

CITY COUNCIL AGENDA

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

Tuesday, January 3, 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](tel:541-2115).

CONSENT AGENDA

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

Page

1. OPENING CEREMONIES

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

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. Work Session of December 12, 2022.

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

- 6.1. RESOLUTION NO. 23-078: A RESOLUTION TO APPROVE A COMMERCIAL LEASE AGREEMENT WITH BINNS ENTERPRISES FOR THE STORAGE OF LAS CRUCES MUSEUM SYSTEM COLLECTIONS AND EXHIBITS IN THE AMOUNT OF \$96,000.00 ANNUALLY.

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[Resolution No. 23-078 - Pdf](#)

- 6.2. RESOLUTION NO. 23-079: A RESOLUTION TO AWARD A FIVE (5) YEAR LEASE WITH UPPER VALLEY INVESTMENT CORPORATION OF EL PASO, TEXAS COMMENCING ON JULY 1, 2021 FOR THE LAS CRUCES FIRE DEPARTMENT TRAINING FACILITY AT 1670 SOUTH VALLEY DRIVE IN LAS CRUCES, NEW MEXICO IN AN INITIAL AMOUNT OF \$120,000.00 ANNUALLY, INCREASING INCREMENTALLY OVER THE LIFE OF THE LEASE TO \$180,000.00 ANNUALLY. 20 - 30
[Resolution No. 23-079 - Pdf](#)
- 6.3. 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. 31 - 55
[Ordinance No. 3020 - Pdf](#)
- 6.4. COUNCIL BILL NO. 23-015; ORDINANCE NO. 3021: AN ORDINANCE AUTHORIZING REPAYMENT TO THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD) FOR THE LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) PROJECT GANYMEDE GAMES, LLC., IN THE AMOUNT OF \$250,000.00 FOR THE TERMINATION OF THE PROJECT PARTICIPATION AGREEMENT AND MATCH REQUIREMENT OF \$100,000.00. 56 - 77
[Ordinance No. 3021 - Pdf](#)
7. **RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION**
- 7.1. RESOLUTION NO. 23-080: 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. 78 - 162
[Resolution No. 23-080 - Pdf](#)
- 7.2. RESOLUTION NO. 23-081: A RESOLUTION ADOPTING A FAST TRACK PERMITTING PROGRAM. 163 - 171
[Resolution No. 23-081 - Pdf](#)
- 7.3. RESOLUTION NO. 23-082: A RESOLUTION URGING THE NEW MEXICO STATE LEGISLATURE TO PASS THE AMENDMENT TO THE METROPOLITAN REDEVELOPMENT CODE [CHAPTER 3 ARTICLE 60A] PROVIDING FOR THE DEDICATION OF A PORTION OF AN INCREASE IN CERTAIN PROPERTY TAX REVENUE, LOCAL OPTION GROSS RECEIPTS TAX REVENUE AND STATE GROSS RECEIPTS TAX REVENUE TO FINANCE A METROPOLITAN REDEVELOPMENT PROJECT. 172 - 213
[Resolution No. 23-082 - Pdf](#)
- 7.4. RESOLUTION NO. 23-083: A RESOLUTION TO ESTABLISH A PILOT PROGRAM FOR THE INSTALLATION OF HYGIENE STATIONS THROUGHOUT THE CITY OF LAS CRUCES. 214 - 218
[Resolution No. 23-083 - 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. 23-016; ORDINANCE NO. 3022: AN ORDINANCE 219 - 290

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 INTENSITY), 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.

[Ordinance No. 3022 - Pdf](#)

9.2. COUNCIL BILL NO. 23-017; ORDINANCE NO. 3023: AN ORDINANCE 291 - 302

REPEALING SECTIONS 2-1206 THROUGH 2-1211 AND ENACTING NEW SECTIONS 2-1206 THROUGH 2-1213, LCMC 1997 AS AMENDED, ENTITLED INVESTMENT POLICY.

[Ordinance No. 3023 - Pdf](#)

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11. CITY MANAGER REPORT

12. ADJOURNMENT



MINUTES

Work Session Meeting

1:00 PM - Monday, December 12, 2022

City Council Chambers, City Hall

The Work Session of the City of Las Cruces was called to order on Monday, December 12, 2022, at 1:00 PM, in the City Council Chambers, City Hall, with the following members present:

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

EXCUSED:

1. PETS OF THE WEEK

1.1

Jennifer Martinez, Communications Department introduced the Pets of the Week.

2. JOBS OF THE WEEK

2.1

Giselle Palomares of New Mexico Workforce Connection introduced the Jobs of the Week.

3. AGENDA ITEM

3.1 GO BOND QUARTERLY UPDATE

David Sedillo, Public Works Director introduced the topic.

Kyle Arend, Engineering Administrator gave an overhead presentation.

Councilor Flores said you were talking about GO Bonds and how it looks like the City has met all of its goals and deadlines. And then there's more money coming in for the East Mesa based on the recent election. But the roads around there, that's CIP, that isn't covered by GO Bonds. Do you have any idea how that is being planned out?

Tony Trevino, Deputy Director, Public Works said you are correct. The Sonoma Springs extension and the Camino Coyote roadway were not part of the GO Bond, they're CIP and they are complete. There're some final touches they're going to do for some erosion issues, but all-in-all the roads are in place and useable.

Councilor Flores asked so there's that connection at Camino Coyote? Does it go all the way around now?

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Tony Trevino said they both tie into the East Mesa Sports Complex from the north and south side.

Councilor Flores asked what about the artwork at Fire Station Number 3? My understanding was that there were some delays of some sort.

David Sedillo said the artwork for the Fire Station is ready. Quality of Life has moved forward in obtaining the PO, they are in that process with the vendor, and they will be having that vendor start within the next couple of months.

Councilor Flores asked so there was no problem in the installation because of some technicalities?

David Sedillo said to my understanding there was no issues with infrastructure. I believe they made a slight modification to the foundation.

Councilor Flores asked do you know if there's going to be some kind of Grand Opening or an event that showcases Fire Station 3?

David Sedillo said we did have a Grand Opening for Fire Station 3.

Councilor Flores asked do you know if there's going to be an unveiling of the artwork?

David Sedillo said I will pass that information on to Miss Vasconcellos and ask to see if, once the art piece is installed, to see if there's going to be any unveiling of it once the artist is complete.

Councilor Abeyta said one of the items that I did want to touch base with as we've already issued other GO Bonds and looking at the East Mesa Complex, with the anticipation of this first part having the construction complete, what is going to be the wait time before we can restart construction again?

Kyle Arend said it's my understanding that portions of the work in the next phase of East Mesa Recreation Complex can begin quite soon. The lighting and lighting foundations, a lot of that work we're looking at putting back out to bid. We do expect to get that done pretty quickly.

David Sedillo said the City is preparing to sell the GO Bonds that were recently approved in this last election sometime in the spring. Once we move forward with the sale of the Bond and we receive those proceeds then we can move into those activities that Mr. Arend has explained.

Councilor Abeyta said we had a lot of changes in the last two years, especially when it came to the cost of materials. I know we've adjusted with our reserve capacity to help with some of those things, but we did have to use ARPA dollars to make up for some of those deficits. I was wondering what the plan was as far as making sure that we're anticipating some of those inflation costs that might

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go beyond the reserve or if we think that we've been able to account for that enough?

Kyle Arend said yes, you're correct; inflation has hit this project rather hard. Construction costs were exceeding their original estimates back when the project was conceived, there's a lot of work remaining to do on East Mesa. The Public Works Department is working at present with Parks & Recreation and the City Manager's Office to add additional CIP requests and to bring additional funds to bear on the East Mesa Parks & Rec.

Tony Trevino said to answer the other part of your question was for the upcoming GO Bond projects, with the consultant that we hired we did do some review back of the escalation we've had for the past four years and projected that forward for the next four years. So there has been some fluff added to those projects so we should be good enough for the infrastructure construction of all of these. The Fire Station went up about \$3 Million compared to what we had before, so we have looked into that.

Councilor Bencomo said you mentioned there was a two-month billing delay on the East Mesa Complex Recs. Is that on our side, the contractor's side, can you explain that a little bit more?

Kyle Arend said that is primarily on the contractor's side. It's my understanding that just in the last week they have bundled two-month's-worth of billing and turned them in. And so our team is reviewing those right now and we hope to be able to get them approved and issued a check very shortly. The contractor has been working furiously out there getting a lot of work done and they've just been struggling to keep up with their actual billing cycles.

Councilor Bencomo said I know there were a couple updates that were going on with Burn Lake with the shade structures that we're going to demolish and then a couple new ones. Do you have an update on that? Is that more of a Parks & Rec question?

Tony Trevino said that would be a Parks & Rec question. That is not part of the GO Bonds Project. The GO Bond is just new infrastructure, not tearing down.

Mayor Pro Tem Gandara said my question is around the Animal Services Center. Did you say it was 96% complete? One of the things last month that we heard that the hardware had been a delay. Are you telling me that you received that hardware and the only thing that we're waiting on is the kennels because of the work it requires to make them?

Kyle Arend said I do have some of those specifics. There's a bunch of hardware that has come in just recently that we're expecting to get completed. It's my understanding that all the hardware needed is expected to be installed by the end of this month. There are some kennels, the puppy kennels that we are waiting on; we don't have a time yet when we expect them to arrive. The contractor is working diligently with the supplier to get them as quickly as

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possible. We do expect that the installation of the kennels will occur after the end of this month sometime.

Mayor Pro Tem Gandara said that's good news! Will you go back to the slide where you wrapped everything up nicely? The Fees, that line item, can you talk to me specifically what that entails?

Kyle Arend said it's my recollection that those fees consist of the architects, the engineers, soil review technicians and other professional services.

Mayor Pro Tem Gandara asked and the Miscellaneous Cost, what does that entail?

Tony Trevino said as part of this project we had money set aside for permitting that comes up, some unforeseen costs we had set aside so it doesn't take away from the overall construction costs.

Mayor Pro Tem Gandara said so this is the money that you set aside but you also used.

Tony Trevino said yes, ma'am.

Mayor Pro Tem Gandara asked and that comes from the General Fund?

Tony Trevino said all of the items you see there comes out of the original GO Bond cost. We just had to break it down so we have money set aside for unforeseen circumstances during construction.

Mayor Miyagishima asked on the East Mesa Public Recreation Complex lights, when do those go in?

Kyle Arend said the lighting is included in the 2022 GO Bond Program. We will not be selling those bonds until next Spring; we expect the money to come on board around the April/May timeframe. Once the money is on board, we can proceed with getting a contractor on board to proceed with installation of those items.

Mayor Miyagishima said so they weren't on the original Bond, they're on this new one.

Tony Trevino said we're already getting in contact with the light contractor to get that process started. So as soon as those proceeds come, we're going to move right into that installation and construction. There won't be much of a delay.

Mayor Miyagishima said it's good to see that the walking trail is completely finished. If I recall, this was connecting – on the south end – the west to the east, is that correct? I think this will pretty much complete a loop around the City.

Tony Trevino said Question 4, which is the Walking, Jogging, Biking Trails, the Armijo Lateral, it started here off of the Outfall Channel Trail that comes off the

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Las Cruces Dam on the north side of town and this will eventually tie into the Burn Lake area. I think what you've been hearing is the La Llorona Trail that goes along the river heading south, and the town of Mesilla has built a trail along Calle del Norte heading east and comes to tie into Avenida de Mesilla, and now they have a project from Avenida de Mesilla to University to help complete that loop. One of the only segments that will be missing is through University Park to tie the whole thing. That's where we are now as a community for that trail.

Mayor Miyagishima said the whole purpose was to eventually get and market a marathon race around the City; there's not that many in the Southwest and I think it just lends itself to the City and highlights it. That's what I was looking for when we could finally get that going.

4. ADJOURNMENT

- 4.1** Councilor Tessa Abeyta made a motion to Adjourn at 1:38 p.m. Councilor Kasandra Gandara seconded the motion. Carried unanimously.

Mayor

City Clerk



City of Las Cruces

City Council Action and Executive Summary

23-078

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

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

1st Reading: Adopted: January 3, 2023

Drafter: Dave Duncan Department: Financial Services

Program: Procure to Pay Line of Business: Purchasing

Title: **A RESOLUTION TO APPROVE A COMMERCIAL LEASE AGREEMENT WITH BINNS ENTERPRISES FOR THE STORAGE OF LAS CRUCES MUSEUM SYSTEM COLLECTIONS AND EXHIBITS IN THE AMOUNT OF \$96,000.00 ANNUALLY.**

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

PURPOSE(S) OF ACTION:

To award a lease agreement to museums for the storage of Las Cruces Museum System collections and exhibits.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On October 28, 2021, the City of Las Cruces entered into a lease for the building at 910 Telshor Drive in Las Cruces, New Mexico to provide storage space for Las Cruces Museum System (LCMS) collections that are not on display. Utilizing this facility combines two separate rental spaces providing more square footage in one facility and requires a single lease agreement. This facility also allows city staff to store the City's Museum collections and exhibits in a climate-controlled environment.

Leasing the facility is a cost-effective and timely option more than it would be to construct a new facility for collection and exhibit storage purposes. LCMS contacted the Land Management Section for assistance in identifying the property and facilitating the lease for LCMS. Upon inspection of the property, city staff determined that this facility suited the City's needs and proceeded with lease negotiations.

The negotiated lease is \$8,000.00 per month or \$96,000 annually. The initial lease was through June 30, 2022. The City executed an extension for FY23 and intends to do so for the foreseeable future.

The cost for the leasing of the facility has been adopted into the LCMS FY23 budget, and the intent is to continue to do so for the life of the lease.

By approving this lease, LCMS will be able to accommodate and expand the collection and exhibit storage in a facility that is dedicated to that sole purpose.

SUPPORT INFORMATION:

[Exhibit A - Binns - City Lease 910 Telshor](#)

[Exhibit B - Lease Extension 1](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: 96,000.00 **AVAILABLE AMOUNT:**

EXPENDITURE AMOUNT:
96,000

Funding Source(s):

10444003-741000

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the Lease.
2. Vote "No"; this will not approve the Resolution, and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on City Council direction to staff.
4. Vote to "Table"; this could delay authorizing the Lease and delay payment of the lease.

RESOLUTION 23-078

A RESOLUTION TO APPROVE A COMMERCIAL LEASE AGREEMENT WITH BINNS ENTERPRISES FOR THE STORAGE OF LAS CRUCES MUSEUM SYSTEM COLLECTIONS AND EXHIBITS IN THE AMOUNT OF \$96,000.00 ANNUALLY.

The City Council is informed that:

WHEREAS, on October 28, 2021, the City of Las Cruces entered into a lease for a facility to store the Las Cruces Museum System's collections and exhibitions in an amount of \$96,000.00 annually; and

WHEREAS, this facility combines two separate rental spaces for more square footage in one facility and requires a single lease agreement; and

WHEREAS, leasing the facility is a cost effective and timely option more than it would be to construct a new facility for collection and exhibit storage purposes; and

WHEREAS, this facility also allows city staff to store the City's Museum collections and exhibits in a climate-controlled environment.

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

(I)

THAT the lease between the City of Las Cruces and Binns Enterprises for the facility intended for the storage of Las Cruces Museum System collections and exhibits in an amount of \$96,000.00 annually, designated as Exhibit "A", attached hereto and made a part hereof, is hereby approved.

(II)

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

DONE AND APPROVED this day of

Agenda Item #6.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

**COMMERCIAL LEASE AGREEMENT BETWEEN
BINNS ENTERPRISE AND THE CITY OF LAS CRUCES**

This Commercial Lease Agreement ("Lease") is entered into on this 28th day of October, 2021, between BINNS ENTERPRISES, ("Landlord") as Lessor, whose address is 2700 E. Missouri Avenue, Suite 1, Las Cruces, NM 88011 and the City of Las Cruces, ("City"), a New Mexico municipal corporation, as Lessee, whose address is P.O. Box 20000, Las Cruces, NM 88004, on the following conditions:

1. **Premises Leased:** Landlord for valuable consideration, leases to the City the premises shown on Exhibit "A" attached hereto and incorporated herein by reference, which premises are located at 910 Telshor, Las Cruces, NM _____ ("Premises").
2. **Parking:** The landlord agrees to provide the Tenant with and access to and use of the parking facilities in front and back of the Leased building.
3. **Term:** The term of the Leases shall be for 8 months commencing on the 1st day of November, 2021 to expire on June 30, 2022, subject to the availability of budgeted funding for that year. The City must submit renewal request in writing to Landlord, sixty (60) days prior to expiration of the initial term. If the terms and conditions should need to be revised the Lease conditions are not complete within the 60 day period, if the Lease is not renewed the Lease will proceed on a month to month term and City will be hold over tenant, until the Lease has been reviewed, amended and approved by the City Council or by the City Manager depending on the amendments.
4. **Rent:** The City shall pay to Landlord at the address stated in Item 6 hereof, a minimum monthly rent of \$8,000.00 payable in equal monthly installments. The first installment due on November 1, 2021 and continuing to be due on the 1st day of each consecutive month thereafter, subject to the availability of budgeted funding for that given year
5. **Late Charge:** If the City fails to pay monthly rent and other lawful charges when due, the non-payment shall be a material breach of this Lease. The City agrees to pay a late charge of 5% of rent payment, if payment is not made by 10 days after due date.
6. **Use of the Premises:**
 - a. The City shall occupy and use the Premises for the operation of a Museum Collections and Exhibits Storage Facility and business office for such.
 - b. The City shall not use Premises or permit the same to be used in any manner that is not in accordance with City regulations, ordinances, or governmental or municipal regulation; or for any use other than the use specified above or to detrimentally affect the market value or reputation of the Landlord.
 - c. The City shall promptly comply with all laws, ordinances and regulations of any governmental authority having jurisdiction over the Premises.
 - d. The City shall keep the Premises and walks adjacent thereto at all times in a neat, clean and sanitary condition.
7. **Notices:** Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to the other, such notice or demand shall be given or served and shall not be deemed to have been given or served unless in writing

and delivered personally or forwarded by Certified or Registered Mail, Return Receipt Requested, postage paid, addressed as follows:

To Landlord: Binns Enterprises
Attn: Eddie Binns
2700 E. Missouri Avenue Suite 1
Las Cruces, New Mexico 88011

To the City: City of Las Cruces
Attn: Economic Development – Land Management
P.O. Box 20000
Las Cruces, NM 88004

or as may be changed from time to time by either party serving notices as above provided.

8. Services and Utilities: The City shall pay or cause to be paid all charges for the furnishing of all utilities to the Premises, and for the removal of garbage and rubbish from the Premises, and for any other services desired by the City in connection with their use of the leased Premises.
9. Alterations, Additions, and Improvements: The City shall not be allowed to make any modifications, alterations, additions, or improvements to the premises, without first obtaining the written approval of the Landlord. All alterations, additions and improvements shall be made by the Landlord on the City's behalf by agreement under this Lease, as set out on Construction Letter attached hereto and made a part hereof and shall be at the Landlord's expense, and shall become and remain the property of the Landlord. Such alterations, additions, and improvements, once installed or completed, shall not be removed from the premises without the prior consent in writing from the Landlord.
10. Maintenance: The City shall be responsible for all normal maintenance and upkeep of the Premises, including
 - Cleaning
 - Replacement of light bulbs after normal wear and tear.
 - Paint interior walls
 - Plumbing clogs and minor plumbing repairs.
11. Repairs:
 - a. The City agrees, at its own cost and expense, to repair or replace any damages or injury done by itself, its employees, agents or invitees, to the land or any building or improvements which may be erected thereon, or any part thereof. The City further agrees to maintain and keep the interior of the Premises in good repair and condition at the City's sole expense, caused by the negligence or intentional acts of the City, its employees, agents or invitees. The City agrees that Landlord shall not be responsible for any damages to the Premises or the property of the City unless it is due to the direct negligence of Landlord.
 - b. Landlord will be responsible for all repair or replacement of the following, unless such repairs or replacements are made necessary by the negligence or intentional acts of the City.

- Foundation, subfloor;
- Exterior walls;
- Interior ceiling tiles;
- Roof;
- Signs;
- Under the slab utilities;
- Doors;
- Front Windows have tinting to keep out direct light,
- Glass doors and frontage area; and
- HVAC, Heating, Electrical, Plumbing, Lighting Fixtures and systems as well as seasonal servicing.

12. Taxes: Landlord shall pay all real property taxes that occur during the term of the Lease. The City shall be responsible for any and all special taxes and assessments or license fees applicable to its use and operation of the Premises, and any taxes and other assessments of whatever kind and nature which may be levied upon the personal property belonging to the City.
13. Liability Insurance: The City is self-insured for all tort risks for which immunity has been waived under the New Mexico Tort Claims Act. The City's self-insurance fund is maintained by the City at a level deemed to be adequate for the reasonable foreseeable future tort liabilities of the City.
14. Casualty Insurance: Landlord, during the term hereof, will provide with or without deductibles, insurance coverage against loss or damage by fire, flood, windstorm, hail, explosion, damage from aircraft and vehicles, smoke damage, and other risks as are from time to time included in an extended coverage endorsement insuring the Premises and insuring the improvements to the Premises (exclusive of the City's merchandise, and all other items of personal property of the City) in an amount equal to the Premises taxable value.
15. Force Majeure: For the purpose of the Lease, except such provision as required or concern the payment of monies, neither Landlord or the City, as the case may be, shall be considered in breach of or in default of the obligations of such party hereunder in the event of any delay in the performance of such obligations due to causes beyond the control of, and without the fault or negligence of, such party, including without limitation acts of God, acts of the public enemy, acts of the federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe or inclement weather, shortages in labor or materials directly attributable to the aforementioned, or delays due to such causes; it being the purpose of this Section that in the event of the occurrence of any such delay, the time or times for performance of the obligations of Landlord or the City, as the cause may be, with respect to this Lease shall be extended for the period of the delay. The party seeking the benefit of the provisions of this Section shall within seven (7) days after the beginning of any such delay, advise the other party of such delay by written notice in accordance with this Lease, and of the cause or causes thereof, provided that the failure of such party to so advise the other party shall not be deemed to be a condition to the applicability of this Section.



16. Subletting and Assigning: The City shall not assign this Lease or allow it to be assigned, in whole or in part, or mortgage, or sublease the Premises or any part thereof without the written consent of Landlord.
17. Assignment by Landlord: Landlord shall have the right to assign or transfer, in whole or in part, every feature of its right and obligations, hereunder and in the building and the Premises. Such assignments of transfers may be made to a corporation, trust company, individual or group of individuals, and howsoever made shall be in all things respected and recognized by the City.
18. Mortgages and Encumbrances: The City shall not cause the Premises to be mortgaged or encumbered in any way.
19. Hold Harmless: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act. Lessor shall save and hold harmless, indemnify and defend the City, its elected officials, employees and agents, in their official and individual capacities, of and from any and all liabilities, claims losses, or damages arising out of or alleged to arise out of or indirectly connected with the negligent operations of Lessee under this Lease, or arising out of the presence of the Leasehold Property of any agent, contractor or subcontract of Lessee
20. Termination: The City shall be allowed to terminate the Lease for any reason at any given time by providing Landlord ninety (90) day prior written notice of termination.
21. Default: If either party defaults in the performance of any Lease obligation, the other party may seek specific performance of this Lease or arbitration or any other remedy for such breach.
22. Surrender of Premises and Holdover: Upon termination or expiration of this Lease, or any renewal thereof, the City shall surrender the Premises in good condition and repair, reasonable wear and tear and loss by fire, explosion, windstorm, or other casualty except. In the event the City remains in possession of the Premises after the expiration of the Lease, or renewal thereof, and without execution of a new lease, the City shall be deemed to be occupying said premises as a tenant from month to month, subject to all the conditions, provisions, and obligations of this Lease insofar as the same are applicable to month to month tenancy, except that the amount of the monthly rental shall be equal to the rent paid for the last month of the initial lease term.
23. Signs: The Landlord shall have the right to install at its own cost and expense, necessary and usual trade signs, including electrical signs, on the front of said Premises, said signs to be erected and installed maintained in a first-class manner, in accordance with the ordinances of the city, county and state in which the Premises are located. The size and location of the sign must first be approved in writing by Landlord.
24. Non-Waiver: Neither acceptance of rent by Landlord nor failure by Landlord to complain of any action, non-action or default of the City, whether singular or repetitive, shall constitute a waiver of any of Landlord rights hereunder. Waiver by Landlord of any right for any default of the City shall not constitute a waiver of any right for either subsequent default of the same obligation or any other default. No act or thing done by Landlord or

its agents shall be deemed to be an acceptance or surrender of the Premises and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by a duly authorized officer or agent of Landlord.

25. Codes, Laws, and Rules: The City and its agents, employees, and invitees, will comply fully with all applicable requirements of Federal, State, and/or County Law rules and laws pertaining to building, electrical and fire codes, except for such rules and laws that Landlord is required to comply with pursuant to Section 8 (B).
26. Severability: This Lease shall be construed in accordance with the laws of New Mexico. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws affective during the term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of both parties that, in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and reasonable and be legal, valid and enforceable.
27. Attorney Fees: If either party defaults in any respect regarding this Lease, thus making it necessary for the other party to employ an attorney to enforce the provisions of this Lease, the defaulting party shall pay reasonable attorney fees to the other party. However, prior to instituting any litigation, the parties have a contractual duty in good faith to attempt to resolve any controversy between them.
28. Entire Agreement: This Lease reflects the entire agreement between the parties and replaces any prior lease or agreement for the use of the Premises. No amendment or modification shall be permitted unless agreed to by both parties in writing.

IN WITNESS WHEREOF, this Lease was executed on the date first written above.

DONE AND APPROVED THIS 28th day of October, 2021.

Binns Enterprises,

City of Las Cruces,
A New Mexico Municipal Corporation

BY: Eddie Binns
Eddie Binns, Owner

BY: Ifo Pili
Ifo Pili, City Manager

Approved at to Form:

By: Jennifer Vega Brown 10/20/21
Jennifer Vega Brown, City Attorney

EXHIBIT "A"



COMMERCIAL LEASE EXTENSION AGREEMENT BETWEEN
BINNS ENTERPRISE AND THE CITY OF LAS CRUCES

The Commercial Lease Extension Agreement is entered into on the 30th day of June, 2022, and effective as of July 1, 2022 between Binns Enterprise, as Lessor, whose address is 2700 E. Missouri Avenue, Suite 1, Las Cruces, NM 88011 and the City of Las Cruces, a New Mexico municipal corporation, as Lessee, for the benefit of the Las Cruces Museum Department, whose address is P.O. Box 20000, Las Cruces, NM 88004, for the Leased Premises located at 910 Telshor, Las Cruces, NM.

The parties agree to extend the Commercial Lease Agreement dated October 28, 2021 on the same terms and conditions from July 1, 2022 through June 30, 2023, being the first additional one (1) year terms.

IN WITNESS WHEREOF, this Commercial Lease Extension Agreement is entered on this ____ day of June, 2022.

BINNS ENTERPRISES

BY:

Eddie Binns
Eddie Binns, Owner

CITY OF LAS CRUCES

BY:

EJP 7/20/22
for Ifo Pili, City Manager

Approved as to Form:

Jennifer Vega-Brown 6/20/22
Jennifer Vega-Brown, City Attorney



City of Las Cruces

City Council Action and Executive Summary

23-079

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

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

1st Reading: **Adopted:** January 3, 2023

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

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

Title: **A RESOLUTION TO AWARD A FIVE (5) YEAR LEASE WITH UPPER VALLEY INVESTMENT CORPORATION OF EL PASO, TEXAS COMMENCING ON JULY 1, 2021 FOR THE LAS CRUCES FIRE DEPARTMENT TRAINING FACILITY AT 1670 SOUTH VALLEY DRIVE IN LAS CRUCES, NEW MEXICO IN AN INITIAL AMOUNT OF \$120,000.00 ANNUALLY, INCREASING INCREMENTALLY OVER THE LIFE OF THE LEASE TO \$180,000.00 ANNUALLY.**

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

PURPOSE(S) OF ACTION:

To award a lease for the Las Cruces Fire Department.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On July 1, 2021, the City of Las Cruces entered into a lease for the building at 1670 South Valley Drive in Las Cruces, New Mexico to use as a training facility for the Las Cruces Fire Department (LCFD).

Leasing the facility is a cost-effective and timely option more than it would be to construct a new facility for training purposes. LCFD contacted the Land Management Section for assistance in identifying the property and facilitating the lease for LCFD. Upon inspection of the property, city staff determined that this facility suited the City's needs and proceeded with lease negotiations.

The negotiated lease allows for incremental increases in the rent amount over the course of the lease. These amounts for each year of the lease are as follows:

July 1, 2021 thru June 30, 2022	\$ 10,000.00 per month
July 1, 2022 thru June 30, 2023	\$ 13,000.00 per month
July 1, 2023 thru June 30, 2024	\$ 13,000.00 per month
July 1, 2024 thru June 30, 2025	\$ 15,000.00 per month
July 1, 2025 thru June 30, 2026	\$ 15,000.00 per month

The cost for the leasing of the facility has been adopted into the LCFD FY23 budget, and the intent is to continue to do so for the life of the lease.

By approving this lease, LCFD will be able to continue training in a facility that is dedicated to increasing training effectiveness and allow personnel the resources and environment to most effectively learn and train for real-life situations.

SUPPORT INFORMATION:

[Exhibit A - Lease-1670 S Valley](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:

156,000.00

AVAILABLE AMOUNT:

EXPENDITURE AMOUNT:

156,000.00

Funding Source(s):

10133001-741000

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the Lease for a term of five years.
2. Vote "No"; this will not approve the Resolution, and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on City Council direction to staff.
4. Vote to "Table"; this could delay authorizing the Lease and payment to the vendor.

RESOLUTION 23-079

A RESOLUTION TO AWARD A FIVE (5) YEAR LEASE WITH UPPER VALLEY INVESTMENT CORPORATION OF EL PASO, TEXAS COMMENCING ON JULY 1, 2021 FOR THE LAS CRUCES FIRE DEPARTMENT TRAINING FACILITY AT 1670 SOUTH VALLEY DRIVE IN LAS CRUCES, NEW MEXICO IN AN INITIAL AMOUNT OF \$120,000.00 ANNUALLY, INCREASING INCREMENTALLY OVER THE LIFE OF THE LEASE TO \$180,000.00 ANNUALLY.

The City Council is informed that:

WHEREAS, On March 18, 2021, the City of Las Cruces entered into a lease for the building at 1670 South Valley Drive in Las Cruces, New Mexico to use as a training facility for the Las Cruces Fire Department (LCFD); and

WHEREAS, leasing the facility is a cost effective and timely option more than it would be to construct a new facility for training purposes. Upon inspection of the property, city staff determined that this facility suited the City's needs and proceeded with lease negotiations; and

WHEREAS, by approving this lease, LCFD will be able to continue training in a facility that is dedicated to increasing training effectiveness.

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

(I)

THAT the lease agreement under the terms and conditions for five years between Upper Valley Investment Corporation of El Paso, Texas, in an amount of \$120,000.00 annually, and increasing incrementally to \$180,00.00 annually, designated as Exhibit "A", attached hereto and made a part hereof, 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

LEASE

This Lease agreement is entered into, this 1st day of July, 2021 between **Upper Valley Investment Corporation** whose address is: Attn: Gordon Welch, 1200 Golden Key Circle, Ste 301, El Paso, TX 79925 ("Landlord"), and **City of Las Cruces, a New Mexico municipal corporation** on behalf of the Fire Department

Whose address is: 201 E Picacho Ave- P.O. Box 20000, Las Cruces, NM 88004

WHEREAS, Landlord is owner of certain real estate commonly known as 1670 S. Valley Dr., Las Cruces, NM 88005-3152; and

WHEREAS, Landlord desires to lease such real estate to Tenant, and Tenant desires to lease the real estate from Landlord for the term, at the rental rate and upon the covenants, conditions and provisions herein set forth,

THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the parties agree as follows:

1. Premises: The Landlord leases to Tenant and Tenant leases from Landlord a warehouse measuring approximately 22,000 sq. ft. located on approximately 5 acres which is commonly known as 1670 S. Valley Dr., Las Cruces, NM (the "Premises")
2. Term: The term of this Lease (the "Lease Term") shall be 5 years commencing on July 1, 2021 and terminating on June 30, 2026.
3. Rent: Tenant agrees to pay gross rent in the amount of \$ 10,000.00.

Monthly Base Rent: July 1, 2021 thru June 30, 2022	\$ 10,000.00 per month
July 1, 2022 thru June 30, 2023	\$ 13,000.00 per month
July 1, 2023 thru June 30, 2024	\$ 13,000.00 per month
July 1, 2024 thru June 30, 2025	\$ 15,000.00 per month
July 1, 2025 thru June 30, 2026	\$ 15,000.00 per month

First payment of \$ 10,000.00 is due on July 1, 2021.

4. Taxes N/A.
5. Insurance: During the Lease Term, Tenant will, at its expense, continue to be self-insured. The City is self-insured for General Liability and Workers Compensation. The City can provide our let of self-insurance.

Tenant shall bear the risk of any and all damage to Tenant's personal property, including but not limited to, the contents, trade fixtures, machinery, equipment, furniture and furnishings it places in the Premises. Tenant agrees that Landlord shall have no liability with respect thereto.

Landlord shall maintain fire and extended coverage insurance on Premises and commercial general liability insurance in such amounts as Landlord shall deem appropriate. Tenant shall not be named as additional insured on such policies.

6. **Mutual Waiver of Subrogation:** Nothing in this Lease shall be construed so as to authorized or permit any insurer of Landlord or Tenant to be subrogated to any right of Landlord or Tenant against the other party arising under this lease. Landlord and Tenant each hereby release the other to the extent of any perils to be insured against under Section 2. of this Lease only, whether or not such insurance has actually been secured, and to the extent of insurance coverage for any loss or damage caused by any such casualty, even if such incidents shall be brought about by the fault or negligence of either party. All insurance policies to be provided under Section 2. by either Landlord or Tenant shall contain a provision that they are not invalidated by the foregoing waiver.
7. **Maintenance, Repairs and Alterations:** Tenant shall maintain all portions of the Premises in a clean and orderly condition, free of accumulation of dirt and rubbish. Tenant shall repair any damage to the Premises resulting from the actions or inactions of Tenant, its agents, employees or invitees.

