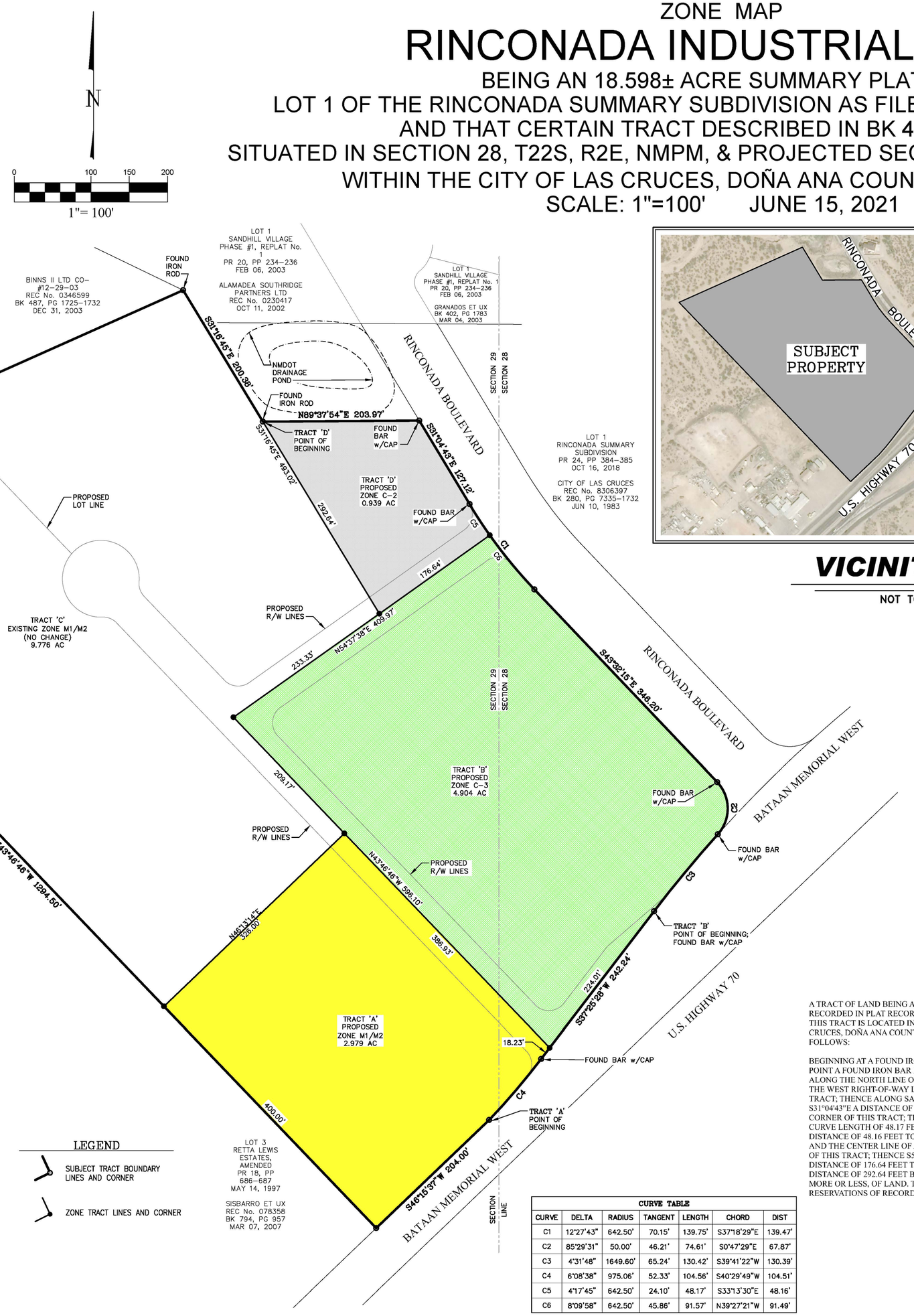
RINCONADA INDUSTRIAL PARK

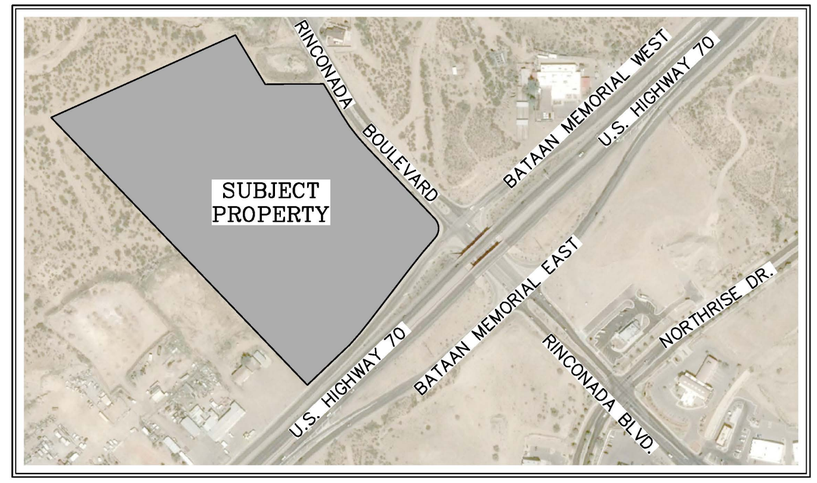
BEING AN 18.598± ACRE SUMMARY PLAT OF
LOT 1 OF THE RINCONADA SUMMARY SUBDIVISION AS FILED IN PR 24, PP 384-385;
AND THAT CERTAIN TRACT DESCRIBED IN BK 487, PG 1723;
SITUATED IN SECTION 28, T22S, R2E, NMPM, & PROJECTED SECTION 29, T22S, R2E, NMPM;
WITHIN THE CITY OF LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO
SCALE: 1"=100' JUNE 15, 2021

TRACT 'B'
EXISTING ZONE C-3c, C-2, M1/M2, & A-2
PROPOSED ZONE C-3

A TRACT OF LAND BEING A PART OF THAT CERTAIN TRACT AS DESCRIBED IN THE DOÑA ANA COUNTY CLERK RECORDS UNDER RECEPTION No. 0346597, BOOK 487, PAGE 1723, FILED DECEMBER 31, 2003; AND A PART OF LOT 1 OF THE RINCONADA SUMMARY SUBDIVISION AS RECORDED IN PLAT RECORD 24, PAGES 384-385, FILED OCTOBER 16, 2018, IN SAID CLERK RECORDS; THIS TRACT IS LOCATED IN SECTION 28, T22S, R2E, NMPM, AND PROJECTED SECTION 29, T22S, R2E, NMPM; WITHIN THE CITY OF LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO; THIS TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND BAR w/CAP FOR A POINT OF TANGENCY ON THE NORTH RIGHT-OF-WAY LINE OF BATAAN MEMORIAL WEST; THENCE S37°25'28"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 224.01 FEET TO THE SOUTHWEST CORNER OF THIS TRACT; THENCE LEAVING NORTH SAID RIGHT-OF-WAY LINE N43°46'46"W, ALONG THE CENTER LINE OF A FUTURE 50-FOOT WIDE RIGHT-OF-WAY, A DISTANCE OF 596.10 FEET TO A POINT AT THE INTERSECTION WITH A FUTURE EAST-WEST 50-FOOT WIDE RIGHT-OF-WAY FOR THE NORTHWEST CORNER OF THIS TRACT; THENCE N54°37'38"E, ALONG THE CENTER LINE OF SAID FUTURE EAST-WEST RIGHT-OF-WAY, A DISTANCE OF 409.97 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF RINCONADA BOULEVARD FOR THE NORTHEAST CORNER OF THIS TRACT; THENCE ALONG THE WEST RIGHT-OF-WAY LINE OF RINCONADA BOULEVARD THE FOLLOWING THREE COURSES: ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 642.50 FEET, A CURVE LENGTH OF 91.57 FEET, A DELTA OF 08°09'58", AND WHOSE LONG CHORD BEARS S39°27'21"E A DISTANCE OF 91.49 FEET TO A POINT OF TANGENCY FOR A CORNER OF THIS TRACT; THENCE S43°32'15"E A DISTANCE OF 346.20 FEET TO A FOUND BAR w/CAP FOR A POINT OF CURVATURE FOR A CORNER OF THIS TRACT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET, A CURVE LENGTH OF 74.61 FEET, A DELTA OF 85°29'31", AND WHOSE LONG CHORD BEARS S00°47'29"E A DISTANCE OF 67.87 FEET TO A FOUND BAR w/CAP FOR A POINT OF REVERSE CURVATURE ON THE NORTH RIGHT-OF-WAY LINE OF BATAAN MEMORIAL WEST FOR A CORNER OF THIS TRACT; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1649.60 FEET, A CURVE LENGTH OF 130.42 FEET, A DELTA OF 04°31'48", AND WHOSE LONG CHORD BEARS S39°41'22"W A DISTANCE OF 130.39 FEET BACK TO THE POINT OF BEGINNING. THIS TRACT CONTAINS 4.904 ACRES, MORE OR LESS, OF LAND. THIS TRACT IS SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.





VICINITY MAP

NOT TO SCALE

TRACT 'A'
EXISTING ZONE C-2 & C-3c
PROPOSED ZONE M1/M2

A TRACT OF LAND BEING A PART OF THAT CERTAIN TRACT AS DESCRIBED IN THE DOÑA ANA COUNTY CLERK RECORDS UNDER RECEPTION No. 0346597, BOOK 487, PAGE 1723, FILED DECEMBER 31, 2003; THIS TRACT IS LOCATED IN SECTION 28, T22S, R2E, NMPM, AND PROJECTED SECTION 29, T22S, R2E, NMPM; WITHIN THE CITY OF LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO; THIS TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF TANGENCY ALONG THE NORTH RIGHT-OF-WAY LINE OF BATAAN MEMORIAL WEST; THENCE S46°15'37"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 204.00 FEET TO THE SOUTHWEST CORNER OF THIS TRACT; THENCE N43°46'46"W A DISTANCE OF 400.00 FEET TO THE NORTHWEST CORNER OF THIS TRACT; THENCE N46°13'14"E A DISTANCE OF 326.00 FEET TO THE NORTHEAST CORNER OF THIS TRACT; THENCE S43°46'46"E, ALONG THE CENTER LINE OF A FUTURE 50-FOOT WIDE RIGHT-OF-WAY, A DISTANCE OF 386.93 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY LINE FOR THE SOUTHEAST CORNER OF THIS TRACT; THENCE S37°25'28"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 18.23 FEET TO A FOUND BAR w/CAP FOR A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 975.06 FEET, A CURVE LENGTH OF 104.56, A DELTA OF 06°08'38", AND WHOSE LONG CHORD BEARS S40°29'49"W A DISTANCE OF 104.51 FEET BACK TO THE POINT OF BEGINNING THIS TRACT CONTAINS 2.979 ACRES, MORE OR LESS, OF LAND. THIS TRACT IS SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)

A TRACT OF LAND BEING A PART OF THAT CERTAIN TRACT AS DESCRIBED IN THE DOÑA ANA COUNTY CLERK RECORDS UNDER RECEPTION No. 0346597, BOOK 487, PAGE 1723, FILED DECEMBER 31, 2003; THIS TRACT IS LOCATED IN PROJECTED SECTION 29, T22S, R2E, NMPM; WITHIN THE CITY OF LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO; THIS TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND IRON ROD FOR THE NORTHWEST CORNER OF THIS TRACT; THENCE N65°57'40"E A DISTANCE OF 704.96 FEET TO A FOUND IRON ROD FOR THE NORTHEAST CORNER OF THIS TRACT; THENCE S31°16'45"E A DISTANCE OF 493.02 FEET TO A POINT ON THE CENTER LINE OF A FUTURE 50-FOOT WIDE RIGHT-OF-WAY FOR A CORNER OF THIS TRACT; THENCE S54°37'38"W, ALONG THE CENTER LINE OF A FUTURE 50-FOOT WIDE RIGHT-OF-WAY, A DISTANCE OF 233.33 FEET TO A POINT ON THE CENTER LINE OF A FUTURE NORTH-SOUTH 50-FOOT WIDE RIGHT-OF-WAY FOR A CORNER OF THIS TRACT; THENCE S43°46'46"E, ALONG SAID NORTH-SOUTH CENTER LINE, A DISTANCE OF 209.17 FEET TO THE SOUTHEAST CORNER OF THIS TRACT; THENCE S46°13'14"W, LEAVING SAID NORTH-SOUTH CENTER LINE, A DISTANCE OF 326.00 FEET TO THE SOUTHWEST CORNER OF THIS TRACT; THENCE N43°46'46"W A DISTANCE OF 894.50 FEET BACK TO THE POINT OF BEGINNING. THIS TRACT CONTAINS 9.776 ACRES, MORE OR LESS, OF LAND. THIS TRACT IS SUBJECT TO EASEMENTS, RESTRCTIONS, AND RESERVATIONS OF RECORD.

OWNER OF RECORD

BINNS II LTD
COMPANY – #12–29–03
1501 DON ROSER DRIVE
LAS CRUCES, NM 88011
REC No. 0346597
FILED DECEMBER 31, 2003

OWNER OF RECORD

WILFRED E. BINNS & IVA BERNICE BINNS
IRROVOCABLE CHILDREN'S TRUST 10–15–93
RECEPTION No. 2018538
FILED AUGUST 3, 2020

TRACT 'D'
EXISTING ZONE A-2
PROPOSED ZONE C-2

A TRACT OF LAND BEING A PART OF LOT 1 OF THE RINCONADA SUMMARY SUBDIVISION AS RECORDED IN PLAT RECORD 24, PAGES 384-385, FILED OCTOBER 16, 2018, IN SAID CLERK RECORDS; THIS TRACT IS LOCATED IN PROJECTED SECTION 29, T22S, R2E, NMPM; WITHIN THE CITY OF LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO; THIS TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND IRON ROD FOR THE NORTHWEST CORNER OF THIS TRACT, FROM WHICH POINT A FOUND IRON BAR BEARS N31°16'45"W A DISTANCE OF 200.38 FEET; THENCE N89°37'54"W, ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 203.97 FEET TO A FOUND BAR w/CAP ON THE WEST RIGHT-OF-WAY LINE OF RINCONADA BOULEVARD FOR THE NORTHEAST CORNER OF THIS TRACT; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: S31°04'43"E A DISTANCE OF 127.12 FEET TO A FOUND BAR w/CAP FOR A POINT OF CURVATURE FOR A CORNER OF THIS TRACT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 642.50 FEET, A CURVE LENGTH OF 48.17 FEET, A DELTA OF 04°17'45", AND WHOSE LONG CHORD BEARS S33°13'30"E A DISTANCE OF 48.16 FEET TO A POINT BEING THE INTERSECTION OF SAID WEST RIGHT-OF-WAY LINE AND THE CENTER LINE OF A FUTURE 50-FOOT WIDE RIGHT-OF-WAY FOR THE SOUTHEAST CORNER OF THIS TRACT; THENCE S54°37'38"W, ALONG THE CENTER LINE OF SAID FUTURE RIGHT-OF-WAY, A DISTANCE OF 176.64 FEET TO THE SOUTHWEST CORNER OF THIS TRACT; THENCE N31°16'45"W A DISTANCE OF 292.64 FEET BACK TO THE POINT OF BEGINNING. THIS TRACT CONTAINS 0.939 ACRES, MORE OR LESS, OF LAND. THIS TRACT IS SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

CURVE TABLE						
CURVE	DELTA	RADIUS	TANGENT	LENGTH	CHORD	DIST
C1	12°27'43"	642.50'	70.15'	139.75'	S37°18'29"E	139.47'
C2	85°29'31"	50.00'	46.21'	74.61'	S0°47'29"E	67.87'
C3	4°31'48"	1649.60'	65.24'	130.42'	S39°41'22"W	130.39'
C4	6°08'38"	975.06'	52.33'	104.56'	S40°29'49"W	104.51'
C5	4°17'45"	642.50'	24.10'	48.17'	S33°13'30"E	48.16'
C6	8°09'58"	642.50'	45.86'	91.57'	N39°27'21"W	91.49'

UNDERWOOD ENGINEERING INC
1430 W. AMADOR AVENUE
LAS CRUCES, NM 88005
PH: (575) 647–4329
PROJECT: 1941

SHEET 1 OF 1

C:\Users\sergh\Zoho WorkDrive (UEI)\UEI_Team\UEI Land Projects\2019\1941 Rancho Del Rey P21\1941 RINCONADA INDUSTRIAL PARK ZONING MAP.dwg, 6/15/2021 11:40:38 AM

FINDINGS:

- Based upon staff's analysis, the proposal meets the intent of the Elevate Las Cruces Comprehensive Plan; 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 38-2.
- The proposed rezoning is consistent with submittal requirements outlined in Section 38-2 of the 2001 Zoning Code, as amended
- The proposed rezoning is harmonious with and not out of character with the uses and existing zoning districts of the surrounding area.