Landlord shall be responsible for all repairs and replacements to the building except for any damage to the Premises resulting from the actions or inactions of Tenant, its agents, employees or invitees.
8. **Utility Charges:** Tenant agrees to pay for any and all utilities; payments will be made directly to the utility company.
9. **Signs:** Tenant may install any signs allowed by law on the Premises. Upon termination of this Lease, all signs must be removed, and Premises restored to its original or better condition.
10. **Environmental:** Tenant agrees that, except for de minimis amounts of Hazardous Substances brought onto the premises as necessary to service Tenant's vehicles or by Tenant's agents or employees in the form of fluid for cigarette lighters and other personal items, it shall not bring Hazardous Substances onto the Premises nor allow Tenant's agents, employees or invitees to bring Hazardous Substances onto the Premises. Tenant agrees to indemnify Landlord against any Losses (as defined in Section 12) incurred by Landlord arising out of any Hazardous Substance created by Tenant on the Premises or out of any Hazardous Substances brought onto the Premises by Tenant, its agents, employees or invitees. For purposes of this Agreement, "Hazardous Substances" shall mean and refer to any and all hazardous, extremely hazardous or toxic substances or wastes or constituents, as those terms are defined by any environmental laws, rules, regulations, orders or ordinances.
11. **Compliance with Law:** Tenant shall comply with all laws, orders, ordinances, and other public requirements now or hereafter pertaining to Tenant's use of the Premises.
12. **Damage by Fire or Other Casualty:** If the Premises or any portions thereof shall be damaged or destroyed by fire or other casualty, or is threatened to be condemned, Tenant shall promptly notify Landlord, and either party shall be entitled to terminate the Lease upon ten (10) days advance written notice. Notwithstanding the foregoing, if the Premises or any other part thereof is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, Tenant shall not have the option to terminate the Lease, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by Landlord's insurance.
13. **Surrender:** At the expiration or earlier termination of the Lease Term or any extensions hereof, Tenant shall promptly yield up the Premises in the condition, order and repair in which it is required to be maintained by Tenant under this Lease, reasonable wear and tear excepted.
14. **Holdover:** Tenant shall have no right to holdover and remain in possession of the Premises after the expiration of the Lease Term or after the date specified in any notice of termination given by either the Landlord or Tenant, unless otherwise permitted by Landlord in writing.

15. **Subordination Non-disturbance:** This Lease shall be subject and subordinate at all times to the lien of any lending institution's mortgage or deed of trust now or hereafter placed upon the Premises or upon any real property of which the Premises form a part, and Tenant agrees to execute any instrument which may be reasonably required by Landlord to evidence the subordination of this Lease provided, however, the holder of such mortgage or deed of trust shall not disturb Tenant's possession or its rights to possession of the Premises or any other right or privilege created for or inuring to the benefit of Tenant under this Lease so long as Tenant is not in default.
16. **Defaults: Remedies:** Tenant agrees that anyone or more of the following events shall be considered events of default as said term is used herein:
- (a) If Tenant fails to pay in full when due and without demand any and all installments or rent, additional rent or any other sums payable hereunder and such default continues for a period of five (5) days after written notice thereof by Landlord to Tenant.
 - (b) If Tenant defaults in the performance of any other covenant, condition or agreement herein contained to be performed by Tenant and such default continues for a period of five (5) days provided, however, that if the nature of Tenant's covenant is such that more than five (5) days are required for performance, then Tenant shall not be in default if Tenant commences performance and diligently prosecutes the same to completion within thirty (30) days.
 - (c) If Tenant abandons the Premises; or
 - (d) If Tenant becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if petition in bankruptcy or for reorganization or for an arrangement with creditors under any Federal or State act filed by or against Tenant is not dismissed within one hundred eighty (180) days after filing, or a bill in equity is filed or other proceeding commenced for the appointment of a receiver, trustee, liquidator, custodian, conservator, or similar official for any of Tenant's assets.
- Upon the occurrence of any of the foregoing events of default which remain uncured past applicable cure periods, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Premises is not surrendered, Landlord may reenter the Premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages. Notwithstanding anything hereinabove stated, Landlord shall not exercise any right or remedy provided for in this Lease or allowed by law because of nonpayment of rent or additional rent by Tenant without having first given five (5) days prior written notice thereof to Tenant.
17. **Curing Defaults:** If Tenant shall be in default in the performance of any of its obligations hereunder, Landlord, after written notice to Tenant (except in the case of emergency then such written notice shall not be required), may elect to cure such default on behalf of Tenant, and Tenant shall reimburse the Landlord within fifteen (15) days of a written demand for any reasonable sums paid or reasonable cost incurred by Landlord in curing such default.
18. **Attorney's Fees:** In the event either party shall bring an action for damages for an alleged breach of any provision of this Lease or to enforce, protect or establish any term or covenant of this Lease, the prevailing party, if any, shall be entitled to recover reasonable attorney's fees and court costs as may be fixed by the court.
19. **Landlord's Right of Entry:** Tenant shall permit Landlord and the authorized representatives of Landlord and of any mortgagees or any prospective mortgagee, prospective purchaser, or tenant, to enter the Premises at all reasonable times for the purpose of inspecting them or making any repairs.
20. **Assignment and Subletting:** Tenant shall not assign this Lease, in whole or in part, nor sublet the Premises, or any part or portion thereof.
21. **No Waiver:** No delay or omission of Landlord to exercise any right or power under this Lease shall

impair any such right or power or be construed to be a waiver of any such right or power or any acquiescence in any failure, breach, or default by Tenant. No waiver of any breach of any of the covenants of this Lease shall be construed, taken, or held to be a waiver of any other breach, or as a waiver, acquiescence in or consent to any further or succeeding breach of the same covenant. The acceptance by Landlord of any payment of rent after the termination by Landlord of this Lease or of Tenant's right to possession hereunder shall not, in the absence of agreement in writing to restore or reinstate this Lease which is signed by Landlord and Tenant, be deemed to restore this Lease or Tenant's right to possession hereunder, as the case may be, but shall be construed as a payment on account, and not in satisfaction of damages due from Tenant to Landlord.

22. **Notice:** Any notice required or permitted under this Lease shall be in writing and shall be deemed given when actually delivered or three (3) business days after deposit in the United States mail as certified or registered mail, addressed to the addresses set forth in the beginning of this Lease or to such other address as may be specified from time to time by either of the parties in the manner above provided for the giving of notice.

23. **NO LIABILITY; NO REPRESENTATIONS OR WARRANTIES:**

THE LIABILITY OF LANDLORD AND LANDLORD RELATED PARTIES TO TENANT FOR ANY DEFAULT, ACTOR OMISSION BY LANDLORD UNDER THE TERMS OF THIS LEASE SHALL BE LIMITED TO THE INTEREST OF LANDLORD IN THE BUILDING AND THE PREMISES, AND NEITHER LANDLORD NOR ANY OF LANDLORD RELATED PARTIES SHALL BE LIABLE FOR ANY DEFICIENCY. NOTWITHSTANDING THE FOREGOING, LANDLORD SHALL NOT BE LIABLE FOR INJURY, LOSS OR DAMAGE TO PERSON OR GOODS, WARES, MERCHANDISE OR OTHER PROPERTY OF TENANT, ITS EMPLOYEES, CONTRACTORS, INVITEES, CUSTOMERS OR ANY OTHER PERSON IN OR ABOUT THE PREMISES, WHETHER SUCH DAMAGE, LOSS OR INJURY IS CAUSED BY OR RESULTS FROM FIRE, STEAM, ELECTRICITY, GAS, WATER OR RAIN OR FROM THE BREAKAGE, LEAKAGE, OBSTRUCTION OR OTHER DEFECTS OF PIPES, FIRE SPRINKLERS, WIRES, APPLIANCES, PLUMBING, HVAC OR LIGHTING FIXTURES, OR FROM ANY OTHER CAUSE, WHETHER OR NOT THE SAID INJURY, LOSS OR DAMAGE RESULTS FROM CONDITIONS ARISING UPON THE PREMISES OR UPON OTHER PORTIONS OF THE BUILDINGS OF WHICH THE PREMISES ARE A PART OR OTHER SOURCES OR PLACES. LANDLORD SHALL NOT BE LIABLE FOR ANY INJURY, LOSS OR DAMAGE ARISING FROM ANY ACT OR NEGLECT OF ANY OTHER PERSON. NOTWITHSTANDING LANDLORD'S GROSS NEGLIGENCE OR BREACH OF THIS LEASE, LANDLORD SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR LOSS, INJURY OR DAMAGE TO TENANT'S BUSINESS OR ANY LOSS OF INCOME OR PROFIT THEREFROM.

TENANT ACKNOWLEDGES AND AGREES THAT TENANT TAKES THE PREMISES AS-IS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, VERBAL OR WRITTEN, BY LANDLORD, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR HABITABILITY OR REGARDING THE CONDITION OR REPAIR OF THE PREMISES.

24. **Severability:** If any term or provision of this Lease shall be deemed invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and the rest of the terms and provisions shall be valid and enforceable.

25. **Authority: Binding Effect:** If the Landlord or Tenant shall be a corporation, trust or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity. The provisions of this Lease shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, personal and legal representatives, successors and assigns.

26. Venue: This Lease shall be construed and enforced in accordance with the laws of Dona Ana County, State of New Mexico in which the Premises shall be located.

27. Additional Provisions:

a) Landlord Improvements:

The Landlord will build out the front six offices plus the two classrooms with carpet and paint prior to the Tenant's move in on February 1, 2021 as specified on the attached plan

The remodeling for the back bathrooms and offices will be completed during the first year of the Tenant's occupancy.

Landlord will make existing bathrooms ADA compliant

The Landlord will finish the space with Landlord's standard finishes.

The Landlord will repair and restripe the parking lot.

Landlord will have all VCT tiled areas stripped and re-polished.

Tenant will be allowed to choose exterior and interior paint and carpet colors.

Landlord will install counter and sink, electrical outlets for stove, refrigerator and portable appliances in kitchen.

b) Landlord Maintenance and Repairs

The balance of the repairs and servicing of the HVAC, plumbing, roof, overhead doors and electrical system will be completed prior to Tenant's move in at Landlord's expense.

c) Tenant Maintenance:

Tenant will be responsible for normal day to day maintenance and repairs.

d) Other Issues:

During the first six months of occupancy, the existing mobile home tenant will be allowed to remain on the rear parking lot of the premises.

e) First Right of Refusal

Should Landlord receive a written contract to purchase the property located at 1670 S. Valley Dr., Las Cruces, NM 88005, Tenant shall have the first right of refusal to purchase said property. Tenant will notify Landlord in writing within ten (10) working days of their intent.

f) Tenant shall have two five-year options to renew lease.

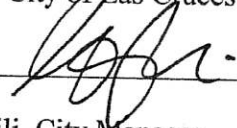
IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement of Lease to be executed as of the date first above written.

Landlord: Upper Valley Investment Corporation



Gordon E Welch

Tenant: City of Las Cruces



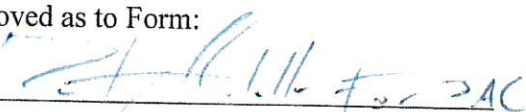
IFO Pili, City Manager

Address: P.O. Box 20000, Las Cruces NM 88004
Attn: Catherine Duarte Real Estate Specialist, Sr.

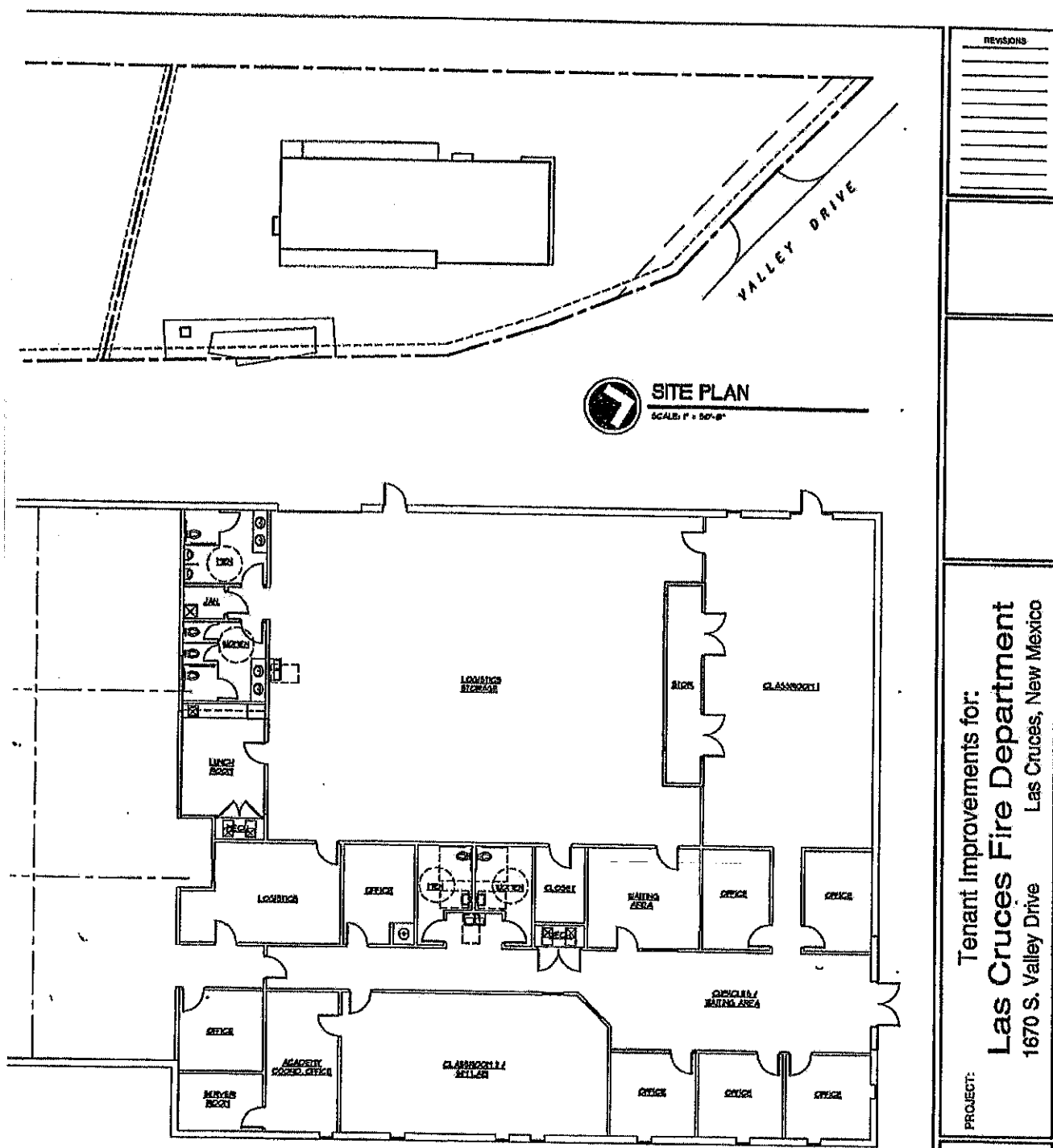
Phone (575) 541-2767

Email: cduarte@las-cruces.org

Approved as to Form:



Jocelyn Garrison, Sr. Assistant City Attorney





City of Las Cruces

City Council Action and Executive Summary

3020; Council Bill 23-014

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ N/A		
1st Reading:	December 5, 2022	Adopted:	January 3, 2023
Drafter:	Vince Banegas	Department:	Community Development
Program:	Community Planning	Line of Business:	Community Planning
Title:	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.		

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

PURPOSE(S) OF ACTION:
Zone Change

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City Council is required to review and take final action on zone changes per Section 38-10 B.2.b. and 38-13A. of the 2001 Las Cruces Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulation uniformly governs the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from A-2 (Agriculture District) to C-3 (Commercial High Intensity) for a property approximately 17.07 acres in size and located at 3400 Bataan Memorial East. The existing A-2 zone represents a non-conforming zoning designation that became defunct upon adoption of the 2001 Las Cruces Zoning Code, as amended. In order to develop the property, a zone change to an appropriate zoning designation will be required. Due to the surrounding area, and the proximity of arterials in the immediate vicinity, the C-3 zoning district is an appropriate designation.

The subject property is predominately underutilized having an old residence located on site. This residence is currently unoccupied, and the majority of the land surrounding this structure is undeveloped. According to the property owner, future use of the structure and part of the property will consist of an Airbnb. At this time, the property owner is uncertain how the remainder of the property will be developed.

The proposed zone change is consistent with the Elevate Las Cruces Comprehensive Plan and several goals, policies, and actions contained therein. Policy supporting the request speaks to encouraging the development of vacant/underutilized property, supporting, promoting, and identifying places of employment to help increase employment opportunities, and promoting a jobs-housing balance. The property is within the Regional Commercial Place Type whose defined character strongly supports what is proposed for redevelopment and any future commercial development that takes place on-site. It also supports the developing commercial nature of the surrounding area given the commercial zoning in place.

Agenda Item #6.3.

On August 23, 2002, the case was heard by the Planning and Zoning Commission at their regular meeting. The zone change request was not contested at the meeting and received a recommendation of approval by a vote of 6-0-0 (1 seat vacant) based on the findings reflected in Exhibit "B".

The case was publicly noticed in accordance with the City's notification provisions. Staff did not receive any public comment on the case.

SUPPORT INFORMATION:

[EXHIBIT "A"](#)

[EXHIBIT "B" - Findings](#)

[ATTACHMENT "A" - P&Z Staff Report](#)

[ATTACHMENT "B" - Approved P&Z Minutes \(excerpt\)](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 3400 Bataan Memorial East will be rezoned from A-2 (Agricultural District) to C-3 (Commercial High Intensity).

2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current non-conforming zoning designation of A-2 (Agricultural District) will remain, requiring the property owner to seek an alternate zoning designation prior to redevelopment.

3. Vote to "Amend"; this could allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.

4. Vote to "Table"; this could allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3020; COUNCIL BILL 23-014

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.

The City Council is informed that:

WHEREAS, Mark Heck, property owner, has submitted a request for a zone change from A-2 (Agricultural District) to C-3 (Commercial High Intensity); and

WHEREAS, the subject property is approximately 17.07 acres in size and largely vacant with the only development consisting of an unoccupied dwelling; and

WHEREAS, the proposed C-3 (Commercial High Intensity) zone will be in keeping with the surrounding area and the proposed development of the site; and

WHEREAS, the proposed zone change is consistent with the Elevate Las Cruces Comprehensive Plan.

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-3 (Commercial High Intensity).

(II)

THAT the zoning is based on the findings contained in Exhibit "B", attached hereto and made part of this Ordinance.

(III)

THAT the zoning of said property be shown accordingly on the City Zoning Atlas.

(IV)

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

DONE AND APPROVED this day of

APPROVED

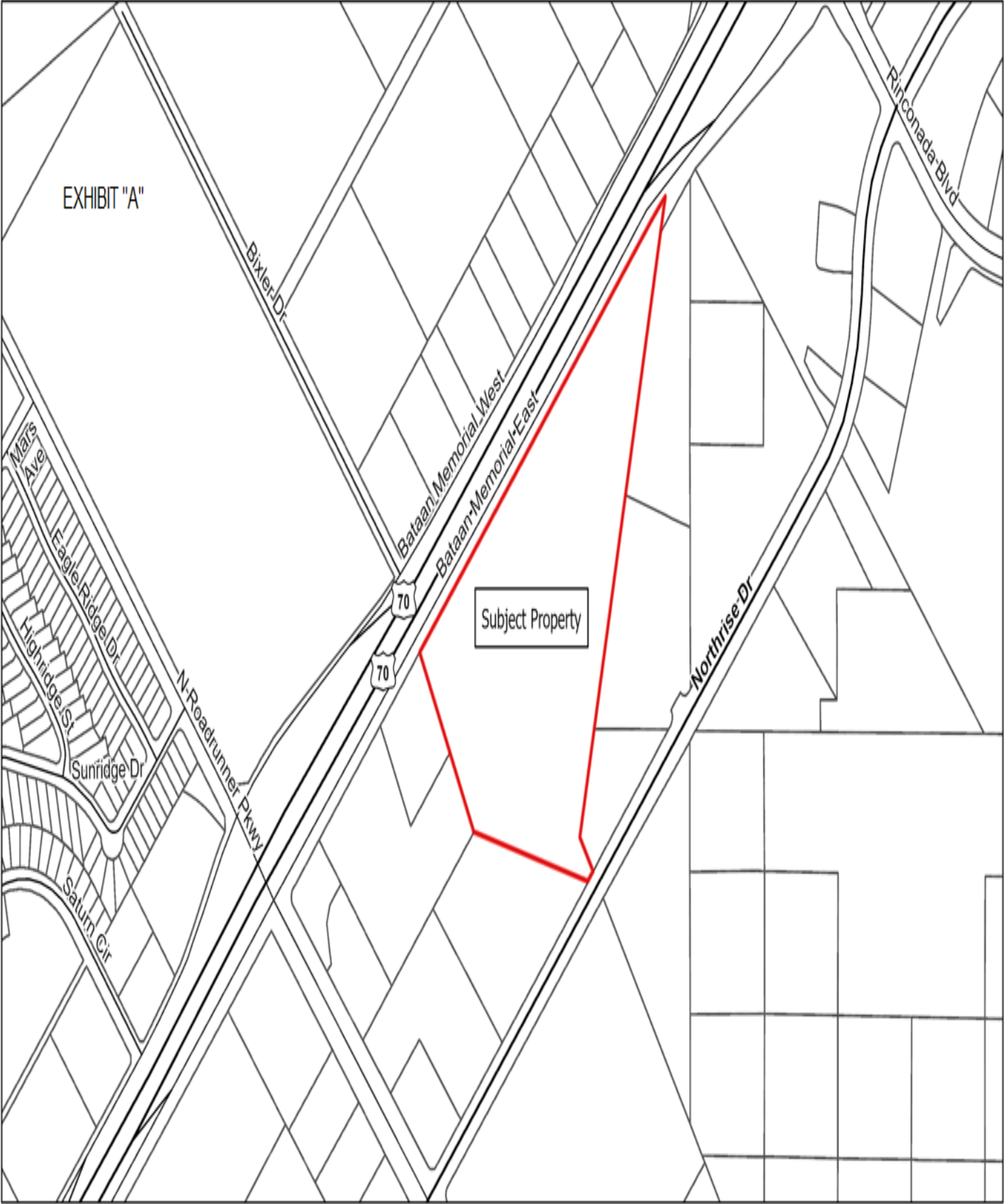
ATTEST:

Moved by:

Seconded by:

AYES

NAYS



Note: Subject property is outlined in red.

EXHIBIT "B" - Findings

1. The property under consideration has a non-conforming zoning designation that no longer exists in the 2001 Las Cruces Zoning Code, as amended.
2. Prior to further development or redevelopment, an appropriate zoning district designation needs to be established pursuant to code. The C-3 district designation is the most appropriate zoning district given the surrounding area and the present lot size.
3. The subject property falls within the Regional Commercial Place Type. This classification is characterized by large retail and professional service uses at a scale that can accommodate a city-wide/regional draw. The C-3 zoning district is consistent with the place type.
4. The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code, as amended (2001 Zoning Code, Section 38-2).
5. The surrounding area consists largely of commercial, office, multi-family, and vacant property zoned PUD, C-2, C-3, C-3C, R-4, R-4C, and A-2. Many of the PUD zoned properties have underlying commercial zoning in place.



Planning & Zoning Commission 8/23/2022
CASE 22ZO0500084: BATAAN MEMORIAL EAST
REZONING

STAFF CONTACT:	Vincent Banegas, (575) 528-3058, vbanegas@las-cruces.org
OWNER:	John Heck
REPRESENTATIVE:	Same
DISTRICT:	District #6
SITE ADDRESSES:	3400 Bataan Memorial East
EXISTING ZONING:	A-2 (Agriculture District from the 1981 Zoning Code)
REQUEST:	Rezone from A-2 (Agriculture District from the 1981 Zoning Code) to C-3 (Commercial High Intensity)
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF CASE 22ZO0500084:

A request to approve the rezoning of property from A-2 (Agricultural District from the 1981 Zoning Code) to C-3 (Commercial High Intensity), located at 3400 Bataan Memorial East. The property is ± 17.07 acres in size and is within Council District 6. Submitted by John Heck on behalf of Tuff Co. LLC.

SUMMARY OF RECOMMENDATION:

Staff is recommending **APPROVAL** based on the findings listed below:

- The property under consideration has a non-conforming zoning designation that no longer exists in the 2001 Las Cruces Zoning Code, as amended.
- Prior to further development or redevelopment, an appropriate zoning district designation needs to be established pursuant to code. The C-3 district designation is the most appropriate zoning district given the surrounding area and the present lot size.
- The subject property falls within the Regional Commercial Place Type. This classification is characterized by large retail and professional

service uses at a scale that can accommodate a city-wide/regional draw. The C-3 zoning district is consistent with the place type.

- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code, as amended (2001 Zoning Code, Section 38-2).
- The surrounding area consists largely of commercial, office, multi-family, and vacant property zoned PUD, C-2, C-3, C-3C, R-4, R-4C, and A-2. Many of the PUD zoned properties have underlying commercial zoning in place.

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

The property owner is seeking rezoning from A-2 to C-3 in that the present A-2 zoning district designation is non-conforming and does not exist within the current 2001 Las Cruces Zoning Code, as amended. The A-2 district existed in an earlier zoning code having been eliminated under the current code regime. At the time of code adoption, a two-year grace period allowed any non-conforming zoning to remain in full force and effect until rezoning or conversion of zoning took place. Staff initiated rezoning/conversion efforts for related properties and encouraged property owners to come forward with requests of their own to bring about compliance with the 2001 Zoning Code. Due to the sheer number of properties that needed adjustment, staff could not reach out to all applicable property owners within the time frame provided even after extending the time frame for compliance.

Originally, the A-2 district was intended for farm land and later was used as a holding zone when property owners were not ready to commit to a zoning designation upon annexation of their property. In this instance, a holding zone application of the district appears to have been applied. Changing the zoning to C-3 corrects the non-conforming zoning designation while maintaining and supporting the land use focus that the comprehensive plan intends for the area. The applicant’s proposal does not come with any specific plans for development. The property presently has a dwelling unit on-site that may or may not factor into any future development plans.

LAND USE HISTORY:

The subject property was originally annexed via the Hwy 70 Annexation in 1967. Later, the property became part of the Northrise Business Park Development Plan, one of the earliest master plans containing land use, zoning, and urban design considerations for the acreage within the master plan boundary. This plan exists today and covers a large amount of acreage immediately east of I-25 along Telshor Boulevard/Northrise Drive to just east of Roadrunner Parkway. The parcel was recently subdivided via the MBSK Subdivision and a companion replat that followed. A dwelling exists on the parcel which was built in 1949. No other development/redevelopment of the property has taken place since.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
<u>Neighborhood Character and Compatibility</u>	Yes
<u>Elevate Las Cruces Comprehensive Plan</u>	Yes

<u>Thoroughfare Plans</u>	Yes
<u>Purpose and Intent of the Code: Section 38-2</u>	Yes
<u>Criteria for Decisions: Section 2-382</u>	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

In large part, the area surrounding the subject property consists of office, commercial, multi-family residential, and vacant land. There are two properties that have a single dwelling on-site, one of which is the subject property. All properties in the area are zoned either PUD, C-2, C-3, C-3C, R-4, R-4C, or A-2. Of those zoned PUD, most have an underlying zoning classification of commercial. Given the land use and zoning pattern described, there should be no impact to the surrounding neighborhood in terms of character and compatibility.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

According to the Future Development Map in the Elevate Las Cruces Comprehensive Plan, the subject parcel falls within the Regional Commercial Place Type. This place type is characterized as providing accommodation for large retail and professional service uses at a scale that can accommodate a city-wide/regional draw. Various commercial zoning districts and high intensity office zoning are typical districts supporting the place type.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the proposed Zone Change:

- Community Environment:
 - Goal CE-1: Balanced Growth – Encourage efficient land use development patterns that accommodate projected growth in a sustainable manner.
 - Policy CE-1.2. – Promote investment within older areas of the city through redevelopment.
 - Action CE 1.2.3 – Partner with property owners of vacant land for infill opportunities.
- 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 jobs-housing balance.
 - Policy CP-4.2 – Support efforts to be regionally and nationally competitive in regards to retaining and growing businesses, jobs, and students.
- Community Livability:
 - Goal CL-2: Neighborhood Conservation - Strengthen neighborhood condition through improvements to the built-environment.
 - Policy CL-2.2 – Encourage redevelopment of vacant properties within neighborhoods.

As the uses surrounding the subject property are congruous to the Regional Commercial Place Type and well supported by various comprehensive goals, policies, and actions, staff feels the application is justified and should pose no conflict with the existing neighborhood.

COMPLIANCE WITH THOROUGHFARE PLAN:

Access to the subject property exists from both Bataan Memorial East and Northrise Drive; both major arterial roadways as designated by the Mesilla Valley Metropolitan Organization (MPO). Bataan Memorial East is part of the Hwy 70 right-of-way, allows limited access to adjacent properties, and has a paving width of $\pm$ 27 feet with curb/gutter, but no sidewalk. Access from Bataan Memorial East for commercial development of the subject property would require review and approval from NMDOT and city staff. Northrise Drive has $\pm$ 75 feet or right-of-way, curb/gutter and sidewalk adjacent to the parcel in question and along significant portions of the roadway. Both roadways are fully built-out (less sidewalk as indicated). As such, the road network providing ingress/egress is adequate to accommodate any proposed commercial development. Other roadway improvements may be required at the time of development, and may be in the form of acceleration/deceleration lanes, etc.

CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:

Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed zone change include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- H. Encourage the conservation of energy in the use of structures, buildings, and land.
- K. Encourage development of vacant properties within established areas.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- N. Conserve the value of buildings and land.

Review by City of Las Cruces staff determined the proposed zone change would not adversely impact the surrounding area. Future uses that may be authorized by the proposed zoning designation will be in keeping with the surrounding area per section 38-2 of the 2001 Zoning Code, as amended. Additionally, the proposed action will eliminate the property's non-conforming zoning.

CRITERIA FOR DECISIONS:

Per Section 2-382 of the Las Cruces Municipal Code, the Planning and Zoning Commission shall determine the following:

- A. The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:
 - 1. Impair an inadequate supply of light and air to adjacent property or otherwise adversely adjoining properties.

2. Unreasonably increase the traffic in public streets.
 3. Increase the danger of fire or endanger the public safety.
 4. Deter the orderly and phased growth and development of the community.
 5. Unreasonably impair established property values within the surrounding area.
 6. In any other respect, impair the public health, safety, or general welfare of the city.
7. Constitute a spot zone, and therefore, adversely affect adjacent property values.
 8. Be in harmony with the purpose and intent of the zoning code, sign code, design standards, and other companion codes.
- B. The commission shall take care that the development of the city, in accordance with present and future needs, best promotes the health, safety, morals, order, convenience, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.
 - C. The commission shall encourage the proper use and development of land, shall seek to create and maintain an aesthetic urban setting, and protect and preserve the quality of the water, air and other environmental, natural, historical and cultural resources for the city.
 - D. The commission shall use the comprehensive plan as a guide in making all future decisions concerning land use and development, and in the financing and location of capital improvements.
 - E. Before taking any action concerning land use and development and financing and location of capital improvements, the commission shall review the relationship between the proposed action and the comprehensive plan.

Upon internal review, Staff did not identify any issues that would deter the Planning and Zoning Commission from making an affirmative recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions above and has deemed the zone change request appropriate with a recommendation of approval.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is currently zoned A-2. The A-2 zoning district is a defunct designation requiring that it be brought into compliance with current code prior to any development taking place on-site. The proposed zone change to C-3 seeks to accomplish this in a manner that is compatible with the surrounding area.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

If the subject property is rezoned as proposed, the size of the lot and the access provided via Bataan Memorial East and Northrise Drive allows future development of commercial uses. All development would then follow the requirements of the C-3 zoning district if approved.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas, and sewer currently serve the property and will not be negatively impacted by the zone change request and any resulting development. Road

infrastructure is largely in place and should accommodate development pursuant to the C-3 standards.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notification letters were mailed to property owners within 500 feet of the subject property on August 5, 2020. Staff has not received any inquiry/input as of the writing of this report.

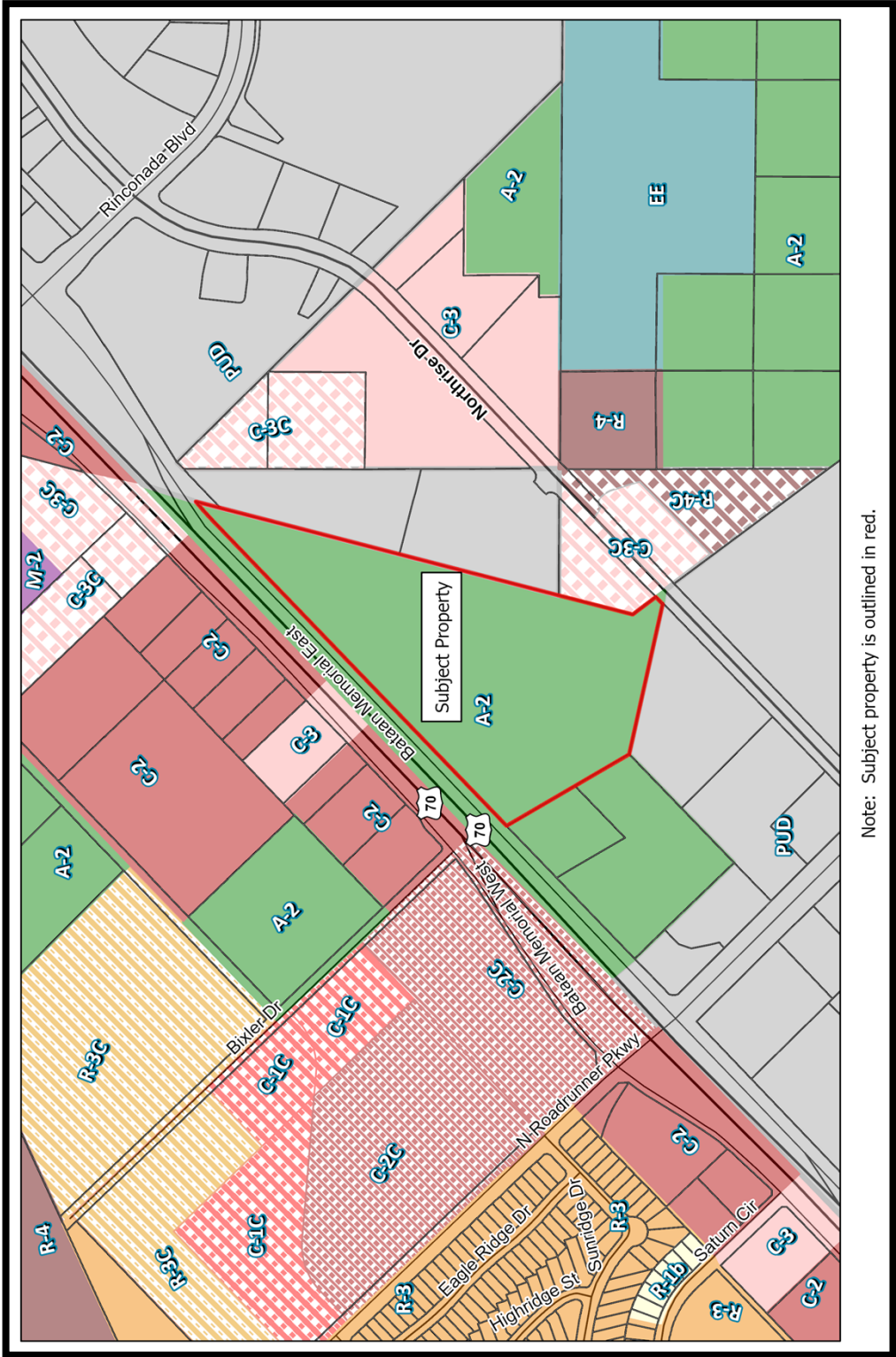
STAFF COMMENTS:

No reviewing department had any negative comments nor have any reviewing staff objected to the proposed rezoning.

ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Department Review Comments

ATTACHMENT 1
Zoning Map



Note: Subject property is outlined in red.

ATTACHMENT 2
Aerial Map



Note: Subject property is outlined in red.

ATTACHMENT 3

Department Review Comments

Department: Planning

Status: APPROVED

Department: Econ. Dev. - Land Management

Status: IN PROCESS

Department: Transportation

Status: NOT REQUIRED

Department: Engineering

Status: IN PROCESS

Department: Utility

STATUS: IN PROCESS

Department: Fire

Status: APPROVED

Department: MPO

Status: APPROVED

Department: Parks and Recreation Review

Status: APPROVED

ATTACHMENT “B” – Approved P&Z Minutes (excerpt)

**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
August 23, 2022 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

Luis Armando Guerrero, Chair
Joaquin Acosta, Member
James Bennett, Member
Scott Kaiser, Secretary
Enrico Smith, Member
Vanessa Vega, Member

STAFF PRESENT:

Larry Nichols, Director Community Development Department, CLC
Katherine Harrison-Rogers, Senior Planner
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Jocelyn Garrison, CLC Senior Assistant City Attorney
Adrian Guzman, CLC Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Guerrero: All right. Well good evening everyone. It's been a beautiful past few rainy days in Las Cruces. Just so you all know, I just found out like five minutes ago I'm supposed to run this meeting, so hopefully we go without hiccups. But I think we'll be fine.

2. CONFLICT OF INTEREST

Guerrero: First order of business, is there any conflict of interest with any of the agenda items tonight? No, it does not seem, then I think we're good.

3. APPROVAL OF MINUTES – July 26, 2022

Guerrero: Why don't we move on to the approval of minutes? Could I get a motion to approve the minutes?

Breen I make a motion to approve the minutes.

Kaiser: I'll second.

Guerrero: All righty.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Kaiser.

Kaiser: I abstain. I was absent last meeting.

Baum: Thank you. Board Member Bennett.

Bennett: Yes.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Board Member Guerrero.

Guerrero: Yes.

Baum: Thank you. All right. Excellent. Well, the minute's pass.

4. ELECTION OF OFFICERS

Guerrero: We are going to be doing an election of officers. As mentioned, the former Chair, Mr. Harvey Gordon, resigned. And we need to decide if I'm going to be the chair, if somebody else wants to do it, totally fine, but yes. I don't know how we do this part.

Nichols: Mr. Chair. You'll ask the Commission to make nominations, and we get a second, and then we go to vote. But ask the nominee if they're willing to accept the nomination and go to vote.

Guerrero: Perfect. All righty. Well, does anybody want to make a nomination for Chair?

Bennett: I nominate Luis as Chair.

Guerrero: Okay.

Vega: And then I second.

Guerrero: All righty. Perfect. Then do we still vote or?

Nichols: You would accept the nomination.

Guerrero: Yes. Yes, I do.

Nichols: Yes, So take a vote, please.

Baum: Board Member Vega. We have too many microphones on. We need to turn them off, please. Thank you. Board Member Vega.

Vega: Yes. Thank you.

Baum: Board Member Smith.

Smith: Yes.

Baum: Thank you. Board Member Kaiser.

Kaiser: Yes.

Baum: Thank you. Board Member Bennett.

Bennett: Yes.

Baum: Thank you. Board Member Acosta.

Acosta: Yes.

Baum: And Board Member Guerrero.

Guerrero: Yes.

Baum: Thank you.

Guerrero: All right. Perfect. Well, that's solves one of the seats. Now we need to nominate someone for Vice-Chair. Would anybody like to make a nomination for Vice-Chair?

Bennett: I nominate Scott.

Vega: I second.

Agenda Item #6.3.

Guerrero: All right, perfect.

Kaiser: I am willing.

Guerrero: Perfect. Then we got a vote then.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Chair Guerrero.

Guerrero: Yes. All righty. Awesome. Well that was quick. Now, do we, we don't have any postponements, so we're going to skip that.

H-Rogers: Mr. Chair.

Guerrero: Yes.

H-Rogers: One point of order/ Because Commissioner Kaiser was Secretary now that ...

Guerrero: Okay, well now never mind. Scratch that. We need to nominate a secretary. Any of the Commissioners wants to nominate someone as the secretary?

Kaiser: I'll return the favor and nominate Commissioner Vega.

Guerrero: That sounds great.

Agenda Item #6.3.

Vega: Is it because I'm a woman?

Kaiser: Absolutely not.

Bennett: I'll second.

Vega: I accept.

Guerrero: All right. Perfect. Then let's vote.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Chair Guerrero.

Guerrero: Yes.

Baum: Thank you.

Guerrero: All right. Perfect. I think, is that it? We got all of it. Perfect. All right. Excellent.

5. POSTPONEMENTS – None

6. PUBLIC PARTICIPATION

Guerrero: Then up next, we have public participation. This is if anybody has anything they would like to share that is not in the agenda. Do we have

anybody in the public that would like to come up and speak on something that is not in the agenda? No. All right then that's fine.

7. CONSENT AGENDA - None

9.2 3400 Bataan Memorial East Zone Change: A zone change request from A-2 (Agricultural District) to C-3 (Commercial High Intensity) for ± 17.07 acres of property generally located between Rinconada Boulevard (east), Roadrunner Parkway (west), Northrise Drive (south), and Bataan Memorial East (north) in Council District 6. Submitted by John Heck on behalf of Tuff Co. LLC, property owner. (Case # 22ZO0500084)

Guerrero: Moving on to the next item in our agenda, we have 9.2 which is also a zoning change. Could I get a motion in a second?

Vega: Make a motion to hear item 9.2.

Guerrero: Thank you,

Smith: I second.

Guerrero: All righty. Thank you.

Banegas: Mr. Chairman, Members of the Commission. Vincent Banegas again presenting case 22ZO0500084. It is a zone change. Yet another conversion type zone change from A-2 to C-3 involving property located at 3400 Bataan Memorial East. Current conditions are as follows, the property is approximately 17.07 acres in size. As indicated it is A-2. A-2 is, or was our agricultural district zoning designation as part of the '81 code. Again, when the 2001 code came into effect A-2 was no longer part of it. So back in the day A-2 was applied to properties that were either agricultural in nature in terms of land use, but quite often it was used as a placeholder when annexations occurred and the property owner did not know exactly what designation they wished to proceed with. Oftentimes the A-2 zone was utilized for kind of a reservation of future considerations for zoning district. So the current zoning of A-2 is defunct. As indicated it is nonconforming and we do need to seek out a conversion to an appropriate designation pursuant to the 2001 code.

In this case, the property is located in a regional commercial place type that is identified as part of the Elevate Las Cruces Comprehensive Plan. And just to give you a little idea as to the character of that place type, it seeks to allow large retail and professional office type service uses that require a large draw or typically have a large draw in terms of customer base. The property itself is predominantly vacant. There is a single-family dwelling on site built back in 1949. I don't believe it's occupied at the

present time. It doesn't look like it is. It looks like there's some maintenance that is needed. So I believe again, most of, clearly the majority of the acreage is vacant, certainly an underutilized parcel.

So the Highway 70 annexation back in 1967 brought the parcel in. It is outside the Northrise Business Park Development Plan. I believe in your packet I may have misspoke. It is literally one parcel outside the boundary of that business park development plan. I think I said it was within, but I have confirmed it is outside. It is part of the MBSK subdivision and there was a replat that sought to add a little bit of acreage at the apex of the access point along Northrise Drive, and that apex was widened to approximately 70 feet if memory serves. That apex location is right where this cursor is pointing to, that's where the replat came into play. But the subject property is outlined in red here. And you can see that there's a few other A-2 properties immediately west of the subject property and there are certainly several others located south of the property and south of Northrise Drive. You do have other zoning designations in the immediate vicinity, several of which are commercial in nature. You do have some C-3C zoning, you do have some C-2C further north across Bataan Memorial and the highway. And a lot of these PUD designated parcels or zoned parcels have an underlining underlying zoning district for commercial uses. So quite a bit of commercial that certainly ties in and supports the regional commercial place type that's mentioned in Elevate.

So you do have this aerial showing the property. It is right underneath the word subject where the single-family home currently sits, otherwise it is vacant. You do have an access point off of Bataan Memorial and you will have access point off of Northrise Drive. As it relates to any future development, I'm sure from the perspective Bataan Memorial you will have New Mexico Department of Transportation involved in the review of any permit, as well as City staff of course. But beyond that, a lot of the area surrounding the subject property at least immediately east and west is predominantly vacant as well. You do have some I believe it's Domino's up in this corner of Bataan Memorial and Roadrunner Parkway. You have a large office complex. You do have on the south side of Northrise near the intersection of Northrise and Roadrunner you have some, I believe it's the residential care facility. And further south you do have some multifamily apartments so again uses that are consistent with Elevate.

So the proposal before us is to rezone the property from A-2 to C-3. C-3 being the commercial high intensity zone within our 2001 code. It's certainly a reasonable request given the Elevate Las Cruces place type, the parcel size, and the physical location of the property. No development proposal was identified as part of the application packet for this request, so staff is unaware of what the ultimate intention is in terms of build out.

So from a reviewing perspective, staff didn't find any considerable issues to be addressed at this point in time. I'm sure we will reserve that for an actual application for development so that we can better review what is requested with development code. So here's a couple of photos, this is looking north from Northrise Drive, single-family home is shown here in the background up on the hill. It is a very somewhat hilly property, change in elevation from the Bataan Memorial side down to Northrise side fairly considerably. This is looking south, again the single-family dwelling here. You can see the access point almost on the far right of the photo. It's a little driveway that comes from Bataan Memorial into the property, otherwise you have this wall along Bataan Memorial that restricts access. So there are no health, safety, or welfare issues identified by staff. We do find that the requested zoning of C-3 is compatible with the surrounding neighborhood. It's certainly compatible with the regional commercial place type as per Elevate Las Cruces. And we find that several goals, policies, and actions support the request. It speaks to developing vacant land, creating employment opportunities, job housing, balance, and growing businesses etc. Those are some of the key themes of policy that supports the request.

So in terms of public notice, notice was made pursuant to current code. Again early in the month letters were sent out. On this particular case, staff has not received any input to date. Here we are. Staff's recommendation is approval based on the following findings, the property has nonconforming zoning and said zoning needs to be brought into compliance in order to allow further development on site. The C-3 is considered to be the most appropriate zoning designation given the location, surrounding area, roadway access, and lot size. The area certainly seems to be geared towards drawing from a large population base. And so it's consistent with that place type, as mentioned I indicated that several goals and policies supported the request. It meets the purpose and intent of the 2001 Las Cruces Zoning Code as amended. And it meets the criteria for decisions found in the municipal code. So the surrounding area already has a variety of uses and zoning districts that are certainly consistent with that C-3 zoning district.

So your options this evening is the vote "yes" and approve the request, vote "no" and deny, you can vote "yes" with conditions, or vote to table. And I believe, Mr. Chairman, that the property owner and/or representative is in the audience. And so again, either the individual or myself can answer any questions you might have.

Guerrero: Yes, of course. Yes. Do we have the either owner or representative in the audience? Yes sure. Could you come up? Just watch your step there. All right perfect. First of all can we get your first and last name?

Heck: John Heck H-E-C-K.

Guerrero: All righty. Thank you. And do you swear and affirm that the testimony you're about to give is the truth and nothing but the truth until under penalty of law?

Heck: Absolutely. All right. Yes. Go ahead.

Guerrero: Any questions that you would have about the property, I'll be glad to answer.

Guerrero: Sure. All right. Well, does anybody have any questions for the property? Go ahead, Commissioner.

Acosta: Do you have any idea what you're looking to put there commercially wise or?

Heck: The existing house has been vacant for about seven years and been ransacked by various and assorted different people in and out of the property. It has broken windows, they tore out most of the copper pipe and electrical. I recently replaced the roof on it which was incredibly antiquated with Shake Shingles which are no longer allowed. I'm a general contractor. This is basically what I do is find older properties and fix them up and turn them somehow. I do have a client out of Washington State that's very interested in purchasing this house if I remodel it and bring it up to code, and they're going to use it as an Airbnb.

Acosta: Thank you.

Heck: The rest of the property, I don't know what will happen with it at this point in time.

Guerrero: Thank you. Thank you so much. Does anybody else have any questions? Yes, Commissioner Kaiser.

Kaiser: This is actually a question for staff. I noticed in the staff report, attachment three, the department review comments, it still has under several departments the status as listed as in process. I just haven't seen that before so I'm not sure if there's a significance there.

Banegas: Mr. Chairman, Commissioner Kaiser. When I looked at that, that was indeed the status by a few of the reviewing departments. They were having difficulty locating the property. There was a legal description, or metes and bounds description, and so I provided on the specific location, cleared it up, and they didn't have any issues beyond that.

- Guerrero: All righty. Thank you very much. Does anybody else have any questions or comments for either staff or the owner? No. In that case we're going to move on to comments from the public. Would anybody in the public like to speak about this specific case? Does not look like it. So in that case, could I get a motion to approve this case?
- Kaiser: I'll make a motion to approve item 9.2.
- Smith: I second.
- Guerrero: All right.
- Baum: Board Member Vega.
- Vega: I vote to approve based on site visit and it meets the zoning code updates
- Baum: Board Member Smith.
- Smith: I vote yes based on site visit and staff recommendation
- Baum: Board Member Kaiser.
- Kaiser: Yes, based on staff recommendation and consistency with Elevate Las Cruces.
- Baum: Board Member Bennett.
- Bennett: I vote to approve based on staff recommendation, this meets to Elevate Las Cruces, and the municipal code.
- Baum: Board Member Acosta.
- Acosta: I vote yes based off staff recommendation and compliance with the Elevate Las Cruces Comprehensive Plan.
- Baum: Chair Guerrero.
- Guerrero: Yes, I vote yes, also based on staff recommendations, site visit, and compliance with Elevate Las Cruces. Perfect. We have a motion that passed. Thank you very much.



City of Las Cruces

City Council Action and Executive Summary

**3021; Council
Bill 23-015**

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

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

1st Reading: December 19, 2022

Adopted: January 3, 2023

Drafter: Elizabeth Teeters

Department: Economic Development

Program: Business Development

Line of Business: Business Development

Title: AN ORDINANCE AUTHORIZING REPAYMENT TO THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD) FOR THE LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) PROJECT GANYMEDE GAMES, LLC., IN THE AMOUNT OF \$250,000.00 FOR THE TERMINATION OF THE PROJECT PARTICIPATION AGREEMENT AND MATCH REQUIREMENT OF \$100,000.00.

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

PURPOSE(S) OF ACTION:

To authorize repayment.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Under Ordinance 2886, the City Council previously authorized the City of Las Cruces (City) to act as the fiscal agent for a Local Economic Development Act (LEDA) project for Ganymede Games, LLC. The City received \$250,000.00 from the New Mexico Economic Development Department (NMEDD) for the project. In addition, the City provided a local match in the amount of \$100,000.00. None of the funds have been expended.

The purpose of the funding was to support Ganymede Games, LLC. with its commitment to creating jobs in the City over a period of five (5) years. Ganymede Games, LLC., as required by the Ordinance, entered into a Project Participation Agreement on March 4, 2019, with the City and agreed to the following: a total of 51 full-time persons by December 31, 2024.

On July 29, 2020, Ganymede Games, LLC. was granted an extension to their Project Participation Agreement (PPA) because the COVID-19 pandemic negatively impacts them. With the extension, they have still been unable to meet the minimum job number of 10 employees by December 31, 2021. There is a 180-day "cure period" to give the company the opportunity to reach its minimum employment numbers, which has now been exhausted. Therefore, the LEDA is being canceled due to the inability to reach the employee count and the fact that the cure period has passed.

Since no funds have been transferred to the company, no clawback penalties will apply. After the budget adjustment and repayment to NMEDD with Council approval via this ordinance, no additional actions are required.

SUPPORT INFORMATION:

[Exhibit "A" Project Participation Agreement](#)

[Attachment "A" Ganymede Games Project Cancellation Memo](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

- ☐ Yes
- ☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:

AVAILABLE AMOUNT:

EXPENDITURE AMOUNT:

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 Ordinance to terminate the PPA and authorize repayment to NMEDD.
- 2. Vote "No"; this will not approve the Ordinance to terminate the PPA and authorize repayment to NMEDD.
- 3. Vote to "Amend"; this will delay the City's ability to repay the State in a timely manner.
- 4. Vote to "Table"; this will delay the City's ability to repay the State in a timely manner.

ORDINANCE 3021; COUNCIL BILL 23-015

AN ORDINANCE AUTHORIZING REPAYMENT TO THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD) FOR THE LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) PROJECT GANYMEDE GAMES, LLC., IN THE AMOUNT OF \$250,000.00 FOR THE TERMINATION OF THE PROJECT PARTICIPATION AGREEMENT AND MATCH REQUIREMENT OF \$100,000.00.

The City Council is informed that:

WHEREAS, as indicated in Ordinance 2886, the City Council previously authorized the City of Las Cruces (City) to act as the fiscal agent for Local Economic Development Act (LEDA) project with Ganymede Games, LLC.; and

WHEREAS, the City received funding in the amount of \$250,000.00, from the New Mexico Economic Development Department (NMEDD) to be distributed to the project; and

WHEREAS, the City provided a local match in the amount of \$100,000.00, for a total of \$350,000.00 to be distributed to Ganymede Games, LLC.; and

WHEREAS, the funding was to be used to support the Ganymede Games, LLC., project to create 51 full-time jobs pursuant to a March 4, 2019, Project Participation Agreement (PPA) entered into between Ganymede Games, LLC., and the City; and

WHEREAS, on July 29, 2020, Ganymede Games, LLC. was granted a one-year extension to their PPA because of the impact they faced due to the COVID-19 pandemic; and

WHEREAS, Ganymede Games, LLC., did not reach the minimum job number requirement in the PPA of 10 jobs by December 31, 2021, and the cure period of 180 days has expired, which terminates the agreement.

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

(I)

THAT the City is hereby authorized to terminate the Project Participation Agreement (PPA) attached hereto as Exhibit "A", and made part of this Ordinance.

(II)

THAT the City is authorized to accept the \$100,000.00 match in funds reimbursed due to the cancellation of the PPA in order for the FY2022 budget to be adjusted.

(III)

THAT the City reimburse the NMEDD its original funding towards the Ganymede Game, LLC., project in the amount of \$250,000.00 with no further action required for this.

(IV)

Agenda Item #6.4.

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

DONE AND APPROVED this day of

Agenda Item #6.4.

APPROVED

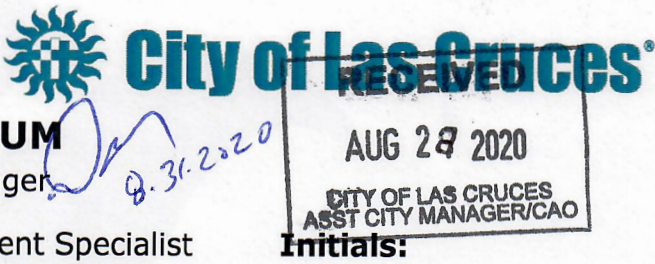
ATTEST:

Moved by:

Seconded by:

AYES

NAYS



MEMORANDUM

To: David Maestas, Interim City Manager
From: Cruz Ramos, Economic Development Specialist
Date: August 18, 2020
Subject: Extend Ganymede Games, LLC LEDA Project Timeline

File #: FE#21-005

Ganymede Games, LLC is a games studio that has established operations in Las Cruces. Ganymede brings years of invaluable video game development experience and expertise to New Mexico's creative economy. Ganymede received \$100,000.00 in LEDA funds from the city and \$250,000.00 from the State to create 51 new jobs.

With the COVID pandemic, the company has met some challenges that have impacted its ability to meet the timeline of their LEDA Agreement. Difficulty of recruiting additional staff to meet their job creation numbers has been hindered, given travel restrictions associated with the pandemic.

The company has requested a 1-year extension to the PPA to allow them to recover from the COVID impacts.

The City's Economic Development department has discussed Ganymede's current situation with the NMEDD and they are comfortable proposing extending the terms of the LEDA Agreement to the new timeline below.

Job Measurement Date	Cumulative Fulltime Target Job Number	Minimum Job Number	Clawback Penalty if Minimum Job Number not met
December 31, 2020	11	10	100% of clawback Penalty
December 31, 2021	29	26	100% of clawback Penalty
December 31, 2022	40	36	100% of clawback Penalty
December 31, 2023	47	42	50% of clawback Penalty
December 31, 2024	51	46	25% of clawback Penalty

The Amendment to Agreements and the Project Participation Agreement as established by City of Las Cruces Ordinance #2886 and now updated, are attached to this Memorandum. Both documents recommend extending the project timeline through June of 2026.

Per the recommendation of NMEDD, this is the mechanism used in other municipalities to extend LEDA projects and the mechanism we have used to extend previous LEDA projects in Las Cruces.

Please review the document. If it meets with your approval, please sign and call the Economic Development Office for pick up and final processing. If I may be of further assistance, please contact me at (575) 642-0454 or via email at cramos@las-cruces.org.

Attachments: Amendment to Agreement
Extended Project Participation Agreement

- cc: Mandy Guss, Business Development Administrator
- cc: Griselda Martinez, Economic Development Director
- cc: Francisco Pallares, Economic Development Deputy Director
- cc: Jennifer Vega-Brown, City Attorney
- cc: Barbara De Leon, Interim Assistant City Manager

Initials: *Approved via email*
Initials: *Approved via email*
Initials: *Approved via email*
Initials: *[Signature] for JUB*
Initials: *[Signature]*

Dania Soto

From: Mandy Leatherwood Guss
Sent: Wednesday, August 19, 2020 9:43 AM
To: Dania Soto; Griselda Martinez; Francisco Pallares
Cc: Cruz Ramos; Cynthia Villanueva
Subject: RE: Ganymede Extension

Approved!
Thanks,

Mandy Guss
Business Development Administrator/Economic Development
Direct: 575-541-2286

From: Dania Soto <dasoto@las-cruces.org>
Sent: Wednesday, August 19, 2020 9:40 AM
To: Griselda Martinez <gtmartinez@las-cruces.org>; Francisco Pallares <fpallares@las-cruces.org>; Mandy Leatherwood Guss <mguss@las-cruces.org>
Cc: Cruz Ramos <cramos@las-cruces.org>; Cynthia Villanueva <cvillanueva@las-cruces.org>
Subject: Ganymede Extension

Good morning,

Please see the Ganymede LEDA extension memo and backup docs for your review and approval.

Thank you,

Dania Soto
Executive Administrative Assistant/Economic Development/A&G
Direct: 575-528-3477
Email: dasoto@las-cruces.org
City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004



Dania Soto

From: Griselda Martinez
Sent: Wednesday, August 19, 2020 2:49 PM
To: Dania Soto; Francisco Pallares; Mandy Leatherwood Guss
Cc: Cruz Ramos; Cynthia Villanueva
Subject: RE: Ganymede Extension

Approved.

Dr. Griselda T. Martínez
Director / Economic Development
Phone: 575-541-2428 Direct / 575-528-3477 Main / Email: gtmartinez@las-cruces.org



 Please consider the environment before printing this email

From: Dania Soto <dasoto@las-cruces.org>
Sent: Wednesday, August 19, 2020 9:40 AM
To: Griselda Martinez <gtmartinez@las-cruces.org>; Francisco Pallares <fpallares@las-cruces.org>; Mandy Leatherwood Guss <mguss@las-cruces.org>
Cc: Cruz Ramos <cramos@las-cruces.org>; Cynthia Villanueva <cvillanueva@las-cruces.org>
Subject: Ganymede Extension

Good morning,

Please see the Ganymede LEDA extension memo and backup docs for your review and approval.

Thank you,

Dania Soto
Executive Administrative Assistant/Economic Development/A&G
Direct: 575-528-3477
Email: dasoto@las-cruces.org
City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004



Dania Soto

From: Francisco Pallares
Sent: Wednesday, August 19, 2020 9:49 AM
To: Dania Soto; Griselda Martinez; Mandy Leatherwood Guss
Cc: Cruz Ramos; Cynthia Villanueva
Subject: Re: Ganymede Extension

Good morning Dania,

Please consider this email as my electronic approval for the LEDA extension.

Sincerely,

Francisco Pallares
Deputy Director/Economic Development
Direct: 575-528-3060, fpallares@las-cruces.org



From: Dania Soto <dasoto@las-cruces.org>
Sent: Wednesday, August 19, 2020 9:39 AM
To: Griselda Martinez <gtmartinez@las-cruces.org>; Francisco Pallares <fpallares@las-cruces.org>; Mandy Leatherwood Guss <mguss@las-cruces.org>
Cc: Cruz Ramos <cramos@las-cruces.org>; Cynthia Villanueva <cvillanueva@las-cruces.org>
Subject: Ganymede Extension

Good morning,

Please see the Ganymede LEDA extension memo and backup docs for your review and approval.

Thank you,

Dania Soto
Executive Administrative Assistant/Economic Development/A&G
Direct: 575-528-3477
Email: dasoto@las-cruces.org
City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004



Amendment to Agreements for LEDA Project as established by City of Las Cruces Ordinance # 2886 approving the Ganymede Games, LLC Economic Development Project.

On March 4, 2019 the City of Las Cruces adopted Ordinance 2886 supporting an Economic Development Project with Ganymede Games, LLC. The ordinance authorized City Staff to enter into a Project Participation Agreement (PPA) and Intergovernmental Agreement (IGA) which are incorporated into the Ordinance and made a part thereof by reference.

The Project Agreements were based on a preliminary project schedule that involved initiating facility improvements in Spring of 2019 and being in full operation by Fall of 2019. The project began operations as scheduled but, due to delays in financing, and then the impact of COVID-19, the Project will continue to operate from home through Spring of 2021 and will require additional time to complete the facility improvements for common office space and recruit employees to Las Cruces.

Parties agree to extend all performance and reporting deadlines on the PPA and IGA by 1 year in order to accommodate the construction delays. Specifically, Parties agree to extension of the following timeframes as defined in the PPA:

- 2.b Deadline for Project Investment extended to December 31, 2020.
- 2.c Job Creation Target Period extended to December 31, 2025.
- 2.e Sustainability period of operation extended to June 30, 2026.
- 8.b Security requirement extended to June 30, 2026.
- 9.a Facility closure clawback extended to June 30, 2026.
- 9.b Annual performance clawbacks each extended 1 year as follows:

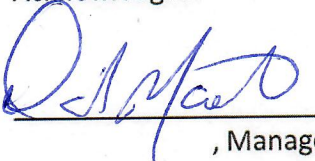
Job Measurement Date	Cumulative Fulltime Target Job Number	Minimum Job Number	Clawback Penalty if Minimum Job Number not met
December 31, 2021	11	10	100% of Clawback Penalty
December 31, 2022	29	26	100% of Clawback Penalty
December 31, 2023	40	36	100% of Clawback Penalty
December 31, 2024	47	42	50% of Clawback Penalty
December 31, 2025	51	46	250% of Clawback Penalty

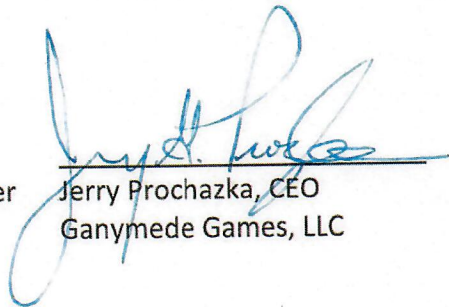
- 12 Termination date extended to June 30, 2026.
- 13 Request for early release of security is job target maintained prior to December 31, 2025 but in no case prior to December 31, 2022.

All other terms and conditions remain unchanged.

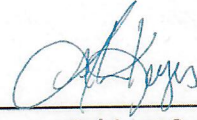
Amendments accepted: July 29, , 2020

Acknowledged:


_____, Manager
City of Las Cruces



Jerry Prochazka, CEO
Ganymede Games, LLC



Alicia J Keyes, Cabinet Secretary
NM Economic Development Department

As Extended, 2020

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on March 19, 2019 by and between **CITY OF LAS CRUCES**, a New Mexico Municipal Corporation (the "City"), and **GANYMEDE GAMES, LLC** (the "Company").

Recitals.

- A. Article 9, Section 14 of the New Mexico Constitution provides municipalities the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.
 - B. Pursuant to the Local Economic Development Act, NMSA 1978, Sections 5-10-1 through 5-10-13 ("LEDA"), the City adopted Ordinance No. 2873 (the "Las Cruces Local Economic Development Plan") authorizing the City to consider applications for economic development assistance;
 - C. As provided in the Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City serve as local government conduit for an appropriation of up to \$250,000.00 from the Legislature of the State of New Mexico (the "State Contribution") to go toward the Company's development of a headquarter Facility at 201 N Church Street in the City of Las Cruces (the "Project"). The company will establish operations at the Facility and will employ at least 51 full-time persons by December 31, 2024.
 - D. The City has adopted Ordinance No. 2886 ("Project LEDA Ordinance") finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Agreement as meeting the requirements of the Act.
1. **Goals and Objectives.** The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.
2. **Substantive Contribution from the Company.**
- a. **Facility.** The Company will establish business operations at 201 N Church Street in the City of Las Cruces, New Mexico (the "Facility").

b. **Investment.** The Company will make capital investments in the Project and costs associated therewith (including, for the acquisition of land, building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of approximately \$1,000,000 by December 31, 2019, provided, however, failure to meet this level of Project Contribution will not constitute a breach of this Agreement.

December 31, 2020

December 31, 2025

c. **Job Creation.** The Company will directly employ a target of 51 full-time employees at the Facility by December 31, 2024 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. Full-time employees do not include agency, sub-contracted, temporary employees or independent contractors. While failure to meet certain Minimum Job Numbers may result in a Performance Clawback as provided in Section 9b, below, the Company's failure to meet the Job Target will not constitute a breach of this Agreement.

d. **Schedule.** A preliminary Project schedule is as follows, but failure to meet these milestones will not constitute a breach of this Agreement.

Spring 2019
Fall 2019

Initiate Facility improvements and hiring
Project in full operation

e. **Sustainability.** Although the Company intends to have a long-term presence in the City, for purpose of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until June 30, 2025.

June 30, 2026

3. **The City Contribution.**

a. The City Contribution is composed of up to \$100,000.00. The City Contribution will be disbursed to the Company in accordance with the provisions of this Agreement for such purposes as set forth in Section 5-10-3D NMSA 1978.

b. In addition, the City will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. The City will comply with the Local Economic Development Act ("LEDA") with respect to the acceptance and disbursement of the State Contribution. As required by the LEDA Ordinance and the Act, the City will deposit the State Contribution into a clearly identified separate account. The State Contribution will be disbursed to the Company through the City for reimbursement of LEDA Eligible Expenditures.

4. Disbursement of City Contribution

The City will disburse equal payments during the first 2 years (24 months) to the Company totaling \$100,000.00 on a reimbursement basis upon receiving invoices from Ganymede and proof-of-payment to the landlord.

5. The State Contribution

- a. The City anticipates that the State Contribution will be delivered by the State to the City for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of this document and the intergovernmental agreement between the State and the City, after which time the City will request transfer of the State Contribution. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. The City will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement executed between the City and the State. The City will disburse the State Contribution to the Company as reimbursement for LEDA Eligible Expenditures subject to the Company's satisfaction of the conditions set forth herein. Disbursements shall be paid on a reimbursement basis and the Company shall first incur the LEDA Eligible Expenditures and then submit requests for reimbursement to the City. For purposes of this Agreement, LEDA Eligible Expenditures shall mean: expenditures including, but not limited to, land, building and infrastructure, including permanently installed and situated physical assets and the design, labor and permitting required to put them in place. Examples include: foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.
- b. The State Contribution is composed of up to \$250,000.00. The State Contribution will be disbursed to the Company in accordance with the provisions of this Agreement for such purposes as set forth in Section 5-10-3D NMSA 1978.

5. Disbursement of State Contribution

- a. **Conditions to Disbursement; Performance Milestones.** The State Contribution will be disbursed in two (2) separate allotments. Each disbursement will be conditioned on (i) the Company's having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) the Company meeting minimum employment targets and being in compliance with job reporting requirements; and (iii) the Company's satisfaction of the performance milestones set forth below (the "Disbursement Performance Milestones") for each allotment prior to the disbursement:

Amount of State Contribution Available for Disbursement	Disbursement Performance Milestone
\$150,000.00	Occupy the Facility and incur LEDA eligible Construction Expenditures (defined below).
\$100,000.00	Maintain a minimum employment level of 25 or more (per quarterly Wage and Employment report submitted to State of NM) for six (6) consecutive months and incur LEDA eligible expenses including Construction Expenditures and/or lease payments.

“Construction Expenditures” means an expenditure for construction materials and services, but does not include lease payments or equipment purchases. The Company has budgeted approximately \$300,000 for its Construction Expenditures. The Company shall inform the contracted construction companies to use the correct New Mexico Taxation and Revenue Department Location Code of 07-132 Downtown TIDD-Las Cruces, for Gross Receipts Tax filing.

6. **Disbursement Requests.** From time to time, after the Company has satisfied the conditions for disbursement set forth herein, the Company may submit to the City a written request for disbursement of the City or State Contribution (the “Disbursement Request”). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) documentation of current employment level in New Mexico. The Company will not submit a Disbursement Request for less than \$50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution then available to the Company at any time. The City may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.
7. **No Offset of City costs.** The City may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.
8. **Security.** As security for the faithful performance and payment of Company’s obligations under this Agreement, prior to the Company’s receipt of any part of the State or City Contribution, Company shall fund a Certificate of Deposit held for the City, or some alternative form of security in a form mutually acceptable to the parties (the “Security”). The maximum obligation secured by the Security (the “Maximum Obligation”) will be \$350,000.00. The Company shall be permitted to obtain incremental increases in the Security in the amount of each Disbursement Request and shall not be required to secure the Maximum Obligation before a disbursement will be made; for example, if the 1st disbursement is for \$100,000.00 and a 2nd disbursement is for another \$100,000.00, the total security must equal

\$200,000.00. The Security shall be delivered to the City no less than 15 days before request for Disbursement.

- a. The City may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.
- b. Provided that the Company has not been required to pay any Clawback, the Security will terminate on June 30, 2025, unless earlier released in accordance with this Agreement. June 30, 2026
- c. If the State or City reduces the amount of LEDA Funds that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds actually received by the Company.

9. **Clawbacks:**

Notwithstanding any other provision of this Agreement, the Company shall be required to pay the Clawback Penalties set forth in this Section (together with forfeiture of the security instrument provided to secure the Company's Clawback obligations), if the Company does not satisfy the conditions set forth herein.