Attachment A

SUBDIVISION

City of Las Cruces®
PEOPLE HELPING PEOPLE

Planning & Zoning Commission 07/27/2021

CASE 21CS0500057/20ZO0500111

Rancho Del Rey Master Plan Amendment #3 and Zone Change

STAFF CONTACT:	John Castillo, (575) 541-2288, jcastillo@las-cruces.org
OWNER:	Binns II LTD Co
REPRESENTATIVE:	Souder, Miller & Associates
COUNCIL DISTRICT:	District #6
SITE ADDRESS:	North of Bataan Memorial East and east of Rinconada Blvd.
EXISTING ZONING:	M-1 (Industrial Standard), C-3C (Commercial High Density-Conditional), and A-2 (Agricultural 1981 Zoning Code)
REQUEST:	Request for approval of an amendment to a master plan to adjust the property lines of the southern boundary and provide a secondary access north of Parcel P3 to Parkhill Estates. A request for a zone change from M1/M2, C-3C and A-2 to M-1/M-2/C-3 to C-2
RELATED APPLICATIONS:	Rancho Del Rey Master Plan, Rancho Del Rey Master Plan Amendment #1, Rancho Del Rey Master Plan Amendment #2
STAFF RECOMMENDATION:	Approval

SUMMARY OF REQUEST: The applicant is proposing a third amendment to the existing Ranch Del Rey Master located north of Bataan Memorial East and west of Rinconada Blvd. The amendment will modify the boundary lines of parcels P 21 and P 22 that encompass 14.6 ± acres to include the adjacent lot to the east of P 22 which encompasses 3.94 ± acres for the creation of Parcel P24 to agree with the layout for the Rinconada Industrial Park. The amendment will also create a secondary access to the north of Parcel P3 for future access into Park Hill Estates. In addition to the amendment a request for zone change will be associated with the approval from M-1 (Industrial Standard) C-3C (Commercial High Density-Conditional), and A-2 (Agricultural 1981 Zoning Code) to M-1/M-2/C-3 and C-2 (Commercial Medium Density).

SUMMARY OF RECOMMENDATION:
Case 21CS0500057 (Master Plan Amendment) DRC/Staff is recommending **approval** based on the findings listed below:

1. The proposed Master Plan Amendments are consistent with submittal requirements outlined in Section 38-2 of the 2001 Zoning Code and Article II of the Subdivision Code.
2. Based upon staff's analysis, the proposal meets the intent of the Comprehensive Plan 2040; 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.
3. DRC recommended approval of the proposed Master Plan Amendment.

Case 20ZO0500111 (zone change) Staff Recommendation: **APPROVAL** based on the findings listed below:

1. Based upon staff's analysis, the proposal meets the intent of the Elevate Las Cruces Comprehensive Plan; 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.
2. The proposed Rezoning is consistent with submittal requirements outlined in Section 38-2 of the 2001 Zoning Code.
3. The proposed Rezoning is harmonious with and not out of character with the uses and existing zoning districts of the surrounding area.

PROPOSAL AND LAND USE HISTORY

PROJECT DESCRIPTION:
The proposed amendment to the Rancho Del Rey Master Plan, known as Rancho Del Rey Master Plan Amendment #3, is to modify the boundary lines of the master plan for Parcels P 21 and P22 to incorporate a parcel of land to the east adjacent to Riconada Blvd that encompasses 3.94 ± acres. This will also create a third parcel labeled P 24 within the subject property that will align with the proposed Rinconada Industrial Park Preliminary Plat. In addition, the amendment proposes the inclusion of a secondary access to the north of Parcel P3 that will connect a future local road to Park Hill Estates. Associated with the master plan amendment the applicant also proposes to rezone the same properties from M-1 (Industrial Standard), A-2 (Agricultural 1981 Zoning Code) and C-3C (Commercial High Density-Conditional) to M-1/M-2/C-3 (Industrial Standard/Commercial High Density) and C-2 (Commercial Medium Density) to correspond with the master plan and development of the Rinconada Industrial Park.

The master plan and zone change both require approval by the P&Z. The zone change will then be forwarded to City Council for consideration, and, if approved, will finalize the zoning of the subject property.

LAND USE HISTORY:
In 1997, the initial master plan was approved by the Planning and Zoning Commission, to allow for the phasing out of Rancho Del Rey Master Plan. Around 2004, Rancho Del Rey Master Plan Amendment #1 was approved by the Planning and Zoning Commission for the adjustment of parcel boundaries and Settler's Pass to fit topography. In 2012 Rancho Del Rey Master Plan Amendment #2 and

associated zone changes were approved to rezone 279.43 ± acres and adjust the parcel boundaries. Roadrunner Parkway, and Settler's Pass to agree with a road and lot layout study which fit existing topography. The development up to the present time has been developed with single-family dwellings and a small section of Commercial development.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Elevate Las Cruces Comprehensive Plan	Yes
Mesilla Valley Metropolitan Planning Organization (MPO) Thoroughfare Plan	Yes
Objectives of Master Plan: Section 37-41	Yes
Purpose and Intent of the Code: Section 38-2	Yes
Criteria for Decisions: Section 2-382	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:
The master plan area contains a variety of uses which include multifamily (medium density), single family (various densities), open space, flood control, recreation, and commercial (various intensities). The amendment proposes to incorporate 3.43± acres into the subject properties P21 and P22 Located west of Rinconada Blvd and Bataan Memorial East for future commercial development. As part of this boundary incorporation the creation of parcel P24 will occur for the agreement with the layout for the Riconada Industrial Park. In addition the associated rezone from M-1, C-3C and A-2 to M-1/M-2/C-3 and C-2 is compatible with the existing area.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:
The property is located within an area designated as a Regional Commercial Place Type as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. Regional Commercial areas are defined by large retail and professional service uses, often located in multi-tenant shopping centers and office buildings, as well as hotels, restaurants, and other services. Regional Commercial land uses are of a scale and character to serve as a city wide and regional draw.

The following goals, polices, and actions from Elevate Las Cruces are relevant to the proposed Zone Change and Master Plan Amendment:

- Community Environment:
  - Goal CE-3: Centers and Corridors – Support community growth through concentrated development at activity centers and along key corridors.
    - Policy CE-3.2 – Allow for a mix of development type and intensity along major thoroughfares that reflects surrounding urban, suburban, and rural contexts.

    - Goal CE-4: Complete neighborhoods - develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses
- Community Prosperity
    - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.
        - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
            - Action CP -2.2.2 – Identify and promote places of employment to minimize commutes and increase accessibility to other transportation modes to create a job-housing balance.
    - Goal CP-4: Diversification - Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.
        - Policy CP-4. - Support efforts to be regionally and nationally competitive in regard to retaining and growing businesses, jobs, and students.

The request to rezone the property from O-2 to C-2 is not out of context with Elevate Las Cruces. The Regional Commercial place type encourages a diverse assortment of commercial and professional services that would be made available by allowing a broader spectrum of uses. The proposed master plan will allow for business owners to subdivide while still being part of a business center that will provide a variety of commercial/industrial uses to the community to the north and south of the subject property.

COMPLIANCE WITH MPO THOROUGHFARE PLAN:
Rinconada Boulevard and Bataan Memorial East are classified as minor arterial roadways roadway by the MPO on which high intensity commercial and industrial uses and zoning are considered appropriate.

OBJECTIVES OF MASTER PLAN:
The purpose of the master planning process is to advance the goals and objectives of the City's Comprehensive Plan and to address a variety of environmental and social issues in an area being proposed for development. A master plan is considered part of the planning process in which the proposal is viewed as a conceptual tool reflecting the ideas and thoughts for future development and designed to achieve the following objectives:

- To achieve the goals, objectives and policies of the City Comprehensive Plan and the objectives of other City policies.
- To ensure compliance with the growth management section of the land use element of the City Comprehensive Plan.
- To ensure compliance with the metropolitan planning organization's transportation plan.
- To guide future land development and transportation patterns.
- To provide for an efficient process in determining fiscal impacts, neighborhood concerns, the coordination of City capital improvements, and the identification and protection of significant natural features.

- To ensure that all adopted City plans, rules and regulations are followed. To ensure that proposed development is suitable and appropriate for a given parcel of land, based on its location and its environmental characteristics.

The amendments to the Rancho Del Rey Master Plan Amendment #3 are consistent with the requirements of the City's Subdivision Code, as amended.

CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:
The relevant purpose and intent statements to the proposed rezoning are:

A. Ensure that all development is in accordance with this Code and the Las Cruces Comprehensive Plan and its elements;
B. Encourage innovations in land development and redevelopment;
C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses;
J. Improve the design quality, and character of new development;
M. Foster a more rational relationship between different land uses for the mutual benefit for all;
Q. Mitigate conflicts among neighbors.

The requested zone change will allow for development of vacant/developed land based on the future growth and the needs of the existing neighborhood. The proposed zone change does not impact the existing neighborhood, nor the use, but provides availability for a different Commercial/Industrial design within the area.

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.

City Staff did not identify any issues associated with the potential master plan amendment and the proposed changes provide proper connectivity for the existing and future neighborhoods and by positioning commercial uses along thoroughfares which are encouraged.

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 master plan amendment and zone change does not alter the density, but it does provide for more buildable space within each lot. Several property owners are requesting dwelling units with rear porches/patios and the proposed

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR CURRENT USE:
The subject parcel P21 is currently vacant, and the subject parcel P 22 contains a commercial use building on the west side of the parcel. The amendment will adjust their boundaries to incorporate the third subject parcel located at the northwest corner of Rinconada Boulevard and Bataan Memorial East. As part of the Rinconada Industrial Park layout the creation of parcel P 24 will occur located to the north of P 22 to follow the new boundaries created. This amendment will also create a secondary access located north of Parcel P 3 that will provide connectivity to Park Hill Estates.

SITE SUITABILITY FOR PROPOSED USE:
The proposed master plan amendments will allow the parcels to be subdivided in accordance with the proposed Rinconada Industrial Park. The location of the secondary access located to the north of Parce P 3 will provide connectivity to residential, multi-family, commercial and open space which are compatible with the existing neighborhood and the surrounding areas.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:
City water, gas and sewer already serve the current developments and as the property owner continue to develop the area the utilities will be extended. The applicants are providing multiple roadways for connectivity and improvement to the City Design Standards with pavement, curb, gutter, sidewalk and lighting.

FLOOD PLAIN: The property is not located in a flood zone.

STAFF AND PUBLIC COMMENTS

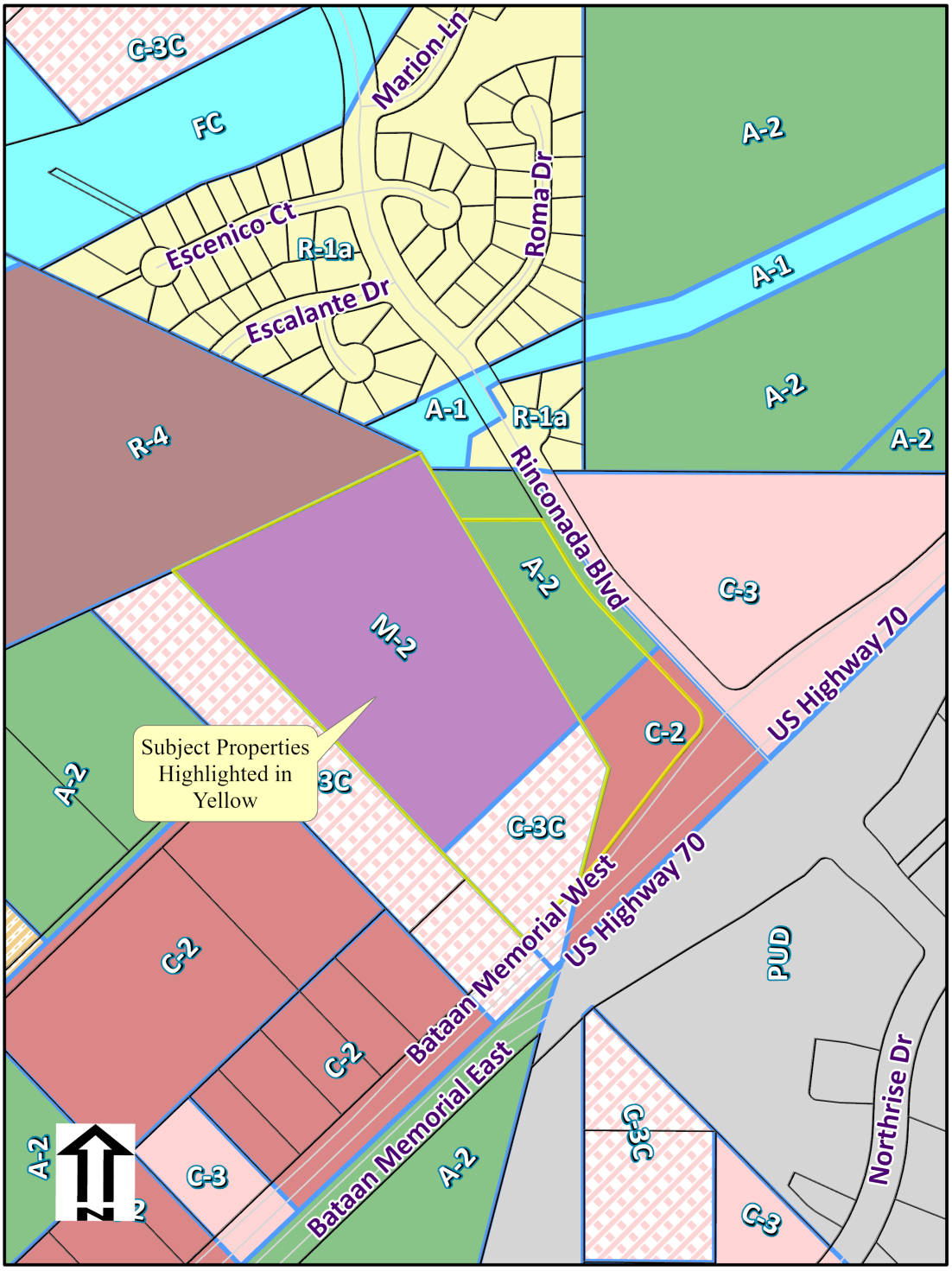
PUBLIC NOTIFICATION AND INPUT: Notice of a Public Hearing was mailed to all property owners within 500 feet of the subject property on July 09, 2021. Staff has not received any input for the proposal at the time this report was drafted.

STAFF COMMENTS: No reviewing departments had any negative comments and there have been no objections to the proposed master plan.

ATTACHMENTS:
1. Zoning Map
2. Aerial Map
3. Department Comments
4. DRC Minutes dated July 14, 2021
5. Existing Master Plan Amendment #2
6. Proposed Master Plan Amendment #3

ATTACHMENT 1

Zoning Map



ATTACHMENT 2

Aerial Map

ATTACHMENT 3

Department Comments

Department: Planning

Status: YES WITH CONDITION
Under PURPOSE OF THIS AMENDMENT 3 change parcel P23 to Parcel P24. Parcel P23 is ROW according to table and P24 labeled as the newly created lot for Rinconada Industrial Park.

Department: Flood

Status: REVISION REQUIRED
1: Revisions Required - Incorrect Map Panel and effective date. Please correct.

Department: Long Range Planning

Status: YES

Department: Traffic Engineering

Status: YES WITH CONDITION
1. At time of development an updated TIA will be required due to the road network change

2. No direct access to Rinconada or Bataan West from P21, P22, P24.

Department: New Mexico Department of Transportation

Status: YES

Department: Engineering

Status: YES

Department: Parks and Recreation

Status: YES

Department: Utility Engineering

STATUS: YES WITH CONDITION
Include the conceptual utilities plan per Las Cruces Municipal Chapter 37 (37-46 A18): Conceptual utilities plan. The conceptual utilities plan shall contain enough information to provide a general outline of the proposed utility-routing plans for the

development, including locations and sizes of existing and proposed utilities to be provided to the development. Actual size and location of utilities to be determined at time of development and subject to change based on utility needs of the surrounding area.

Department: Fire

Status: YES

Department: City MPO

Status: YES WITH CONDITION
The Mesilla Valley MPO has one comment on the Rancho Del Rey Master Plan Amendment 3. Riconada Blvd is listed as a collector, it is a minor arterial. The rest of the functional classified roads are listed correctly Settlers Pass is a collector and Roadrunner parkway is a minor arterial. The rest of the roads are local roads. One suggestion we would have is to leave open a connection to Riconada Blvd.

ATTACHMENT 4

Development Review Committee Minutes

1. Case 21CS0500057: Rancho Del Rey Master Plan Amendment No. 3

- A request for approval of the third major amendment to the Rancho Del Rey Master Plan.
- The amendment is to adjust the Master Plan boundary due to adjustments on the size of parcels P21 and P22. The amendment will also create parcel P23 to agree with the layout for the Rinconada Industrial Park. IN addition the amendment will show a secondary access to the north of Parcel P3.
- Submitted by Underwood Engineering representatives.