June 30, 2026

- a. **Facility Closure Clawback.** If the Company ceases operations in the City on or before June 30, 2025 the Company will repay to the City all LEDA Funds that the Company actually received from the City as of that date (the "Facility Closure Clawback") and the City shall have the right to execute reimbursement from the Security, but only after thirty (30) days following written demand for payment to the Company. For purposes of this Agreement, a failure to produce product for a period of 90 days or more or failure to occupy the Facility shall be considered a cessation of operations; provided however cessations for reasonable periods for the repair or replacement of facilities damaged or destroyed, cessations resulting from labor disputes, strikes, riots or acts of God, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 10a. If the Company ceases operations for any of the causes set forth in this Section 10a, the Company shall submit a plan for resolving such cessation of operations within 30 days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the City within 10 days.
- b. **Performance Clawback.** It is the Company's intent to create, hire and maintain the number of jobs set forth in the table below under the column captioned "Cumulative Fulltime Target Job Number" on the Job Measurement Dates set forth below. If the Company does not meet or exceed the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Measurement Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty

(as defined below) to the City which will be applied in the percentage set forth in the table below:

Job Measurement Date	Cumulative Fulltime Target Job Number	Minimum Job Number	Clawback Penalty if Minimum Job Number not met
December 31, 2020 2021	11	10	100% of Clawback Penalty
December 31, 2021 2022	29	26	100% of Clawback Penalty
December 31, 2022 2023	40	36	100% of Clawback Penalty
December 31, 2023 2024	47	42	50% of Clawback Penalty
December 31, 2024 2025	51	46	25% of Clawback Penalty

For the purposes of this Section:

The "Clawback Penalty" is a penalty that the Company will be required to pay the City upon the Company's failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State and City Contribution paid to the Company as of that time. For purposes of this subsection, the "Percentage Hiring Shortfall" shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date.

"Cure Period" is the period of 180 days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if the Company meets the Minimum Job Number at any time during the Cure Period as validated by the job reporting requirements set forth herein, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

See Attachment 1 hereto for examples of Clawback Calculations

The parties hereto recognize certain economic factors generally described as "Business Climate Changes" are beyond the control of any of the parties and may affect the ability of the Company to strictly adhere to the job creation numbers and schedule set forth herein. "Business Climate Changes" means substantial changes, beyond the control of the Company within the industry in which the Company operates, that causes a

significant decrease in the Company's ability to perform pursuant to the requirements of this agreement with the City. The Company may request specific modifications to the job creation schedule in writing within ten days of learning of the existence of the "Business Climate Change." Such notification shall include the details of the business climate change, the effect thereon on the Company, and the modification of this agreement the Company requests. If the City and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified.

- c. **Job Reporting.** The Company shall submit quarterly employment reports documenting its quarterly filing of the Department of Workforce Solutions' ("DWS") Employment and Wage Detail Reporting as submitted to DWS in the form and manner required by EDD (a sample reporting process is attached hereto as Attachment 2). The State will provide copies of all such reports to the City. The City or the State may request a copy of the Company's quarterly employment reports at any time while this Agreement is in effect and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the City and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without up to date quarterly job reporting as set forth herein.
- d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

10. Fees. Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.

11. Annual Performance Review. To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City or EDD staff beginning on June 30, 2020 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

If the requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the City terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the City will not have a right to clawback any of the payments already made to the Company.

12. Termination. This Agreement shall terminate at the close of business on June 30, 2025 or when otherwise terminated by ordinance. June 30, 2026

13. Request for early release of security. If the Company achieves and then sustains the Minimum Job Number of 51 employees for six (6) consecutive months prior to December 31, 2024, the Company may request that the Security be released and such request shall not unreasonably be denied. Said request shall be made to the City in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. A request for release of the Security may not be submitted prior to December 31, 2021. In the event that a request for early release of Security is granted, the job reporting and annual performance review requirements of this Agreement remain in full effect through the termination date stated above. December 31, 2022

14. Liability. No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.

15. Amendments. This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto and EDD. Any amendments may be subject to the approval of the governing body of the City of Las Cruces.

16. Governing Law. This Agreement shall be governed by the laws of the State of New Mexico.

17. Miscellaneous. This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the EDD; provided, however, that with notice to the City and the EDD, the Company may assign this Agreement to any affiliate or other member of the Company that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.

18. Notice. All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:	If to the Company:
City of Las Cruces	Ganymede Games LLC
Attention: Mandy Guss	:
PO Box 20000	:
Las Cruces, New Mexico 88004	:

Effective Date: March 19, 2019

- Attachments:**
- 1. Example of Clawback Calculations
 - 2. Sample Affidavit for Job Reporting

SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

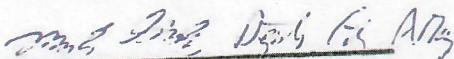
City of Las Cruces

By  3/19/19

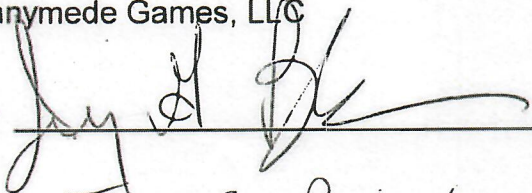
Name Stuart C. Ed

Title City Manager

APPROVED AS TO FORM:


David L. Smith, Deputy City Attorney
City Attorney

Ganymede Games, LLC

By 

Name: Jerry G. Prochazka

Title: CEO

Agenda Item #6.4.



Michelle Lujan Grisham • Governor
Alicia J. Keyes • Cabinet Secretary

Date: November 21, 2022

Memo: Ganymede Games LEDA Project Cancellation, Project Number LCO-2019-11

From: New Mexico Economic Development Department

To: City of Las Cruces

Ganymede Games has failed to comply with the terms of the Project Participation Agreement approved by the Las Cruces City Council in March of 2019, and amended on July 29, 2020. Specifically, **Section 9. Clawbacks b. Performance Clawback** of the above-mentioned documents includes a Job Measurement Date table which provides dates that hiring milestones were due. The PPA, in the same section, allows for a 180 day 'Cure Period', an additional six-month opportunity provided to help the company achieve the agreed upon milestones. As of June 30, 2022, the 180-day Cure Period for Ganymede Games LEDA project has expired. Ganymede Games has not satisfied the terms of the PPA and is considered noncompliant at this time, therefore NMEDD is requesting termination of this LEDA project.

The City of Las Cruces is the fiscal agent for this project. No funds have been transferred to the company so no Clawback penalties will apply. Funds were, however, transferred to the fiscal agent that need to be returned to NMEDD. Section 11 of the executed Project Participation Agreement (PPA) states:

"If requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder..."

At your earliest convenience, please initiate the process of approving a termination ordinance in order to cancel LEDA project LCO-2019-11 before the Las Cruces City Council.

Thank you,

Mark Roper
Division Director
New Mexico Economic Development Department



City of Las Cruces

City Council Action and Executive Summary

23-080

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

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

1st Reading: **Adopted:** January 3, 2023

Drafter: Cherrall De La Cruz **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 accept awarded grants and adjust the FY23 budget.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

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

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

SUPPORT INFORMATION:

[Exhibit "A" - Fund Summary](#)

[Attachment "A" - Grant Listing](#)

[Attachment "B" - If Then Agreement](#)

[Attachment "C" - MOWA Agreement](#)

[Attachment "D" - NMDOT TSD Executed Agreement](#)

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☒ Yes

Agenda Item #7.1.

☐ 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.
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 23-080

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

Agenda Item #7.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	2100 SPECIAL REVENUE REIMB GRANTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 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	5,358,203	16,333,960	84,995	16,418,955
State Grants	1,120,000	9,774,421	0	9,774,421
Local Grants	46,440	35,866	7,960	43,826
Debt Service	0	0	0	0
Total Revenues	6,706,643	26,326,506	92,955	26,419,461
TOTAL RESOURCES	\$ 6,706,643	26,326,506	92,955	26,419,461
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	629,444	5,992,677	84,995	6,077,672
Las Cruces Fire Department	85,478	1,078,031	0	1,078,031
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	1,229,604	0	1,229,604
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 Manager-500	0	0	0	0
Parks & Recreation	11,030	459,981	0	459,981
Community Development	337,981	791,666	0	791,666
Quality of Life	2,375,183	2,023,376	7,960	2,031,336
Public Works	0	365,000	0	365,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 6,706,648	26,326,506	92,955	26,419,461
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	\$ (5)	0	0	0

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 12/19/2022

Attachment #: B

Grant Title: **IF/THEN GENDER EQUITY PROJECT**

Department: Quality of Life – Museum System

Grant/Agreement #: None *Grant Type:* Foundation/Other

Granting Agency: Association of Science and Technology (ASTC)

Grant Amount: \$4,000.00 *Cash Match Amount:* \$0.00

Total Grant Project Amount: \$4,000.00

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

Grant Start Date: 11/16/2022 *Grant End Date:* 1/27/2023

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

Project Code #: 23012

Use of Funds Description:

To create a museum exhibit and surrounding educational program for the Museum of Nature and Science on the topic of women in STEM. The project must be completed by late January of 2023.

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 12/19/2022

Attachment #: C

Grant Title: **MEALS ON WHEELS AMERICA COLLABORATION PROGRAM**

Department: Quality of Life – Senior Programs

Grant/Agreement #: None

Grant Type: Foundation/Other

Granting Agency: Meals on Wheels America

Grant Amount: \$3,960.00

Cash Match Amount: \$0.00

Total Grant Project Amount: \$3,960.00

Cash Match Source: N/A

Match Fund #: N/A

Grant Start Date: 9/28/2022

Grant End Date: 3/15/2024

Amendment Needed: **CIP:** NO

VAF: NO

Project Code #: 23068

Use of Funds Description:

This is a collaborative grant with the Albuquerque Meals on Wheels program to provide prescriptive meals to senior in Albuquerque and Las Cruces. The project will provide 35 bulk meal deliveries to the City's Senior Programs for a total of 5,500 medically tailored meals, serving at least 100 new seniors in Las Cruces. The entire award is \$75,000 with Las Cruces receiving \$3,960 for salaries, benefits, and training of Senior Program's staff.

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 12/19/2022

Attachment #: D

Grant Title: **FY2023 TRAFFIC SAFETY POLICE GRANT**

Department: Police Department

*Grant/Agreement #*03-AL-64-049 /03-OP-RF-049 /03-PT-02-049*Grant Type:* Federal/State

Granting Agency: New Mexico Department of Transportation

Grant Amount: \$84,995.00 *Cash Match Amount:* \$0.00

Total Grant Project Amount: \$84,995.00

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

Grant Start Date: 12/19/2022 *Grant End Date:* 9/30/2023

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

Project Code #: 23101 / 23102 / 23103

Use of Funds Description:

Annual funding from NMDOT – Traffic Safety Division to provide the Police Department with overtime to conduct the following traffic safety programs – ENDWI, BKLUP, and STEP.

MEMORANDUM OF AGREEMENT

ASTC IF/THEN® Gender Equity Engagement Grants

This Memorandum of Agreement (MOA) is entered into by the Las Cruces Museum System ("Grantee") and the Association of Science and Technology Centers (ASTC).

Your institution will receive \$4,000 in support from ASTC on behalf of Lyda Hill Philanthropies. By signing and returning this MOA, your institution commits to use these funds for the projects and programs described in your application (attached and incorporated by reference).

The full amount of this award will be distributed upon receipt of the signed MOA, W-9, and ACH form (if applicable). You may submit these documents electronically to ifthen@astc.org.

Responsibilities

By signing this MOA, you agree to do the following:

- Complete the project deliverables as described in your grant proposal, including using assets from the IF/THEN® Project Library as described.
- Take high-resolution photos of the installed project to share with ASTC and Lyda Hill Philanthropies and sign any required release forms to allow photos to be shared broadly.
- Participate in outreach activities to share your project with your community such as writing a blog post, press release, and/or social media posts.
- Track and document grant expenditures. If requested by ASTC or by independent auditors authorized by ASTC, you may be required to produce all receipts and other expense documentation.
- Submit a final report on development and installation of your project by the date described in your project proposal (ASTC will provide a template and guidelines for this final report).

Relationship of the Parties

Nothing in this Agreement shall be construed in a manner which creates a partnership, joint venture, or employment relationship between Grantee and ASTC. Neither Grantee nor ASTC shall be liable for the debts or obligations of the other. Grantee is not, nor shall be deemed to be for any purpose, an employee of ASTC, and ASTC shall not in any way exercise domain or control over Grantee's business.

Confidential Information

A. Grantee acknowledges and agrees that all Confidential Information is and shall be the sole and exclusive property of ASTC. Grantee shall not, without ASTC's consent, disclose Confidential Information, directly or indirectly, to any third party or use the Confidential Information for any purpose other than to perform the Services. Immediately upon request by ASTC or upon termination of this Agreement, Grantee shall deliver to ASTC all Confidential Information in its possession or control, including all copies or, at ASTC's election, destroy all Confidential Information and certify to ASTC that it has done the same.

B. "Confidential Information" means the Work Product and all other proprietary, confidential information of ASTC relating to its business and operations, whether oral, electronic, or written, and whether or not designated as confidential, which has been provided to or acquired or learned by Grantee in the course of

performing the Services. Confidential Information shall include, without limitation: financial information; plans, policies, and procedures; marketing strategies, and existing and contemplated programs and services.

C. The obligations regarding confidentiality and use of Confidential Information shall not apply to information that (i) is publicly known and made generally available through no action or fault of Grantee, (ii) can be proven to have been in Grantee's possession prior to disclosure to Grantee or acquisition by Grantee, (iii) is independently developed by Grantee without use of or reference to Confidential Information, (iv) is required by law to be disclosed by Grantee, provided that Grantee gives ASTC prompt written notice prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure, or (v) is acquired by Grantee under no obligation of confidentiality from a third party who has the right to disclose the information.

Intellectual Property Rights

Consistent with the terms of the IF/THEN® Materials License Agreement, Grantee grants ASTC and Lyda Hill Philanthropies a worldwide, royalty-free, sublicensable right and license in perpetuity to copy, publish, adapt, distribute, edit, modify, reproduce, publicly display, publicly perform and otherwise use the data, information, and materials created, devised, or used to create the exhibits, programs, and content ("Work Product"), in whole or in part, in combination with any other materials and for any and all purposes related to STEM or otherwise supported by or through the IF/THEN® Project Library, in any and all media now known or hereafter devised, including, but not limited to, on any blog, website, social media channel or mobile application.

Insurance

Grantee shall maintain during the term of this Agreement, at all times and at its own costs, insurance coverage in a form and amounts sufficient to meet any minimum statutory requirements and Grantee's obligations and liabilities under this Agreement, or otherwise protect against severe financial loss including, at a minimum, comprehensive general liability, automobile liability, and worker's compensation, if applicable.

Indemnity

Grantee shall indemnify, defend, and hold harmless ASTC and its directors, officers, employees, and agents from and against any and all claims, actions, demands, judgments, losses, liabilities, costs and expenses, including, without limitation, reasonable attorney's fees (collectively "Claims") arising out of or relating to Grantee's breach of this Agreement, Grantee's negligence or willful misconduct in providing the Grantee Involvement, unless such Claims arise from ASTC's sole negligence or sole willful misconduct.

ASTC Contact

For questions about the IF/THEN® Initiative, payment, or this MOA, please contact Cassie Byrd and Amanda Fisher at ifthen@astc.org.

Institution Partner Agreement

If unforeseen circumstances prevent Grantee from completing the responsibilities herein, I will immediately notify ASTC via email to ifthen@astc.org. I understand that Grantee may be asked to return all or part of the funding if they do not complete these requirements.

Authorized representative signature:



Authorized representative name (print):

Ifo Pili

Authorized representative title:

City Manager

Date:

11/16/2022

Return this **MOA**, along with a copy of your institutional signed **IRS Form W-9**, and the attached **ASTC External Vendor ACH Authorization Form** to ifthen@astc.org.

Las Cruces Museum of Nature and Science IF/THEN® Project REP: Women in STEM Proposed Budget		
Cost Category	Projected Expenditures	Description of Project Cost
Minor Equipment	\$2,385	32" slanted touch screen digital kiosk @ \$2,162 each
Production	\$ 2,046.00	6 retractable banners (\$341 each)
Marketing	\$700	Social Media advertising expenses and print advertisement in local newspaper for opening reception
General Supplies	\$500	Education materials - consumable materials & supplies for hands-on STEM programs
Staff Time	\$ 1,000.00	Staff time related to producing graphics, managing exhibition related supplies, testing digital components, exhibition installation, and opening reception
Museum Match	(\$2,631)	The Las Cruces Museum System will incur the cost of staff time (\$1,000), marketing (\$700), educational supplies (\$500), overflow costs related to production materials (estimated \$431), and any associated shipping costs yet to be determined.
Total Funding Request	\$4,000	

waiting for actual quote from Del Valle.

Submission: Las Cruces Museum System



Cassie Byrd (IF/TH...

Call

IF/THEN® Gender Equity Grant: Museum and Library Expansion | [GO TO CALL](#)

System Status

Open

Update status:

ACCEPT

REJECT

EDITABLE

Link to session

LINK TO SESSION



Actions

REVISE / EDIT

SEND E-MAIL TO AUTHORS

EXPORT / PRINT

WITHDRAW SUBMISSION

Tags

No tags assigned to this submission

EDIT TAGS

Co-Author

Andrea Gomez (Grants Administration)

Reviews

ADD REVIEWER(S)

DISABLE REVIEW REVISION NOTIFICATIONS

Review Feedback

The most recent revision of this submission **has not** been reviewed since the last time feedback was shared with the submitter.
You can share feedback once a new review is created for this revision or an existing review is edited.

Agenda Item #7.1.

IF/THEN® Gender Equity Grant Application

Applications will be accepted and approved on a rolling basis through November 22, 2022. Awardees will be notified within two weeks of submitting an application. Project major display component must be completed no later than March 17, 2023. Project final reports are due within 30 days of project completion. All final reports must be submitted no later than March 17, 2023.

Please refer to www.astc.org/ifthen/grants for a complete list of eligibility and program requirements.

Contact ifthen@astc.org with any questions.

Section 2

Organization Information

Organization name

Las Cruces Museum System
Required

Legal organization name (if different from above)

Organization city

Las Cruces
Required

Organization state

New Mexco
Required

Is your organization a Tribal Organization?

☐ Yes ☐ No

Required

How would you describe your organization? Choose the best option:

Science/technology center

Agenda Item #7.1.

Required

Is your organization a member of (check all that apply):

- ☐ American Association of Museums (AAM)
- ☐ American Library Association (ALA)
- ☐ American Public Gardens Association (APGA)
- ☐ Association for Rural and Small Libraries (ARSL)
- ☐ Association of African American Museums (AAAM)
- ☐ Association of Children’s Museums (ACM)
- ☐ Association of Science and Technology Centers (ASTC)
- ☐ Association of Zoos & Aquariums (AZA)
- ☐ National Girls Collaborative Project (NGCP)
- ☐ STAR Library Network (STAR Net)
- ☐ Urban Libraries Council (ULC)
- ☐ None of the above

Required

Name of contact for this application

Stephanie Hawkins

Required

Job title of contact for this application

Museum Curator (education)

Required

Email of contact for this application

shawkins@las-cruces.org

Required

Name of IF/THEN® Project Lead (if different than applicant)

Job title of IF/THEN® Project Lead (if different than applicant)

Email of IF/THEN® Project Lead (if different than applicant)

Phone number of IF/THEN® Project Lead

575-532-3372

Required

Name of institution's finance contact

Amy Johnson Bassford
Required

Email of institution's finance contact

grants@las-cruces.org
Required

Section 3

IF/THEN® Gender Equity Grant Type and Description of Project

Please provide a narrative description of your proposed project, including:

- *An overview of the project you plan to implement**
 - * Which project(s) from the project library you will replicate and how you will use it/them at your organization**
 - * A thorough description of your major display component including the format, size, and location of the display(s)**
 - * How you will modify the project(s) from the project library (if applicable)**
 - * Any other important details**
- (Maximum of 800 words)**

The Las Cruces Museum System (LCMS) engages and inspires a diverse audience through exhibitions, public programming, and educational activities. Las Cruces, NM is just 40 miles from the U.S./Mexico border in Doña Ana County, where more than half of the population speaks a language other than English at home, predominately Spanish (U.S. Census Bureau, 2018). Las Cruces is home to a diverse population of approximately 101,759 people: 59.6% Hispanic/Latinx, 34.4% White, 2.6% Black/African American, 2.6% Asian, and 0.7% Native American (U.S. Census Bureau, 2018). The LCMS provides regular museum admission free of charge, which is critical for access in a county where the poverty rate is twice (25.6%) the national average (12.7%) (U.S. Census Bureau, 2018).

The LCMS IF/THEN® project will create a new museum exhibition and provide corresponding educational programming presented at the Museum of Nature & Science (MoNaS). The IF/THEN® exhibition, *REP (Rise, Explore, Persevere): Women in STEM*, will utilize the full content of The Museum of Science’s project, *The Faces of Science: Ambassadors for Equity* and the Oregon Museum of Nature & Science’s (OMSI) digital media exhibition *Inspired Design*. The content of these IF/THEN® Initiative Projects emphasizes the impact women in STEM professions make towards social justice reform

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through research, advocacy, and creativity and how intersectionality and diversity in STEM drive inspiration, innovation, and invention. The MoNaS IF/THEN® project will increase the visibility of professional women in STEM within the museum's physical space while enhancing the LCMS's efforts to engage our community's female youth audience. MoNaS participation in the IF/THEN® project creates an equitable space for all to learn more about STEM subjects and careers. The bilingual components of the print and digital media content within the IF/THEN® projects align with existing permanent exhibitions presented in English and Spanish at the MoNaS.

The MoNaS IF/THEN® exhibition, *REP: Women in STEM* will be on display in the museum's atrium, a shared space that serves as the primary entrance for MoNaS and the Museum of Art. *The Faces of Science: Ambassadors for Equity* content will be modified by the LCMS in-house graphic designer to display on six 33.5"x78.7" double-sided retractable banners. Three of the Ambassador banners will be presented within the museum's large storefront window façade on Main Street. The selected orientation will allow pedestrian traffic to view a portion of the exhibition from the street. The two remaining Ambassador banners along with one introductory banner will be displayed along MoNaS interior walls adjacent to the storefront windows.

The gallery space accommodates one digital display component in which a 32" pedestal kiosk will loop the videos produced for OMSI's Inspired Design exhibition. IF/THEN® videos will loop at a reasonable volume for the space, with subtitles. Audio recordings and transcriptions of exhibition content will be produced in English and Spanish and made available upon request.

The IF/THEN® *REP: Women in STEM* exhibition will be supported by educational programming provided by MoNaS. The IF/THEN® project will foster existing community partnerships with MoNaS programming for youth, such as "Teen Science Café" to create opportunities for middle and high school students to engage with professional scientists through in-person dialogue, experiments, and projects. The IF/THEN® project also ignites an opportunity for MoNaS to implement new STEM programming specifically geared toward girls. MoNaS partners with community schools to provide monthly out-of-school-time programs such as SciGirls, for upper elementary students. Additionally, MoNaS will connect with local organizations and IF/THEN® Ambassadors for special event and presentation opportunities throughout the exhibition duration period. All MoNaS programs – including those proposed for the IF/THEN® project – are designed to maximize accessibility for diverse audience groups where programming is provided on weekends, weekday evenings, and during school breaks.

At the closure of the *REP: Women in STEM* exhibition, the six retractable banners will be

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made available by loan to local schools, libraries, and institutions to reach audiences who were unable to visit MoNaS during the exhibition period and continue to inspire students to see themselves in a STEM world.

Required

Are you also applying for Partnership support?

☐ Yes ☐ No

Required

Section 4

IF/THEN® Project Library and Ambassadors

Which category of project from the project library will your project use? Check all that apply.

Note: Projects in the Supplemental Materials category will not be funded on their own and must be paired with a project from a different category. Projects in the Programs and Activities category must be implemented in a way that includes a major display component (i.e. a large format display placed in a high-traffic area), or paired with a project that includes a major display component.

Printable Panels & Banners - Projects that include printable displays such as exhibit panels, posters, pop-up banners, and more.

Digital Media - Projects that require digital screens to display.

☐

Programs & Activities – Programs that incorporate hands-on activities and highlight IF/THEN® Ambassador career connections

☐

Supplemental Materials – Supplemental experiences that enhance other projects in the IF/THEN® Project Library

Required

Which project(s) from the Printable Panels & Banners category do you plan to use?

☐

New Science: Queer and intersectional identities are revolutionizing how science gets done.

☐

STEM Superheroes

Faces of Science: Ambassadors for Equity

☐

IF/THEN Ambassador Rotating Poster Display

☐

She Engineers Pop-Up Banners and Posters

☐

"This is What a Scientist Looks Like" Poster Exhibit

5

Celebrating Women in STEM Banners & Posters

☐

STEM Role Models

二

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- ☐ The STEAM in Me: Sparking STEAM Curiosity in Young Innovators
- ☐ STEM Play Workshops
- ☐ Zoo Tunnel Murals and Kiosks
- ☐ It's a Wild Life

Which project(s) from the Digital Media category do you plan to use?

- ☐ STEM Career Discovery Quest Exhibit
- ☐ I Can See Myself in STEM Videos & Reflection Questions
Inspired Design / Diseño con inspiración
- ☐ IF/THEN Ambassador Videos

Which IF/THEN® Ambassador(s) do you plan to feature in your project?

Note: The informational pdf included with each project in the project library lists the names of Ambassadors who are featured in that project. All proposed projects are required to highlight at least one IF/THEN® Ambassador.

The Museum of Nature & Science IF/THEN® exhibition will highlight Ambassadors in two formats: print and digital. Ambassadors included in the Faces of Science: Ambassadors for Equity: Afua Bruce, Charita Castro, Tiffany Panko, Dorothy Tovar, and Kellyn LaCour-Conant will be exhibited in print on retractable banners. Additionally, digital videos produced by the Oregon Museum of Science and Industry for Inspired Design will feature Erika Anderson, Katy Croff Bell, Deborah Berebichez, Dana Bolles, Afua Bruce, Catie Cuan, Gracie Ermi, Xyla Foxlin, Sydney Hamilton, J'Tia Hart, Ana Maria Porras, Ritu Raman, Arlyne Simon on a 32" pedestal kiosk.

Required

Section 5

Audience, Impact, and Timeline

Please provide an estimate of how many people will view or interact with your project, and include any information on how you reached this estimate. (For Example: "Based on our average monthly attendance, we estimate 10,000 people per month will view the project over 12 months for a total of 120,000 people.")

During the required six-month exhibition period of January through June 2023, we anticipate the exhibition to attract 14,000 visitors based on our average monthly attendance. An additional 12,000 visitors are expected to attend in the second half of 2023 for a total of 26,000 visitors.

Required

What is the length/duration of impact for the end-product(s) of this project?

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(For example, if you create an exhibit component, how long do you expect the exhibit to be displayed? If you create a programmatic component, how many times and over what time period will the program be offered?)

REP: Women in STEM will be on exhibit at MoNaS from January 2023 through December 2023. At the scheduled close of the exhibition the retractable banners will be made available on a loan basis to local and regional institutions extending the longevity of the exhibition for at least one additional calendar year. The digital display component will remain on display as a semi-permanent interactive element of the museum's Nature Center extending the life of the OMSI Inspired Design videos at MoNaS through connections with local ecology.

Programming created in alignment with the project will be integrated into the museums regular programming including onsite, outreach, and special events.

Required

Provide a timeline for the proposed project including estimated start date, end date, final report due date, and significant milestones. Project major display component must be completed by March 17, 2023, and Final Reports are due within 30 days of project end date, or March 17, 2023 (whichever comes first).

October 2022 – Project Application and Acceptance

- Receive notification of award
- Route award for City Council approval

November 2022 – Material Acquisition, Graphic Design, printing

- Download graphic and video content
- Inhouse graphic designer adjusting dimensions of printable materials from 40"x54.2" to 33.5" x 78.7" retractable banners
- Purchase of angled digital display and retractable banners
- Design associated educational programming for January – March of 2023
- Develop marketing materials for exhibition and associated educational programming

December 2022 – Installation

- Test exhibition digital display and receive printed retractable banners
- Advertise upcoming exhibition and opening reception and associated educational programming

January 2023 – Exhibition Opening

- January 5 complete install exhibition components
- January 6 Host opening reception for exhibition
- Begin associated educational programming
- Pilot SciGirls after school outreach program with community schools

February 2023 – End of Grant Period Closeout

- Exhibition continues with supportive educational programming
- Submit final report by February 6, 2023

March 2023 – December 2023 –

- Exhibition and programming continue
- Continued marketing efforts
- Special event or presentation featuring one or more IF/THEN® Ambassadors

Looking Ahead

- Convert banner display to travelling exhibition for local and regional institutions including advertising and scheduling displays
- Evaluate, adapt, and continue SciGirls after school outreach program in partnership with community schools

Required

Section 6

Proposed Project Budget Information

Allowable expenses include, but are not limited to: materials, production costs, and staff time.

Grant funds may not be used for:

- indirect charges/administrative overhead
- capital expenditures
- alcoholic beverages
- computer hardware that is not public-facing (for example, servers, staff computers)
- admission fees
- purchase of stock photos

If programmatic components are included with your project plan, they should be provided at no cost to participants. Programs that are free with paid admission are acceptable.

What is the total amount of funding being requested for your Engagement Grant?
(Maximum of \$4,000)

\$4,000.00

Required

- Please upload a document (Word, Excel, or PDF) with a detailed budget for your project. Your budget should include:
- o Name for each expense category (i.e., supplies, printing, staff time, Partnership support)
 - o Total amount of each category
 - o Brief explanation of expenses included in each category

IFTHEN Budget.pdf [Download](#)

waiting for actual quote from the Value.

Project	
Project Cost	
est.	
estimated in local newspaper for opening reception	
display for students and staff programs	
at the Science Center for the opening of the	
exhibition - \$1,000 (estimated \$400)	
for staff and students to attend (estimated \$400) and	
for production materials (estimated \$400) and	
ed.	

Las Cruces Museum of Natural and Cultural History IF/THEN® Project - Budget RFI Memo to STEW			
Cost Category	Proposed Expenses	Estimated Revenue	Description
Museum Equipment	\$2,485.00	\$2,485.00	12" aluminum touch screen digital kiosk @ \$2,122.24
Production	\$2,000.00	\$2,000.00	10 retractable banners (\$200 each)
Marketing	\$500.00	\$500.00	Social Media advertising expenses and print ads
General Supplies	\$500.00	\$500.00	Supplies for museum materials, consumable materials & supplies
Staff Time	\$1,000.00	\$1,000.00	Staff time for installation, and opening
Museum Merch	\$2,431.00	\$2,431.00	any associated shipping costs yet to be determined
Total Funding Request	\$4,000.00		

Required

Section 7
Marketing & Communications

All awardees are required to share information with the public about your project. This may include, but is not limited to, a blog post, press release, media interview, flyers, free or paid advertisement, and/or social media posts. Describe your plans for sharing information with the public.

LCMS participation in the IF/THEN® project will be advertised to a diverse market of residents and visitors to Las Cruces, New Mexico and the surrounding border region. An initial press release will announce the receipt of the award ahead of exhibition development. Information about the IF/THEN® exhibition and associated programs will be included in the existing LCMS print and digital calendars, social media pages, and print flyers. Direct marketing communication will alert community partners to the exhibition and programs that serve their audiences. A second press release will notify media outlets of the exhibition dates and accessibility with a paid full color print advertisement in the local newspaper prior to unveiling the IF/THEN® exhibition. MoNaS will establish a social media event page for the opening night and advertise to a 100-mile radius of LCMS.

Required

Section 8
Acknowledgement and Agreement of Terms

Check the boxes below to acknowledge your agreement with the following statements. Please note you must check all boxes to be considered for an award. If selected to receive a grant, I agree to:

- Sign an agreement before receiving funding
- Track and document grant expenditures

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Take and share with ASTC high-resolution photos or videos of this project when complete

Submit a short final report about my project within 30 days of completion (no later than March 17, 2023)

Required

By checking the boxes below I certify that:

My organization is a museum, library, cultural institution, or Tribal organization (as defined by the Institute of Museum and Library Services) within the United States.

I have informed my supervisor of this application and have their full support.

To the best of my ability, all information provided in this application is truthful and accurate.

Required

Do you have any additional questions or comments?

Section 9

Opportunity to Share BIG Ideas (Optional Response)

Lyda Hill Philanthropies, creator of IF/THEN®, is committed to funding game-changing efforts that can activate a culture shift among young girls to open their eyes to STEM careers. Do you have a BIG idea to expand the reach of the IF/THEN® Collection and engage large audiences beyond the scope of this grant proposal?

Share 3-4 sentences about your idea, how many people you expect to be able to reach, a few characteristics about your idea (such as type, depth, and duration or the engagement) and an approximate overall budget. Don't forget to tell us how the IF/THEN® Collection will be a key part of your project. We will share your ideas with Lyda Hill Philanthropies team and they may reach out to you about putting your BIG idea into action!

Execution Copy

AGREEMENT FOR PARTICIPATION IN THE MEALS ON WHEELS COLLABORATION PROGRAM GRANT

This Agreement, effective as of September 28, 2022 ("Effective Date"), by and among Meals and Wheels America ("Association") and the undersigned Senior Nutrition Programs (each a "Grantee" and collectively, "Grantees"), contains the terms and conditions agreed to and accepted by each Grantee in connection with its participation in the Meals on Wheels Collaboration Program Grant ("Program") made and administered by the Association.

Pursuant to the Program requirement that at least two or more organizations that deliver Meals on Wheels directly already have an existing collaborative relationship and/or are willing and able to form a formal collaboration that will foster communication and cooperative action, Meals on Wheels of Albuquerque will be serving as the lead organization for this Program ("Lead Grantee"). The other collaborating Grantee is City of Las Cruces, New Mexico. Grantees agree to deliver meals directly in either congregate and/or home-delivered settings.

PROGRAM PURPOSES

A Program Grant Award ("Grant" or "Grant Award") is being made to each Grantee in the amount set forth opposite their name on the signature page to this Agreement solely for the following purposes as described in the Grant Application and below ("Program Purposes"). The Program Purposes that Grantees are expected to achieve by expending Grant Award funds consist of at least one of two goals:

- Goal 1: Expand access to meal options for seniors with specific focus on medically tailored and/or culturally tailored meal offerings; and/or
- Goal 2: Create collaboration model(s) with potential to scale and replicate in other communities to better serve underserved or unserved seniors in Grantees' communities.

PROGRAM GRANT AWARD TERMS AND CONDITIONS

Each Grantee hereby accepts the Grant Award in the amount specified for the Program Purposes and further agrees to the following terms and conditions:

A. Each Grantee represents and warrants that:

1. Grantee is and shall be a Member of Meals on Wheels America in good standing and remain in good standing through at least December 31, 2024 (this requirement shall survive beyond the Term of this Agreement).
2. Grantee possesses and shall maintain an active nonprofit or government tax status.
3. Grantee currently uses and agrees to continue to use the current Meals on Wheels America Member Badge (or licensed local version of the national brand) and displays it on their organization's website or in some other way (if Grantee does not have a website).
4. Grantee shall comply with the terms and conditions stated herein, in the Grant Application and any other terms that the Association may impose in connection with the Program.

- B. Grantee agrees to expend the Grant Award funds by March 15, 2024, in order to meet the reporting deadlines set forth in this Agreement and agrees that such Grant Award funds shall be expended only for such purposes as set forth in this Agreement.
- C. Grant Awards will be distributed in two equal disbursements. The first disbursement shall occur upon Grantee's signature to this Agreement. The second disbursement shall occur upon successful completion of the Interim Report (as defined below) and demonstrated progress toward the Program Purposes.
- D. Lead Grantee (on behalf of all Grantees) shall submit to the Association an interim report due on April 28, 2023, which shall provide a progress report on all Grantees' efforts to achieve the Program Purposes as of such date ("Interim Report"), and a final report due no later than April 5, 2024, as directed by the Association describing the outcomes achieved by virtue of expending the Grant Award funds consistent with the Program Purposes ("Final Report" and together with the Interim Report, the "Reports"). Documentation supporting all Grant Award expenditures is required with the submission of each Report by Lead Grantee. The Final Report may be submitted earlier if all Grantees have expended their Grant Awards and have sufficient data to report on the actual impact of the Grant.
 - 1. The Interim Report shall include the answers to several questions that seek to understand lessons learned, how funds are being spent, as well as any barriers that any Grantee encountered in connection with its execution of the Program.
 - 2. The Final Report shall certify that all Grantees completed all Program activities during the grant period and describe how Grantees fulfilled the Program Purposes by serving underserved or unserved seniors, increased access to meal options for seniors with specific focus on medically tailored and/or culturally tailored meal offerings, and/or created collaboration model(s) with the potential to scale and replicate in other communities.
 - 3. In addition, the Lead Grantee (on behalf of all Grantees) shall provide demographics, data, stories, and photos to the Association related to their services.
 - 4. In no event shall Lead Grantee submit the Final Report via the Online Grant System later than 5 p.m. Eastern Time, Friday April 5, 2024 (unless extended by the Association).
- E. Each Grantee's signature to this Agreement evidences such Grantee's agreement to the terms and conditions contained in this Agreement, the Grant Application (Exhibit A), and any other conditions imposed by the Association in connection with the Program Purposes. Grantee acknowledges and accepts that Grant Award funds may be only used for legitimate Program Purposes consistent with achieving at least one of the two Program goals set forth above (i.e., Goal 1: Expand access to meal options for seniors with specific focus on medically tailored and/or culturally tailored meal offerings; and/or Goal 2: Create collaboration model(s) with potential to scale and replicate in other communities to better serve underserved or unserved seniors in Grantees' communities).

- F. Lead Grantee agrees to submit the Interim Report and the Final Report by filing on the Association's online grants management system or by such other means as approved by the Association. All questions regarding this Grant Program shall be submitted to grants@mealsonwheelsamerica.org. The Association grants a limited license to Lead Grantee for the use of the Association's online grant system solely for the purposes of compliance with this Agreement. Each Grantee certifies its compliance with the terms and conditions applicable to the use of the online grant management system.
- G. All Reports and documentation submitted to the Association shall become the property of the Association to be used as it deems appropriate without further approvals from any Grantee, and because information relating to the Program may be made public, the Association requires that the narrative portions of the Reports be drafted without confidential information. The Association reserves the right to seek supplemental information for any Report.
- H. Grantees agree to: (1) participate in conference calls with other Grantees to provide progress updates on the Program as may be called by the Association; (2) permit the Association to conduct site visits; (3) share what they have learned from the Program with other Association Members via webinars and/or conference presentations; and (4) collaborate in advance with Association regarding press releases and storytelling.
- I. Grantees shall meet all deadlines as provided for herein.
- J. If the purchase of any equipment or services is anticipated, Grantees shall assess whether the use of the Association's group purchasing service would offer more favorable pricing for such equipment or services being purchased with Grant funds (Grantees may be required to register to participate in the Association's group purchasing program; please contact grants@mealsonwheelsamerica.org for more information). Grantees are not required to use the Association's group purchasing services; however, Grantees acknowledge that if they choose to pay a higher price for any purchase(s) from a vendor other than through an Association group purchasing vendor, the Association may elect to only provide Grant funds in an amount equal to the lowest price for such purchase. Any savings accrue to the Grantees.

SATISFACTORY PERFORMANCE AND VIOLATION OF TERMS OR CONDITIONS

The Association reserves the right to withhold a future disbursement (and to seek recovery of previously disbursed funds) and/or terminate the participation of a Grantee in the Program if, in the Association's sole discretion, Grantee fails to:

- A. Satisfactorily or consistently perform its obligations under this Agreement, Grant Award or the Grant Application, including but not limited to failing to meet deadlines or failing to provide sufficient reports when due;
- B. Adhere to the terms and conditions contained in this Agreement;
- C. Use funds in a manner consistent with this Agreement, the Grant Application, the Program or for any other purposes approved by the Association;
- D. Uphold the ethical standards applicable to Meals on Wheels Member programs generally; or

- E. Cure a breach of such terms or conditions in a reasonable time following notice by the Association.

If any of the above circumstances arise or come to the attention of the Association following the disbursement of Grant funds, Grantee agrees to refund to the Association upon request any and all Program Grant funds provided to it by the Association. If Grantee fails to refund such funds to the Association as may be requested, the Association shall seek to recover such funds through all means available to it. This Section shall survive the termination of this Agreement.

GRANT PERIOD TERM AND TERMINATION

The Term of this Agreement and the Grant Award hereunder shall begin on the Effective Date specified above and end when the activities associated with the Program are completed, but no later than 5 p.m. Eastern Time, Friday, April 5, 2024 (subject to submission of a Final Report and final approval by the Association) unless extended by the Association or sooner terminated for reasons as provided for herein. If Grantee terminates its participation in the Grant Program prematurely, then all funds provided by the Association to Grantee shall be returned to the Association.

USE OF FUNDS; PROGRAM GRANT AWARD MODIFICATIONS

Grantee shall use the full amount of the Grant Award funds only for the purposes set forth in this Agreement, Grant Award or the Grant Application. Grantee agrees not to use any portion of the Grant or any income derived from the Grant for the following:

- A. To carry on propaganda or otherwise attempt to influence legislation within the meaning of Section 4945(d)(1) of the Internal Revenue Code, as amended ("Code");
- B. To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive within the meaning of Section 4945(d)(2) of the Code;
- C. To provide a grant to an individual for travel, study, or similar purpose within the meaning of Section 4945(g) of the Code. Payments of salaries, other compensation, or expense reimbursement to employees of the Grantee within the scope of their employment do not constitute "grants" for these purposes and are not subject to these restrictions;
- D. To provide a grant to any other organization without prior written approval of the Association; or
- E. To promote or engage in criminal acts of violence, terrorism, hate crimes, the destruction of any state, or discrimination on the basis of race, national origin, religion, military and veteran status, disability, sex, age, or sexual orientation, or support of any entity that engages in these activities.

If a Program Grant Award amount is different from the amount requested by Grantee in its proposal, Grantee may be required to submit to the Association a revised budget using the same format as the previously submitted budget and to make such other changes to the proposal as requested by the Association.

IDENTIFICATION OF GRANT MANAGER; MONITORING AND NOTIFICATIONS OF CHANGES

If required by the Association, Grantee shall identify a Grant Manager for the Program and submit all contact information for that Grant Manager to the Association through its online grants management system or to grants@mealsonwheelsamerica.org. Activities and results will be monitored through regular contacts between the Grant Manager and the Association. Grantee shall notify the Association of any changes that may affect the status of the Program, including changes in Grant Manager, other staffing or Program plan changes, through email at grants@mealsonwheelsamerica.org.

FINANCIAL RECORDS

Grantee agrees to maintain financial records of expenditures of Grant Award funds for a period not less than three years and respond to inquiries and/or provide an accounting of the use of such funds if requested by the Association. This Section shall survive the term of this Agreement.

PUBLIC DISCLOSURE, PUBLIC PRESENTATION AND MATERIALS

Grantee hereby permits the Association to disclose Grantee's name, Program, Grant Award, or Final Report in public communications without advance notification to Grantee. Grantee agrees that it shall make no public announcement regarding the Grant Award or use the Association's name in a press release or related disclosure without the advance approval of the Association. The Association may ask selected Grantees to make a public presentation about their Program and use of their Program Grant Award. Because information relating to the Program may be made public, the Association requires that the narrative portions of Grantee's Reports be drafted without confidential information. Further, if applicable, Grantee on behalf of the Association shall obtain valid photography/videography releases from any individuals appearing in any photographs or videos submitted to the Association. This Section shall survive the term of this Agreement.

INDEMNIFICATION

To the extent provided by law, Grantee agrees to defend, indemnify and hold harmless the Association from and against all claims, actions or causes of action, liabilities, including reasonable attorney's fees, and costs arising from any claim, action, cause of action, or liabilities arising out of or resulting from the use of the Grant, or the negligence or misconduct of Grantee relating to the use of the Grant. This Section shall survive the term of the Agreement.

MODIFICATIONS TO THIS AGREEMENT

The Association reserves the right to modify and amend this Agreement and terms and conditions at any time. The Association will seek, but is not required, to notify Grantee of any amendments to this Agreement; it is the Grantee's obligation to access and review the terms and conditions contained in this Agreement that may be in effect at any given time.

SAVINGS CLAUSE, INDEPENDENT ACTIONS AND INTELLECTUAL PROPERTY

Any other requirements imposed on Grantee specified in the Grant Application or in communications from the Association are hereby incorporated by reference in this Agreement. Any Program activities undertaken by the Grantee shall be considered to be done on an independent basis and the Association shall assume no responsibility and liability whatsoever for such activities. All intellectual property, including but not limited to this Agreement, the Application, and the grants management system, as well as any new processes, data, publications or findings created or derived as a result of this Grant Award, is or shall become the property of the Association, and cannot be sold or otherwise used for pecuniary gain by Grantee.

without the advance written consent of the Association. All uses of the Association's name and logo shall be subject to prior approval of the Association, shall be undertaken in a manner consistent with the guidelines or directions of the Association, and shall inure to the benefit of the Association.

The individual executing this Agreement shall be, or shall act on behalf of, the Executive Director, President or CEO of Grantee Senior Nutrition Program. Such individual represents and warrants that the Grantee is a dues-paying General Member of Meals on Wheels America in good standing and that he/she has authority to execute this Agreement on behalf of the Grantee. The Grantee organization shall be bound to this Agreement and all of the terms and conditions for the Program and the Grant Award as contained herein as of the Effective Date.

Meals on Wheels of Albuquerque, as Lead Grantee

Grant Award: \$71,040

By: Shayna M. Frost
Name: Shauna M Frost
Title: Executive Director

City of Las Cruces, New Mexico, as
Grantee

Grant Award: \$3,960

By: Ifo Pili
Name: Ifo Pili
Title: City Manager

Meals on Wheels America ("Association")

By: Kenneth C. Euwema
Name: Kenneth C. Euwema
Title: Chief Financial and Operating Officer

Shauna Frost

EXHIBIT A:
GRANT APPLICATION

Meals on Wheels of Albuquerque

Albuquerque-Las Cruces New Mexico Medically
Tailored Meal Collaboration for Senior Nutrition

*Meals on Wheels Collaboration Program
Grant*

Meals on Wheels of Albuquerque

Miss Shauna M Frost
P.O. Box 92614
Albuquerque, NM 87199

shauna-ed@mow-nm.org
O: 505-823-8060

Miss Shauna M Frost

P.O. Box 92614
Albuquerque, NM 87199

sfrost@mow-nm.org
O: 505-823-8065

Application Form

ABOUT THIS GRANT

Project Name*

Name of Project.

Albuquerque-Las Cruces New Mexico Medically Tailored Meal Collaboration for Senior Nutrition

DESCRIPTION / OVERVIEW

Meals on Wheels America is pleased to launch the **Meals on Wheels Collaboration Program ("Grant")**. Partnership and collaboration are critical to the Meals on Wheels Network. The ever-evolving landscape in which we operate often has us working together in new and exciting ways. This Grant opportunity is specifically designed to further the following goals:

- **Goal 1:** Expand access to meal options for seniors with specific focus on medically tailored and/or culturally tailored meal offerings; and
- **Goal 2:** Create collaboration model(s) with potential to scale and replicate in other communities to better serve underserved or unserved seniors in community.

As such, this Grant opportunity requires a **partnership of two or more organizations** that deliver Meals on Wheels directly, already have an existing collaborative relationship and/or are willing and able to form a formal collaboration **that will foster communication and cooperative action**. Note: one of the Meals on Wheels organizations will be required to serve as the Lead organization and applicant for this funding opportunity. All organizations must deliver meals directly in either congregate and/or home-delivered settings.

Support for this Grant comes through Meals on Wheels America's Go Further Fund, launched during the COVID-19 pandemic. **Applications with requests between \$50,000 - \$75,000 will be considered**. A separate Grant agreement will be established with the lead program and each partnering organization based on the application. The grant period can last up to eighteen months. All Grants will begin on or around Wednesday, September 14, 2022 and all funds must be expended no later than Friday, March 15, 2024. An **Interim Report due on Friday, April 28, 2023, and a Final Report due on Friday, April 5, 2024** are required.

Representatives from each organization participating in the collaboration will be expected to share learnings, experiences and best practices with Meals on Wheels America through reporting, quarterly web-based technical assistance calls and other optional learning opportunities. Additionally, site visits by Meals on Wheels America staff may be conducted. Technical Assistance opportunities will be offered to the selected partnering organizations and will be tailored to the needs specific to the proposed effort.

ELIGIBILITY AND REQUIREMENTS

To apply, you must have a partnership of two or more organizations that directly deliver Meals on Wheels. In order to be eligible to apply for, and receive, a grant, the Lead Organization must:

- Be an active dues-paying Member of Meals on Wheels America and remain in good standing through at least December 31, 2024;
- Maintain active nonprofit or government tax-exempt status;

- Have the current **Meals on Wheels America Member Badge** (or approved local version of the national brand) displayed on your organization's website;
- Provide demographics, data, stories and photos to Meals on Wheels America around their current services along with deliverables listed below;
- Agree to expend all funds by the date listed below;
- Submit all required reports on behalf of the group via the Online Grant System by the dates listed below; and,
- Adhere to all terms and conditions for this grant program, including entering into a grant agreement following a successful application.

The partnering organizations must:

- Be an active dues-paying Member of Meals on Wheels America and remain in good standing through at least December 31, 2024;
- Maintain active nonprofit or government tax-exempt status;
- Have the current **Meals on Wheels America Member Badge** (or approved local version of the national brand) displayed on your organization's website;
- Work with the lead organization to provide demographics, data, stories and photos to Meals on Wheels America around their current services along with deliverables listed below;
- Work with the lead organization to submit all required reports via the Online Grant System by the date listed below; and,
- Adhere to all terms and conditions for this grant program, including entering into a grant agreement following a successful application.

State Associations are eligible to apply for this grant opportunity.

USE OF FUNDS

Grant funds may be utilized for initiatives that support the grant goals. Grant funds may be tailored to fit the group's needs or to reduce barriers to implementation. Up to 10% of the total budget is allowable for indirect expenses. Travel for staff to attend the 2023 Meals on Wheels Annual Conference and Expo can be included in the budget proposal.

REVIEW AND NOTIFICATION PROCESS

Applications must be submitted by 5:00 p.m. ET on Wednesday, August 24, 2022. Applications received after this deadline will not be considered. The Lead organization will submit the application on behalf of the participating organizations.

Applications will be evaluated by the Review Committee and notifications of award will be sent via email to the lead organization on or around **September 14, 2022**. Funds will be disbursed in two payments, with 50% upon execution of agreements and 50% in May 2023, following submission of required reporting and demonstration of acceptable progress.

Grant(s) between \$50,000 - \$75,000 may be awarded, with applications being evaluated based on quality of proposed plan for tackling one or more of the goals listed above, community and program need and impact potential. The Review Committee has discretion in the amount of funding awarded to applicants, and the decision of the Committee is final.

All grant funds must be expended by the grantee no later than Friday, March 15, 2024.

REPORTING

An Interim Report and Final Report will be required for this grant. The Lead organization will submit the interim and final reports on behalf of the group.

The Interim Report will be due by **5:00pm ET on Friday, April 28, 2023**, and will include several questions to understand interim lessons learned, how funds are being spent, as well as any barriers that the group has encountered. Successful completion of the Interim Report and demonstrated progress toward the identified grant application goals are requirements to receive a second grant disbursement.

For the Final Report, a written description of the use of funds will be required. Additional topics in the Final Report will also include questions around collaboration feasibility, successes, barriers and solutions implemented during the grant cycle, as well as outcome/impact reporting inclusive of client data. Information and data needed to replicate the collaboration must be reported as well. The Final Report must be submitted by **5:00 p.m. ET, Friday, April 5, 2024**, using the Meals on Wheels America Online Grant System.

All reporting must be completed and submitted by the grantee through the Online Grants System. For your information, here is a **preview/draft copy of the Interim Report template**, and here is a **preview/draft copy of the Final Report template**. Please note that changes may be made to this Interim and/or Final Report before final posting in the Online Grants System.

QUESTIONS

We have prepared a document of frequently asked questions that can be **accessed here** that can support you in your application preparation.

If you have any questions about completing this grant application, please contact **grants@mealsonwheelsamerica.org**.

If you need to stop and finish the application later, just click the "Save Application" button. The next time you log into the Online Grants System, your saved application will appear on your "Applicant Dashboard." To continue working on your saved work, simply click the "Edit Application" link associated with your saved application.

Note: Submission of an application does not guarantee receipt of grant award.

ELIGIBILITY REQUIREMENTS & AGREEMENTS

Terms and Conditions*

*Please carefully review and agree to the **Terms and Conditions** for participation in the **Meals on Wheels Collaboration Program Grant**.*

Please note that an additional grant agreement will be established following a grant award. The grant agreement will detail additional considerations in line with the submitted grant application. Each participating organization will enter into an individual grant agreement with Meals on Wheels America.

I have read, and agree to, the Terms and Conditions.

Submitting Follow-Up Reports*

I commit that my organization will submit an Interim Report on or before April 28, 2023, and a follow-up Final Report for this grant on or before April 5, 2024.

Yes

Membership in Good Standing*

This grant is only available to current dues-paying Member organizations of Meals on Wheels America and will remain in good standing through at least December 31, 2024.

I commit that my organization's Membership is and will remain in good standing during the term.

Yes

If you answered "No"

If you answered "No" to any of the questions above, please provide a brief explanation below.

Letters of Support from Participating Organizations*

Please upload a signed letter of support from each participating organization. Letters of support must indicate that the organization will remain in good standing during the term of the grant.

MOW ABQ signed LOS .pdf

Letters of Support from Participating Organization #2

MOWABQ Collaboration letter signed.pdf

Letters of Support from Participating Organization #3

Letters of Support from Participating Organization #4

Letters of Support from Participating Organization #5

Proof of Meals on Wheels America Member Badge or Local Version of National Brand*

*This grant is only available to Member programs that have the current **Meals on Wheels America Member Badge** (or approved local version of the national brand) displayed on your organization's website.*

Please provide a link to each organization's website where the current Meals on Wheels America Member Badge (or approved local version of the national brand) is displayed:

<https://mow-nm.org/about-us/>

Proof of Meals on Wheels America Member Badge or Local Version of National Brand #2

<https://www.las-cruces.org/2576/Meals-on-Wheels>

Proof of Meals on Wheels America Member Badge or Local Version of National Brand #3

Proof of Meals on Wheels America Member Badge or Local Version of National Brand #4

Proof of Meals on Wheels America Member Badge or Local Version of National Brand #5

Electronic Agreement and Signature

By entering my name and date below, I consent to the use of an **Electronic Agreement and Signature** and indicate my agreement to the **Terms and Conditions**.

Signature - Name*

Dennis R. Plummer

Signature - Date*

08/22/2022

GRANT APPLICATION

Key Administrative Contacts*

Please provide the Name, Title and Email contact for the key administrative contact at each organization below. Please note that the organization submitting the application will be the project Lead.

Meals on Wheels Albuquerque
Dennis Plummer
Special Projects Manager
dplummer@mow-nm.org

City of Las Cruces,
Amy Johnson Bassford,
Grants Manager,
abassford@las-cruces.org
grants@las-cruces.org

Requested Grant Amount*

What amount of funds is your organization requesting on behalf of the proposed collaborative?

\$75,000.00

Number of Clients Currently Served from Your Meals on Wheels Program*

How many clients does each organization's programming currently support? Individually by organization.

Meals on Wheels, Albuquerque-1,400-1,500/year

Las Cruces Senior Nutrition Program-1,256/year

Number of New Clients to Begin Receiving Services from Your Collaborative*

Estimate how many new clients you anticipate serving if you were to receive this grant.

50 new seniors will start receiving meals from Las Cruces Senior Nutrition Program as a result of this collaboration.

Number of Existing Clients to Receive Expanded Services by Your Collaborative*

Estimate how many existing clients receiving new/additional services if you were to receive this grant.

As a result of this partnership, 160 currently served seniors in Las Cruces will receive meals that meet their needs as a diabetic or renal patient, providing better nutrition and overall health to those who previously lacked access to these specific types of meals.

U.S. Census 2020 data reveals that 18.2% of New Mexicans live in poverty, compared to 11.4% of Americans nationwide. Additionally, Feeding America estimates that 15.4% of New Mexicans are food insecure, compared to 12.5% of Americans nationwide. According to the Centers for Disease Control and Prevention, poor nutrition can lead to or exacerbate chronic illnesses like heart disease, obesity, cancer, and type 2 diabetes. These conditions leave our neighbors vulnerable to poor health outcomes. Food insecurity, nutrition, and chronic illness are inextricably linked:

--79% of households experiencing food-insecurity purchase inexpensive, unhealthy foods, which do not meet basic nutritional needs.

--Chronic diseases represent 7 of the top 10 causes of death in the United States.

MOW Albuquerque (MOW-ABQ) is the only meal delivery organization in New Mexico that has no qualifications for receiving meals and serves 8 types of medically tailored diets, providing access to food and meals that support specific health needs. The majority of individuals enrolled in meal delivery are seniors, and many live with chronic illnesses and disabilities, factors that increase the likelihood of becoming homebound.

Seniors in Meals on Wheels Albuquerque's service area have access to 8 different medically tailored meals. MOW-ABQ has kitchen capacity to make these meals and knowledgeable staff to prepare them.

However, seniors in the City of Las Cruces lack access to these medically tailored meals that can increase overall nutrition and quality of health.

When exploring this partnership, we evaluated the organizational capacity of both groups. Having MOW-ABQ prepare frozen diabetic and renal meals, two of the types they already prepare, and then delivering them to City of Las Cruces Senior Nutrition Program (LCSNP) to distribute is a realistic plan.

Nutrition Services*

Below are examples of nutrition services that could be offered.

1. A minimum of five meals per week or as needed to clients
2. Meals that are aligned to Older Americans Act or Recommended Daily Allowances (RDA) national dietary standards
3. Medically tailored meal adjusted to one or more client conditions (e.g., meals that are texture-modified or meals that are both diabetic and renal meal)
4. Regular menus that align with local religious (e.g., Kosher/Halal), lifestyle (e.g., vegetarian) preferences, and regional food practices (e.g., no fish on Fridays)
5. Dedicated culturally tailored meal menu (i.e., a Hispanic or Vietnamese meals menu)
6. Choice of select meal components or all meal components
7. Provision of Medical Nutrition Therapy – Registered Dietitian Nutritionist (RDN) led dietary, nutrition education and counseling support towards specific chronic disease self-management goals
8. Other

Please indicate the type of nutrition services you plan to offer. Please select all that apply:

#3 - medically tailored meals adjusted to one or more client conditions

If Other, please describe.

Proposal Narrative*

Describe how your Collaborative intends to use the requested amount of grant funds. Please include any data (ex. community needs assessment, client assessments, external community demographics) that support your approach. Connect this narrative directly with one or more of the two programmatic goals. You must identify measurable goal(s) and indicate what activities will be taken to meet your goals.

- **Goal 1:** Expand access to meal options for seniors with specific focus on medically tailored and/or culturally tailored meal offerings; and/or
- **Goal 2:** Create collaboration model(s) with potential to scale and replicate in other communities.

Seniors in the City of Las Cruces currently lack access to medically tailored meals. MOW-ABQ Albuquerque (MOW-ABQ) provides seniors access to these options in their current service area. For this collaboration, MOW-ABQ will use its capacity to prepare frozen diabetic and renal meals and deliver them to the City of Las Cruces Senior Nutrition Program (LCSNP). LCSNP will offer diabetic and renal meals as a grab-and-go option to those in their congregate setting, as well as options for weekend meals, providing access to nutrition that is currently lacking for their seniors. MOW-ABQ has been preparing medically tailored meals for over two decades, preparing roughly 23,000 such meals a year.

This collaboration addresses both goals above. Seniors in Las Cruces who are currently without prepared, medically tailored meals will have access to these nutritionally appropriate offerings. According to New Mexico Department of Health statistics, over 23% of New Mexicans ages 45-64 and more than 41% of seniors ages 65+ live with multiple chronic conditions. Additionally, approximately 30% of New Mexicans live in food

deserts, according to USDA data. These two factors pose challenges to many seniors to find healthy, affordable food.

MOW-ABQ currently offers 8 menu options developed in consultation with a registered dietician to meet the nutritional needs of New Mexicans fighting malnutrition or managing chronic illnesses. Regular, Heart Healthy, Vegetarian, and three textured options are available to MOW-ABQ's seniors. This collaboration focuses on the two other meal types:

--Diabetic: Meals with carbohydrate levels designed to help individuals maintain healthy blood sugar levels.
 --Renal/Dialysis: Provides the protein those with renal insufficiency or undergoing dialysis need and are low in potassium, phosphorus, and salt.

We are beginning the program with Diabetic and Renal meals because LCSNP identified the need for those meal types and MOW-ABQ has found those two options to be among the most needed.

Each year, MOW-ABQ serves between 1,400 and 1,500 unduplicated people experiencing food insecurity. Seniors in other parts of the state lack access to medically tailored meals, including in Las Cruces. This project is critical to expanding service to provide more New Mexicans experiencing food insecurity with the medically tailored meals they need to combat malnutrition and manage their health.

One of MOW-ABQ's strategic goals is to expand to serve communities statewide. To achieve this goal, we created a new position, Special Project Manager in January of 2021. For this collaboration opportunity, MOW-ABQ analyzed the state to identify which market would provide the best opportunities for a pilot program of statewide expansion. Las Cruces was selected based on their current level of service to the seniors; they provide meals in a congregate setting, but this access does not include medically tailored meals or weekend meal options. Another resource available to the collaboration is new vehicles acquired by MOW-ABQ from a recent grant award. The New Mexico Food Security has funded vehicles to help serve outlying unserved or underserved areas, such as Las Cruces. This grant supported the purchase of 3 cars, as well as a fleet of 4 vans, and provided for their conversion into temperature-controlled vehicles.

This collaboration can be replicated with other New Mexico communities, as well as tribal locations, providing currently underserved and unserved seniors access to medically tailored meals.

Our plan of action includes five phases, (see Approach to Collaboration) with the fifth focused on sharing our learning with other Meals on Wheels organizations in the hopes they will be able to use the framework we have created to replicate the partnership.

Therefore, the goals for this project are measured in accomplishment, sustainability, and learning.

1. MOW-ABQ will successfully deliver medically tailored meals to LCSNP every two weeks for the grant period.
2. Both LCSNP and MOW-ABQ will keep records of the number of meals prepared, delivered and distributed (as applicable). LCSNP will track new neighbors served as a result of the medically tailored meals.
3. Channels of communication will remain open between the two organizations, with no more than four weeks passing without a check-in.
4. Both organizations will track their learnings through the grant period and work together during the final phase to record identified best practices for such a collaboration.
5. Seniors in Las Cruces will have the opportunity to share their stories with LCSNP who will record and share them out. Both LCSNP and MOW-ABQ will record stories from staff and volunteers about the collaboration.
6. Seniors will continue to benefit from increased access to medically tailored options, as the organizations will work together to find sustainable funding for the collaboration before the end of the grant period.

Geographic Location of Clients*

Please select the geographic location of the **majority of clients** you will be serving. (Select only one).

Urban

Approach to Collaboration*

Describe how your approach will foster communication and cooperative action between the partner organizations, and how working collaboratively will enhance your collective effectiveness and ability to scale your service offerings.

To begin, we will deliver meals bi-weekly, with the potential to grow to weekly. The number of seniors served and type of meals will be finalized at least several days prior to delivery to provide ample time for preparation, with a phone call or email. We anticipate that during phases one and two (months 1-6), numbers might need to be adjusted for every delivery, but within several months, we will settle on a standing order, with adjustments on an as-needed basis.

Using the new vehicles purchased with the New Mexico Food Security grant to deliver the meals ourselves instead of by a third party allows for frequent in-person check-ins and an opportunity to see how the partnership is unfolding in real-time.

There are two primary program staff involved in the day-to-day collaboration, supported by additional leadership and administrative personnel. Dennis Plummer, Special Projects Manager, MOW-ABQ and Roger Bishop, Nutrition and Meals Services Program Manager, LCSNP are the project leads. Plummer is supported by Shauna Frost, MOW-ABQ's executive director, and Bishop is supported by Amy Noll, the grants manager for the City of Las Cruces.

Plummer and Bishop have had several conversations via email and phone, establishing a solid rapport. Both organizations are experienced in data tracking, using ServeTracker to track the number of meals made, delivered, and distributed, as well as seniors served.

We have broken the collaboration down into five phases.

Phase 1 (1-3 months): System Generation.

The two participating organizations hold planning meetings, including MOW-ABQ staff visiting LCSNP to survey storage capacity, and distribution sites, and to talk through data of current meals served and neighbors fed. Using MOW-ABQ's historical data, as well as LCSNP's knowledge of their community, the parties will agree on a number of meals to be prepared by MOW-ABQ and delivered to LCSNP.

During this period, we anticipate frequent contact between the partners. We will utilize video conferencing, phone calls, emails, and in-person meetings. We anticipate the number of seniors served and meals prepared will fluctuate for the first few months, as we refine the number of meals needed, storage space, and the turnover rate of clients. The goal of this first phase is to develop operations around the process of preparing, delivering, and distributing these additional meals.

This phase will include audits by Amy Noll, Grants & Contracts Compliance Specialist for the City of Las Cruces.

Phase 2 (months 4-9): Outreach and Scaling.

Once the process is developed, we will advertise the medically-tailored meals more broadly, to attract new neighbors and to ensure our current seniors know about the service. Potential outreach includes advertising in the El Paso TV market (which serves Las Cruces), posting flyers and other notices at congregate sites, adding to LCSNP's list of meal options on its website and local press releases.

As more seniors are served, we will adjust the number of meals prepared and delivered, scaling the project up to our goal of over 200 meals per delivery.

Phase 3 (months 9-11): Data Collection and Analysis

Seniors will be surveyed about the medically tailored options and their needs, sharing stories and feedback. Potential data collecting includes number of current neighbors served, number of new neighbors served, health changes of those receiving meals, and the demand for other meal types.

Phase 4 (months 12-14): Adjustments

Drawing on the data that are gathered during Phase 3, we will make any necessary recalibrations. We will additionally stabilize what is working.

Phase 5 (months 14-18): Sustainability and Replication

The partners will identify additional potential partner organizations and funding to sustain the partnership. Additionally we will share the learning of the collaboration with MOW-ABQ America and other MOW-ABQ programs. We hope to be able to share our experiences at MOW-ABQ conferences.

Program Evaluation*

Describe your intended outcomes and plan to document and evaluate these outcomes, including any measurement tools and the specific metrics you plan to measure. Please be as specific as possible. Example metrics:

- *Number of additional clients to be served*
- *Increased number of meals across partners*
- *Expanded menu options available for clients*
- *Increased resource sharing among partners*
- *Increased collaboration across partners*

1. Successfully complete 35 bulk meal deliveries to Las Cruces from MOW-ABQ.
2. Seniors in Las Cruces will receive 5,500 medically tailored meals.
3. 100 new seniors will access meals through LCSNP.
4. At least 25 check-ins will occur between the partner organizations.
5. The creation of a minimum one-page project guide for other MOW-ABQ organizations to borrow from or replicate the project.
6. A minimum of 10% of neighbors served will complete a survey, with at least ten community members' stories being recorded. At least five stories will be collected from staff and volunteers across the two organizations.

Management and Collaboration Plan*

It is critical to have a clearly articulated management plan that describes the roles and functions of all partners participating in the proposed effort. Describe the role of each organization and detail the plans for coordination, collaboration, communication, data-sharing and reporting among the members of the project team. Describe the commitment of the partners and how the collaboration and its impact will be sustained beyond the life of the grant award.

At a macro level, responsibilities are divided with MOW-ABQ preparing meals and delivering them to Las Cruces, while LCSNP will distribute those meals to individuals and track seniors served. Both partners are responsible for clear communication, reporting, and supporting the other partner.

Different phases will have varied responsibilities for the two partners:

Phase 1 (1-3 months): Both organizations will be active communicators, reaching out immediately to the other party with questions or concerns. MOW-ABQ's responsibility will be preparing additional meals beyond

those provided in their current service area and determining the logistics of delivering them. LCSNP's responsibility will be the distribution and tracking of those meals.

Phase 2 (months 4-9): In terms of outreach, MOW-ABQ will provide language and information around their medically tailored meals to be used by LCSNP, as well as some lessons they have learned around sharing that information with the public. LCSNP will use their resources and connections to reach out to outlets, send press releases and update their website. Both organizations will work on scaling, with MOW-ABQ preparing and delivering more meals and LCSNP distributing and tracking a larger quantity. Again, active communication between the parties will remain vital.

Phase 3 (months 9-11): Seniors in Las Cruces will be surveyed on their experiences with the program. The responsibility for connecting with these neighbors will be LCSNP's. MOW-ABQ will support the effort with lessons learned around their previous surveying regarding medically tailored meals. MOW-ABQ will also help with analysis. Both parties will contribute stories from their volunteers and staff about the collaboration, with LCSNP contributing a larger portion of these stories.

Phase 4 (months 12-14): Both partners will contribute to evaluating the data and the program, discussing possible changes and growth opportunities, and brainstorming solutions. Having a robust number of players involved in this phase strengthens the ability of the parties to realize lessons learned and implement any changes. MOW-ABQ will actively address any changes that need to be made in the preparation and delivery of meals, while LCSNP will address any changes needed in distribution and tracking.

Phase 5 (months 14-18): Both parties will contribute language to lessons learned and sharing of the collaboration, with responsibility for the finished product being MOW-ABQ's. Both parties will seek and apply for additional funding if the collaboration is successful and the decision is made to continue. MOW-ABQ will identify additional potential partners as the organization with the capacity to provide additional meals to other organizations, but LCSNP will be called on to share best practices with potential new partners.