Weir: That will take us to our third item on our agenda today with Rancho del Rey Master Plan Amendment No. 3. John do you want to introduce the case?

Castillo: Yes. So case number three is the Rancho del Rey Master Plan Amendment No. 3. It's a request for the third amendment to the Rancho del Rey Master Plan. The amendment is to adjust the master plan boundaries.

E. Binns: I apologize.

Castillo: So the amendment is to adjust the master plan boundary lines to incorporate three point …

E. Binns: Can you pull the map up on the screen?

Castillo: Yes. Sorry, I'm going blank here.

Weir: We're not used to meeting in person.

Dubbin: We haven't had a DRC meeting last more than half an hour.

Castillo: So yes we're talking about parcels P21 and P22 which are this one up here and this one below. We're going to incorporate this almost four acres of land into P21 and P22 to create a third additional parcel that will coincide with the Rinconada Industrial Park preliminary plat. That would be labeled P24.

In addition to this, they are also going to amend and create a secondary access to the north off of parcel P3, which would be over here that would connect into Park Hill Estates.

Weir: Is that it?

Castillo: That's it.

Weir: Okay.

E. Binns: You have another map of the master plan that shows the street so that can make sense.

Weir: I would say Mr. Binns or Mr. Binns, do you want to give your take on the proposal?

D. Binns: Wait for a map.

E. Binns: I'm glad you're running the computer right now.

H-Rogers: Me too Mr. Binns.

E. Binns: That's the subdivision that we talk about next but that's not the master plan.

Kinney: There it is, 57, right there.

E. Binns: Now I know why I still like paper. Zoom out in the whole region.

Castillo: The whole region.

E. Binns: Yes. There you go. Okay. Originally, this region was planned on a masterplan basis back in the late 80s. And it was a long range plan. At that time developments pretty well continued along with those projections. At one point in time there was a tended to take a road from highway 70 through our property going into the large tract. If you can point to that cul-de-sac that has evolved there in lower tract right in there. Okay, since this tract is going into industrial activity we wanted to close that road off that would be going into the residential and isolate the industrial activity only into the tract which I'll say is to the south that we're looking at it the Rinconada Industrial Business tract. So that was the number one change to close that off so that it didn't enter into residential.

Number two was a street that we agreed to work with Park Hill and provide a potential fire exit up in that upper area, as well as it gave us the opportunity to take care of sewage drainage over in that bowl area which was beneficial to both parties. Those are the major changes to the master plan at this time, which was an update to incorporate these two activities. The balance of the tract is pretty much on schedule as the original design and layout from day one. These are the two changes that are involved in the master plan to bring it current.

Weir: Does anybody on the DRC have any questions for Mr. Castillo or Mr. Binns on the master plan?

Mathews: Mr. Chair. So I have no objection to making the lower industrial tract with a cul-de-sac. I mean I think that's a fine thing to do. However, I believe if I'm recalling correctly the master plan does show a trail and parkland further to the north along that road that crosses east/west.

E. Binns: No.

Mathews: No. Okay.

E. Binns: We never had any trails in this master plan.

Mathews: Okay. Am I thinking of some, a different one then that has recently come up?

Castillo: So towards, I believe you're speaking of *(inaudible)*. What you're speaking of is this park and regional drainage detention.

Mathews: Yes.

E. Binns: Now, that's a tract that's proposed for combination of park and drainage combination.

Castillo: There also is just above the Sand Hill Arroyo is a 40 foot wide walking path.

Mathews: Right.

Castillo: That was also proposed Mr. Binns.

E. Binns: Here and what now?

Castillo: The 40 foot walking path right here.

E. Binns: Okay.

Castillo: Was also proposed as part of the master plan.

E. Binns: That's proposed on the long range. It doesn't exist today.

Castillo: No, not as of yet.

E. Binns: Correct.

Mathews: Right. Okay, so, but it is shown as part of the approved master plan from the 1980s. Is that?

E. Binns: No. That that was not there in 1980s.

Mathews: But it's there now.

Weir: I think that's taken place …

E. Binns: It has evolved because that is a sewer easement that feeds the whole northeast corner of Las Cruces.

Mathews: Okay. So I guess my question is, is the action we're proposing today, does that approve that park and regional drainage pond and the 40 foot wide path/sewer utility.

Nasir: That was approved, the amendments that he's having are just the bottom and the top. That one is already there.

Weir: A previous amendment.

Mathews: Okay. So that's not under discussion today.

Castillo: This is already approved under Amendment No. 2.

Mathews: Okay.

Castillo: And I believe even Amendment No. 1, but I'd have to go back and verify.

Mathews: Okay.

Castillo: These have already been set in place. We're just basically discussing the approval of the secondary access and the southern portion.

Mathews: Okay. This is the first time I've seen those.

E. Binns: It does *(inaudible)* in that park area, but he can't …

Castillo: 7.9.

E. Binns: 7.9 so you got a pretty good side combination there that we're playing with.

Mathews: Right.

E. Binns: When this original 600 acre was planned, the City's position was Eddie, we don't want any parks on your area. We have all kinds of land available from BLM and we will use that land and we want you to furnish money to build the parks. So there are about 600 people living in a subdivision that have no park. They've all paid for it but the money's been used in the rest of the town because the City changed their regulations that it had to be used within a certain region and the region now is City wide, not district wide.

Mathews: Yes.

E. Binns: So all our money went somewhere else and they ain't got no park up here. It wasn't yours; it wasn't mine, but both we both inherited this mess and now we tried to do some cleanup. But we do plan on doing some park there. There has been earlier designs on that and I don't know whether you've gotten records out but the park has had some designs, some playground area and that kind of stuff. And it is something that is still on the table.

Mathews: Okay. Thank you Mr. Chair.

E. Binns: And trail-wise is a natural on that utility easement going all the way through it.

Castillo: Correct.

Weir: Any other DRC members? Mr. Skelton.

Skelton: A couple of things is that at the time to development we'll need an updated TIA *(inaudible)*.

E. Binns: I beg your pardon.

Skelton: An updated TIA.

E. Binns: What for?

Skelton: For the changes in the road network.

E. Binns: We haven't changed anything.

Skelton: You're changing the access on …

E. Binns: We haven't changed anything. There's no changes. Roads are still right where they're at.

Weir: You're no asking for it with this master plan, you're asking when a phase come in or.

Skelton: Right.

Weir: Okay.

E. Binns: We're not changing any roads so that there's no traffic change is taking place. So no I don't have a traffic study planned.

Skelton: Okay.

E. Binns: We've got wide roadways and collector's laid out and those are all in existence and laid out and they're not going to change.

Weir: I think Gary's putting you on, making you aware that when a new phase is that Public Works is probably going to ask for a revised TIA.

E. Binns: I'm telling him no.

Weir: We'll have that discussion.

E. Binns: I mean for what purpose.

Weir: I think he's just being transparent.

Skelton: Okay, the other common I had is parcels 21 and 22 and 24. Want to restrict access not to have directly to Rinconada and Bataan Memorial. Just limit their access to the local roads right there.

E. Binns: Okay. This is our next item on discussion.

Weir: I think for the masterplan Gary's just saying these are the comments that he has. Then the next case will be the subdivision.

Skelton: Okay.

E. Binns: You're getting the horse in front of the card.

Skelton: That's all I have.

Weir: Okay. Mark, do you have anything?

Dubbin: No.

Weir: Okay. If there's no other comments, does DRC want to make a motion or did you have a recommendation?

Castillo: We had a recommendation for approval.

Weir: Okay. Thank you. Is there a motion to approve, deny, or amend or table the Rancho del Rey Master Plan Amendment No. 3?

Nasir: So move to approve.

Weir: Do I have a second?

Dubbin: Second.

Weir: I have a motion and a second. I'll go do the department roll. We'll change, I'll give you a break Rocio.

Nasir: Thank you.

Weir: CD. I'm asking for your vote on a motion to approve the Amendment No. 3. Whoever wants to.

H-Rogers: He keeps looking at me. I recommend we approve.

Weir: Fire.

Dubbin: Yes.

Weir: Okay. Parks and Recreation.

Mathews: Yes.

Weir: Public Works.

Skelton: Yes.

Weir: And Utilities.

Nasir: Yes.

Weir: Okay. There is a recommendation to approve the Master Plan Amendment. And it is scheduled for the P&Z meeting on the 25th.

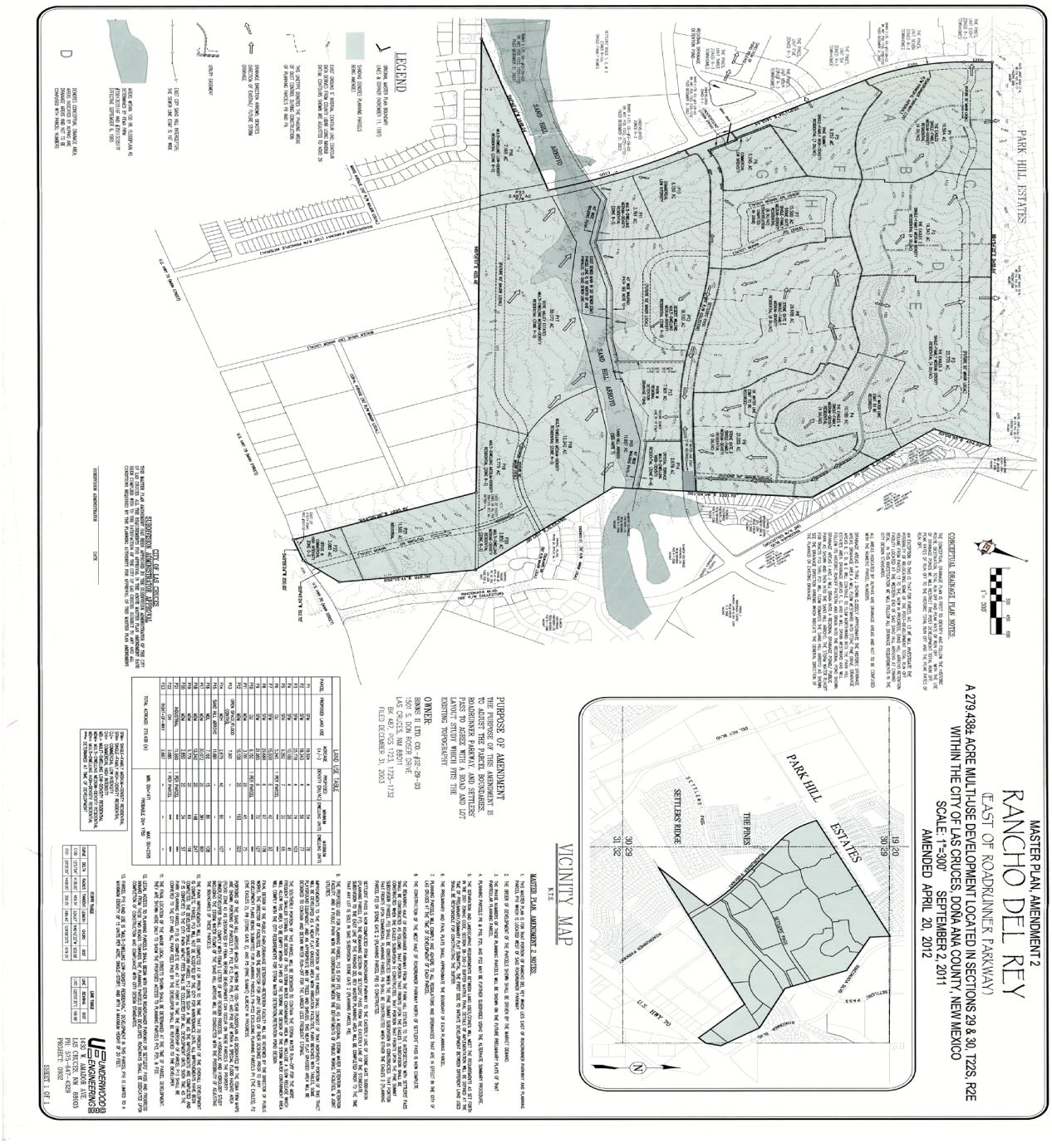
H-Rogers: It is.

Castillo: Correct.

Weir: Okay. All right, thank you.