Proposal Budget*

*Using our **Budget Template**, please provide a program budget that specifically outlines your plan for using these funds. You must download this template, complete the form and re-upload it below. Grants not using the **provided template** will not be scored. You will need to indicate how much will be awarded to each participating organization.*

There are two tabs on the budget template. One is a sample budget. Please use the "Actual Budget" tab for your proposed budget.

(Note: To upload a file, simply click the "Budget Template" link above, fill in the spreadsheet and save it onto your computer. Then, click the "Upload a File" box below, and attach your saved Budget spreadsheet. Please double-check that the information is saved in the Budget spreadsheet before submitting this grant application.)

v2---2022_Collaboration_budget.xlsx

BACKGROUND INFORMATION

Note: Your answers to the questions below will not be considered during the evaluation of your application. In regards to the technical assistance question, this helps us tailor opportunities for awarded grantees to ensure success.

Technical Assistance*

What type of technical assistance would you and other participating organizations benefit most from for accomplishing the goals set forward in this application?

Any platform that would allow the two partners who are several hours apart to access the shared data in real-time would be beneficial to accomplishing the goals.

DEMOGRAPHIC PROFILE OF CLIENTS AND ORGANIZATION

Meals on Wheels America is looking to better understand the demographic profile of the older adults you are serving and your organizational makeup. This information will help Meals on Wheels America to tailor offerings to better meet your organization's needs and the clients you serve. This is for informational purposes only and does not affect the grant evaluation.

NOTE - Only the Lead organization should answer the following demographic questions.

Who does your program currently serve?

(Please select only one)

We primarily serve seniors

If "Other"

Please provide more information below.

Does your organization primarily serve any of the following?

Does your organization primarily serve, or provide services designed to specifically benefit, any of the following groups? (Check all that apply.)

About what percent of your PAID STAFF are Black, Indigenous or Persons of Color*?

**Includes persons who are Asian or Asian American, Native Hawaiian or Pacific Islander, Black or African American, Latino/Latina/Latinx or Hispanic, Native American or Alaskan Native, or more than one race.*

50% - 74%

CONCLUSION

Thank you for completing the Collaboration Program Grant application!

Once you have answered all the questions and have uploaded all the required documents, simply click the "Submit Application" button at the bottom of this page.

If you need to stop and finish the application later, just click the "Save Application" button. The next time you log

Agenda Item #7.1.

Shauna Frost

Meals on Wheels of Albuquerque

into the Online Grants Management System, your saved application will appear on your "Applicant Dashboard." To continue working on your saved work, simply click the "Edit Application" link associated with your saved application.

Note: Submission of an application does not guarantee receipt of grant award.

File Attachment Summary

Applicant File Uploads

- MOW ABQ signed LOS .pdf
- MOWABQ Collaboration letter signed.pdf
- v2---2022_Collaboration_budget.xlsx



August 16, 2022

Meals on Wheels of America (MOWA) Collaboration Grant

Dear MOWA Review Panel:

We are pleased to write this letter in support of Meals on Wheels (MOW) Albuquerque's application to the MOW Collaboration Grant, and excited to be part of this new partnership, pairing the only two MOW organizations in New Mexico. Our proposed collaboration is focused on expanding access to meal options for seniors with a specific focus on medically tailored meals. MOW Albuquerque would prepare frozen diabetic and renal meals, drop-ship them to us for distribution to seniors here. We currently do not provide diabetic or renal meals. We are also exploring receiving frozen meals for distribution as a grab-n-go option for seniors to take for weekend use. This would also be a new offering for us.

The City of Las Cruces Senior Nutrition Program provides congregate meals at three locations, grab-n-go meals at two locations, and home delivered meals to participants who live in the city limits. The program operates three production kitchens and two catered kitchens that produce 470 breakfast meals and 860 lunch meals Monday through Friday. 250 weekend frozen meals are produced as an added service for our most at-risk clients. Currently, the Senior Nutrition Program has 751 unduplicated congregate and grab-n-go clients. Home Delivered meals currently has 505 unduplicated clients with those numbers increasing every day.

Each production kitchen is staffed with two full-time cooks and three part-time regular food service workers. Catered meal sites are staffed with one food service worker and an office assistant to help record the meals to the correct consumer. The Senior Nutrition Program has twelve routes to cover the city. A part-time regular driver delivers the meal and provides a safety check for each of our homebound clients. A team of case managers assess, reassess, and provide individualized case management to all Senior Program consumers.

We have been a member of Meals on Wheels America since 2014 and have sufficient budget to renew membership. Our program has had the opportunity to send staff to the annual Meals on Wheels America conference on two occasions. Both times provided valuable information on current trends in nutrition programs across the country and the opportunity to network and collaborate with industry leaders.

We acknowledge the roles and responsibilities fulfilled by us in this partnership that include working with MOW Albuquerque to identify and specify our neighbors' dietary needs, receive meals, and distribute them. We are also aware of the importance of midterm and final reporting requirements and ongoing communication. We commit to having a minimum of 10% of our clients served complete the provided survey and look forward to sharing lessons learned from this collaboration with the larger Meals on Wheels community.

Sincerely,


for Ifo Pili
City Manager



To Whom It May Concern:

Please accept this letter of support as part of our application to the Meals on Wheels Collaboration Grant. We are excited to be part of this new partnership, pairing the only two official MOW organizations in New Mexico.

Our proposed collaboration is focused on expanding access to meal options for seniors with a specific focus on medically-tailored meals. We would prepare frozen diabetic and renal meals, and deliver them for distribution to seniors in Las Cruces. They currently do not provide diabetic or renal meals. This collaboration will also introduce a weekend meal option that is currently not available to seniors in Las Cruces.

Seniors in our community depend on Meals on Wheels of Albuquerque for healthy, home-delivered meals. Community members enrolled in our meal delivery program choose from eight different medically-tailored meal options developed to meet the nutritional needs of individuals with chronic illnesses like diabetes and heart disease. A registered nutritionist works with our kitchen staff to develop these medically-tailored meal options.

Approximately 73% of community members enrolled in our meal delivery program are 60 years of age or older. Approximately 31% of seniors enrolled in meal delivery are African American, Asian, Hispanic, or Native American. Meals on Wheels of Albuquerque prioritizes service to seniors, and we are intentionally increasing and improving outreach to Black, Indigenous, and People of Color (BIPOC) communities because we understand the disproportionate need for hunger relief. Incorporating culturally-tailored meals into our rotating menu will expand our ability to meet the nutritional and dietary needs and preferences of BIPOC seniors in our community.

We acknowledge the specific roles and responsibilities fulfilled by us in this partnership, including, but not limited to, working with the City of Las Cruces to identify our neighbors' dietary needs, prepare meals, and deliver them. We are also aware of the reporting requirements for this opportunity and commit to participating in midterm and final reporting, as well as ongoing communication. We commit to tracking individuals served, including new individuals and individuals with expanded services. We commit to collecting stories and pictures to share. We look forward to sharing lessons learned from this collaboration with the larger Meals on Wheels community.

Sincerely,

Shauna Frost, Executive Director
Meals on Wheels Albuquerque

Program Budget Report			
Provide a line item program budget that identifies how the grant funds you are requesting will be spent. <i>Funding may not be used for general operating expenses or capital expenditures. Staff salaries should reflect the proportion of an individual's time that will be spent administering the program. Grant funds cannot be used to provide 100% support of a full-time position. Overhead must be limited to no more than 10 percent of the budget.</i>			
Item	Description	Actual Cost	Cost to be Covered by
PERSONNEL			
MOW-ABQ Driver	drive meals every two weeks, full 8 hour shift @\$15/hr	\$ 4,000.00	\$ 4,000.00
MOW-ABQ-Program manager	20% of time overseeing project	\$ 11,250.00	\$ 1,250.00
LCSNP--Program Manager	20% of time overseeing project	\$ 11,250.00	\$ 1,250.00
TOTAL SALARIES		\$ 26,500.00	\$ 6,500.00
FRINGE BENEFITS @ 15%	LCSNP--\$187.50, MOW-ABQ-\$787.50	\$ 3,975.00	\$ 975.00
TOTAL SALARIES AND FRINGE		\$ 30,475.00	\$ 7,475.00
PROGRAM IMPLEMENTATION ACTIVITIES			
MOW-ABQ-Conference and Sharing	Conference attendance for partners to share learning	\$ 2,522.50	\$ 2,522.50
LCSNP-Conference and Sharing	Conference attendance for partners to share learning	\$ 2,522.50	\$ 2,522.50
MOW-ABQ-Transprotation of meal	Gas, maintance and vehicle depretation	\$ 2,500.00	\$ -
		\$ -	\$ -
TOTAL PROGRAM ACTIVITIES		\$ 7,545.00	\$ 5,045.00
MATERIALS AND SUPPLIES			
MOW-ABQ-Medcially Tailored Meal	Preparation of 5,550 meals @ \$11.36/meal	\$ 62,480.00	\$ 62,480.00
Item 2		\$ -	\$ -
Item 3		\$ -	\$ -
TOTAL MATERIALS & SUPPLIES		\$ 62,480.00	\$ 62,480.00

OTHER DIRECT COSTS			
1. Consultants		\$ -	\$ -
2. Marketing/Communications			\$ -
3. Evaluation			\$ -
4. Other			\$ -
TOTAL DIRECT COSTS		\$ -	\$ -
TOTAL EXPENSES			
		\$100,500.00	\$ 75,000.00

Total Awarded to MOW-ABQ

Total Awarded to LCSNP

[illegible]

Agenda Item #7.1.

Signature: Amy J Bassford

Email: abassford@las-cruces.org

Signature: Rosemarie Randle
Rosemarie Randle (Nov 3, 2022 10:36 MDT)

Email: rrandle@las-cruces.org

Signature: Rebecca Slaughter
Rebecca Slaughter (Nov 4, 2022 13:59 MDT)

Email: rslaughter@las-cruces.org

MOWA - Albuquerque-Las Cruces Collaboration Grant - Participation Agreement - For execution 10-6-2022

Final Audit Report

2022-11-04

Created:	2022-11-03
By:	Elizabeth Gonzales (suegonzales@las-cruces.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAUawXOneJCv7TlbQbd8jEuRmKdUmjo5w

"MOWA - Albuquerque-Las Cruces Collaboration Grant - Participation Agreement - For execution 10-6-2022" History

-  Document created by Elizabeth Gonzales (suegonzales@las-cruces.org)
2022-11-03 - 4:25:51 PM GMT
-  Document emailed to Amy Bassford (abassford@las-cruces.org) for signature
2022-11-03 - 4:26:43 PM GMT
-  Email viewed by Amy Bassford (abassford@las-cruces.org)
2022-11-03 - 4:26:59 PM GMT
-  Document e-signed by Amy Bassford (abassford@las-cruces.org)
Signature Date: 2022-11-03 - 4:27:13 PM GMT - Time Source: server
-  Document emailed to Rosemarie Randle (rrandle@las-cruces.org) for signature
2022-11-03 - 4:27:14 PM GMT
-  Email viewed by Rosemarie Randle (rrandle@las-cruces.org)
2022-11-03 - 4:35:40 PM GMT
-  Document e-signed by Rosemarie Randle (rrandle@las-cruces.org)
Signature Date: 2022-11-03 - 4:36:13 PM GMT - Time Source: server
-  Document emailed to Rebecca Slaughter (rslaughter@las-cruces.org) for signature
2022-11-03 - 4:36:15 PM GMT
-  Email viewed by Rebecca Slaughter (rslaughter@las-cruces.org)
2022-11-04 - 7:58:23 PM GMT

Agenda Item #7.1.

 Document e-signed by Rebecca Slaughter (rslaughter@las-cruces.org)

Signature Date: 2022-11-04 - 7:59:32 PM GMT - Time Source: server

 Agreement completed.

2022-11-04 - 7:59:32 PM GMT

Agenda Item #7.1.



New Mexico DEPARTMENT OF
TRANSPORTATION
 MOBILITY FOR EVERYONE

MEMORANDUM

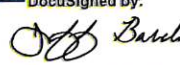
Date: November 2, 2022

To: Ricky Serna, Cabinet Secretary

Through: Jeff Barela, Director, Traffic Safety Division

From: Kimberly Wildharber, Staff Manager

Subject: Letter of Justification for Grant Agreement between the New Mexico Department of Transportation Traffic Safety Division and City of Las Cruces.

DocuSigned by:

 E291EAE03FAF441...

DocuSigned by:

 9BF30817988A403...

**Michelle Lujan
 Grisham**
 Governor

Ricky Serna
 Cabinet Secretary

Commissioners

Jennifer Sandoval
 Commissioner, Vice-Chairman
 District 1

Bruce Ellis
 Commissioner
 District 2

Hilma E. Chynoweth
 Commissioner
 District 3

Walter G. Adams
 Commissioner, Chairman
 District 4

Thomas C. Taylor
 Commissioner
 District 5

Charles Lundstrom
 Commissioner, Secretary
 District 6

1. TSD Program Manager Nick Rivera, Phone # 505-470-8907, will oversee the project(s).
2. The Consolidated Agreement provides funding to Las Cruces Police Department to conduct the following project(s) and activities as shown below.
 - ENDWI – \$49,995.00 (Fed 164)
 The ENDWI program funds overtime enforcement for DWI checkpoint and DWI directed patrol program. Funds are used to maintain the program, as funding allows, and to expand the program in areas of the State with high rates of DWI.
 - BKLUP -- \$4,985.00 (State Road Fund)
 The BKLUP program funds overtime for law enforcement agencies to conduct safety belt and child restraint/ booster seat use activities to increase in occupant protection use in New Mexico.
 - STEP – \$30,015.00 (Federal 402)
 Provides funding for sustained enforcement program to target specific traffic problems such as speed, DWI, road rage, distracted and reckless driving, fatigue/ drowsy driving, occupant protection, and crashes involving pedestrians, primarily through the use of Safety Corridors. Participating agencies include local law enforcement.
3. The agreement will be effective from date of last signature to 9/30/2023.
4. A deliverables table is listed in Exhibit A-C.
5. The agreement is Exempt from the procurement as it is with another government agency, (per NMSA 1978 Section 13-1-98, et seq.)

General Office

P. O. Box 1149

Santa Fe, NM 87504

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New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

November 2, 2022

Sergeant Adrian Alva
Las Cruces Police Department
P. O. Box 20000
Las Cruces, NM 88004

RE: Project Agreement

Dear Coordinator:

Enclosed is the project agreement for the federal 2023 fiscal year. This letter contains information required to meet Federal Funding Accountability and Transparency Act (FFATA) and 2 CFR Part 200 requirements. Please provide a copy of this letter to the person responsible for meeting those requirements at your City, County, Town, or Tribal agency. The following table contains the information necessary to meet these requirements.

Project Number	Funding Source	CFDA #	FAIN	Award Date	Amount
03-AL-64-049	BIL 164 Transfer	20.608	69A3752230000164NM	5/16/2022	\$49,995.00
	Funds				
03-OP-RF-049	State Road Fund				\$4,985.00
03-PT-02-049	BIL NHTSA 402	20.600	69A37522300004020NMO	5/16/2022	\$30,015.00

2 CFR Subpart F 200.500-521

(a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

**Michelle Lujan
Grisham**
Governor

Ricky Serna
Cabinet Secretary

Commissioners

Jennifer Sandoval
Commissioner, Vice-Chairman
District 1

Bruce Ellis
Commissioner
District 2

Hilma E. Chynoweth
Commissioner
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

Agenda Item #7.1.



New Mexico DEPARTMENT OF
TRANSPORTATION
 MOBILITY FOR EVERYONE

(d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

If expenditures are less than \$750,000 during your agency's fiscal year 2022, please submit a statement to the Traffic Safety Division at the address listed on this letterhead. The Statement should read, "We did not meet the \$750,000 expenditure threshold and therefore we are not required to have a single audit performed for FY {22}."

Your agency must submit copies of any audits and review reports which they have had prepared to the Department for informational purposes if requested regardless of whether the criteria for audit or review are met.

Operational Plan

Your agency is required to develop an operational plan to include a jurisdiction-specific performance goal, problem statement, problem identification and basic crash data upon which the project is based. Performance goals should be specific, measurable, action-oriented, realistic, and time-bound.

Performance Indicators

The Department has implemented performance indicators on Department funded law enforcement projects. The performance indicators are as follows:

ENDWI Large Agency (Populations above 100,000) - 1 DWI in 28 hours

BKLUP 1 seat belt or child restraint citation for every 2 hours of enforcement worked.

STEP 2 citations or warnings for every hour of enforcement worked.

At no time does the New Mexico Department of Transportation require an individual officer to issue a specific number of citations during an enforcement period.

We look forward to working with you to prevent injuries and fatalities. Thank you for your cooperation.

Sincerely,

Jeff Barela, Director
 Traffic Safety Division

Enclosure

Office of General Counsel Contract Brief Form

Date: November 2, 2022 **From:** Nick Rivera **Location:** Traffic Safety Division

Phone: 505-470-8907

Agency: NMDOT

Contractor: Las Cruces Police Department

Project No.: 03-AL-64-049, 03-OP-RF-049, 03-PT-02-049

NEW CONTRACT

- ☐ Copy of RFP, if applicable
- ☐ Copy of approved sole source justification
- ☐ Copy of approved small purchase justification
- ☐ Copy of Contract Brief signed by Contract Administration

AMENDMENT TO EXISTING CONTRACT

- ☐ Scope of Work
- ☐ Additional Compensation
- ☐ Time extension

Note: For amendments please attach a copy of the original agreement, any previous amendments, and a copy of the RFP. (If applicable)

X EXEMPT FROM PROCUREMENT PROCESS (university: other educational institutions; other state agency, bureau; local public bodies).

The Office of General Counsel's policy for turnaround time is ten (10) working days. Please indicate below if there are extenuating circumstances, which require immediate review of this agreement.

Attorney Review Comments

The attached agreement is being returned for revisions or corrections. Please call at (505) 469-6411 if you have any questions.

☐ Please make corrections on pages

☐ I have signed the agreement with the understanding that you will make the corrections indicated on the agreement submitted for review or discussed with you.

☐ Please make corrections on pages and return the marked copy to the receptionist for further review and approval.

Other Comments

TS05073
CONTRACT NUMBER: _____
UNIQUE ENTITY IDENTIFIER: J3ZLWA2K1X47
SUPPLIER: 0000054342

GRANT AGREEMENT

This Grant Agreement (**Agreement**) is between the New Mexico Department of Transportation (**Department**) and City of Las Cruces (**Grantee**), collectively referred to as the "parties." This Agreement is effective as of the date of the last party to sign it on the signature page below. The Department and the Grantee agree as follows:

1. **Award.** The Department hereby awards the Grantee funding for the following projects:
 - a. End Driving While Impaired (**ENDWI**), Project No. 03-AL-64-049, \$49,995.00;
 - b. Buckle Up (**BKLUP**)/Click It or Ticket (**CIOT**), Project No. 03-OP-RF-049, \$4,985.00;
 - c. Selective Traffic Enforcement Program (**STEP**), Project No. 03-PT-02-049, \$30,015.00
 - d. Total Funding awarded per this Agreement \$84,995.00.
2. **Scope of Work.** The Grantee shall perform the professional services stated in the following exhibits: **Exhibit A** - ENDWI; **Exhibit B** - BKLUP/CIOT; **Exhibit C** - STEP.
3. **Payment.** To be reimbursed for eligible expenses, the Grantee must submit timely and properly prepared reimbursement requests as provided in the Department's Electronic Grant Management System or the Traffic Safety Division Financial Management Manual 2019, as directed by the Department. The Grantee acknowledges that the Department will not pay for any expenses incurred prior to both Parties signing the Agreement, after termination of the Agreement, or in excess of the amount of the award noted in Section 1. The Grantee must submit its final reimbursement request no later than forty-five (45) calendar days after termination of this Agreement, unless otherwise approved by the Department.
4. **Records and Audit.** The Grantee shall strictly account for all receipts and disbursements related to this Agreement. The Grantee shall record costs incurred, services rendered, and payment received. The Grantee shall maintain these financial records during the term of this Agreement and for three (3) years from the date of submission of the final reimbursement request. On request, the Grantee shall provide the financial records to the Department and the state auditor, and shall allow the Department and the state auditor to inspect or audit these financial records during business hours at the Grantee's principal office during the term of this Agreement and for three (3) years from the date of submission of the final reimbursement request. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty (30) calendar days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the project or were used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty (30) calendar days of written notice.

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5. **Officials Not to Benefit.** The parties intend that no member of the New Mexico legislature or the United States Congress, or any public official, public employee or tribal council member, in that person's individual capacity, will benefit from this Agreement.
6. **Termination.** The Department may terminate this Agreement for any reason, by giving the Grantee thirty (30) calendar days written notice. On receipt of a "Notice of Cancellation," the Grantee shall suspend work unless otherwise directed by the Department in writing. The Grantee may only terminate this Agreement based on the Department's uncured, material breach of the Agreement and by giving the Department thirty (30) calendar days' written notice. The Parties acknowledge that termination will not nullify obligations incurred prior to termination, including any obligations intended to survive termination of the Agreement, including but not limited to Section 4 and Section 11.
7. **Appropriations.** The Grantee acknowledges that:
 - a. this Agreement is contingent upon sufficient appropriations and authorizations being made by the Congress of the United States or the New Mexico state legislature;
 - b. if sufficient appropriations and authorizations are not made, this Agreement will terminate upon written notice by the Department to the Grantee; and
 - c. the Department will not expend any funds until approved for expenditure, and the Department's determination as to whether approval has been granted will be final.
8. **Compliance with Law.** The Grantee, its employees, agents and contractors, shall comply with the following:
 - a. Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the ADA Amendments Act of 2008, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, and 49 C.F.R. Section 21;
 - b. all applicable federal and state laws, rules, regulations, and executive orders pertaining to equal employment opportunity, including the Human Rights Act, NMSA 1978, Sections 28-1-1 through 28-1-15, and in accordance with such, the Grantee states that no person, on the grounds of race, religion, national origin, sex, sexual orientation, gender identity, spousal affiliation, serious medical condition, age, disability, or other protected class will be excluded from employment with or participation in, denied the benefits of, or otherwise subjected to, discrimination in any activity performed under this Agreement; if the Grantee is found to be in violation of any of these requirements, the Grantee shall take prompt and appropriate steps to correct such violation, subject to Section 6 above;
 - c. state laws applicable to workers compensation benefits for the Grantee's employees, including the Workers' Compensation Act, NMSA 1978, Sections 52-1-1 through 52-1-70, and related rules;
 - d. 2 C.F.R. 200, Subpart F - Audit Requirements, Sections 200.500 - 200.521; and
 - e. those sections in Appendix A to Part 1300 labeled "applies to subrecipients as well as states."
9. **Notices.** For a notice under this Agreement to be valid, it must be in writing; be delivered by hand, registered or certified mail postage prepaid, fax or email; and be addressed as follows:

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to the Department at:
New Mexico Dept. of Transportation
Attn: Traffic Safety Division
P.O. Box 1149
Santa Fe, NM 87504

to the Grantee at:
Las Cruces Police Department
Attn: Sergeant Adrian Alva
P. O. Box 20000
Las Cruces, NM 88004

10. **Severability.** The terms of this Agreement are lawful; performance of all duties and obligations shall confirm with and do not contravene any state, local, or federal statute, regulation, rule, or ordinance. The parties intend that if any provision of this Agreement is held to be unenforceable, the rest of the Agreement will remain in effect as written.
11. **Liability.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with the Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.*, as amended, and any other applicable law. This section is intended only to define the liabilities between the parties and it is not intended to modify in any way, the Parties' liabilities as governed by law.
12. **Project Responsibility.** The Grantee acknowledges that it bears sole responsibility for performing the services referred to in Exhibits A, B and C, Scope of Work, Training, Reimbursement and Reporting.
13. **Term.** This Agreement takes effect as of the date the last party to sign it on the signature page below. The grantee may not start work until directed to by the Department. The Agreement terminates at 12:00 a.m. on September 30, 2023, unless earlier terminated as provided in Section 6 or Section 7.
14. **Applicable Law.** The laws of the state of New Mexico, without giving effect to its choice of law provisions, govern all adversarial proceedings arising out of this Agreement.
15. **Jurisdiction and Venue.** The Grantee acknowledges the jurisdiction of the courts of the state of New Mexico for any adversarial proceeding arising out of this Agreement, and that venue for any such proceeding will be in the First Judicial District Court for the county of Santa Fe, New Mexico.
16. **Amendment.** No amendment of this Agreement will be effective unless it is in writing and signed by the parties.
17. **No Third-party Beneficiary.** This Agreement does not confer any rights or remedies on anyone other than the Department and the Grantee.
18. **Scope of Agreement and Merger.** This Agreement incorporates all the agreements, covenants, and understanding between the parties concerning the subject matter of this Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents will be valid unless included in this Agreement.

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- 19. Disadvantaged Business Enterprise.** The following provision applies to a USDOT-assisted federally funded agreement only. The recipient shall not discriminate on the basis of race, color, national origin, sex, or other protected class in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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NEW MEXICO DEPARTMENT OF TRANSPORTATION

CITY OF LAS CRUCES

By:  Date: 11/22/2022
Counsel for City of Las Cruces

Agenda Item #7.1.

Exhibit A: Scope of Work, Training, Reimbursement and Reporting**END DRIVING WHILE IMPAIRED (ENDWI) Project Number: 03-AL-64-049**

1. **Scope of Work.** The Grantee shall conduct sobriety checkpoints (SCs) and DWI directed enforcement patrols (DDEPs) as negotiated between the Department and the Grantee, in high crash locations identified in data compiled by local, state or federal government agencies and included the Grantee's Operational Plan. The Department encourages the Grantee to accompany SCs and DDEPs with public information, media and educational activities. SCs must be scheduled to be staffed by at least 5 officers as required by *City of Las Cruces v. Bentancourt, 1987-NMAC-039*, and must last a minimum of 4 hours. Number of officers should meet the amount required by *Bentancourt* but not exceed the number detailed in the Grantees Operational Plan. If for any reason, the SC is not staffed with the minimum number of officers or was not conducted for the minimum number of hours, the Grantee must submit a justification with the invoice for these services. The Department may choose to deny the invoice for SCs based on the justification. DDEPs must deploy officers in high crash locations consistent with the enforcement plan. If for any reason, the DDEPs were conducted in areas not consistent with the enforcement plan, the Grantee must submit a justification with the invoice for these services. The Department may choose to deny the invoice for DDEPs based on the justification. The Grantee is encourage to schedule SCs and DDEPs throughout the grant period with a focus on participating during the Superblitz Period, 3 Mini Superblitz Periods, and National DWI Mobilizations as identified below.
2. **Definitions.** For purposes of this exhibit, the following definitions apply:

"Agency Coordinator" means the person assigned by the Grantee to assume direct responsibility for administering all phases of the Agreement.

"Directed Enforcement Patrols" means activities that enforce traffic laws in areas consistent with the agency's operational plan.

"Operational Plan" means a plan based on the most current crash data that identifies the problem to be addressed, goals to be achieved, and the performance measures to be employed. The Grantee may update its operational plan as needed to align with current trends.

"Winter Superblitz Period" means November 18, 2022 to January 1, 2023.

"St. Patrick's Day Mini Superblitz Period" means March 11 to March 19, 2023.

"Cinco de Mayo May Mini Superblitz Period" means May 1 to May 7, 2023.

"Fourth of July Mini Superblitz Period" means July 1 to July 8, 2023.

"National DWI Mobilization Period" means August 18 to September 4, 2023.
3. **Training and Qualifications.** The Agency Coordinator must attend the Department's Law Enforcement Coordinators symposium and other Department training as required. The Grantee should notify the Department of any changes in the Agency Coordinator as soon as possible. The Grantee's participating officers must have law enforcement certifications in all areas necessary to

Agenda Item #7.1.

conduct the services noted in Section 1 of this exhibit. The Grantee shall keep documentation of training and provide the Department with a list of certified officers on request.

4. **Reimbursement.** The Department will pay the Grantee for the actual cost paid to personnel that worked the SCs and DDEPs. Claims for payment must specify officers' actual hourly rate of overtime pay based on the Grantee's overtime policy; the Department will not pay any amount in excess of that rate or for any amount that is not above and beyond the officers normal duties. The Grantee should submit claims at minimum quarterly no later than January 30th, April 30th and July 30th during this Agreement period. The final claim shall be submitted no later than October 31, 2023. If the final claim is submitted after October 31, 2023, the claim must be accompanied by a justification letter. The Department may choose to deny the claim based on the justification. The claim must be on a form approved by the Department. The Department will pay the Grantee for the following:
 - a. pay, including overtime, for officers conducting traffic safety DWI enforcement in areas consistent with the enforcement plan;
 - b. pay, including overtime, for officers attendance at administrative license revocation hearings and court hearings directly related to DWI arrests made while participating in the ENDWI program;
 - c. overtime costs for officers or authorized personnel to support activities directly related to the SCs and/or DDEPs conducted during the claim month. Authorized personnel may include dispatcher, transport or others as authorized by checkpoint supervisor or command staff. The Grantee can only claim up to 10 percent of the total monthly claim amount; and
 - d. in state travel and related expenses for officers to attend DWI related training approved by the Department in advance and shall be reimbursed in accordance with the Regulation Governing the New Mexico Per Diem and Mileage Act, 2.42.2 NMAC.
5. **Reporting.** *The Grantee must submit activity reports by the 20th of each month using the activity report form provided unless otherwise directed by the Department.* Activity reports must include the type of activity and types of citations issued. The Grantee must report all citations to the Motor Vehicle Division of the New Mexico Taxation and Revenue Department and to the appropriate court in accordance with New Mexico state statute. The Grantee must submit timely crash reports to the Department in accordance with NMSA 1978, Section 66-7-207. If the Grantee is not submitting crash reports in accordance with NMSA 1978, Section 66-7-207, the Department may hold reimbursement claims until this provision is met.
6. **Funding.** The Department expects the funding source to be BIL 164 Transfer Funds and the Catalog of Federal Domestic Assistance (CFDA) number to be 20.608. However, both funding source and CFDA number are subject to change at the Department's discretion. The Grantee may transfer funds between budget categories only with prior written approval from the Department. The project's itemized budget is as follows:

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Personal Services	\$49,995.00
Contractual Services	\$0.00
Commodities	\$0.00
Indirect	\$0.00
Other	\$0.00
TOTAL	\$49,995.00

7. **Goals.** The Department's performance goals for the state are as follows: Five-year alcohol-impaired fatalities rose by 13.4 percent between 2016 and 2020, with continued, but with a smaller increase projected between 2020 and 2023. The State has determined to set the five-year average projection of 131.2 as the 2023 target. The State's ENDWI and participation in the National Drive Sober or Get Pulled Over enforcement and media will continue to focus on areas of the State that have higher incidents of alcohol-involved crashes, fatalities and injuries, and among high-risk groups such as young male drivers, motorcyclists and pedestrians.
8. **Equipment.** The Grantee may only purchase equipment under this Agreement with prior written approval of the Department.

Exhibit B: Scope of Work, Training, Reimbursement and Reporting**BUCKLE UP (BKLUP) and CLICK IT OR TICKET (CIOT) Project Number: 03-OP-RF-049**

1. **Scope of Work.** The Grantee shall conduct occupant protection directed enforcement patrols (ODEPs) in high crash locations identified in data compiled by local, state or federal government agencies and the Grantee's Operational Plan. The Department encourages the Grantee to accompany the ODEPs with public information, media and educational activities. ODEPs must deploy officers in high crash locations consistent with the enforcement plan for occupant protection issues. If for any reason, the ODEPs were conducted in areas not consistent with the enforcement plan, the Grantee must submit a justification with the invoice for these services. The Department may choose to deny the invoice for ODEPs based on the justification. The Grantee is encouraged to schedule ODEPs throughout the grant period with a focus on participating during the Superblitz Period, 3 Mini Superblitz Periods, National DWI Mobilizations and the National Click It or Ticket Mobilizations identified below.
2. **Definitions.** For purposes of this exhibit, the following definitions apply:

"Agency Coordinator" means the person assigned by the Grantee to assume direct responsibility for administering all phases of the Agreement.

"Directed Enforcement Patrols" means activities that enforce traffic laws in areas consistent with the agency's operational plan.

"Operational Plan" means a plan based on the most current crash data that identifies the problem to be addressed, goals to be achieved, and the performance measures to be employed. The Grantee may update its operational plan as needed to align with current trends.

"Winter Superblitz Period" means November 18, 2022 to January 1, 2023.

"St. Patrick's Day Mini Superblitz Period" means March 11 to March 19, 2023.

"Cinco de Mayo May Mini Superblitz Period" means May 1 to May 7, 2023.

"National Occupant Protection Mobilization Click It or Ticket period" means May 22 to June 4, 2023.

"Fourth of July Mini Superblitz Period" means July 1 to July 8, 2023.

"National DWI Mobilization Period" means August 18 to September 4, 2023.
3. **Training and Qualifications.** The Agency Coordinator must attend the Department's Law Enforcement Coordinators symposium and other Department training as required. The Grantee should notify the Department of any changes in the Agency Coordinator as soon as possible. The Grantee's participating officers must have law enforcement certifications in all areas necessary to conduct the services noted in Section 1 of this exhibit. The Grantee shall keep documentation of training and provide the Department with a list of certified officers on request.

Agenda Item #7.1.

4. **Reimbursement.** The Department will pay the Grantee for the actual cost paid to personnel that worked the ODEPs. Claims for payment must specify officers' actual hourly rate of overtime pay based on the Grantee's overtime policy; the Department will not pay any amount in excess of that rate or for any amount that is not above and beyond the officers normal duties. The Grantee should submit claims at minimum quarterly no later than January 30th, April 30th and July 30th during this Agreement period. The final claim shall be submitted no later than October 31, 2023. If the final claim is submitted after October 31, 2023, the claim must be accompanied by a justification letter. The Department may choose to deny the claim based on the justification. The claim must be on a form approved by the Department. The Department will pay the Grantee for the following:
- pay, including overtime, for officers conducting traffic safety occupant protection focused enforcement in areas consistent with the enforcement plan;
 - attendance at, and excess per diem for, operation safe kids training and the four-day NHTSA standardized child passenger safety training; and
 - assistance at child safety seat clinics or car seat fitting stations.
5. **Reporting.** *The Grantee must submit activity reports by the 20th of each month using the activity report form provided unless otherwise directed by the Department.* Activity reports must include the type of activity and types of citations issued. The Grantee must report all citations to the Motor Vehicle Division of the New Mexico Taxation and Revenue Department and to the appropriate court in accordance with New Mexico state statute. The Grantee must submit timely crash reports to the Department in accordance with NMSA 1978, Section 66-7-207. If the Grantee is not submitting crash reports in accordance with NMSA 1978, Section 66-7-207, the Department may hold reimbursement claims until this provision is met.
6. **Funding.** The Department expects the funding source to be state road fund. However, the funding source is subject to change at the Department's discretion. The Grantee may transfer funds between budget categories only with prior written approval from the Department. The project's itemized budget is as follows:

Personal Services	\$4,985.00
Contractual Services	\$0.00
Commodities	\$0.00
Indirect	\$0.00
Other	\$0.00
TOTAL	\$4,985.00

7. **Goals.** The Department's performance goals for the state are to:
- Five-year unrestrained occupant fatalities rose by 11.6 percent between 2016 and 2020, and projected five-year data indicate a further 18.5 percent rise in 2023. The State has set the five-year average projection of 138.6 as the 2023 target. The State will continue to support its BKLUP enforcement and awareness campaign and its participation in the National CIOT in an effort to reduce these fatalities. The State requested and participated in an Occupant Protection Assessment in May of 2022 to obtain guidance from NHTSA to improve our OP programs and reduce unrestrained crashes and fatalities.