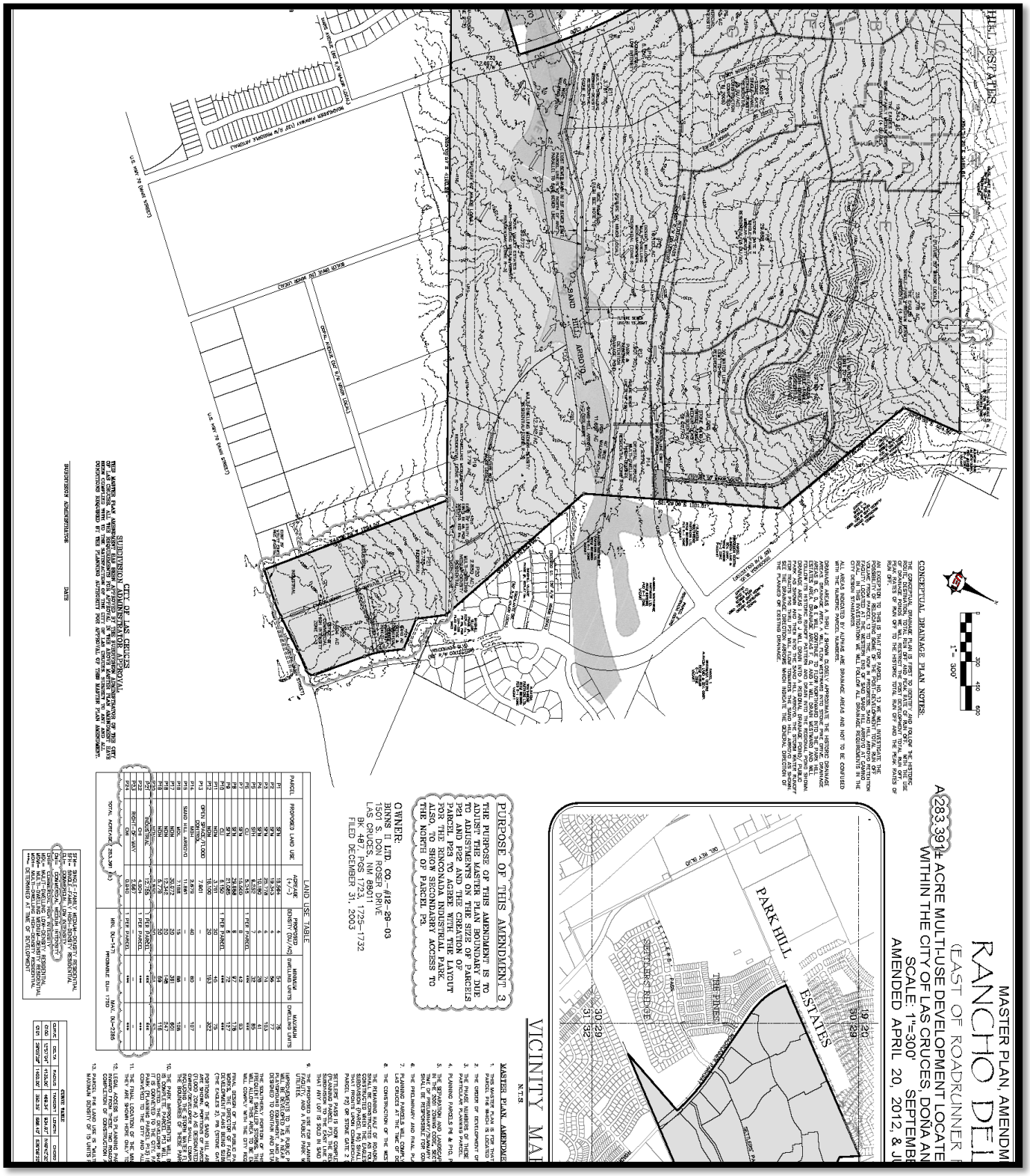
ATTACHMENT 5

Existing Master Plan Amendment #2



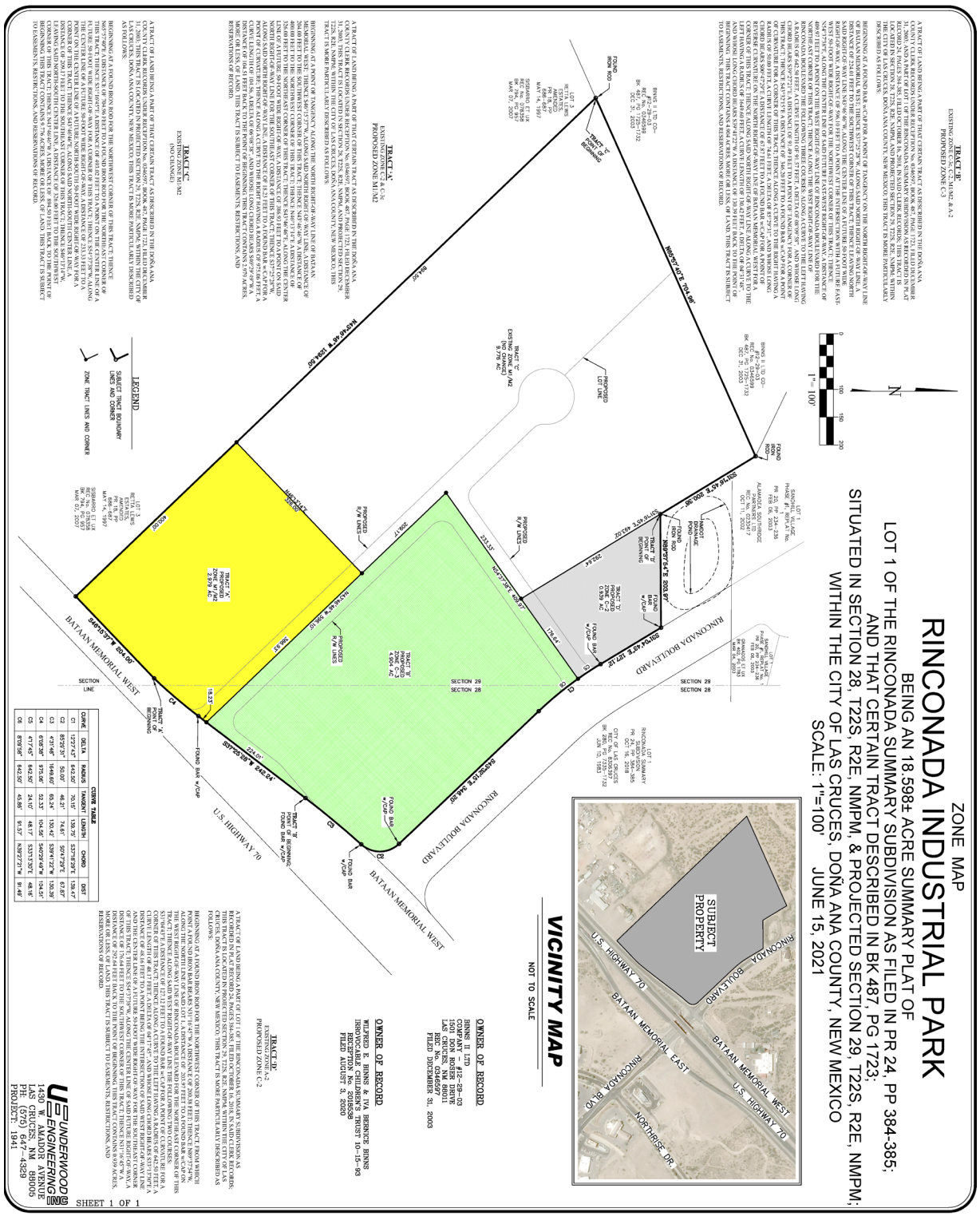
ATTACHMENT 6

Rancho Del Ray Amendment #3



ATTACHMENT 7

Proposed Zone Change


ZONE MAP
RINCONADA INDUSTRIAL PARK
BEING AN 18.598± ACRE SUMMARY PLAT OF
LOT 1 OF THE RINCONADA SUMMARY SUBDIVISION AS FILED IN PR 24, PP 384-385;
AND THAT CERTAIN TRACT DESCRIBED IN BK 487, PG 1723;
SITUATED IN SECTION 28, T22S, R2E, NMPM, & PROJECTED SECTION 29, T22S, R2E, NMPM;
WITHIN THE CITY OF LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO
SCALE: 1"=100' JUNE 15, 2021
VICINITY MAP
NOT TO SCALE
SUBJECT PROPERTY
RINCONADA BOULEVARD
U.S. HIGHWAY 70
BATAAN MEMORIAL EAST
BATAAN MEMORIAL WEST
NORTHRISE DR
OWNER OF RECORD
BINNS II, LTD
COMPANY – #12-28-03
1500 W. AMADOR AVE
LAS CRUCES, NM 88001
REC No. 03465697
FILED DECEMBER 31, 2003
OWNER OF RECORD
WILFRED E. BINNS & IVA BERNICE BINNS
IRREVOCABLE CHILDREN'S TRUST 10-15-03
RECEPTION No. 2018598
FILED AUGUST 12, 2020
TRACT 'A'
EXISTING ZONE C-2
PROPOSED ZONE C-2
TRACT 'B'
EXISTING ZONE C-2, M-1/M-2, & A-2
PROPOSED ZONE C-3
TRACT 'A'
EXISTING ZONE C-2 & C-3c
PROPOSED ZONE M-1/M-2
TRACT 'C'
EXISTING ZONE M-1/M-2
(NO CHANGE)
LEGEND
SUBJECT TRACT BOUNDARY LINES AND CORNER
ZONE TRACT LINES AND CORNER
TRACT 'A' PROPOSED ZONE M-1/M-2 2.909± AC
TRACT 'B' PROPOSED ZONE C-3 4.904± AC
TRACT 'B' PROPOSED ZONE C-2 10.785± AC
TRACT 'C' EXISTING ZONE M-1/M-2 (NO CHANGE) 0.378 AC
PROPOSED R/W LINES
PROPOSED LOT LINE
SECTION LINE
SECTION 29
SECTION 28
BATAAN MEMORIAL WEST
RINCONADA BOULEVARD
U.S. HIGHWAY 70
SOUTHRISE DRIVE
SANDHILL VILLAGE PHASE #1, REPLAT No. 2
PR 24, PG 236
REC No. 03-2003
OCT 11, 2002
ALAMOSA SOUTHRIDGE SUBDIVISION
PR 24, PG 236
REC No. 03-2003
OCT 11, 2002
RINCONADA SUMMARY SUBDIVISION
PR 24, PG 384-385
REC No. 2018598
DEC 19, 2018
CITY OF LAS CRUCES
BK 280, PG 1733-1737
JUN 10, 1985
LOT 1 SUMMARY
RINCONADA SUBDIVISION
PR 24, PG 384-385
REC No. 2018598
DEC 19, 2018
LOT 1
RETAIL LEASES
PARTNERS
PR 24, PG 236
REC No. 03-2003
MAY 14, 1997
LOT 2
RETAIL LEASES
PARTNERS
PR 24, PG 236
REC No. 03-2003
MAY 14, 1997
SIGNAMIGO, ET UX
BK 784, PG 1957
MAY 27, 2003
BINNS II, LTD CO.
REC No. 03465699
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PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
July 27, 2021 at 6:00 p.m.

BOARD MEMBERS PRESENT:
Sharon Thomas, Chair
Harvey Gordon, Vice-Chair
James Bennett, Member
LaVonne Muniz, Member
Enrico Smith, Member
Vanessa Vega, Member

BOARD MEMBERS ABSENT:
Luis Armando Guerrero, Member

STAFF PRESENT:
David Weir, Deputy Director Community Planning
Catherine Harrison-Rogers, Senior Planner
John Castillo, Planner
Roberto Cabrillo, CLC Legal
Adrian Guzman, CLC Communications
Becky Baum, Recording Secretary, RC Creations, LLC

I. CALL TO ORDER (6:00)

Gordon: Good evening, and welcome to the July 27th meeting of the Planning and Zoning Commission. Before we start, I would like to say how happy I think we all are to be back in chambers. Being on zoom for the last year and a half has not been such a pleasure, but at least we got our business conducted. So anyway, we're here and we're glad to be here. So what I'd like to do is call the meeting to order.

II. CONFLICT OF INTEREST

At the opening of each meeting, the chairperson shall ask if any member on the Commission or City staff has any known conflict of interest with any item on the agenda.

Gordon: First, is there any conflict of interest? Okay. I'd like to have someone make a motion to allow Commissioner Thomas to be present by via telephone.

Bennett: I make a motion that Commissioner Thomas be present over the phone.

Gordon: All right. I need a second, please.

Vega: I second.

Gordon: All in favor?

MOTION PASSES UNANIMOUSLY.

Gordon: Commissioner Thomas, are you here? Can you hear us?

Thomas: I'm here. Can you hear me?

Gordon: Yes. Thank you.

III. APPROVAL OF MINUTES

a. June 22, 2021

Gordon: All right. Now I need an approval of the minutes. Can I have a motion please?

Bennett: I make a motion that we approve the minutes.

Gordon: Is there a second?

Muniz: I second the motion.

Baum: Yes. I will call the roll for you. Board Member Thomas.

Thomas: Yes.

Baum: Thank you. Board Member Smith.

Smith: Present.

Baum: This is for approval of the minutes. I will need a yes or no, please.

Smith: Yes. Thank you.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Muniz.

Muniz: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Gordon.

Gordon: Yes.

Baum: Thank you.

Gordon: All right.

MOTION PASSES UNANIMOUSLY.

IV. POSTPONEMENTS - NONE

Gordon: There are no postponements.

V. PUBLIC PARTICIPATION

Gordon: Is there any public participation here this evening that would like to address something that is not on the agenda? All right. Seeing none.

VI. CONSENT AGENDA - NONE

1. **Metro Verde South Phase 3E and 3F Final Site Plan:** A request for a Final Site Plan, known as Metro Verde South Phase 3E and 3F, located within the Metro Verde South Planned Unit Development (PUD). The proposed subdivision encompasses 9.357 + acres, is zoned PUD (Planned Unit Development), and is located at the southeast corner of Red Hawk Golf Road and Peachtree Hills Road. The Final Site Plan proposes 91 single-family residential lots and one tract to be dedicated to the City of Las Cruces for drainage. Submitted by Sierra Norte Development Inc., property owners. (21ZO3000047)

2. **Escondido at Alameda Ranch Preliminary Plat:** A request a preliminary plat known as Escondido at Alameda Ranch within the Alameda Ranch Planned Unit Development (PUD). The proposed subdivision encompasses 33.46 + acres is zoned PUD-R-3 (Planned Unit Development, Multi-Dwelling Medium Density), and is located east of Calle Abuelo and Pegasus Road. The preliminary plat proposes a gated 135 single-family residential lot subdivision with three tracts to be dedicated to the City of Las Cruces for drainage. Submitted by Souder, Miller and Associates, representatives.

Gordon: All right, then we can move to the consent agenda. There are two items on the consent agenda this evening. I need a motion to approve the consent agenda.

Vega: A motion to approve.

Bennett: I'll second.

Baum: Board Member Thomas.

Thomas: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Muniz.

Muniz: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Gordon.

Gordon: Yes.

VII. OLD BUSINESS - NONE

Gordon: All right, there's no old business.

VIII. NEW BUSINESS

1. **Rancho Las Fincas Preliminary Plat:** A request for a preliminary plat and associated road improvement waiver for an 8-lot single-family residential gated community known as Rancho Las Fincas. The proposed subdivision encompasses 9.357 + acres, is zoned RE-M (Residential Estate Mobile), is located at 4821 Dunn Drive. Submitted by Moy Surveying, representative. (20CS0500119)

Gordon: Then we can move to new business. The first item on the agenda is item number one, Rancho Las Fincas Preliminary Plat. Before we vote on this, I'd like to make a comment of what we plan on doing this evening for that item. Because the item calls for basically two votes, one on a plat and one

on a road waiver, so we will split this in half. We'll take one vote on the plat and one vote on the road waiver. So John, if you want to go ahead. Do we have to make a motion first to do that? You have to make a motion to approve this.

H-Rogers: Chair Gordon. I would like to maybe encourage the Commission to make a motion to suspend the rules, meaning that you're going to split it in two and vote on it as two separate items. And that should be sufficient for at least that portion. And then of course you can vote to make a motion to hear it altogether.

Gordon: Okay. Then I need a motion to suspend the rules to split item number one into two parts; one to vote on the plat and one to vote on the road waiver.

Bennett: I make a motion to suspend the rules on the preliminary plat and the waiver.

Smith: I second that motion.

Baum: Board Member Thomas.

Thomas: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Muniz.

Muniz: Yes.

Baum: Board Member Vega.

Vega Yes.

Baum: Board Member Gordon.

Gordon: Yes. All right. John.

Castillo: Good evening, Mr. Chair, Commission. As Commissioner Gordon stated, this is going to be two separate items that you will be voting on separately. Today it's for the approval of the Rancho Las Fincas Preliminary Plat and the associated road improvements waiver.

Gordon: Can you speak in the microphone?

Muniz: Yes, I can't hear you.

Castillo: So the current conditions of the property, it's located currently right now the northwest corner of Dunn Drive and Aldrich Road. It is approximately 9.35 acres, and it's currently zoned REM which is our Residential Estate Mogul. As it sits right now it's an undeveloped vacant tract of land. From our zoning map we can see here it is the one that's highlighted with the checkered type pattern. The aerial map right here shows which property it is.

So what they're proposing for the preliminary plot is an eight single-family residential lot gated community. It's going to provide one interior roadway to provide access off of Dunn Road. Associated with this was a road improvements waiver request for Aldrich Road to provide the necessary road improvements such as sidewalks, curb and gutter, and asphalt. As part of this request, the developer was going to propose to extend utilities, essentially gas and sewer, in lieu of the roadway improvements.

This is the proposed preliminary plat. At the time reviews were sent out to all relevant agencies, staff approved the preliminary plat. However, staff did deny the road improvements. This was then taken to the Development Review Committee or DRC. Discussions took place and they did provide a recommendation to the Planning and Zoning Commission. Notices were also sent out to the surrounding properties within a 500 foot radius. We did receive one e-mail in regards to signage located along Aldrich Road and adjacent properties, not necessary to the concern of the actual development of the subdivision.

Staff recommendation, approved to the preliminary plat based on the following findings which was that it complies with the City of Las Cruces Subdivision Code and the City of Las Cruces Design Standards. The proposed preliminary plat complies with all requirements of the 2001 Zoning Code. And it was approved by the DRC on June 2, 2021. Staff did propose a recommendation of denial for the road improvement waiver request based on the fact that the Rancho Las Fincas Preliminary Plat complies with the requirements and standards of the Las Cruces Subdivision Code and Design Standards. Based upon review of the relevant City staff at this moment, we have nothing that really enforces the development of utility extensions on the property. They are allowed to use propane and gas so at that moment we don't have anything solid. DRC on June 2nd did approve the preliminary plat and provided a recommendation of denial for the road improvement waiver. Today's options are to vote "yes" to approve, vote "no" to deny, or vote "yes" with conditions, or to vote to table.

Gordon: All right. Thank you John. Is there anybody here from the petitioner who wishes to speak? All right then, seeing none. Are there any of our Commissioners would like to make some comments? All right. Seeing none. Then I have a comment. I think the road improvements certainly would not contribute any benefit to the area or certainly improve safety or access for police and fire. Since the petition does not involve the development of the property putting on Aldrich Road this is another reason to grant the waiver. So the approval, so that is my opinion. I think that it's, I was out there, I did my site visit. I looked at Dunn Road, there's certainly no reason there to do anything, that's a paved road. But Aldrich Road is just a gravel enhanced dirt road. And the property at this time is not slated to have borders on Aldrich Road, it's slated for improvement or for development. So I don't think there's any reason that we should grant a waiver that won't be necessary. So in that case, I guess we have to, now I guess make a motion on part one which is the plat. So if I could have a motion to approve the plat, item number one.

Bennett: I make a motion to approve the plat for item number one.

Gordon: Is there a second?

Smith: I second the motion.

Baum: Board Member Thomas.

Thomas: Yes. I vote yes. Complies with *(inaudible)* and the Elevate Las Cruces.

Baum: Thank you. Board Member Smith.

Smith: I vote yes. it complies with the Elevate Las Cruces Comprehensive Plan, and I think it's also complies with the *(inaudible)* plan.

Baum: Board Member Bennett. Mr. Smith, can you please turn your microphone off. Thank you. Sorry.

Bennett: I vote yes based on staff recommendation and it meets all zoning codes.

Baum: Thank you. Board Member Muniz.

Muniz: I will vote yes. My vote's based upon staff recommendations and they've met all conditions.

Baum: Board Member Vega.

Vega: I vote yes. It complies with zoning code and based on staff recommendation.

Baum: Board Member Gordon.

Gordon: I vote yes based on findings, my site visit, staff recommendation, and its ability to go along with the Elevate Las Cruces. That case. Okay. So the vote is then 6:0. Okay. Then we go on to item number two, which would be the road waiver.

Castillo: Point of order Commissioner Gordon.

Gordon: Yes.

Castillo: I do have a member of the public that would like to speak about the road improvements portion at least.

Gordon: All right. Thank you. No problem. Is that person in the chamber?

Castillo: Yes sir.

Gordon: Oh, okay. Before you begin sir would you please state your name?

Boje: Professor David Michael Boje, PhD.

Gordon: Okay. And I have to swear you in before you speak. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Boje: I do.

Gordon: Thank you. Go ahead sir. Thank you.

Boje: You're welcome. Let's see. I live directly across the street from the property that has the proposed waivers. So I'd like to speak to it. I'm diagonally across about nine acres, no six acres, about six acres, horse ranch. I am welcoming the Rancho Las Fincas development. So I would like to raise a couple of issues with the City if that's permissible.

Gordon: Sir you can speak whatever you like.

Boje: Thank you. Okay, there's a no dumping fine of $300 according to Section City Code, 19-45. For the past week, this Lazy Boy chair has been dumped on the roadside. There's been no action. Would call for the enforcement of Section 19-45. According to that regulation that is littering and it's illegal dumping.

The street signs on the corner of Dunn and Aldrich where the proposed development will take place, we would like to see that development. But as you can see in two through ways Dunn and Aldrich, there is a single stop sign on one of the four corners. That stop sign was placed by the City, but it's placed inappropriately because that's actually the land of the New Mexico public land, the State Land Office. It's confused with the Bureau of Land Management, but I've checked out and I've talked to the people and they've done site visits and I want to explain problems with the installment of the street sign at Aldrich and Dunn and the lack of stop signs on the four corners. When you come down Aldrich on the paved section, it does say pavement ends, no City services. However there is City services to the right on Aldrich but no City services to the left. In speaking to the former City manager the reason for this is there's one holdout person that doesn't even live there that is afraid that the taxes will be raised, so there's no street maintenance on that part of Aldrich even though it's on the City …

Gordon: Sir, excuse me for interrupting you.

Boje: Yes sir.

Gordon: I will allow you to speak whatever you like, as far as pertaining to the road waiver is concerned. All these other items, I think are legitimate concerns …

Boje: Right.

Gordon: That you could probably address the respective City departments such as traffic and whatever takes care of dumping and street signs. But if you have something to say about the roadway waiver that we appreciate your limiting your comments.

Boje: Okay. Well, my understanding of the word roadway is it's the road Aldrich, the entrance from Aldrich. And right now it's a dangerous intersection. And the plan is we understand the new owners have said they're going to put up a six foot wall, that rock wall which is a good improvement, however you won't be able to see oncoming traffic in either direction.

The other thing is the water is being polluted in the area, including on the property and all around the four parts of that stop area on Aldrich and Dunn where the new property is being waivered. The City plan for 40 years includes the water. These are two maps from your City plan. There are no City no dumping signs in the whole area of this part of the East Mesa. And we feel we're being treated differently than Sonoma Ranch. This is a county sign. And there's a reason why the county can't put up signs that I'm going to explain to you now. And that is because the encroachment of illegal vehicle traffic. There used to be, when I moved there 14 years ago, barbed

wire fence, and to the right was public land, and the county had their easement where they could put up no dumping signs. I know that you have other things to talk about, but if you're going to move to that part of Las Cruces and East Mesa, there's some severe problems that need to be addressed. This is the only sign and I got this put up after an effort of 14 years.

Gordon: Sir, again, I'm sorry to interrupt you, but you're not addressing the item of a road waiver. Let me try to explain something to you what a roadway basically is.

Boje: All right. Yes sir.

Gordon: The road waiver is the City is going to require that that portion that borders the property along Aldrich Road make certain road improvements such as sidewalks, drainage, sewer, streetlights. That's what a road waiver is in reference to. It has nothing to do with dumping or water drainage or full stop signs. So I like again, I think all those comments are fine. I have no problem with you making them.

Boje: Okay.

Gordon: But I think you should direct them specifically to the City.

Boje: Okay, I appreciate your reprimand.

Gordon: I'm not reprimanding. I'm just trying to explain.

Boje: I appreciate your correction. And I would like the opportunity to finish my presentation for two minutes.

Gordon: Yes sir.

Boje: All right. There is nightly gunfire, almost on a nightly basis of AR-15s in the area and Mike Tellez, who lives also directly across and would like to speak to you. Here's the gunfire, including not only semiautomatics, but actual machine guns. We have called the sheriff's office. The sheriff's office doesn't realize that that green bordered area that the City has, that the new properties inside of it, but if you're in this part of the East Mesa, there is no sheriff coming out, there is no City police coming out to enforce the law. And I spoke to fish and game today, and they said they're willing to start coming out. But we need to have the City Council make it clear to codes enforcement who come on these properties, what is the jurisdiction of the City, what is the jurisdiction of the county, what is the jurisdiction of the state and the federal government. So that's what I'm speaking to. I want to just back up here. How do I backup? Let's see. Previous. Okay. All right.

I want to give you an idea what it sounds like at night on this neighborhood. *RECORDED SOUNDS PLAYED.* I don't know if you can hear the gunfire but that's Single gunfire, That's AR-15 semiautomatic, and it's also the bump work of this record. I am a Vietnam veteran. And I do not like to have automatic, semiautomatic fire. I did my service to the country. And I don't like it. My neighbors are afraid to walk in the area. When I spoke to a lady who said that she goes to this pond one time to see what was there, and people were firing AR-15s. And a young boy was firing it and the bullet whisked her ear and she said to the man, please stop. He said, get out of here. This is a violation of the law for recreational vehicles to be in this area. It is a violation to be burning tires and trees and illegal dumping. And to have a tax rating of one in this area is kind of unconscionable. And I'm done, I know you have other things to do. But I appreciate it if you would look into how to communicate the actual regulations of the City to residents so that the off road, illegal vehicle traffic stops. I have a $35 permit to be on public land. I pay for that permit to the State Land Office. It does not entitle for a motor vehicle to go anywhere else but on the official roads. It doesn't allow to go from Wilt and Davis off Aldrich into this property. And I know you have other things to do, and I appreciate the time you've taken to listen to me. I'm done.

Gordon: Thank you sir. I'll tell you what I'd like you to do. I personally can't take these issues to City Council or the relevant departments of the City. But if you would certainly make a list of those items of your concern, dumping, full stop signs, and a water ponding, and anything else that you think you would like to have the City in to look into, if you'll please just make a list and perhaps give it to someone in the Community Development department and they could pass it on to certain departments. I hope that will take care of these problems for you. I can understand your concern. And they're concerned that I probably would have if I lived there. But again sir thank you for your comments.

Boje: Thank you. I've been a resident of Las Cruces for 23 years. Love it. Love the East Mesa. I've been there for 14 years. But these problems are ongoing, and it's your responsibility to correct them. Thank you, sir.

Gordon: Is there anyone else who has any comments?

Castillo: Mr. Chair. I do have Moy Surveying who is the representative for the road improvement waivers on behalf of the property owner.

Gordon: Okay. Sir before you start will you please speak your name.

Magallanez: Anton Magallanez.

Gordon: Okay, before you speak I'd like to swear you in please. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Magallanez: I do.

Gordon: All right. I thank you sir. Go ahead.

Magallanez: Thank you. Thank you all. Good evening. Just to clarify, one of the things I wanted to mention was that when John was giving the presentation, he stated that we were able to have gas along with propane at the site. I don't want to speak at a term for him, but what I think he meant to say was that because of where the location of the property is, we're actually allowed to have propane along with septic. And so the big question at this point is the septic. We've worked with the utility department to talk about our opportunities for gas so that we don't place propane tanks on the sites once the proposed development is approved, if it in fact, well it since it has been. And so what the City utility department is willing to do is bring gas from Davis across down through Aldrich and then we will in turn tie our road into Dunn Drive. So the City utility department, not at the cost of the developer, will bring gas service to what would be our new proposed roadway and we will tie into the service there. So then that would eliminate us having the requirement of propane tanks, which I think is a benefit, on the proposed development here.

The second one, which is where the road waiver comes into play, is that since we are not required to tie into the sewer system since we are far enough away, we're proposing that we have a waiver for the road improvements on Aldrich, for all road improvements on Aldrich, the 600 feet and in turn the owner is willing to provide sewer through an adjacent lot that they have which would then connect down into their road, thus eliminating the need for septic tanks also on this site. Because of those costs, we know that it's hard for them to manage both of them, and so what we're hoping for by requesting this road waiver is that we can have the road waiver in place, and then they would agree to in fact not place septic systems. If the road waiver unfortunately wasn't, I think they might have to forego the cost of placing a sewer system and then opt for septic tanks on their lots.

So with that said, I mean we just recently saw a huge ordinance that was unanimously voted for residents tying into sewer systems at their lots helping to not create more of a groundwater contamination issue with more septic tanks. And I think this is an area in question, and so I think the proposed waiver, which would then in turn trigger the sewer system in place, would allow us to not continue to compound that problem as it exists. When we were working with staff and through the DRC process, they did state that Aldrich was a very low significant road, as we've seen Davis and Dunn have

its improvements built out through recent paving projects. And unfortunately Aldrich didn't make the cut. And for those reasons, the other the other concern, when we did in fact vote and received denial for the waiver through staff recommendation, every staff member mentioned, you know I just can't find areas in the code that can support the waiver, which kind of threw me for a little bit of a loop because I don't think there would be areas in the code that would align very closely with the waiver or else we wouldn't be in fact asking for a waiver. So yes, we are requesting a waiver for the Aldrich improvements. We did have one staff member vote in favor for that. And I think because of helping to not continue to compound that septic water pollution as Dr. Boje mentioned, issue along with staff mentioning that Aldrich is already a very low significant road. We're hoping that we could receive approval for our waiver. Thank you.

Gordon: Excuse me sir, don't leave.

Magallanez: Yes sir.

Gordon: Is there anyone from the Commission has any questions? All right, if not, I do.

Magallanez: Yes sir.

Gordon: I was informed that on Aldridge there is gas and sewer. Is that correct? That's what you said.

Magallanez: There is neither of those services at this time on Aldrich.

Gordon: I'm sorry, from Dunn I guess. On Dunn.

Magallanez: Dunn.

Gordon: Not Dunn. Sorry, Davis. I'm sorry. Davis, okay.

Magallanez: Yes sir. You're correct.

Gordon: So I also was told that there is water on Dunn. Is that also correct?

Magallanez: Yes sir.

Gordon: Will you be tying into that for your water?

Magallanez: Yes sir. I'm sorry.

Gordon: So there will be no need for wells or anything.

Magallanez: Correct. No need for well, no need for septic if the road waiver, you know.

Gordon: Okay. So basically what you're asking us to do to help you avoid to pay the large cost of the road improvements that you feel are not necessary, you will have then the minimal cost of now extending sewer from Davis and gas to your property for this new development.

Magallanez: Yes. Through talks with the City though however, they have already agreed to tie, not at the expense of the owner, gas from Davis through Aldrich and then up to where our street would intersect Dunn and our new proposed street. So we would be placing a gas service line within the compound or confines of our road tying into what would then be at that time an existing City gas line.

Gordon: All right I understand. Does everybody on the Commission understand that?

Bennett: I do.

Gordon: Are there any questions?

Vega: I have a question.

Gordon: Commissioner Vega. Go ahead.

Vega: So in terms of cost difference, this is my first in person meeting, so I'm probably going to have a lot of questions. But in terms of the cost to developer versus City, if we were to grant the waiver, how significant are we looking at?

Magallanez: I don't know if I have the answer that question. I know when I, and the owner is here and I know that they've reached out to some of the contractors to try and start to estimate what those cost differences are. I know that it is not feasible for them to provide both improvements to Aldrich and a sewer line. Although I know there might be, we have to remember that it's 600 feet of frontage for the Aldrich improvement, with the sewer line they would be going the full length of the road and then through another adjacent parcel, which is just to the west, tying into potentially placing a new manhole into Davis Road. So I don't have dollar to dollar comparison as to what it would cost to do Aldrich versus the sewer system, however, I don't think that the sewer system is going to be by any means inexpensive as well, because they do have to traverse that much distance, and then of course place a new manhole and make sure everything is at grade.

Gordon: Commissioner Muniz.

Muniz: Yes, I have a question. I'm a little confused. You have a choice, am I correct of putting in sewer lines or septic tanks?

Magallanez: Yes ma'am.

Muniz: I find that a lot of homeowners who have septic tanks hook up with the sewers and it's quite an expense. You're already, am I understanding that you're already not that far from sewer line hookups, so wouldn't it be more profitable for you to update the streets in the development, hooking everything up to the sewers?

Magallanez: Correct. I mean …

Muniz: Because people don't really like septic tanks, that's a yearly fee to clean them and pollution. And we're looking at environmental things today. And maybe I misunderstood you, you have a choice? Why aren't you taking the choice of upgrading and connecting to City sewers?

Magallanez: Well you're right. So because of the proximity of this parcel, they are not within the minimum footage required to have to in fact by code connect to a sewer system. So they're far enough away to then have the option if they chose to, the owner that is, when development comes to either place propane tanks and/or place septic tanks. Now, this is a gated private community. And I have two of the six household members back there with us right now. So they're not looking to necessarily develop this at this point in time and sell it to anybody outside. So they're okay with incurring the cost of whatever that septic maintenance may be for however long they in fact do. But they've already told me which cousin and daughter and spouse are getting which lots. So it is a small scale development because we are only looking at eight lots. I agree 100% with what you're stating in terms of the maintenance that a septic system has, however we are looking at eight lots versus anything larger than that in terms of a subdivision size.

Gordon: All right. Thank you. Is there anyone else? All right. Let me just ask you something else and make sure that we all understand. I know that to do road improvements is not just a little thing. It's a matter of putting in sidewalks and gutters and streetlights and paving the road. And we're talking about a distance of maybe, I don't even know how many feet it is on your property.

Magallanez: 600.

Gordon: How many?

Magallanez: 600.

Gordon: All right. So it's almost ludicrous to pave and do all these things for 600 feet and the rest of Aldridge stays the way it is. Really there's no point. There's nothing in the future that looks like there's going to be any development out there that's going to require road improvements. So based on that, I think really the best thing to do is to go ahead and have them bring the sewer and gas in from Davis, and whatever your cost is of hooking up to that, I think solves a lot of problems and certainly reduces the amount of your financial exposure. Is that what you're saying?

Magallanez: Yes sir. And I think the other thing to point out is it as Dr. Boje mentioned, Aldrich currently is only servicing one side of the road with you know BLM land south of that. And then of course the portion that we would be paving would only then, you'd have four houses that don't in fact have any paving until it reaches Davis. So it does seem like a really small stretch to pave such a small area.

Gordon: All right. Thank you. Is there anyone else who has some comments from the audience?

Thomas: I have a comment.

Gordon: Is that Thomas? I'm sorry, Commissioner Thomas is that you? I can hardly hear you.

Thomas: This is Commissioner Thomas. Can you hear me now?

Gordon: Yes, go ahead.

Thomas: So I wanted to know how far, how much of Aldrich is there then and is the condition of the road the same the whole length of Aldrich?

Gordon: I believe it is. I think Aldrich all the way down is nothing more than in a dirt gravel road. Is that correct? How far down does it go? I'm not familiar with as far down as what I looked. Doctor.

BOJE SPEAKING, NOT AT THE MICROPHONE.

Thomas: Does anybody know?

Gordon: Okay. I think the gentleman at the dais knows the answer to that. Sir could you please state your name for the record?

Tellez: My name is Michael Tellez.

Gordon: All right. Excuse me, John do you know the answer?

Castillo: Commissioner Gordon. Aldrich Road is, so Aldrich road has, it's not completely asphalt, it's a mix of gravel and asphalt, but it does go all the way down from Davis to Dunn. So basically, the preliminary plat portion of it would be 600 feet. The remaining lots would not have those necessary requirements such as sidewalks, curb and gutter.

Gordon: All right. Okay. Thank you. Commissioner Thomas does that answer your question?

Thomas: I have a further question. And so if they did do the road, they would only be doing half of it right?

Castillo: Yes, they would only be doing half. They would just be doing their portion of it.

Thomas: So they'd only be doing one half of 600 feet of a road that how long do you think the entire road is?

Gordon: I'm sure the road must be at least a half a mile long.

Castillo: I believe it's between half a mile to a mile.

Gordon: Right. It's quite long.

Thomas: Okay. So they would just be doing this fairly small section and only half of the road on this this *(inaudible)* road that the rest of us *(inaudible)* kind of gravel and asphalt. So I don't see any reason to do that.

Gordon: Right.

Thomas: In that 600 feet of *(inaudible)* road, half of 600 feet of the road and make it different from the entire rest of the road.

Gordon: Okay. Is it Commissioner Thomas. Is that it? Thank you.

Thomas: That's it. Thank you.

Gordon: Okay. Sir do you still like to speak?

Tellez: Yes.

Gordon: Okay. I'm sorry. Would you repeat your name again, please.

Tellez: My name is Mike Tellez.

Gordon: All right. Before you speak I have to swear you in. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Tellez: I do.

Gordon: Thank You. You go ahead sir. Thank you.