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- b. The State anticipates being able to increase its seat belt use to at least 90 percent in 2023 and although projections indicate 89.8 percent use in 2023, the State has determined to set the 2023 target at 90.1 percent observed use. Until 2021, New Mexico's observed seat belt use percentage had remained above 90 percent since 2011.

- 8. **Equipment.** The Grantee may only purchase equipment under this Agreement with prior written approval of the Department.

Exhibit C: Scope of Work, Training, Reimbursement and Reporting**SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) and
SUMMER ENFORCEMENT PERIOD** Project Number: 03-PT-02-049

1. **Scope of Work.** The Grantee shall conduct directed enforcement patrols (DEPs) in high crash locations identified in data compiled by local, state or federal government agencies and the Grantee's Operational Plan. The Department encourages the Grantee to accompany the DEPs with public information, media and educational activities. DEPs must deploy officers in high crash locations consistent with the Operational Plan. If for any reason, the DEPs were conducted in areas not consistent with the Operational Plan, the Grantee must submit a justification with the invoice for these services. The Department may choose to deny the invoice for DEPs based on the justification. *The Grantee is encouraged to schedule DEPS through the grant period with a focus on participating during the Summer enforcement period which runs June 21, 2023 through September 23, 2023.*

2. **Definitions.** For purposes of this exhibit, the following definitions apply:

"Agency Coordinator" means the person assigned by the Grantee to assume direct responsibility for administering all phases of the Agreement.

"Directed Enforcement Patrols" means activities that enforce traffic laws in areas consistent with the agency's operational plan.

"Operational Plan" means a plan based on the most current crash data that identifies the problem to be addressed, goals to be achieved, and the performance measures to be employed. The Grantee may update its operational plan as needed to align with current trends.

3. **Training and Qualifications.** The Agency Coordinator must attend the Department's Law Enforcement Coordinators symposium and other Department training as required. The Grantee should notify the Department of any changes in the Agency Coordinator as soon as possible. The Grantee's participating officers must have law enforcement certifications in all areas necessary to conduct the services noted in Section 1 of this exhibit. The Grantee shall keep documentation of training and provide the Department with a list of certified officers on request.

4. **Reimbursement.** The Department will pay the Grantee for the actual cost paid to personnel that worked the DEPs. Claims for payment must specify officers' actual hourly rate of overtime pay based on the Grantee's overtime policy; the Department will not pay any amount in excess of that rate or for any amount that was not above and beyond the officer's normal duties. The Grantee should submit claims at minimum quarterly no later than January 30th, April 30th and July 30th during this Agreement period. The final claim shall be submitted no later than October 31, 2023. If the final claim is submitted after October 31, 2023, the claim must be accompanied by a justification letter. The Department may choose to deny the claim based on the justification. The claim must be on a form approved by the Department. The Department will pay the Grantee for the following:

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- a. Pay, including overtime pay, for officers conducting the traffic safety enforcement described in paragraph 1 of this **Exhibit C**; and
 - b. training for officers as approved by the Department. Pay for travel and traffic safety related training
5. **Reporting.** *The Grantee must submit activity reports by the 20th of each month using the activity report form provided unless otherwise directed by the Department.* Activity reports must include the type of activity and types of citations issued. The Grantee must report all citations to the Motor Vehicle Division of the New Mexico Taxation and Revenue Department and to the appropriate court in accordance with New Mexico state statute. The Grantee must submit timely crash reports to the Department in accordance with NMSA 1978, Section 66-7-207. If the Grantee is not submitting crash reports in accordance with NMSA 1978, Section 66-7-207, the Department may hold reimbursement claims until this provision is met.
6. **Funding – STEP.** The Department expects the funding source to be BIL NHTSA 402 and the Catalog of Federal Domestic Assistance (CFDA) number to be 20.600. However, both funding source and CFDA number are subject to change at the Department's discretion. The Grantee may transfer funds between budget categories only with prior written approval from the Department. The project's itemized budget is as follows:

Personal Services	\$30,015.00
Contractual Services	\$0.00
Commodities	\$0.00
Indirect	\$0.00
Other	\$0.00
TOTAL	\$30,015.00

7. **Goals.** The Department's performance goals for the state are as follows:
 - a. Five-year speeding-related fatalities rose by 12.7 percent between 2016 and 2020, and continue to show an upward trend into 2023. During the peak COVID-19 period (2020-2021), speeding-related fatalities increased by 15.6 percent, and were 38.6 percent of all crash fatalities in 2021. Given the projected continued rise in these fatalities, the State has determined to set the five-year average projection of 174.2 as the 2023 target.
 - b. Five-year alcohol-impaired fatalities rose by 13.4 percent between 2016 and 2020, with continued, but with a smaller increase projected between 2020 and 2023. The State has determined to set the five-year average projection of 131.2 as the 2023 target. The State's ENDWI and participation in the National Drive Sober or Get Pulled Over enforcement and media will continue to focus on areas of the State that have higher incidents of alcohol-involved crashes, fatalities and injuries, and among high-risk groups such as young male drivers, motorcyclists and pedestrians.
 - c. Five-year unrestrained occupant fatalities rose by 11.6 percent between 2016 and 2020, and projected five-year data indicate a further 18.5 percent rise in 2023. The State has set the five-year average projection of 138.6 as the 2023 target. The State will continue to support its BKLUP enforcement and awareness campaign and its participation in the National CIOT in an effort to reduce these fatalities. The State requested and participated in an Occupant Protection Assessment in May of 2022 to obtain guidance from NHTSA to improve our OP programs and reduce unrestrained crashes and fatalities.

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- d. The State anticipates being able to increase its seat belt use to at least 90 percent in 2023 and although projections indicate 89.8 percent use in 2023, the State has determined to set the 2023 target at 90.1 percent observed use. Until 2021, New Mexico's observed seat belt use percentage had remained above 90 percent since 2011.
 - e. Five-year average fatalities rose by 13 percent between 2016 and 2020. 2021 preliminary data indicate a 20 percent increase in fatalities in 2021, with 2022 and 2023 projected increases at similar levels. The State has determined to set the five-year average projection of 446.6 as the 2023 target.
 - f. The methodology used to project the 5-year moving average number of suspected serious injuries for 2023 resulted in a target of 953.5, a 10 percent decrease from the previous year's target, and a larger decrease than in the years since 2016. Therefore, the State has determined a target of 995.4 to be more in-line with the anticipated decrease in the 5-year moving average of suspected serious injuries for 2023.
 - g. Annual motorcyclist fatalities rose from 47 in 2016 to 53 in 2017 and to 55 in 2019 before falling to 46 in 2020. Preliminary data indicate a large rise to 55 in 2021 and projected data show fatalities staying at this level into 2023. As gas prices are anticipated to remain high for some time, and motorcycle travel expected to increase, as evidenced by recent increases in motorcycle sales, the State has determined to set the annual projected target of 54.
 - h. Five-year average under-21 drivers in fatal crashes have risen steadily from 42 in 2016 to 52 in 2020. Preliminary 2021 and projected data indicate continued increases into 2023; therefore the State has determined to set the five-year average projection of 60 as the 2023 target.
 - i. Annual pedestrian fatalities remained in the 74 to 83 range from 2016 to 2020; however 2021 preliminary data indicate a high of 103 fatalities (a 30% increase from 2020), and projected data for 2023 show the number of fatalities remaining at 103. Five-year average data indicate a 26 percent increase in these fatalities, and the State has determined to set the five-year average projection of 93 as the 2023 target.
 - j. Bicyclist fatalities rose from 4 in 2016 to a high of 11 in 2018, then down to 8 in 2020. Preliminary data indicate a reduction to 6 fatalities in 2021, but projections indicate a rise to higher levels close to those in 2018. Given these fluctuations, the State has determined to set the five-year average projection of 9 as the 2023 target.
8. **Equipment.** The Grantee may only purchase equipment under this Agreement with prior written approval of the Department.

Appendix A to Part 1300 – Certifications and Assurances for Fiscal Year 2023 Highway Safety Grants (23 U.S.C. Chapter 4; Sec. 1906, Pub. L. 109-59, As Amended By Sec. 4011, Pub. L. 114-94)

[Each fiscal year, the Governor's Representative for Highway Safety must sign these Certifications and Assurances affirming that the State complies with all requirements, including applicable Federal statutes and regulations, that are in effect during the grant period. Requirements that also apply to subrecipients are noted under the applicable caption.]

State: New Mexico

Fiscal Year: 2023

By submitting an application for Federal grant funds under 23 U.S.C. Chapter 4 or Section 1906, the State Highway Safety Office acknowledges and agrees to the following conditions and requirements. In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following Certifications and Assurances:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4 – Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 – Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 – Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, OMB Guidance on FFATA Subaward and Executive Compensation Reporting, August 27, 2010,

(https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf) by reporting to FSRS.gov for each sub-grant awarded:

- Name of the entity receiving the award;
- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;

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- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A Unique Entity identifier;
- The names and total compensation of the five most highly compensated officers of the entity if:
 - (i) the entity in the preceding fiscal year received—
 - (I) 80 percent or more of its annual gross revenues in Federal awards;
 - (II) \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;
- Other relevant information specified by OMB guidance.

NONDISCRIMINATION**(applies to subrecipients as well as States)**

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.*), **and Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;

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- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

“During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;

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- c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- e. To insert this clause, including paragraphs (a) through (e), in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation, and employee assistance programs;
 - 4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
 - 5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –
 - 1. Abide by the terms of the statement;
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted –

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1. Taking appropriate personnel action against such an employee, up to and including termination;
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)
(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING
(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who

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fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts

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180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

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(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this

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covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to subrecipients as well as States)

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The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE
(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

SECTION 402 REQUIREMENTS

1. To the best of my personal knowledge, the information submitted in the Highway Safety Plan in support of the State's application for a grant under 23 U.S.C. 402 is accurate and complete.
2. The Governor is the responsible official for the administration of the State highway safety program, by appointing a Governor's Representative for Highway Safety who shall be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))
3. The political subdivisions of this State are authorized, as part of the State highway safety program, to carry out within their jurisdictions local highway safety programs which have been approved by the Governor and are in accordance with the uniform guidelines promulgated by the Secretary of Transportation. (23 U.S.C. 402(b)(1)(B))
4. At least 40 percent of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of political subdivisions of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C)) or 95 percent by and for the benefit of Indian tribes (23 U.S.C. 402(h)(2)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)
5. The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))
6. The State will provide for an evidenced-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. (23 U.S.C. 402(b)(1)(E))
7. The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including:
 - Participation in the National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to –
 - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
 - Increase use of seat belts by occupants of motor vehicles;
 - Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;

Agenda Item #7.1.

- An annual Statewide seat belt use survey in accordance with 23 CFR part 1340 for the measurement of State seat belt use rates, except for the Secretary of Interior on behalf of Indian tribes;
 - Development of Statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
 - Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a). (23 U.S.C. 402(b)(1)(F))
8. The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))
9. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4))

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

DocuSigned by:

Justin Reese

6/28/2022

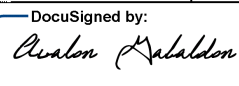
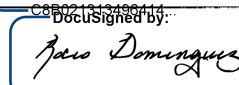
Signature Governor's Representative for Highway Safety

Date

Justin Reese, Acting Cabinet Secretary

Printed name of Governor's Representative for Highway Safety

New Mexico Traffic Safety Division Project Information Sheet

Contract Number:	TS05073				
Government Unit:	Las Cruces, City of				
Contract term:	(11/29/2022 – 09/30/2023)				
Supplier Number:	0000054342		Address ID:		
Grantee Contact Info					
Project Director and Title:		Sergeant Adrian Alva			
Phone:	575-528-4200		E-mail:	aalva@las-cruces.org	
Agency Name:		Las Cruces Police Department			
Address:		P. O. Box 20000			
City, State ZIP:		Las Cruces, NM 88004			
TSD Contact Info					
Program Manager:		Nick Rivera		Phone:	505-470-8907
TSD Finance:		Avalon Gabaldon		Phone:	505-660-8103
Budget Breakdown					
Funding	Project Number	Amount	Fund	Department Code	PO Number
ENDWI	03-AL-64-049	\$49,995.00	10010	5000000000	0000370969
BKLUP	03-OP-RF-049	\$4,985.00	20100	5100000000	0000370972
STEP	03-PT-02-049	\$30,015.00	10010	5000000000	0000370973
Total		\$84,995.00			
PO Entered by TSD Finance:		DocuSigned by:  CBB021333490414			Date: 12/1/2022
PO Approved by Contracts:		DocuSigned by:  320A653A9C19432...			Date: 12/1/2022
Comments:					

Agenda Item #7.1

Signature: Amy Bassford

Email: abassford@las-cruces.org

Signature: Leeann Demouche
Leeann Demouche (Nov 22, 2022 11:49 MST)

Email: ldemouche@las-cruces.org

Signature: Miguel Dominguez
Miguel Dominguez (Nov 22, 2022 15:37 MST)

Email: midominguez@las-cruces.org

CM Memo - NMDOT TSD Consolidated Agreement Unsigned

Final Audit Report

2022-11-22

Created:	2022-11-22
By:	Elizabeth Gonzales (suegonzales@las-cruces.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAm5MWT3Of5Ttq1uOsKF93fX04p7rBXmPR

"CM Memo - NMDOT TSD Consolidated Agreement Unsigned" History

-  Document created by Elizabeth Gonzales (suegonzales@las-cruces.org)
2022-11-22 - 6:43:08 PM GMT
-  Document emailed to Amy Bassford (abassford@las-cruces.org) for signature
2022-11-22 - 6:44:07 PM GMT
-  Email viewed by Amy Bassford (abassford@las-cruces.org)
2022-11-22 - 6:46:08 PM GMT
-  Document e-signed by Amy Bassford (abassford@las-cruces.org)
Signature Date: 2022-11-22 - 6:46:43 PM GMT - Time Source: server
-  Document emailed to Leeann Demouche (ldemouche@las-cruces.org) for signature
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Signature Date: 2022-11-22 - 6:49:22 PM GMT - Time Source: server
-  Document emailed to Miguel Dominguez (midominguez@las-cruces.org) for signature
2022-11-22 - 6:49:23 PM GMT
-  Email viewed by Miguel Dominguez (midominguez@las-cruces.org)
2022-11-22 - 10:36:48 PM GMT
-  Document e-signed by Miguel Dominguez (midominguez@las-cruces.org)
Signature Date: 2022-11-22 - 10:37:06 PM GMT - Time Source: server

Agenda Item #7.1.

✓ Agreement completed.

2022-11-22 - 10:37:06 PM GMT



City of Las Cruces

City Council Action and Executive Summary

23-081

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

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

1st Reading:

Adopted:

January 3, 2023

Drafter:

Cilicia Villegas

Department:

Economic Development

Program:

LAND MANAGEMENT
AND REAL ESTATE
SERVICES

Line of Business:

LAND MANAGEMENT AND
REAL ESTATE SERVICES

Title:

A RESOLUTION ADOPTING A FAST TRACK PERMITTING PROGRAM.

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

PURPOSE(S) OF ACTION:

Approve the proposed Fast Track Permitting Program.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In July 2021, City Council approved the Las Cruces Innovation and Industrial Park Master Plan as per the recommendation of Elevate Las Cruces actions CE-2.5.1 and CP-4.1.5 to stimulate business development in the area. One of the strategic goals of the master plan is to improve the park's image and visibility which includes streamlining the development review and approval process.

In an effort to promote and offer a business-friendly environment, the proposed fast track permitting program would accelerate the review and approval of qualifying economic development projects within the City of Las Cruces.

The attached proposed Fast Track Permitting Program provides a framework defining the purpose, objective, and procedures including project eligibility requirements, the application process, and general guidelines.

SUPPORT INFORMATION:

[Exhibit "A" Fast Track Permitting Program](#)

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Economic Development PRC

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Agenda Item #7.2.

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 Fast Track Permitting Program.
2. Vote "No"; this will not approve the Resolution and will not establish the Fast Track Permitting 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.

REFERENCE INFORMATION:

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

R 22-010

R 20-106

RESOLUTION 23-081

A RESOLUTION ADOPTING A FAST TRACK PERMITTING PROGRAM.

The City Council is informed that:

WHEREAS, in July 2021, City Council approved the Las Cruces Innovation and Industrial Park Master Plan as per the recommendation of Elevate Las Cruces actions CE-2.5.1 and CP-4.1.5 to stimulate business development in the area; and

WHEREAS, one of the strategic goals of the master plan is to improve the park's image and visibility which includes streamlining the development review and approval process; and

WHEREAS, in an effort to promote and offer a business-friendly environment, the proposed fast track permitting program would accelerate the review and approval of qualifying economic development projects within the City of Las Cruces; and

WHEREAS, the attached proposed Fast Track Permitting Program provides a framework defining the purpose, objective, and procedures including project eligibility requirements, application process, and general guidelines.

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

(I)

THAT the Fast Track Permitting Program attached hereto as Exhibit "A", is hereby approved.

(II)

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

FAST TRACK PERMITTING PROGRAM

I. PURPOSE

This policy establishes general guidelines and minimum qualification standards for the Fast-Track process.

II. OBJECTIVE

To accelerate the review and approval of qualifying economic development projects. In an effort to promote and offer a business-friendly environment, the implementation of an efficient and effective streamlined review process is now available for businesses looking to relocate and/or expand into our City.

III. POLICY

A. All requests for Fast Track processing must be **in writing** to the City of Las Cruces Economic Development Department

1. Projects not meeting the qualifications as defined in **Section D** of this policy, may be considered eligible on a case-by-case basis. Applicant will be required to show significant benefit to the City of Las Cruces as follows:

- a. Describe the job creation over the course of the project (i.e., #of total direct jobs, amount of jobs that will be 10% above median household income, amount of gross annual payroll, anticipated construction contract work and associated payroll, etc.)
- b. Provide evidence of financial strength defined in part as credit rating, management experience, and ability to obtain financing for the term of the project (i.e., D&B report, management capability-combined years of experience, profiles of core management team)
- c. Describe the estimated amount of capital investment for the project (i.e., areas of primary focus and distribution of capital- land/buildings (purchased/leased), construction/improvements, infrastructure)
- d. What is the estimated percentage of total revenues that will derive from outside of NM?
- e. Describe the company's history and desire of commitment to support the community (i.e., competitive employee benefits, training programs, internships, community outreach, other types of public investment, etc.)

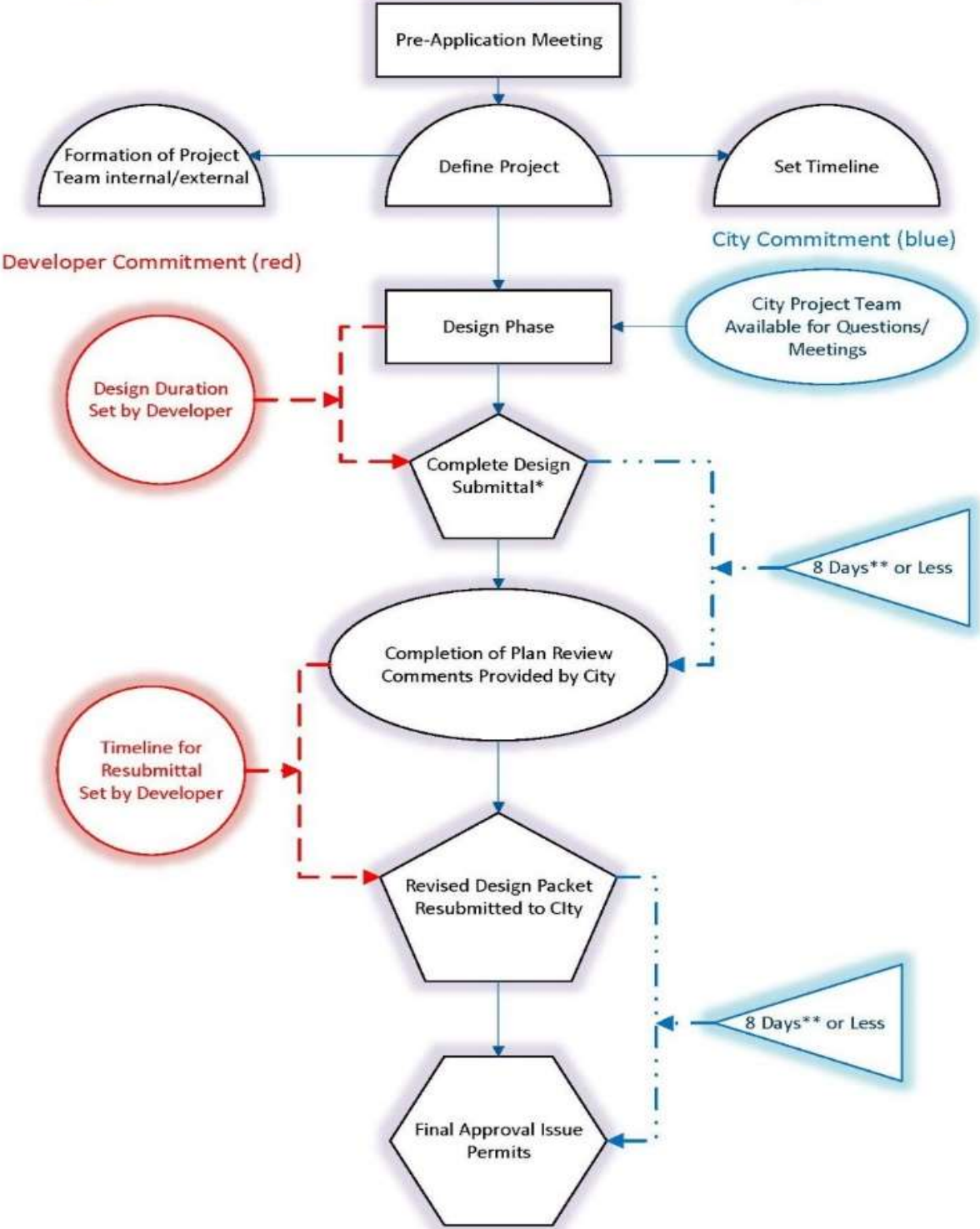
B. A pre-application submission meeting with the City of Las Cruces is required for all potential Fast Track plans. At this meeting, the applicant must provide to the review agencies a written development schedule (working backwards from their proposed construction completion date). The applicant may request the pre-application meeting as soon as they have a written development plan available to present (preferably within a week's notice to ensure scheduling of all parties). If all agencies confirm the plan meets Fast Track criteria, the Community Development Department will issue written authorization to the applicant.

C. General Chronology of the Fast-Track Process

1. In order for this Fast-Track process to be successful, it requires coordination and cooperation between the applicant, the engineering and architectural plan consultants and participating government agencies throughout the entire process. It is imperative that the owner and the plan consultants adhere to the processing schedule (see flow chart below for complete details), if the Fast-Track schedule is to work. In order to make sure everyone stays on the same page; we recommend that developers attend all meetings with city staff.
2. City Contacts
 - a. Economic Development
575-541-2425
econdev@lascruces.gov
 - b. Community Development
575-528-3340, 575-528-3204, 575-528-3089
CDFastTrack2@lascruces.gov

3. Flow chart

City of Las Cruces Fast Track Permitting Process



Note:
* Design submittal shall include all required documents per CLC Development Standards
** Days refers to working days

D. DEFINITIONS *(If applicable; alphabetized)*

- A. Eligible Fast Track Project – must be for non-residential development AND meet at least ONE of the following minimum criteria:
1. Create at least 40 permanent full-time jobs in the first 24-months of operation
 2. Full build out of a building(s) of at least 20,000 square feet for a new or expanded operation in a target industry as determined by Economic Development
- ♦ Accepted Fast track applications will still be required to obtain all CLC Development Code approvals, with the exception of the adherence to the attached timeline flow chart
 - ♦ Inspections and Certificate of Occupancy are not eligible for fast tracking. However, depending on need and benefit to the City, they can be negotiated separately

E. GENERAL GUIDELINES *(Procedures)*

- A. Authority to File Applications
1. Any application for development review or approval under this process shall be filed by the person having legal authority to take action in accordance with the approval sought. That person is presumed to be the record owner, purchaser under a sale from the record owner, or the duly authorized agent of the record owner in the absence of satisfactory proof to the contrary. The City shall be authorized to require proof of legal authority to take the action sought.
- B. Applications
1. Applications required under the Land Development Code shall be submitted on forms and in such manner as required by these regulations. Applications should be accompanied by all required documents and a nonrefundable fee established by City Council to defray the costs of processing applications. Applications shall be reviewed for completeness within five (5) days of filing. If the City determines that the application is complete, the application shall then be processed. If the City determines that it is incomplete, the City shall notify the applicant of the deficiencies. Only complete applications will be accepted for review and processing. The required time frame for action by an approval body starts once a complete application and documents are submitted.
- C. Inactive Development Applications
1. Generally, inactive development applications that have remained idle for a total of six (6) months shall be considered expired. The six (6) month time period will begin on the date that the most recent set of staff comments was returned to the applicant. A complete application along with the appropriate application fee shall be resubmitted in order to resume activity on an application in the development process.

D. Application Completeness

1. Any application that does not include required information or that is not accompanied by the required fee shall be returned to the applicant as incomplete and no further processing of the application shall occur until the deficiencies are corrected.
2. Basic fees associated with development applications are published in the current Fee Schedule of the Community Development Department.

E. Permit Phasing

1. A request may be made to the City of Las Cruces for the phasing of the fast track permit process.



City of Las Cruces

City Council Action and Executive Summary

23-082

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

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

1st Reading: **Adopted:** January 3, 2023

Drafter: Elizabeth Teeters **Department:** Economic Development

Program: Business Development **Line of Business:** Business Development

Title: **A RESOLUTION URGING THE NEW MEXICO STATE LEGISLATURE TO PASS THE AMENDMENT TO THE METROPOLITAN REDEVELOPMENT CODE [CHAPTER 3 ARTICLE 60A] PROVIDING FOR THE DEDICATION OF A PORTION OF AN INCREASE IN CERTAIN PROPERTY TAX REVENUE, LOCAL OPTION GROSS RECEIPTS TAX REVENUE AND STATE GROSS RECEIPTS TAX REVENUE TO FINANCE A METROPOLITAN REDEVELOPMENT PROJECT.**

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

PURPOSE(S) OF ACTION:

To support the amendment to the Metropolitan Redevelopment Code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The State of New Mexico adopted the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] with the legislative intent to authorize local governments to implement redevelopment projects and to promote economic activity in designated metropolitan redevelopment areas.

The City of Las Cruces approved the Main Street Downtown Metropolitan Redevelopment Plan on June 18, 2007, via Resolution 07-386. The City of Las Cruces is in the process of designating a second Metropolitan Redevelopment Area within the infill boundaries. Once established, the vision of the new Metropolitan Redevelopment Area is to provide mechanisms to revitalize a once-thriving area within Las Cruces.

The current State statute does not allow for a meaningful source of revenue to implement redevelopment. The proposed bill does not raise taxes and will hold schools and special districts harmless. It is enabling legislation allowing local jurisdictions to pursue Metropolitan Redevelopment Tax Increment Finance only if the local jurisdiction elects to. This resolution urges passage of the amendment to the Metropolitan Redevelopment Code [Chapter 3, Article 60A] providing for the dedication of a portion of an increase in certain property tax revenue, local option gross receipts tax revenue, and state gross receipts tax revenue to finance a Metropolitan Redevelopment Project.

SUPPORT INFORMATION:

[Attachment "A" - Draft MRA State Statute Changes](#)

PLAN(S):

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

DOES THIS AMEND THE BUDGET?:

Agenda Item #7.3.

☐ 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 would approve the Resolution of support urging the New Mexico State Legislature to pass the amendment to the Metropolitan Redevelopment Code.
2. Vote "No"; this would not approve the Resolution of support urging the New Mexico State Legislature to pass the amendment to the Metropolitan Redevelopment Code.
3. Vote to "Amend"; this could modify the Resolution and would need further direction from Council to staff.
4. Vote to "Table"; this would postpone consideration of the Resolution and would need further direction from Council to staff.

RESOLUTION 23-082

A RESOLUTION URGING THE NEW MEXICO STATE LEGISLATURE TO PASS THE AMENDMENT TO THE METROPOLITAN REDEVELOPMENT CODE [CHAPTER 3 ARTICLE 60A] PROVIDING FOR THE DEDICATION OF A PORTION OF AN INCREASE IN CERTAIN PROPERTY TAX REVENUE, LOCAL OPTION GROSS RECEIPTS TAX REVENUE AND STATE GROSS RECEIPTS TAX REVENUE TO FINANCE A METROPOLITAN REDEVELOPMENT PROJECT.

The City Council is informed that:

WHEREAS, the State of New Mexico adopted the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] with the legislative intent to authorize local governments to implement redevelopment projects and to promote economic activity in designated metropolitan redevelopment areas; and

WHEREAS, the City of Las Cruces approved the Main Street Downtown Metropolitan Redevelopment Plan on June 18, 2007, via Resolution 07-386; and

WHEREAS, the City of Las Cruces is in the process of designating a second Metropolitan Redevelopment Area within the infill boundaries; and

WHEREAS, once established, the vision of the new Metropolitan Redevelopment Area is to provide mechanisms to revitalize a once thriving area within Las Cruces; and

WHEREAS, the current State Statute does not allow for a meaningful source of revenue to implement redevelopment; and

WHEREAS, the proposed bill does not raise taxes; and

WHEREAS, the proposed bill is enabling legislation allowing local jurisdictions to pursue Metropolitan Development Tax Increment Finance only if the local jurisdiction elects to.

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

(I)

THAT the Las Cruces City Council hereby supports passage of the amendment to the Metropolitan Redevelopment Code [Chapter 3, Article 60A] providing for the dedication of a portion of an increase in certain property tax revenue, local option gross receipts tax revenue and state gross receipts tax revenue to finance a Metropolitan Redevelopment Project.