Tellez: I'm a resident of the corner of Dunn and Aldrich, directly across the street from this proposed development is going to take place. My question is, well first of all I do welcome the new development. I have no problem with the improvements that are proposed to this area. My questions are, shouldn't the City require before any more development takes place up there, shouldn't the City be making an effort to bring in all the utilities? After all, we are in the City limits. There's currently no gas in my area. There's no sewer. The only reason we have water is because the City bought out Jornada Water you know a few years back. And other than that the only improvement that's ever taken place in the last 30 years back in the late 80s when the City incorporated that area, when it annexed that area, is the payment of Dunn Street, and that was done without any utilities in place. So it seems to me like you know the City should be doing their part and it shouldn't be fair on the new owners to have to shell out all the costs. Shouldn't the City have some sort of responsibility to bring in all the utilities to make just like the rest of the City? Because another thing is it just seems like that particular part of the City is one area that's been forgotten for the last 30 years. It's like we don't matter out there.

Gordon: I understand your concern, but perhaps Mr. Weir from Community Development will be able to answer your question.

Weir: Mr. Chairman, Committee Members. This is David Weir, Deputy Director, Community Development Department. Mr. Tellez, the City policy is usually for development to pay for itself when a subdivision such as this comes in. They're responsible for extending all of the utilities and streets to support that. That's the way our development ordinances read. And so the other projects within the East Mesa would be something that would have to be dealt through the City Council's budgeting process and capital improvement projects. But tonight we're just talking about this particular development and the requirements the code has for them to subdivide the property.

Tellez: It just somehow doesn't seem fair that they should put, the new owner should be forced to shell out the entire cost when the City has taken no effort, nothing to do anything for the last 30 years or so.

And another thing too is no one's brought up the fact that there are no fire hydrants out there. And how can you allow development without adequate

fire protection? Like I said, I don't have anything against them coming up there but shouldn't the City be making an effort to at least install fire hydrants out there.

Gordon: I tell you I do have a suggestion for you. I think these are legitimate concerns. And I think I would also be concerned about the same things. Perhaps you might address these concerns to your City Councilor in your district. And I would want to speak to him or her directly, and bring these concerns to him or her and see if there's something that she can give you either a good answer or perhaps do something about it.

Tellez: Well, I just thought maybe what, what I said might have something to do with the outcome of whether you approve this or not.

Gordon: All right. Well thank you sir.

Tellez: Okay, and I guess that's all I got to say.

Gordon: All right. Thank you.

Thomas: Can I say something?

Gordon: Commissioner Thomas.

Thomas: Yes.

Gordon: Go ahead.

Thomas: So that you see my *(inaudible)*. And *(inaudible)* pretty *(inaudible)* streets and *(inaudible)* the sidewalks and streets, utilities and all *(inaudible)* were put in by developers and the builders. And when people *(inaudible)* those lots they're paying *(inaudible)*. So in areas *(inaudible)* they were *(inaudible)* with that kind of *(inaudible)*. It's up to the *(inaudible)* to go and put *(inaudible)* put that stuff in. You need to pull *(inaudible)* road *(inaudible)* somebody *(inaudible)* street to do that. The City will help you. Sometimes the City has *(inaudible)* help finance. So that's what I would *(inaudible)* talk to the *(inaudible)*.

Gordon: All right thank you Commissioner Thomas. All right, is there anyone else in the audience who has anything to say? If not, then I'd like to entertain a vote on the second part of this.

AUDIENCE MEMBER SPEAKING, NOT ON THE MICROPHONE.

Gordon: Sir, does it only pertain to the road waiver and nothing else? All right, I'll give you a minute. Just state your name again, please.

Boje: Professor David Boje.

Gordon: Thank you.

Boje: It's been said that this is a gravel road on Aldrich with some paving. To be more accurate between Porter and Dunn it is paved, it just doesn't have sidewalks. The City also comes regularly after the monsoon rains and does sweeping of that portion of Aldrich. After you go eastward at Dunn on Aldrich, then it is gravel all the way to the end. So if this development, actually if the City meets them and does sidewalks around the property it's actually going to continue the sidewalks already on Dunn and then move them to the west through the property. So that is a development that is worth considering. Thank you.

Gordon: All right, thank you sir. All right. Is there anyone else? All right, John.

Castillo: So as I mentioned before, this is a recommendation for approval of a road improvements waiver. The next step after you provide your recommendation we will go to City Council for approval

Gordon: All right then. Do we need another motion or do we have the motion? All right we need another motion then. All right we had the vote. We have to make another motion to, according to the item is to deny the waiver. If you can please vote, and if you vote yes you must state your cause. You want to call the roll? All right, I'm sorry, I have to correct myself. We have to make a motion to either approve or deny the waiver.

Bennett: I'll make a motion to approve the waiver.

Gordon: I need a second.

Smith: I second the motion.

Gordon: All right. So then we need a motion. All right so now we need a vote. Can you call the roll please?

Baum: Yes sir. Board Member Thomas.

Thomas: So we're voting to approve the waiver.

Baum: Yes we are.

Thomas: And we're not voting for the denial *(inaudible)*?

Gordon: Commissioner Thomas. To make sure we are clear because we're having difficulty understanding what you're saying. Are you voting to deny or approve?

Thomas: I'm asking *(inaudible)* being asked to vote to approve the waiver.

Gordon: All right then we didn't hear what you said, I'm sorry.

Thomas: We're being asked to vote to approve the waiver.

Gordon: Right, well how do you vote?

Thomas: I vote to yes to approve the waiver, because I can see that only half of 600 feet doesn't *(inaudible)* worth doing.

Gordon: All right. You can call the roll then.

Baum: Yes. Board Member Smith.

Smith: I vote yes to approve the waiver.

Baum: Board Member Bennett.

Bennett: Yes, I vote to approve the waiver due to financial hardship that would accrue from building out Aldrich and the benefit to the environment to add the City sewer.

Baum: Board Member Muniz.

Muniz: I vote to approve the waiver. We've had this problem come up before and I thought staff was going to talk to us about it. It's quite an expense on homeowners. And this is a small private development. So and it's going to come up again because people have property out there and they're developed trying to approve it. And this is a hindrance to improving some of that property. We need to have something I believe that's more consistent when we have this problem come up.

Baum: Board Member Vega.

Vega: I motion to approve.

Baum: I your need reasoning, please. Thank you.

Vega: Just based on some of the comments here today and the fact that the road is already halfway done, makes sense to complete it.

Baum: Thank you. Board Member Gordon,

Gordon: I vote to approve based on the fact that this is, would be very costly and I think some of the things that they're planning on doing by extending the gas lines and the sewer lines are a very good solution to this problem. So therefore I vote yes, I vote to approve. All right, I think that takes care of that item.

2. **Valley Drive Industrial Park Master Plan:** A request for a master plan known as Valley Drive Industrial Park. The master plan proposes the development of 3-12 industrial lots that will be developed in phases. The subject properties encompass 7.72 ± acres, are zoned M-1/M-2 (Industrial Standard) and are located on the west side of Valley Drive at 2000 and 2100 S. Valley Drive and 275 W. Farney. Submitted by Souder, Miller and Associates, representatives. (21CS0500002)

Gordon: All right. Can we move on now to item number two, which is the Valley Drive Industrial Park Master Plan? Can I have a motion please? Somebody please make a motion.

Bennett: I make a motion to approve item number two.

Gordon: Is there a second?

Vega: Second.

Gordon: John.

Castillo: Okay. Today, we're going to bring you the Valley Drive Industrial Park Master Plan. We are requesting approval of the master plan. It is the subject property west of Valley Drive. it's located on multiple parcels. It comprises 7.69 acres and it's currently zoned M-1/M-2. The properties are developed industrial commercial use lots.

Here's a zoning map that shows the zoning designation. Here's an aerial image. The proposal of the master plan is going to subdivide three existing lots for future development of industrial lots into three to 12 industrial use lots utilizing an alternate summary process. It will connect two existing lots through Farney Lane, and it also meets the requirements of the Subdivision Code Design Standards and the 2001 Zoning Code. It's also supported by Elevate Las Cruces as it falls into the regional commercial place type.

Here's an image of the proposed master plan. As we can see from here, the old Coca Cola company is the larger lot in the middle. It will be subdivided into three or less lots depending on what's moving in, as well as the other two adjacent lots. Public notice was sent to all relevant agencies.

They all supported the master plan. And there was notice sent out to the surrounding properties. Staff at the time that the presentation was made and reports were done, there was no phone calls or e-mails in regards to the proposed master plan. The Design Review Committee met on June 16, 2021, to review the subdivision from an infrastructure, utilities improvement standpoint. After some discussion, the DRC recommended approval for the proposed master plan. Staff recommends approval based on the following findings; the master plan meets the objectives of a master plan and required by the subdivision code. Based upon review by City staff the proposed master plan complies with the 2001 Zoning Code, the Subdivision Code, and the Design Standards. Today, we do have an option to vote "yes" to approve, vote "no" to deny, vote "yes with conditions or vote to table.

Gordon: All right. Thank you John. Is there anyone from the petitioner who is requesting to make a statement? All right sir state your name please.

Pompeo: Good evening Mr. Chairman. Paul Pompeo with Southwest Engineering.

Gordon: All right you know I must swear you in. You've done this before.

Pompeo: Yes sir.

Gordon: Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Pompeo: Yes I do.

Gordon: Thank you. Go ahead.

Pompeo: Thank you Mr. Chairman. I did have a short presentation, however, it mimics a lot of what staff has already presented so I'll put that aside. I stand here to take any questions that the Commission might have. This is a pretty straightforward application. We're looking at redeveloping underutilized industrial property into more opportunities with smaller lots so as to bring more business to that area of Las Cruces. And so I stand for questions. Thank you Mr. Chairman.

Gordon: All right. Thank you. Any questions from the Commission? Seeing none.

Pompeo: Thank you Mr. Chairman.

Gordon: Are there anybody from the audience who wishes to make a comment or have a question? All right. Then seeing none. Then we can have a vote.

Baum: Board Member Thomas.

Thomas: I vote yes based on *(inaudible)* from the staff, the subdivision *(inaudible)*. And I think it's a good idea to *(inaudible)* lot, which would encourage more small *(inaudible)*.

Baum: Thank you. Board Member Smith.

Smith: I vote yes, based on site visit and also with compliance with Elevate Las Cruces and also just the redevelopment of an already previously industrial area.

Baum: Board Member Bennett.

Bennett: I vote yes, meets zoning code, supports Elevate Las Cruces, and based on staff recommendation.

Baum: Board Member Muniz.

Muniz: I'm going to vote yes upon the recommendations of staff. And I hope once it's built, the buildings *(inaudible)* don't sit empty because we need jobs in the City.

Baum: Board Member Vega.

Vega: I vote yes, based on a site visit and staff recommendation.

Baum: Board Member Gordon.

Gordon: I vote yes, based on findings and my site visit and staff recommendation. And certainly it will definitely do something to *(inaudible)* here and perhaps bring in some new jobs. Thank you. I guess that's 6:0. Okay.

3. **Rancho Del Rey Master Plan Amendment No. 3:** A request for an amendment to the Rancho Del Rey Master Plan. The amendment is to adjust the master plan boundary to include 3.94 acres into parcels P21 and P22 and to create a secondary access to the north of Parcel P3. Submitted by Underwood Engineering, representatives. (21CS0500051)

Gordon: Is it all right for us to take items three and four together?

H-Rogers: Chair Gordon, Members of the Commission. Yes, we can hear both the master plan and the zoning change related to Rinconada Industrial Park together. Again, I do recommend that there be a motion to suspend the rules so those could be heard together and then voted upon separately.

Gordon: Okay. All right then I need a motion to suspend the rules that we, all though that we will discuss both these items but vote on them separately, item three

and number of item four. Can I have a vote please? I need a motion. I'm sorry.

Vega: I make a motion to suspend the rules so that we can vote on both of these, or combine them.

Gordon: All right. A second?

Smith: I second that motion.

Gordon: All right. Roll.

Baum: Board Member Thomas.

Thomas: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Muniz:

Muniz: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Gordon.

Gordon: Yes. Okay John.

Castillo: Thank you Commission. Today we have the Rancho del Rey Master Plan Amendment No. 3 and the corresponding zoning change. Current conditions are the Rancho del Rey Master Plan which is currently 279.43 acres. Today we will be looking at changes that encompass 14.64 acres and incorporates 3.95 acres into the master plan. The subject properties are located in the northwest corner of Rinconada Boulevard and Bataan Memorial East. It is consistent of multiple parcels and it does contain a vacant and developed commercial and industrial uses. The current zoning right now as it stands is M-1/M-2 Industrial Standard, C-3C commercial high

intensity with a condition, and A-2 which is a defunct zoning designation from our 1981 Zoning Code.

Here's a zoning map of our subject properties. Here's an aerial view. In the lower left hand corner it is a commercial development as a business center. The master plan modifies the boundaries of two planning parcels designated as P21 and P22. And it will also incorporate 3.95 acres of undeveloped land into those boundaries. As part of this, there is going to be an additional roadway providing access to Rinconada Boulevard and Bataan Memorial East. The amendment also proposes five commercial industrial use lots that will follow boundary lines of the associated Rinconada Industrial Park Preliminary Plat that we'll be hearing after this. The amendment also proposes a secondary access to the north along what we call planning parcel P3 for future roadway development and providing access to Park Hill Estates.

Here is the proposed master plan. As you can see the zoomed in one is the secondary access for the future local roadway. This one is the boundary adjustments, as we can see we're incorporating this 3.95 acres into the boundary. And this is a land use table depicting what the new parcels are going to be.

The second part of this is a zone change proposal. The subject property is conformed to associate the Rinconada Industrial Park boundaries and corresponding zoning districts. The proposed zones are going to be for lots one and two which are a stacked zoning of M-1/M2 and C-3. This will allow for any changes of businesses within that shopping center as well as provide the ability to increase the density of industrial standards. Lot three is going to be M-1/M-2 which is our industrial standard. Lot four will be a C-2 commercial medium density zoning district. And lot five will be C-3 as well.

At the time reviews were sent out to all relevant agencies staff had no major concerns for the approval of the master plan. At the time of the presentation, and staff reports that were sent out, staff did not receive any phone calls or e-mails. The staff recommendation is that P&Z is the final authority on the master plan and a recommending body to City Council on the rezoning. Individual motions and votes for each proposal are needed. Staff recommends approval of both proposals based on the following: The master plan and rezoning are consistent with submittal requirements outlined in Section 38-2 of our zoning code and Article 2 of the Subdivision Code. We also based upon staffs analysis, the proposal meets the intent of the Comprehensive Plan Elevate Las Cruces and outlined in Section 38-2 of the Zoning Code as amended and fulfills the purpose of the Las Cruces Municipal code Section 2-382. This master plan amendment and rezoning is also harmonious and not out of character with the uses and existing

zoning districts of the surrounding area. On July 14th, our Development Review Committee met and recommended approval of the master plan amendment. Today your options are to vote "yes" to approve, vote "no" to deny, or vote "yes" with conditions.

Gordon: All right. Thank you John. Anyone from the public who has something to say?

Binns: For your record my name is Eddie Binns.

Gordon: Okay, sir. I know you're familiar with this also. I have to still swear you in, Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Binns: I do.

Gordon: Thank you. Go ahead sir.

Binns: Good afternoon. And hello Sharon Thomas. Wish she was here so we could wave at each other.

Thomas: *(inaudible)*.

Binns: Anyway, John, you did a good job in presentation. And I can't resist the opportunity to get up and visit with you folks just a little bit. John, would you help me out and pull out the master plan amendments, we'll start with that and give you a little bit of history of way we think. Number one, you can see over in our lower right hand corner, the area that is ballooned is a roadway that goes from my project into the Park Hill subdivision. This was a roadway that was negotiated between developers to provide a fire exit into that region for the benefit of the neighborhoods given it's a better fire access. And also it gave us an access for a sewer line to feed an area that was questionable whether we could feed it. So there's a no brainer so to speak.

If we take a look below, let's blow up the industrial subdivision a little bit there and see it. Okay, again you can see that the new proposed road in the subdivision goes into a cul-de-sac. In looking at good development, I feel that we did not need industrial traffic traveling through an industrial area entering into a residential area. So that we isolated the industrial activity with a cul-de-sac and closed the road which was proposed at one point in time to go back in through a residential subdivision. And again, to me that's a no brainer and it's a thing that makes a better project for me and all the other people involved. The new road that is proposed to come in there, obviously, we've had a go through the highway department and we have had approvals and grants and such and negotiated the acceleration lanes on that particular item. So that those things are moving *(inaudible)* there.

John help me out and let's go to the map area that shows boundaries a little bit better. The area that shows boundaries. There we go. This one gives a little better explanation. The large area there that says subject property is property that has been zoned industrial, and this back portion, for the last 30, 40 years, it was zoned a long time ago. The small odd-shaped property to the right hand side there next to Rinconada is a piece of property that I just acquired through a property exchange with the City of Las Cruces. That property was acquired in a trade to enlarge the Veterans Park so that the park grew by another five acres for parking and improvements to access to behind the dam. And in exchange this piece of tract of land was acquired in that exchange. This piece of land carried an agriculture or an unzoned situation when it was acquired, because it had been sitting in abeyance for that time. So therefore looking at it nobody wants to live on the corner of Rinconada and Highway 70. And it's a natural for some form of commercial activity. And that's why we're asking for commercial activity on that corner, because it's what is logical use and best use is. The industrial activity is still standing there and is doing a little cleanup as far as the boundaries are concerned so that they comply with the lot lines of the new subdivision. But it gives you a little explanation of what's going on and what I think is good planning. And it's an opportunity to visit with you folks just a little bit and give you an idea of what's going on. The subdivision layout is, again simple lots blocked off for potential use for future development activity. With that, I think I've said enough and I will leave the door open. I'd be glad to answer any questions you all might have regarding it. And thank you for your time.

Gordon: Mr. Binns. Thank you. Thank you very much. Does anybody have any questions of Mr. Binns?

Bennett: I don't have any questions. I just wanted to thank you for that breakdown.

Gordon: Then I think that we might be ready for a vote. All right, then can we get a motion to vote on number one, which will be the approval of the master plan.

Bennett: I make a motion to approve the master plan.

Gordon: Can we get a second?

Smith: I second that motion.

Gordon: All right. Could you call the roll please?

Baum: Board Member Thomas.

Thomas: I vote yes based on staff recommendations and *(inaudible)* with Elevate Las Cruces, and also because *(inaudible)* industrial areas *(inaudible)* for a long time *(inaudible)* to see this happen.

Baum: Thank you. Board Member Smith.

Smith: I vote yes based on staff recommendation, also it appears to be best use of that that property.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation and the conversation today.

Baum: Board Member Muniz.

Muniz: I'll vote yes on staff's recommendation and I like the idea that this plan is for the present but he's also, the development he's looking toward the future also development there.

Baum: Board Member Vega.

Vega: I vote yes. I think that was a very helpful overview also. It supports the Elevate Las Cruces and based on staff recommendation.

Baum: Board Member Mr. Gordon.

Gordon: Based on findings, my site visit, staff recommendations, Elevate Las Cruces, and I think this is an excellent choice for this piece of land. It's been sitting there vacant as long as I've been living in Las Cruces. And I hope that we get some nice development in there that will also provide us with some jobs. Therefore, I guess we have a vote 6:0. Thank you.

4. **Rinconada Industrial Park Zone Change:** A request for a zone change for multiple properties/parcels from A-2 (Agriculture 1981 Zoning Code), M-2 (Industrial Standard), and C-3C (Commercial High Intensity-Conditional) to C-2 (Commercial Medium Intensity), C-3 (commercial High Intensity) and M-1/M-2 (Industrial Standard). The properties are located west of Rinconada Boulevard and north of Bataan Memorial West at 3403 Rinconada Blvd and 3497 Bataan Memorial West in the proposed Rancho Del Rey Master Plan Amendment No. 3. Submitted by Underwood Engineering, representative.

Gordon: All right. All right. Then we can move on to the next item, which is the Rinconada Industrial Park Preliminary Plat. Oh, I'm sorry. Forgot already. We need a vote on the zone change. Can I get a motion to approve?

Bennett: I make a motion to approve the zone change.

Gordon: And a second please?

Vega: Second.

Baum: Board Member Thomas.

Thomas: Yes. I vote yes *(inaudible)*, and Eddie Binns description. And I would also like *(inaudible)* to Mr. Binns as companies come there to please work with Workforce Connection to make, so we have *(inaudible)* with the skills so *(inaudible)*.

Baum: Thank you. Board Member Smith.

Smith: I vote yes, based on staff recommendation and also it meets the objective of the master plan.

Baum: Board Member Bennett.

Bennett: I vote yes based on staff recommendation.

Baum: Board Member Muniz.

Muniz: Vote yes on the staff recommendations.

Baum: Board Member Vega.

Vega: I vote yes, based on staff recommendation.

Baum: Board Member Gordon.

Gordon: I vote yes based on staff recommendations. All right. Thank you. Now we have a vote on that for 6:0.

5. **Rinconada Industrial Park Preliminary Plat:** A request for a preliminary plat known as Rinconada Industrial Park. The proposed subdivision encompasses 18.598 + acres, is zoned A-2 (Agriculture 1981 Zoning Code), C-3C (Commercial High Intensity – Conditional), M-2 (Industrial Standard), is located east of Rinconada Boulevard and north of Bataan Memorial West, and is part of the proposed Rancho Del Rey Master Plan Amendment No. 3. The preliminary plat proposes five lots for the development of Industrial and Commercial land uses. Submitted by Underwood Engineering, representatives.

Gordon: All right now we can move on to item number five, which is a Rinconada Industrial Park Preliminary Plat. Can I have a motion on that please?

Vega: Make a motion to approve the preliminary plat.

Gordon: And a second.

Bennett: I second that motion.

Gordon: All right. Thank you. John.

Castillo: Once again good evening. This is an association and it's also connected to the Rancho del Rey Master Plan amendment. This is a requested approval for the Rinconada Industrial Park Preliminary Plat. Current conditions of the property are to be located east of Rinconada Boulevard and north of the Bataan Memorial East. It is comprised of multiple parcels that are 18.59 acres. as previously stated is currently zoned to M-1/M-2, C-3, and A-2.

So we are proposing five lots which are going to be commercial industrial use lots. There is going to be proposed interior local roadway as explained previously, and it will also provide access to Rinconada Boulevard and Bataan Memorial East. Staff recommendation is approval for approval based on the following findings: The proposed preliminary plat known as Rinconada Industrial Park complies with the requirements and standards of the City of Las Cruces Subdivision Code and Design Standards. It has been reviewed by relevant City staff and complies with all requirements of the 2001 Zoning Code. It is also supported by Elevate Las Cruces Comprehensive Plan.

On July 21st, the DRC met and provided a recommendation of approval. It was sent out to all relevant agencies and departments, there was no issues. It also took place at DRC for a discussion. No input was provided from the public as it was sent out to surrounding properties. Today's option is to vote "yes" to approve, vote "no" to deny, or vote "yes: with condition.

Gordon: All right. Thank you. Is there anyone from the public or anyone, I'm sorry is there anyone from the presenter of the petitioner who would like to make a comment? If not anybody from the audience? Mr. Binns you'd like to say something? Since you're already sworn in.

Binns: I'm still swore in. Just my first rodeo.

Gordon: Okay.

Binns: I don't have a whole lot to add. But I have an opportunity to stand up and visit with you folks for just a half a minute. And I think what we're looking at

is *(inaudible)* standard. But what I've got to say is a thank you to ladies and gentlemen in this room that are listening to this stuff back and forth. Unfortunately, the majority of Las Cruces has no idea of what you guys put up with, how many hours you spend trying to see that Las Cruces is developed in a reasonable manner. And I tried to make people aware of people such as you that donate your time to a planning and zoning staff to try to see things are done reasonable. And it gives me an opportunity to express from not only I but from some of the other developers in the area a thank you for spending the time and effort that you do trying to see Las Cruces built in a reasonable manner. And I thank you, and sorry you have to put up with so much crap sometimes.

Gordon: Mr. Binns. Thank you very much for those kind words. We certainly do appreciate it. We will hope that we will continue to do the same in the future. Okay, then we move on to item number five, which is the Rinconada Industrial Park Preliminary Plat. Can I have a vote to approve?

Vega: I make a motion to approve.

Bennett: I'll second. All right, then John. We need a roll call.

Baum: Board Member Thomas.

Thomas: I vote yes, *(inaudible)* recommendation and again we need *(inaudible)* say so.

Baum: Board Member Smith.

Smith: I vote yes, based on the staff recommendation. Also the neighborhood character and compatibility. I know this area continues to grow residentially; I think it's important that we have areas for commercial development too. I think that'll help minimize far as like travel that people make to shop and also to just, it just helps with just the livability of that area.

Baum: Board Member Bennett.

Bennett: I vote yes, based on staff recommendation, meets development standards of the zoning code and Elevate Las Cruces as well.

Baum: Board Member Muniz.

Muniz: I'm voting yes on staffs approval.

Baum: Board Member Vega.

Vega: I vote yes. It supports Elevate Las Cruces and based on staff recommendation.

Baum: Board Member Gordon.

Gordon: I vote yes on staff recommendations, my site visit, and it does meet the zoning code requirements, and certainly will hope the Elevate Las Cruces. All right then thank you John.

6. **Zoning Code Amendments for Cannabis Uses:** Various amendments to Chapter 38, Zoning Code, of the Las Cruces Municipal Code for the purpose of adding cannabis related uses to ensure compliance with the State of New Mexico Cannabis Regulation Act. The following sections are subject to amendments:

   - Sec. 38-21. Specific Definitions;
   - Sec. 38-31. Residential Zoning Districts A. 2. (Single-Family Rural Residential Zoning Districts, Zoning District Descriptions);
   - Sec. 38-32. Office, Commercial and Industrial Zoning Districts B. 2. (Commercial Zoning Districts, Zoning District Descriptions)
   - Sec. 38-32. Office, Commercial And Industrial Zoning Districts C. 2. (Industrial Zoning Districts, Zoning district Descriptions);
   - Sec. 38-32. Office, Commercial, and Industrial Zoning Districts C. 2. (Industrial Zoning Districts, Zoning District Descriptions);
   - Sec. 38-32. Office, Commercial, and Industrial Zoning Districts C. 2. (Industrial Zoning districts, Zoning District Descriptions);
   - Sec. 38-33 Matrix Land use Table and Parking
   - Sec. 38-33c Agriculture & Equestrian Land Uses;
   - Sec. 38-33g Retail Land Uses;
   - Sec. 38-33i Manufacturing & Related Land Uses, Including Associated Assembly, Processing, Packaging, and Compounding;
   - Sec. 38-53 Conditional Uses; and
   - Sec. 38-54 Special Use Permits.

Gordon: Then we move to the last item on the agenda, which is item number six which is zoning code amendments for cannabis use.

H-Rogers: Good evening Members of the Commission. Let me go ahead and open the presentation. All righty, I'll go ahead and get started if that's all right. Katherine Harrison-Rogers for the record. Hopefully most of you are aware but back in March the Cannabis Regulation Act otherwise known as House Bill II, was approved by the state to legalize recreational cannabis for adult use. The state has organized the Cannabis Control Division, it's part of the state's Regulatory and Licensing Division. They're responsible for the licensing and regulation of cannabis uses throughout the state. The City of Las Cruces also plays a role. We are in charge of determining the most

appropriate land uses or zones for which those types of uses can occur. We process the business registrations related to this. And of course we're applying the building codes as it relates to the various types of occupancies, be it retail or manufacturing or things of that nature. September 1st we have some hard deadlines in terms of what we do with cannabis in the City. September 1st the Cannabis Control Division will begin processing permits for the producers, those are the growers, the micro businesses, and also licensed medical cannabis businesses. Because of that, we need to respond and establish some guidance in our land use codes, namely zoning, to accommodate these types of uses.

We're anticipating also September 1st that we will begin doing business registrations for these producers and the micro businesses and the licensed medical cannabis businesses. Starting January 1, 2022, the state will begin issuing server permits, and also the commercial medical licenses and start accepting all application types, so that's those retail businesses. And we will also begin doing business registrations for all the other cannabis business types. April 1st, it's anticipated that those retail sales of cannabis will begin.

So with that little history, I'm going to talk about some of the land use implications. This is a really large, growing and producing operation. This is a cannabis operation. And apologies, I don't recall if this one is in Indiana or if this one was in Canada. So the Cannabis Regulation Act outlines what we, as a municipality can do. We can control the time, the manner, and the place of the cannabis businesses including density. We cannot restrict transportation, prohibit operation, prohibit or limit signage. We can't require the relocation of existing businesses such as the medical cannabis dispensaries, and we can't prohibit personal use or production. So what we have done and what's been presented before you today, and I'm going to give you a nice summary so that it's not as complicated as perhaps it may have seemed in your packet. We are modifying certain code sections to accommodate these uses. This does not include any changes to our overlays as they stand today. That's because they are unique and require oftentimes additional public hearings in front of the board specific to those overlays. But we will get to that. But this is to accommodate the rest of the City at least for the time being.

So with that we are adding specific definitions to 38-21 where all of our definitions live. We are adding some uses specific to our residential zoning districts, our office and commercial districts, as well as our industrial districts. We are adding these uses to our land use table and parking requirements. We are adding these specifically to some agricultural and equestrian land uses, retail land uses, and again manufacturing and other types of land uses, as well as adding some conditions, and some of these uses with special use permits.

Now these are just a listing of the sections in the code that are being affected. I'm going to talk about what that really means in a nice, tidy summary for you. So these recommendations are for cannabis retail to add those to the C-1, which is our low intensity commercial zone, neighborhood commercial is what that is. Adding those to C-1 and adding those to C-3. These are all of our commercial zones in the City. We're recommending that there be no consumption in the C-1 zone. The reason behind that is because the C-1 zone really is intended for those small neighborhood commercial types of uses. And at this time the City doesn't allow for bars or taverns at that location, so it made sense to us that there wouldn't be consumption sites at that location.

We're also recommending that cannabis industry, that would be your growers, your manufacturers that produce various types of extracts, the big packaging and warehousing types of uses, be located in our standard industrial zone, which is the M-1/M-2 and M-3 zone, which is our more intensive industrial zone. Cannabis research laboratories, again we are recommending that those be allowed in all of the industrial zones with the inclusion of our technology zone, which really is geared towards research. The reason behind that is the cannabis research is allowed to do some larger scale cultivation research and things of that nature.

And then we're recommending that cannabis micro businesses, this is our version of a micro business, the state's version I'll explain that in a little bit more detail in a second, we're recommending that those be allowed in our agriculture and low density, single-family residential zones, specifically equestrian estate, EE and REM, which is residential estate and mobile, with a special use permit. Now the reason behind that is because those specific zones allow for horticulture of all types, and they also allow breweries and wineries at those locations with a special use permit if of course those crops are grown on site. So it's a logical transition for that.

In terms of the state's definition of micro business, which there's several different variations, there's a producer, there's the vertically integrated micro business, the maximum amount of plants that can be grown at those locations is 200 adult plants. And these are allowed not just at this location, but they're also allowed in all of the industrial zones that we've outlined here. And there is an opportunity in the code, if not otherwise allowed, to be able to utilize our Infill Development Process to then allow those at other locations as well, specifically those underutilized or vacant lots or buildings around the City. You've seen many of those types of projects come before you in terms of those Infill Development Projects. It is a free process, and it is an expedited process the City does for people who qualify.

There are some conditions that we're recommending. We're recommending that all cannabis uses be 300 feet from a school or daycare. Now the state has very specific requirements in terms of essentially what that can be. They are trying to prevent I guess jurisdictions perhaps from making those distances too great, and so this is actually the cap, the maximum cap of distance from a school or daycare that we can apply. We can't require more than this. And so we're requesting the maximum that was recommended by the state.

For cannabis retailers, I'm going to talk about these buffers in a little bit more detail. One of the elements that's listed in the house bill is that we can control density, time, place, and manner. We're recommending 300 feet from single-family residential zones, and 1000 feet from other cannabis retailers, that's in between. I'm going to talk about some of the public input we've received thus far about that and also some of the discussions that took place at City Council yesterday evening.

Again, one of the provisions that we've added is that these could be closer if a Special Use Permit was obtained and would go before this Commission. In terms of the cannabis industry, again it's going to be 300 feet from a school or daycare. In addition to that there is the ability as part of the conditional uses to allow accessory retail as part of industry. That's something that's already outlined for most of our industrial uses. It is capped though; it really has to be primarily industrial or manufacturing or growing. And then of course, you can have a little retail shop attached to that. Again, cannabis micro business with a Special Use Permit in the EE or REM zones, that would be accessory to a primary residence, you would have to live on site, it would be limited to no more than the 200 mature plants if you were to be growing on site. The products for sale must be grown on site and then located fully in an enclosed accessory building. And we're requesting that they be 100 feet from other residences. If you recall these zones are actually large lot zones, and so generally the 100 foot distancing is predominantly not an issue to be able to achieve that on these lots that are that are half acre, acre, and larger.

So I have some examples of some grow facilities, some large, some small in terms of how they could be done. Just some photos, some of them can be quite large when we're talking about some of the industrial grow areas, indoor and outdoor. Some examples of retailers, you know it looks like a pharmacy or any other sort of small boutique retail.

We do have some policy considerations that have come about from a survey, a work session that we had with City Council, as well as a public meeting that we held, I think that was about a week ago. One of the questions was related to buffers, I'd like to talk about that first. That's maybe a little out of order of the slide, but it's one of our biggest concerns in terms

of the distancing buffers to try to control densities within the City. The New Mexico Cannabis Chamber of Commerce actually did support a 600 foot or less buffer between businesses. I would like to point out that alcohol uses currently in the City, and pharmacies are not buffered from one another or from residential zones. And we don't have density limitations at this point in time. I do want to point out though, that alcohol was sort of self-regulated in terms of the densities that could occur in the City until very, very recently. The State of New Mexico had very limited number of alcohol permits that were available for people to purchase around the state. Of course those limitations have been lifted. So at this point in time the City has never limited the density of alcohol locations. But that's something that might change in the future depending upon what happens with the lifting of those restrictions by the state. Do you want to say that we do have some buffers throughout the City, for example I realize this is not apples to apples, but I just do want to point out there are some buffers that we do have in the City. Adult uses, we do have several buffers related to those. Amusement parks have buffers. Body shops and paint booths have buffers. And the extraction of raw materials have buffers. Again, this is an entirely different industry but I do want to point out some of them do exist in our code.

In terms of what occurred at City Council work session, it really was a split discussion in terms of whether or not the distancing buffer was supported in full or if there was a thought process behind whether or not it should be reduced. I did hear from some Councillors that one was supportive of the 1,000 feet, others were supportive of 600, or perhaps a City block, which is about 300 feet. And there were some questions about maybe exploring whether or not we should buffer at all and perhaps to do a little bit more research about that.

And I did want to speak about consumption areas as well. The way that the state has it listed is they really don't differentiate between indoor and outdoor consumption areas in terms of how that's licensed. But we did want to point out that we do have some concerns about informed consent, and outdoor smoking. So for example, if we had several outdoor consumption areas and people were to be in an area where they were exposed to that secondhand smoke, it could be problematic. And so at this point in time we're actually recommending that a condition be added to this for consumption areas in particular, that they be limited to indoors, and also be in compliance with the Clean Indoor Air Act as amended.

It should be noted that the House bill actually says we may have consumption areas, we're not obligated to have them throughout the City. But I do want to point out that we don't exclude alcohol consumption areas. And so it doesn't really make logical sense at least in a land use sense to exclude those as well together.

And so at this point in time staff is recommending approval of these particular amendments, with some of the considerations that we've outlined, that I just did discuss about the indoor consumption areas and perhaps leave it up to this Commission and City Council to determine whether or not they're comfortable with that 1,000 foot buffer, or if there's a preference to reduce that moving forward. And today your options are to approve, to deny, vote "yes" with conditions, or to table. I would like to point out this is just a recommending body to City Council. And while we're feeling pretty confident about the amendments that we've drafted thus far, there is a possibility that they could be amended at City Council. And with that I stand for any questions. And it does look like we have several people in the audience. So I'm sure there will be some public participation.

Gordon: All right. Thank you Katherine, for that presentation. Very nice. But before we continue I think we're going to need a motion to approve the zoning code amendments for cannabis use. So can I have a motion please?

Bennett: I make I make a motion to approve the cannabis uses amendment.

Gordon: I have a second.

Vega: I second.

Gordon: Did the Commission have any questions? I didn't think so. Go ahead. Maybe roll call on the motion. Well, I thought we would vote on that first but okay. All right can I ask, is there anybody in the audience who wished to speak? I only see one person, two people. Two. All right then. Can someone please come forward and we can start? Yes. I guess you could have as much up to five minutes. We're not having that many people. So before you start, can we please have your name?

Pacheco: Derek Pacheco for the record.

Gordon: All right. And I have to swear you in. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Pacheco: I do.

Gordon: All right. Go ahead sir.

Pacheco: Thanks for having me. I just wanted to voice my opinion for the residential buffer zones that are a potential for this. If we enact more rules on top of what we already have, we have lots of governing bodies including codes, and all sorts, right. If we start enacting rules as far as distance that don't match with other rules such as alcohol consumption distances and available

locations next to residential, then we're kind of re-stigmatizing the entire plant and we're not trying to do that. So I'm asking you to consider dropping any sort of buffer zones for sales and consumption as related to residential. Thank you.

Gordon: All right. Thank you. Someone else? All right. Please state your name.

Pearson: Alyssa Pearson.

Gordon: All right. Can I swear you in please?

Pearson: Yes sir.

Gordon: Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Pearson: I swear.

Gordon: Thank you. You can continue the.

Pearson: Yes. So for the most part I want to say the rules that have been proposed so far exceeded my expectation. My biggest concern that I have is with the cannabis industry proposed rule. What I noticed in the presentation is we saw what industrial grows looked like, we saw what small grows look like, we saw what retail locations look like, but there was no visualization of what production looks like. And part of the reason for that might be that production can vary. It can vary from a huge industrial manufacturing facility, where you have volatile compounds, where you have potential for explosion. There was a big explosion at an extraction plant in Albuquerque. So I understand why the tendency is to think of those things as being industrial processes. However, there are ways of producing cannabis and cannabis products that aren't in line with traditional industrial processes, in line with the City's already existing cottage industry zoning regulations, light manufacturing regulations. That's what a lot of cannabis manufacturing is going to look like. You're going to see small commercial kitchens, where, especially for the micro producers, the micro businesses, you know maybe a stove, maybe an oven, just a standard kind of commercial kitchen. So this idea that we would need an industrially zoned lot to make gummy bears is a ridiculous burden, well maybe that's a little strong word. It is an undue burden especially on small businesses. And in line with the Elevate Las Cruces plan and the recommendations, you're looking for things like economic equity, you're looking for things like entrepreneurship. And if you're forcing us to get industrial land, which is limited, which is expensive, you're also creating this potential for out of state, out of City businesses to come in, swipe up that land, raise the prices, and that's going to push small producers out. That's going to limit entrepreneurship. And it's not in line

with the rationale that you've used for other, for bakeries for candy manufacturers. So I hope that maybe there can be a consideration to add to the rules a light industrial process, or in light industrial cannabis industry. Does the board have any questions for me?

Gordon: Does anyone on the Commission have any questions? I see none. All right. Seeing none. But thank you.

Pearson: Thank you.

Gordon: I think that these comments are well taken. I think perhaps you should plan on attending a meeting with City Council when they take this matter up and present your same arguments.

AUDIENCE MEMBER SPEAKING, NOT AT THE MICROPHONE.

Gordon: Well, the minutes from tonight's meeting will go to City Council so I'm sure that they will see your comments and perhaps someone will take notice of it and perhaps even think of doing something in respect of what you've said. So thank you. All right, if there's no one else perhaps now we could have a vote on the approval of the zoning code amendments for cannabis uses.

Baum: Board Member Thomas. Board Member Thomas.

Thomas: I would like to have *(inaudible)* I have a few questions.

Gordon: We never heard you ask one.

Muniz: Trying to get …

Gordon: I'm sorry then, go ahead.

Thomas: So I want to ask Katherine. The two questions here were wanting to *(inaudible)* that alcohol distances and cannabis distances to be the same. And that don't force small growers *(inaudible)* to have to buy commercial land. Both of those included in what we're voting on?

H-Rogers: Commissioner Thomas. You were asking about wanting to make alcohol buffer distances as well as the distances for cannabis retailers the same, is that correct? It's really hard to hear you so I'm trying to interpret.

Thomas: Thank you. Yes. What the gentleman asked that what's being suggested for cannabis does not match with alcohol.

Gordon: Commissioner Thomas. We're having a lot of difficulty in understanding what you're saying. I don't know if it's a connection you have with your telephone. But you can try that again, please.

Thomas: The suggestion was that the cannabis distance should match the alcohol distance.

H-Rogers: Commissioner Thomas. So you're recommending that we do away with the buffers? Is that correct? Is that what I'm hearing?

Thomas: I'm asking if the gentleman's right, that we, that the buffer that he doesn't *(inaudible)* in there.

H-Rogers: So currently the way it's written there is a recommendation to have a 300 foot buffer from single-family residential zones. And then of course the 1,000 foot buffer between business locations. But again, we've had a lot of feedback on those and so if you have a recommendation to remove those or modify those, that would be something that would need to come from you at this point in time.

Thomas: My other question was the comment about please don't force them to have to buy commercial land. Is that how it's written?

H-Rogers: Commissioner Thomas, Members of the Commission. The way we have the language is that for what we're calling producers, manufacturers, things of that nature, they would be limited to the industrial zones, with the exception of the micro businesses, which would be allowed in the agricultural zones, EE and REM, with a Special Use Permit. Further, there's the ability for people to obtain an Infill Development Process approval for eligible properties if they were to go through that to maybe allow those on those underutilized or vacant properties throughout the City.

Thomas: Okay. Thank you.

H-Rogers: You're welcome.

Gordon: So did I hear her ask for a motion?

Thomas: No, I didn't ask for anything. I was only asking for clarification.

Gordon: All right. Thank you. All right, then if there isn't anything else, now can we vote?

Muniz: I've added my light on. I'd like to ask staff a question. Have you talked to other communities who have legalized medical and recreation sales of marijuana? And if you have, have you shared, have they shared problems

with you and successes. I go to Colorado quite a bit and I know that they've had some problems. And I just wonder has staff gone out to other communities to see how they've worked things out.

H-Rogers: Thank you for the question. Commissioner Muniz, Members of the Commission. Yes staff, including City management, has been really involved in looking at other communities in terms of how they've handled this. One of the unique things about California and Colorado for that matter is that the state gave them an opt in or an opt out ability in terms of whether or not municipalities or counties wanted to consider recreational cannabis. The State of New Mexico has not given us that option. We are obligated to do it. And we've been speaking with the Municipal League, other jurisdictions within New Mexico, to determine sort of the best methods by which to do that. But we are somewhat unique in terms of how it's being handled specifically here compared to some of the other states.

Muniz: Thank you.

H-Rogers: You're welcome.

Smith: Katherine.

H-Rogers: Yes.

Smith: Before we vote, I did have some concerns about the buffer as far as outdoor consumption site. I know the analogy was used of bars serving alcohol, you know you can have bars beside each other and people can sit outside and consume alcohol. But I think with the use of cannabis outside, if you have two or three cannabis businesses beside each other where there's outdoor consumption, there is a density that could be created with secondhand smoke, which doesn't occur with alcohol consumption. That would be one of my concerns with eliminating any buffers between businesses for on site or outdoor consumption.

H-Rogers: Thank you. Members of the Commission, Commissioner Smith. Yes, so one of the concerns that staff has and we've brought up is informed consent and being exposed to that secondhand smoke. And one of the recommendations while not written into the language that you were provided in your packet, but that was discussed tonight, is that perhaps those consumption areas be limited to indoor only. It would have to be a motion made by this Commission if you were if you wish to move forward that way, or as you stated continue to have those buffers between retailers.

Gordon: Right now I see a hand from the audience. Do you wish to speak? All right, then come forward.

Estrada: My name is …

Gordon: Please state your name.

Estrada: Randy Estrada.

Gordon: I have to swear you in. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Estrada: Yes.

Gordon: All right sir go ahead.

Estrada: Okay. This is a comment on the idea of treating, going about the informed consent. My question here is, is it because of a health concern or is it an intoxicant? How is it that we're metering this? Because we don't treat tobacco the same way. And that is another regulated substance that we allow in a consumption area that is covered by the bill, for how it is allowed in those areas, whether they be casinos or already preapproved tobacco consumption areas. I believe that that is another additional stigmatization of how something works. You are already informing the idea that I'm going into a nonclean air space with tobacco, whether you accept that that is not a carcinogen is for you to decide. That is not the difference between cannabis and tobacco, it becomes the same issue. Are you going into smoke? Yes or no?

That's really all I have to say is you decide that you go into a smoky area, you're exposing yourself to carcinogens and all kinds of just bad health effects in many different ways. So I just look at it that way. You already know you're walking into an area; it's already been approved; we should look to see how it is that we then meter those experiences for individuals. Do we put signage to let someone know, this is a fully open smoking area both cannabis and tobacco is allowed? So another consideration for the City to go about thinking about these kinds of things. Because if we're taking away the stigma of it being a prohibited substance, something that we've had prohibition, then we should look at it as how it is we already use substances that are regulated. Thank you.

Gordon: All right. Thank you sir. Is there anyone else? Sir in the back do you want to speak? All right. I see your hand was up. I'm sorry. Commissioner Smith, are you willing to make a motion to that effect?

Smith: Yes, I make a motion that we vote on, the cannabis zoning.

Gordon: Just a second. All right. Thank you. I understand. All right then I guess we are ready to vote on this amendment. So we have a vote to approve the zoning code amendments for cannabis uses. Can you call the roll?

Baum: Board Member Thomas.

Thomas: I vote to approve based on *(inaudible)*, on staff and tonight's *(inaudible)*.

Baum: Thank you. Board Member Smith.

Smith: I vote yes that we approve with the condition that we maintain a buffer for outdoor consumption.

Baum: Board Member Bennett.

Bennett: I vote yes to approve based on staff recommendation and commentary today.

Baum: Board Member Muniz.

Muniz: I vote yes to approve the amendment.

Baum: Board Member Vega.

Vega: Yes, based on staff recommendation.

Baum: Board Member Gordon.

Gordon: I vote yes, based on the staff recommendations. Therefore we have a vote of 6:0.

IX. COMMISSION COMMENTARY

Gordon: All right, then we can move on. Does anybody from the Commission have any comments for this evening?

X. STAFF ANNOUNCEMENTS

Gordon: All right. Are there any staff announcements? Katherine.

H-Rogers: Chair Gordon, Members of the Commission. I do want to remind everyone that we are getting close to having a copy for review of our code diagnostic. It's our first phase of Realize Las Cruces, our zoning code and land use code amendments. And the diagnostic is a report that will inform the way the draft is not only structured, but some of the bigger topics of concern. And it's an excellent tool at least to inform you all, what those big concerns

are. We're proposing to have a joint City Council and Planning and Zoning Commission work session that will be held August 23rd. So please do reserve that. That would begin at 1:00 p.m. in the afternoon. It is a daytime meeting. So if you're unable to attend, of course we will have the information for you. But by all means we encourage you to attend that meeting. And I know I sent an e-mail about it and you'll be receiving invites, if you haven't already. And, and we look forward to hearing your input and having you all review that code diagnostic and get well on our way towards actually drafting sections of the code.

Gordon: All right Katherine. If there's nothing else,

XI. ADJOURNMENT (7:51)

Gordon: Do we have a motion to adjourn? It is now 7:50.

Bennett: Make a motion to adjourn.

Gordon: A second.

Vega: I second.

Gordon: All in favor Aye.

MOTION PASSES UNANIMOUSLY.

_____

Chairperson

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:

Attachment "A" Bond Ordinance - State Shared Gross Receipts Tax Cycling Bonds

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 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 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. ____ 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.

"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.

"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.

"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.

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 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.

"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 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.

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

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. ____, 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:

_____

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 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 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.

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 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 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 day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

COUNCIL BILL NO. _____

ORDINANCE NO. ____

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 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. ____ 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.

"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.

"Depository" means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

"Event of Default" means any of the events stated in Section 25 of this Bond Ordinance.

"Expenses" means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including, to the extent applicable, the fees, compensation, costs and expenses paid or to be paid to the Paying Agent and Registrar, the Insurer and legal fees, financial advisor fees, expenses and applicable gross receipts taxes, costs of printing and distributing the Preliminary Official Statement and the Official Statement, rating fees and accounting fees and expenses.

"Fiscal Year" means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the City as its fiscal year.

"Fitch" means Fitch Ratings, Inc., its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Bond Ordinance and not solely to the particular section or paragraph of this Bond Ordinance in which such word is used.

"Hold Harmless Distribution" means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978.

"Independent Accountant" means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City who (i) is, in fact, independent and not under the domination of the City, (ii) does not have any substantial interest, direct or indirect, with the City, and (iii) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

"Insured Bank" means a bank or savings and loan association insured by an agency of the United States.

"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.

"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.

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 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.

"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 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.

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. ____, 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:

_____

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 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 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.

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 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 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:

_____
Ken Miyagishima, Mayor

ATTEST:

_____
Christine Rivera, City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councilor Gandara:	_____
Councilor Abeyta:	_____
Councilor Graham:	_____
Councilor Bencomo:	_____
Councilor Corran:	_____
Councilor Flores:	_____

APPROVED AS TO FORM

_____
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

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.

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:

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:

Purpose	**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.

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.

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)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

COUNCIL BILL NO. _____

ORDINANCE NO. ____

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:

Purpose	**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

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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:

_____
Ken Miyagishima, Mayor

ATTEST:

_____
Christine Rivera, City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councilor Gandara:	_____
Councilor Abeyta:	_____
Councilor Graham:	_____
Councilor Bencomo:	_____
Councilor Corran:	_____
Councilor Flores:	_____

APPROVED AS TO FORM

_____
Jocelyn Garrison, Acting City Attorney