(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

underscored material = new
[bracketed material] = delete

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SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO METROPOLITAN REDEVELOPMENT; PROVIDING FOR THE
DEDICATION OF A PORTION OF AN INCREASE IN CERTAIN PROPERTY TAX
REVENUE, LOCAL OPTION GROSS RECEIPTS TAX REVENUE AND STATE
GROSS RECEIPTS TAX REVENUE TO FUND A METROPOLITAN REDEVELOPMENT
PROJECT; AUTHORIZING A LOCAL GOVERNMENT TO ISSUE BONDS PAYABLE
FROM LOCAL OPTION AND STATE GROSS RECEIPTS TAX REVENUES AND
REMOVING AUTHORITY TO ISSUE BONDS PAYABLE FROM PROPERTY TAX
REVENUE; REMOVING A REQUIREMENT FOR A SEALED BIDDING PROCEDURE
AND APPROVAL OF AWARD OF CONTRACT BY A LOCAL GOVERNMENT FOR
CERTAIN REHABILITATION CONTRACTS BETWEEN PRIVATE PROPERTY
OWNERS AND CONTRACTORS; ALLOWING A LOCAL GOVERNMENT TO DELEGATE
TO A METROPOLITAN REDEVELOPMENT AGENCY THE POWER TO APPROVE
LOANS, GRANTS AND LEASES OF MORE THAN ONE YEAR'S DURATION;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

.223123.3

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 SECTION 1. Section 3-60A-10 NMSA 1978 (being Laws 1979,
3 Chapter 391, Section 10, as amended) is amended to read:

4 "3-60A-10. POWERS OF LOCAL GOVERNMENT.--A local
5 government shall have all the powers, other than the power of
6 eminent domain, necessary or convenient to carry out and
7 effectuate the purposes and provisions of the Metropolitan
8 Redevelopment Code, including the following powers:

9 A. to undertake and carry out metropolitan
10 redevelopment projects within its area of operation, including
11 clearance and redevelopment, rehabilitation, conservation and
12 development activities and programs; to make, enter into and
13 execute contracts and other agreements and instruments
14 necessary or convenient to the exercise of its powers under the
15 Redevelopment Law; and to disseminate information regarding
16 slum clearance, prevention of blight and the metropolitan
17 redevelopment projects and areas;

18 B. to provide, arrange or contract for the
19 furnishing or repair by a public or private person or agency
20 for services, privileges, works, streets, roads, public
21 utilities, public buildings or other facilities for or in
22 connection with a metropolitan redevelopment project; to,
23 within its area of operation, install, acquire, construct,
24 reconstruct, remodel, rehabilitate, maintain and operate
25 streets, utilities, parks, buildings, playgrounds and public

.223123.3

1 buildings, including parking facilities, transportation
2 centers, public safety buildings and other public improvements
3 or facilities or improvements for public purposes, as may be
4 required by the local government, the state or a political
5 subdivision of the state; to agree to conditions that it may
6 deem reasonable and appropriate that are attached to federal
7 financial assistance and imposed pursuant to federal law,
8 including conditions relating to the determination of
9 prevailing salaries or wages or compliance with federal and
10 state labor standards, compliance with federal property
11 acquisition policy and the provision of relocation assistance
12 in accordance with federal law in the undertaking or carrying
13 out of a metropolitan redevelopment project; and to include in
14 a contract let in connection with the project provisions to
15 fulfill these conditions as it may deem reasonable and
16 appropriate; provided, however, that all purchases of personal
17 property shall be in accordance with the Procurement Code;

18 C. within its area of operation, to inspect any
19 building or property in a metropolitan redevelopment area in
20 order to make surveys, appraisals, soundings or test borings
21 and to obtain an order for this purpose from a court of
22 competent jurisdiction in the event inspection is denied by the
23 property owner or occupant; to acquire, by purchase, lease,
24 option, gift, grant, bequest, devise or otherwise, any real
25 property or personal property for its administrative or project

.223123.3

1 purposes, together with any improvements thereon; to hold,
2 improve, clear or prepare for redevelopment any such property;
3 to mortgage, pledge, hypothecate or otherwise encumber or
4 dispose of any real property; to insure or provide for the
5 insurance of real or personal property or operations of the
6 local government against risks or hazards, including the power
7 to pay premiums on that insurance; and to enter into contracts
8 necessary to effectuate the purposes of the Metropolitan
9 Redevelopment Code;

10 D. to invest metropolitan redevelopment project
11 funds held in reserve, sinking funds or other project funds
12 that are not required for immediate disbursement in property or
13 securities in which local governments may legally invest funds
14 subject to their control; to redeem bonds as have been issued
15 pursuant to the Metropolitan Redevelopment Code at the
16 redemption price established in the bonds or to purchase the
17 bonds at less than redemption price. Bonds so redeemed or
18 purchased shall be canceled;

19 E. to borrow or lend money subject to those
20 procedures and limitations as may be provided in the
21 constitution of New Mexico or statutes and to apply for and
22 accept advances, loans, grants, contributions and other forms
23 of financial assistance from the federal government, the state,
24 the county or other public body or from sources, public or
25 private, for the purposes of the Metropolitan Redevelopment

.223123.3

1 Code; and to give security as may be required and subject to
2 the provisions and limitations of general law except as may
3 otherwise be provided by the Redevelopment Law and to enter
4 into and carry out contracts in connection with that law. A
5 local government may include in a contract for financial
6 assistance with the federal government for a metropolitan
7 redevelopment project conditions imposed pursuant to federal
8 law that the local government may deem reasonable or
9 appropriate and that are not inconsistent with the purposes of
10 the Metropolitan Redevelopment Code;

11 F. within its area of operation, to make plans
12 necessary for the carrying out of the purposes of the
13 Metropolitan Redevelopment Code and to contract with any
14 person, public or private, in making and carrying out such
15 plans and to adopt or approve, modify and amend the plans. The
16 plans may include without limitation:

17 (1) a general plan for redevelopment of the
18 area as a whole;

19 (2) redevelopment plans for specific areas;

20 (3) plans for programs of voluntary or
21 assisted repair and rehabilitation of buildings and
22 improvements;

23 (4) plans for the enforcement of state and
24 local laws, codes and regulations relating to the use of land
25 and the use and occupancy of buildings and improvements and to

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1 the compulsory repair, rehabilitation, demolition or removal of
2 buildings and improvements; and

3 (5) appraisals, title searches, surveys,
4 studies and other preliminary plans and work necessary to
5 prepare for the undertaking of metropolitan redevelopment
6 projects;

7 G. to develop, test and report methods and
8 techniques and carry out demonstrations and other activities
9 for the prevention and elimination of slums and blight and to
10 pay for, accept and use grants of funds from the federal
11 government for those purposes;

12 H. to prepare plans for the relocation of families
13 displaced from a metropolitan redevelopment area to the extent
14 essential for acquiring possession of and clearing the area or
15 its parts or permit the carrying out of the metropolitan
16 redevelopment project;

17 I. to appropriate under existing authority the
18 funds and make expenditures necessary to carry out the purposes
19 of the Metropolitan Redevelopment Code and under existing
20 authority to levy taxes and assessments for such purposes; to
21 close, vacate, plan or replan streets, roads, sidewalks, ways
22 or other places; in accordance with applicable law or
23 ordinances, to plan or replan, zone or rezone any part within
24 the jurisdiction of the local government or make exceptions
25 from building regulations; and to enter into agreements with a

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1 metropolitan redevelopment agency vested with metropolitan
2 redevelopment project powers, which agreements may extend over
3 any period, notwithstanding any provision or rule of law to the
4 contrary, respecting action to be taken by the local government
5 pursuant to the powers granted by the Redevelopment Law;

6 J. within its area of operation, to organize,
7 coordinate and direct the administration of the provisions of
8 the Redevelopment Law as they apply to the local government in
9 order that the objective of remedying slum areas and blighted
10 areas and preventing the causes of those areas within the
11 jurisdiction of the local government may be most effectively
12 promoted and achieved and to establish any new office of the
13 local government or to reorganize existing offices as
14 necessary;

15 K. to acquire real property that is appropriate for
16 the preservation or restoration of historic sites; the
17 beautification of urban land; the conservation of open spaces,
18 natural resources and scenic areas; or the provision of
19 recreational opportunities; or that is to be used for public
20 purposes;

21 L. to engage in the following activities as part of
22 a metropolitan redevelopment project:

23 (1) acquisition, construction, reconstruction
24 or installation of public works, facilities and site or other
25 improvements, including neighborhood facilities, senior citizen

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1 centers, historic properties, utilities, streets, street
2 lights, water and sewer facilities, including connections for
3 residential users, foundations and platforms for air-rights
4 sites, pedestrian malls and walkways, parks, playgrounds and
5 other recreation facilities, flood and drainage facilities,
6 parking facilities, solid waste disposal facilities and fire
7 protection or health facilities that serve designated areas;

8 (2) special projects directed to the removal
9 of materials and architectural barriers that restrict the
10 mobility and accessibility of elderly and disabled persons;

11 (3) provision of public services in the
12 metropolitan redevelopment area that are not otherwise
13 available in the area, including the provisions of public
14 services directed to the employment, economic development,
15 crime prevention, child care, health, drug abuse, welfare or
16 recreation needs of the people who reside in the metropolitan
17 redevelopment area;

18 (4) payment of the nonfederal share of any
19 federal grant-in-aid program to the local government that will
20 be a part of a metropolitan redevelopment project;

21 (5) if federal funds are used in the project,
22 to provide for payment of relocation costs and assistance to
23 individuals, families, businesses, organizations and farm
24 operations displaced as a direct result of a metropolitan
25 redevelopment project in accordance with applicable law

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1 governing such payment;

2 (6) payment of reasonable administrative costs
3 and carrying charges related to the planning and execution of
4 plans and projects;

5 (7) economic and marketing studies to
6 determine the economic condition of an area and to determine
7 the viability of certain economic ventures proposed for the
8 metropolitan redevelopment area;

9 (8) issuance of bonds, grants or loans as
10 authorized by the Metropolitan Redevelopment Code in accordance
11 with the requirements of that code; and

12 (9) grants to nonprofit corporations, local
13 development corporations or entities organized under Section
14 301 (d) of the federal Small Business Investment Act of 1958
15 for the purposes of carrying out the provisions of the
16 Metropolitan Redevelopment Code;

17 ~~[M. if payments are to be made by the local~~
18 ~~government or metropolitan redevelopment agency under the terms~~
19 ~~of a contract for reconstruction or rehabilitation of private~~
20 ~~property, payments shall be made from a special fund created~~
21 ~~for that purpose and shall not be paid directly to the property~~
22 ~~owner but shall instead be paid to the contractor by the local~~
23 ~~government or agency from such fund upon proper authorization~~
24 ~~of the property owner and notification that the terms of the~~
25 ~~contract have been fulfilled. However, those rehabilitation~~

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~~contracts shall be between the property owner and the
contractor after a sealed bidding procedure and award of
contract approved by the local government has taken place;~~

N.] M. in a metropolitan redevelopment project or
rehabilitation or conservation undertaking or activity, to
exercise the following powers in one or more metropolitan
redevelopment areas to include the elimination and prevention
of the development or spread of slums or blight and may involve
slum clearance and redevelopment in that area or rehabilitation
or conservation in that area or any combination or part of
those areas in accordance with a metropolitan redevelopment
plan and for undertakings or activities of a local government
in a metropolitan redevelopment area to eliminate the
conditions that caused an area to be so designated and may
include the following:

(1) acquisition of real property within the
metropolitan redevelopment area pursuant to any powers and for
purposes enumerated in the Metropolitan Redevelopment Code;

(2) clearing the land, grading the land and
replatting the land in accordance with the metropolitan
redevelopment plan; installation, construction or
reconstruction of roads, streets, gutters, sidewalks, storm
drainage facilities, water lines or water supply installations,
sewer lines and sewage disposal installations, steam, gas and
electric lines and installations, airport facilities and

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1 construction of any other needed public facilities or buildings
2 whether on or off the site if deemed necessary by the local
3 government to prepare the land in the metropolitan
4 redevelopment area for residential, commercial, industrial and
5 public use in accordance with the metropolitan redevelopment
6 plan; and

7 (3) making the land available for development
8 by private enterprise or public agencies, including sale,
9 initial leasing, leasing or retention by the local government
10 itself, at its fair market value for uses in accordance with
11 the metropolitan redevelopment plan for the area;

12 [0+] N. the local government is empowered in a
13 metropolitan redevelopment area to undertake slum clearance and
14 redevelopment that includes:

15 (1) acquisition of a slum area or a blighted
16 area or portion thereof;

17 (2) demolition and removal of buildings and
18 improvements;

19 (3) installation, construction,
20 reconstruction, maintenance and operation of streets,
21 utilities, storm drainage facilities, curbs and gutters, parks,
22 playgrounds, single-family or multifamily dwelling units,
23 buildings, public buildings, including parking facilities,
24 transportation centers, safety buildings and other
25 improvements, necessary for carrying out in the area the

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1 provisions of an approved plan for the area; and

2 (4) making the real property available for
3 development or redevelopment by private enterprise or public
4 agencies, including sale, leasing or retention by the local
5 government itself, at its fair value for uses in accordance
6 with the metropolitan redevelopment area plan; and

7 [P.] O. to engage in rehabilitation or conservation
8 that includes the restoration and renewal of a slum or blighted
9 area or portion thereof in accordance with any approved plan,
10 by:

11 (1) carrying out plans for a program of
12 voluntary or compulsory repair and rehabilitation of buildings
13 or other improvements;

14 (2) acquisition of real property and
15 demolition or removal of buildings and improvements thereon
16 where necessary to eliminate unhealthful, unsanitary or unsafe
17 conditions, lessen or increase density, eliminate obsolete or
18 other uses detrimental to the public welfare or to otherwise
19 remove or prevent the spread of blight or deterioration or to
20 provide land for needed public facilities;

21 (3) installation, construction or
22 reconstruction of streets, utilities, parks, playgrounds and
23 other improvements necessary for carrying out in the area the
24 provisions of the Metropolitan Redevelopment Code;

25 (4) the disposition of any property acquired

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1 in the area, including sale, leasing or retention by the local
2 government itself, for uses in accordance with an approved
3 plan;

4 (5) acquisition of real property in the area
5 that, under a plan, is to be repaired or rehabilitated;

6 (6) repair or rehabilitation of structures
7 within the area;

8 (7) power to resell repaired or rehabilitated
9 property;

10 (8) acquisition, without regard to any
11 requirement that the area be a slum or blighted area, of
12 air-rights in an area consisting principally of land on which
13 is located a highway, railway, bridge or subway tracks or
14 tunnel entrance or other similar facilities that have a
15 blighting influence on the surrounding area and over which air-
16 rights sites are to be developed for the elimination of such
17 blighting influences; and

18 (9) making loans or grants or authorizing the
19 use of the proceeds of bonds issued pursuant to the
20 Metropolitan Redevelopment Code for the purpose of
21 constructing, repairing, remodeling or modifying [~~or otherwise~~
22 ~~reconstructing~~] a building or buildings located in the
23 metropolitan redevelopment area. Such rehabilitation or
24 conservation with use of funds expended by authority of the
25 Metropolitan Redevelopment Code or by metropolitan revenue

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1 bonds authorized by that code shall be authorized [~~only~~] after
2 approval by the local government and after it has been
3 determined that the expenditure is in accordance with the
4 metropolitan redevelopment plan for that area."

5 SECTION 2. Section 3-60A-15 NMSA 1978 (being Laws 1979,
6 Chapter 391, Section 15, as amended) is amended to read:

7 "3-60A-15. EXERCISE OF POWERS IN CARRYING OUT
8 PROJECTS.--

9 A. A local government may directly exercise its
10 metropolitan redevelopment project powers or it may, by
11 ordinance if it determines such action to be in the public
12 interest, elect to delegate the exercise of such powers to the
13 metropolitan redevelopment agency created pursuant to the
14 Redevelopment Law. If the local government so determines, the
15 agency shall be vested with all of the powers in the same
16 manner as though all the powers were conferred on the agency or
17 authority instead of the local government.

18 B. As used in this section, the term "redevelopment
19 project powers" includes any rights, powers, functions and
20 duties of a local government authorized by the Redevelopment
21 Law except the following, which are reserved to the local
22 government, the power to:

23 (1) declare an area to be a slum or a blighted
24 area or combination thereof and to designate the area as
25 appropriate for a redevelopment project;

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- 1 (2) approve or amend redevelopment plans;
- 2 (3) approve a general plan for the local
- 3 government as a whole;
- 4 (4) make findings of necessity prior to
- 5 preparation of a metropolitan redevelopment plan as provided in
- 6 the Redevelopment Law and the findings and determinations
- 7 required prior to approval of a metropolitan redevelopment plan
- 8 or project as provided in the Redevelopment Law;
- 9 (5) issue general obligation bonds and revenue
- 10 bonds as authorized by law;
- 11 ~~[(6) approve loans or grants;~~
- 12 ~~[(7) approve leases of more than one year's~~
- 13 ~~duration;~~
- 14 ~~[(8)] (6)~~ issue redevelopment bonds; and
- 15 ~~[(9)] (7)~~ appropriate funds and levy taxes and
- 16 assessments."

17 SECTION 3. Section 3-60A-20 NMSA 1978 (being Laws 1979,

18 Chapter 391, Section 20, as amended) is amended to read:

19 "3-60A-20. ALTERNATIVE FUNDING METHOD ~~[OF FINANCING]~~.--

20 ~~[A. Effective for tax years beginning on or after January 1,~~

21 ~~1980, the] A~~ local government may elect by resolution to use

22 the procedures set forth in the Tax Increment Law for

23 ~~[financing]~~ funding metropolitan redevelopment projects. Such

24 procedures may be used in addition to or in conjunction with

25 other methods provided by law for ~~[financing]~~ funding such

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1 projects.

2 ~~[B. The tax increment method, for the purpose of~~
3 ~~financing metropolitan redevelopment projects, is the~~
4 ~~dedication for further use in metropolitan redevelopment~~
5 ~~projects of that increase in property tax revenue directly~~
6 ~~resulting from the increased net taxable value of a parcel of~~
7 ~~property attributable to its rehabilitation, redevelopment or~~
8 ~~other improvement because of its inclusion within an urban~~
9 ~~renewal, community development or metropolitan redevelopment~~
10 ~~project.]"~~

11 SECTION 4. Section 3-60A-21 NMSA 1978 (being Laws 1979,
12 Chapter 391, Section 21, as amended) is amended to read:

13 "3-60A-21. PROPERTY AND GROSS RECEIPTS TAX ~~[INCREMENT]~~
14 INCREMENTS--PROCEDURES.--

15 A. The procedures to be used in ~~[the]~~ determining a
16 property tax increment ~~[method]~~ are:

17 ~~[A.]~~ (1) the local government shall, ~~[at the~~
18 ~~time]~~ after approval of a metropolitan redevelopment ~~[project]~~
19 plan, notify the county assessor ~~[and the taxation and revenue~~
20 ~~department]~~ of the taxable parcels of property within the
21 ~~[project]~~ metropolitan redevelopment area;

22 ~~[B.]~~ (2) upon receipt of the notification
23 ~~[pursuant to Subsection A of this section],~~ the county assessor
24 ~~[and the taxation and revenue department]~~ shall identify the
25 parcels of property within the metropolitan redevelopment

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1 ~~[project]~~ area within their respective jurisdictions and
2 certify to the county treasurer the net taxable value of the
3 property at the time of notification as the base value for the
4 distribution of property tax revenues authorized by the
5 Property Tax Code. If because of acquisition by the local
6 government the property becomes tax exempt, the county assessor
7 ~~[and the taxation and revenue department]~~ shall note that fact
8 on their respective records and so notify the county treasurer,
9 but the county assessor ~~[the taxation and revenue department]~~
10 and the county treasurer shall preserve a record of the net
11 taxable value at the time of inclusion of the property within
12 the metropolitan redevelopment ~~[project]~~ area as the base value
13 for the purpose of distribution of property tax revenues when
14 the parcel again becomes taxable. The county assessor is not
15 required by this section to preserve the new taxable value at
16 the time of inclusion of the property within the metropolitan
17 redevelopment ~~[project]~~ area as the base value for the purposes
18 of valuation of the property;

19 ~~[6.]~~ (3) if because of acquisition by the
20 local government the property becomes tax exempt, when the
21 parcel again becomes taxable, the local government shall notify
22 the county assessor ~~[and the taxation and revenue department]~~
23 of the parcels of property that because of their rehabilitation
24 or other improvement are to be revalued for property tax
25 purposes. A new taxable value of this property shall then be

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1 determined by the county assessor [~~or by the taxation and~~
 2 ~~revenue department if the property is within the valuation~~
 3 ~~jurisdiction of that department~~]. If no acquisition by the
 4 local government occurs, improvement or rehabilitation of
 5 property subject to valuation by the assessor shall be reported
 6 to the assessor as required by the Property Tax Code, and the
 7 new taxable value shall be determined as of January 1 of the
 8 tax year following the year in which the improvement or
 9 rehabilitation is completed; and

10 [~~D.~~] (4) current tax rates shall then be
 11 applied to the new taxable value of property included in the
 12 metropolitan redevelopment area. The amount by which the
 13 revenue received exceeds that which would have been received by
 14 application of the same rates to the base value before
 15 inclusion in the metropolitan redevelopment [~~project~~] area
 16 shall be multiplied by the percentage of the increment
 17 dedicated by the local government pursuant to Section 3-60A-23
 18 NMSA 1978, credited to the local government and deposited in
 19 the metropolitan redevelopment fund. This transfer shall take
 20 place only after the county treasurer has been notified to
 21 apply the [~~tax increment method~~] procedures pursuant to this
 22 subsection to [~~a specific~~] property included in a metropolitan
 23 redevelopment area. Unless the entire metropolitan
 24 redevelopment area is specifically included by the local
 25 government for purposes of tax increment financing, the payment

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1 by the county treasurer to the local government shall be
2 limited to those properties specifically included. The
3 remaining revenue shall be distributed to participating units
4 of government as authorized by the Property Tax Code ~~[and]~~.

5 B. The procedures to be used in determining a gross
6 receipts tax increment are:

7 (1) after approval of a metropolitan
8 redevelopment area, a dedication is made pursuant to Section
9 3-60A-23 NMSA 1978 and at least one hundred twenty days before
10 the effective date of the dedication, the local government
11 shall notify the taxation and revenue department of the
12 geographical area within the metropolitan redevelopment area
13 and the percentages of a gross receipts tax increment;

14 (2) within ninety days of receipt of the
15 notification, the taxation and revenue department shall certify
16 to the local government the base year gross receipts tax
17 revenue amounts, which shall be calculated as:

18 (a) the amount of the local government's
19 local option gross receipts tax revenue attributable to the
20 gross receipts of persons engaging in business in the
21 metropolitan redevelopment area in the previous fiscal year,
22 less any local option gross receipts tax revenue attributable
23 to construction activities located within the metropolitan
24 redevelopment area; and

25 (b) the amount of state gross receipts

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tax revenue attributable to the gross receipts of persons
engaging in business in the metropolitan redevelopment area in
the previous fiscal year, less any state gross receipts tax
revenue attributable to construction activities located within
the metropolitan redevelopment area and, if the local
government is a municipality, any amount distributed to the
municipality pursuant to Section 7-1-6.4 NMSA 1978 attributable
to the gross receipts of persons engaging in business in the
metropolitan redevelopment area; and

(3) within six months of the end of each
fiscal year following the base year:

(a) the taxation and revenue department
shall compare the amounts of gross receipts tax revenues of the
base year with the amounts of gross receipts tax revenues of
that following fiscal year, using the same calculation methods
as provided in Paragraph (2) of this subsection, except the
amounts of gross receipts tax revenues of the following fiscal
year shall include revenue attributable to construction
activities located within the metropolitan redevelopment area;
and

(b) if there is an increase between the
gross receipts tax revenue of the base year and the gross
receipts tax revenue of that following fiscal year, the sum of:
1) the product of the total rate of the local government's
local option gross receipts tax multiplied by the increased

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1 amount of the local government's local option gross receipts
 2 tax revenue, further multiplied by the percentage of the gross
 3 receipts tax increment dedicated by the local government
 4 pursuant to Section 3-60A-23 NMSA 1978; plus 2) the product of
 5 the state gross receipts tax rate multiplied by the increased
 6 amount of the state gross receipts tax revenue, further
 7 multiplied by the percentage of the gross receipts tax
 8 increment dedicated by the state board of finance pursuant to
 9 Section 3-60A-23 NMSA 1978.

10 ~~[E.]~~ C. The procedures ~~[and methods]~~ specified in
 11 this section shall be followed annually for a maximum period of
 12 twenty years following the date of notification ~~[of inclusion~~
 13 ~~of property as coming under the transfer provisions of]~~
 14 provided by this section.

15 D. As used in this section:

16 (1) "local option gross receipts tax revenue"
 17 means revenue transferred to the local government pursuant to
 18 Section 7-1-6.12 or 7-1-6.13 NMSA 1978, as appropriate; and

19 (2) "state gross receipts tax revenue" means
 20 revenue received from the gross receipts tax imposed pursuant
 21 to Section 7-9-4 NMSA 1978."

22 **SECTION 5.** Section 3-60A-23 NMSA 1978 (being Laws 1979,
 23 Chapter 391, Section 23, as amended) is amended to read:

24 "3-60A-23. ~~[TAX INCREMENT FINANCING METHOD]~~ APPROVAL OF
 25 ALTERNATIVE FUNDING METHOD.--

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~~[A. The property tax increment method shall be applicable only to the units of government participating in property tax revenue derived from the properties within the district.~~

~~B. A local government shall request an approval for up to a twenty-year period for property included in the tax increment funding. The governor or the governor's authorized representative shall approve, partially approve or disapprove the use of the method for state government; the governing body of each other participating unit shall approve, partially approve or disapprove by ordinance or resolution the use of the method for its respective units.~~

~~C. At the request of a participating unit of government, made within ten days of receipt of the request by the local government, the local government shall make a presentation to the governor or the governor's authorized representative and to the governing bodies of all participating units of government, which presentation shall include a description of the metropolitan redevelopment project and the parcels in the project to which the tax increment method will apply and an estimate of the general effect of the project and the application of the tax increment method on property values and tax revenues. All participating units shall notify the local government seeking approval within thirty days of receipt of the local government's request. At the expiration of that~~

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1 ~~time, the alternative method of financing set forth in this~~
2 ~~section shall be effective for a period of up to twenty tax~~
3 ~~years.]~~

4 A. A metropolitan redevelopment plan, as originally
5 approved or as later modified, may contain a provision that a
6 portion of a property tax increment or gross receipts tax
7 increment may be dedicated for the purpose of funding a
8 metropolitan redevelopment project for a period of up to twenty
9 years.

10 B. A local government may dedicate up to seventy-
11 five percent of a property tax increment or gross receipts tax
12 increment and the state board of finance may dedicate up to
13 seventy-five percent of a gross receipts tax increment, each as
14 determined pursuant to Section 3-60A-21 NMSA 1978, with the
15 agreement of the municipality, county or state board of
16 finance, evidenced by a resolution adopted by a majority vote
17 of those entities. A resolution to dedicate a property tax
18 increment or gross receipts tax increment shall become
19 effective only on January 1 or July 1 of the calendar year.

20 C. A resolution of the state board of finance shall
21 find that:

22 (1) the state board of finance has reviewed
23 the request for the use of the state gross receipts tax
24 increment; and

25 (2) based upon review by the state board of

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finance of the applicable metropolitan redevelopment plan, the dedication by the state board of finance of the gross receipts tax increment within the metropolitan redevelopment area for use in meeting the required goals of the metropolitan redevelopment plan is reasonable and in the best interest of the state.

D. The governing body of the jurisdiction in which a metropolitan redevelopment area has been established shall timely notify the assessor of the county in which the area has been established, the taxation and revenue department and the local government division of the department of finance and administration when:

(1) a metropolitan redevelopment plan has been approved that contains a provision for the allocation and percentage of property tax increments and gross receipts tax increments;

(2) any outstanding bonds of the area have been paid off; and

(3) the purposes of the area have otherwise been achieved."

SECTION 6. Section 3-60A-23.1 NMSA 1978 (being Laws 2000, Chapter 103, Section 4, as amended) is amended to read:

"3-60A-23.1. TAX INCREMENT BONDS.--

A. For the purpose of financing metropolitan redevelopment projects, in whole or in part, a local government

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underscored material = new
[bracketed material] = delete

1 may issue tax increment bonds or tax increment bond
2 anticipation notes that are payable from and secured by [~~real~~
3 ~~property taxes, in whole or in part~~] revenue from a gross
4 receipts tax increment allocated to the metropolitan
5 redevelopment fund pursuant to [~~the provisions of~~] Sections
6 3-60A-21 and 3-60A-23 NMSA 1978. The principal of, premium, if
7 any, and interest on the bonds or notes shall be payable from
8 and secured by a pledge of such revenues, and the local
9 government shall irrevocably pledge all or part of the revenues
10 to the payment of the bonds or notes. The revenues deposited
11 in the metropolitan redevelopment fund or the designated part
12 thereof may thereafter be used only for the payment of the
13 principal of, premium, if any, and interest on the bonds or
14 notes, and a holder of the bonds or notes shall have a first
15 lien against the revenues deposited in the metropolitan
16 redevelopment fund or the designated part thereof for the
17 payment of principal of, premium, if any, and interest on the
18 bonds or notes. To increase the security and marketability of
19 the tax increment bonds or notes, the local government may:

20 (1) create a lien for the benefit of the
21 bondholders on any public improvements or public works used
22 solely by the metropolitan redevelopment project or portion of
23 a project financed by the bonds or notes, or on the revenues of
24 such improvements or works;

25 (2) provide that the proceeds from the sale of

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1 real and personal property acquired with the proceeds from the
2 sale of bonds or notes issued pursuant to the Tax Increment Law
3 shall be deposited in the metropolitan redevelopment fund and
4 used for the purposes of repayment of principal of, premium, if
5 any, and interest on the bonds or notes; and

6 (3) make covenants and do any and all acts not
7 inconsistent with law as may be necessary, convenient or
8 desirable in order to additionally secure the bonds or notes or
9 make the bonds or notes more marketable in the exercise of the
10 discretion of the local government.

11 B. Bonds and notes issued pursuant to this section
12 shall not constitute an indebtedness within the meaning of any
13 constitutional or statutory debt limitation or restriction,
14 shall not be general obligations of the local government, shall
15 be collectible only from the proper pledged revenues and shall
16 not be subject to the provisions of any other law or charter
17 relating to the authorization, issuance or sale of tax
18 increment bonds or tax increment bond anticipation notes.

19 Bonds and notes issued pursuant to the Tax Increment Law are
20 declared to be issued for an essential public and governmental
21 purpose and, together with interest thereon, shall be exempted
22 from all taxes by the state.

23 C. The bonds or notes shall be authorized by an
24 ordinance of the local government; shall be in a denomination
25 or denominations, bear a [~~such~~] date and mature, in the case of

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1 bonds, at a time not exceeding twenty years from their date,
2 and in the case of notes, not exceeding five years from the
3 date of the original note; bear interest at a rate or have
4 appreciated principal value not exceeding the maximum net
5 effective interest rate permitted by the Public Securities Act;
6 and be in a form, carry registration privileges, be executed in
7 a manner, be payable at a place within or without the state, be
8 payable at intervals or at maturity and be subject to terms of
9 redemption as the authorizing ordinance or supplemental
10 resolution of the local government may provide.

11 D. The bonds or notes may be sold in one or more
12 series at, below or above par, at public or private sale, in a
13 manner and for a price as the local government, in its
14 discretion, shall determine; provided that the price at which
15 the bonds or notes are sold shall not result in a net effective
16 interest rate that exceeds the maximum permitted by the Public
17 Securities Act. As an incidental expense of a metropolitan
18 redevelopment project or the portion financed with the bonds or
19 notes, the local government in its discretion may employ
20 financial and legal consultants with regard to the financing of
21 the project.

22 E. In case any of the public officials of the local
23 government whose signatures appear on any bonds or notes issued
24 pursuant to the Tax Increment Law cease to be public officials
25 before the delivery of the bonds or notes, the signatures

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1 shall, nevertheless, be valid and sufficient for all purposes,
2 the same as if the officials had remained in office until
3 delivery. Any provision of law to the contrary
4 notwithstanding, any bonds or notes issued pursuant to the Tax
5 Increment Law shall be fully negotiable.

6 F. In any suit, action or proceeding involving the
7 validity or enforceability of any bond or note issued pursuant
8 to the Tax Increment Law or the security therefor, any bond or
9 note reciting in substance that it has been issued by the local
10 government in connection with a metropolitan redevelopment
11 project shall be conclusively deemed to have been issued for
12 that purpose and the project shall be conclusively deemed to
13 have been planned, located and carried out in accordance with
14 the provisions of the Metropolitan Redevelopment Code.

15 G. The proceedings under which tax increment bonds
16 or tax increment bond anticipation notes are authorized to be
17 issued and any mortgage, deed of trust, trust indenture or
18 other lien or security device on real and personal property
19 given to secure the same may contain provisions customarily
20 contained in instruments securing bonds and notes and
21 constituting a covenant with the bondholders.

22 H. A local government may issue bonds or notes
23 pursuant to this section with the proceeds from the bonds or
24 notes to be used as other money is authorized to be used in the
25 Metropolitan Redevelopment Code.

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1 I. The local government shall have the power to
2 issue renewal notes, to issue bonds to pay notes and, whenever
3 it deems refunding expedient, to refund any bonds by the
4 issuance of new bonds, whether the bonds to be refunded have or
5 have not matured, and to issue bonds partly to refund bonds
6 then outstanding and partly for other purposes in connection
7 with financing metropolitan redevelopment projects, in whole or
8 in part. Refunding bonds issued pursuant to the Tax Increment
9 Law to refund outstanding tax increment bonds shall be payable
10 from ~~[real property tax revenues]~~ a gross receipts tax
11 increment, out of which the bonds to be refunded thereby are
12 payable or from other lawfully available revenues.

13 J. The proceeds from the sale of any bonds or notes
14 shall be applied only for the purpose for which the bonds or
15 notes were issued, and if, for any reason, any portion of the
16 proceeds are not needed for the purpose for which the bonds or
17 notes were issued, the unneeded portion of the proceeds shall
18 be applied to the payment of the principal of or the interest
19 on the bonds or notes.

20 K. The cost of financing a metropolitan
21 redevelopment project shall be deemed to include the actual
22 cost of acquiring a site and the cost of the construction of
23 any part of a project, including architects' and engineers'
24 fees, the purchase price of any part of a project that may be
25 acquired by purchase and all expenses in connection with the

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1 authorization, sale and issuance of the bonds or notes to
2 finance the acquisition and any related costs incurred by the
3 local government.

4 L. No action shall be brought questioning the
5 legality of any contract, mortgage, deed of trust, trust
6 indenture or other lien or security device, proceeding or bonds
7 or notes executed in connection with any project authorized by
8 the Metropolitan Redevelopment Code on and after thirty days
9 from the effective date of the ordinance authorizing the
10 issuance of such bonds or notes."

11 SECTION 7. Section 3-60A-27 NMSA 1978 (being Laws 1979,
12 Chapter 391, Section 27, as amended) is amended to read:

13 "3-60A-27. DEFINITIONS.--As used in the Redevelopment
14 Bonding Law:

15 A. "finance" or "financing" means the issuing of
16 bonds by a local government and the use of substantially all of
17 the proceeds from the bonds pursuant to a financing agreement
18 with the user to pay or to reimburse the user or its designee
19 for the costs of the acquisition or construction of a project,
20 whether these costs are incurred by the local government, the
21 user or a designee of the user; provided that title to or in
22 the project may at all times remain in the user, and, in such
23 case, the bonds of the local government may be secured by
24 mortgage or other lien upon the project or upon any other
25 property of the user, or both, granted by the user or by a

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1 pledge of one or more notes, debentures, bonds or other secured
2 or unsecured debt obligations of the user, as the governing
3 body deems advisable, but no local government shall be
4 authorized hereby to pledge any of its property or to otherwise
5 secure the payment of any bonds with its property, except that
6 the local government may pledge the ~~[property of the project~~
7 ~~or]~~ revenues from the project;

8 B. "financing agreement" includes a lease,
9 sublease, installment purchase agreement, rental agreement,
10 option to purchase or any other agreement or any combination
11 thereof entered into in connection with the financing of a
12 project pursuant to the Metropolitan Redevelopment Code;

13 C. "mortgage" means a deed of trust or any other
14 security device for both real and personal property;

15 D. "ordinance" means an ordinance of a local
16 government financing or refinancing an activity involving or
17 affecting improvement or improvements;

18 E. "project" means an activity that can be funded
19 or refinanced by revenue bonds issued pursuant to the
20 Redevelopment Bonding Law for the purpose of acquiring,
21 improving, rehabilitating, conserving, financing, refinancing,
22 erecting or building new or improved facilities on land,
23 building or buildings or any other improvement or improvements,
24 site or any other activity authorized by the Metropolitan
25 Redevelopment Code for projects or activities located within

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1 the boundaries of a metropolitan redevelopment area. The
2 revenue bonds may be used for the projects hereafter enumerated
3 for any purpose or use in such project, except that no funds
4 shall be used for inventories, raw materials or other working
5 capital, whether or not in existence, suitable or used for or
6 in connection with any of the following projects:

7 (1) manufacturing, industrial, commercial or
8 business enterprises, including without limitation enterprises
9 engaged in storing, warehousing, distributing, selling or
10 transporting any products of industry, commerce, manufacturing
11 or business or any utility plant;

12 (2) hospital, health care or nursing home
13 facilities, including without limitation clinics and outpatient
14 facilities and facilities for the training of hospital, health
15 care or nursing home personnel;

16 (3) residential facilities intended for use as
17 the place of residence by the owners or intended occupants;

18 (4) sewage or solid waste disposal facilities;

19 (5) facilities for the furnishing of water, if
20 available, on reasonable demand to members of the general
21 public;

22 (6) facilities for the furnishing of energy or
23 gas;

24 (7) sports and recreational facilities;

25 (8) convention or trade show facilities;

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(9) research, product testing and administrative facilities;

(10) creative enterprises or industries;

(11) cultural facilities as defined in the Local Economic Development Act; and

(12) public infrastructure in state-authorized main street projects or arts and cultural districts;

F. "revenue bonds" means bonds, notes or other securities evidencing an obligation and issued pursuant to the powers granted by the Metropolitan Redevelopment Code by a local government for purposes authorized by that code;

G. "user" means one or more persons who enter into a financing agreement with a local government relating to a project, except that the user need not be the person actually occupying, operating or maintaining the project; and

H. "utility plant" means any facility used for or in connection with the generation, production, transmission or distribution of electricity; the production, manufacture, storage or distribution of gas; the transportation or conveyance of gas, oil or other fluid substance by pipeline; or the diverting, developing, pumping, impounding, distributing or furnishing of water."

SECTION 8. Section 3-60A-30 NMSA 1978 (being Laws 1979, Chapter 391, Section 30, as amended) is amended to read:

"3-60A-30. BONDS AS LEGAL INVESTMENTS.--All banks, trust
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1 companies, bankers, building and loan associations, savings and
2 loan associations, investment companies and other persons
3 carrying on a banking or investment business; all insurance
4 companies, insurance associations and other persons carrying on
5 an insurance business; and all executors, administrators,
6 curators, trustees and other fiduciaries may legally invest any
7 sinking funds, money or other funds belonging to them or within
8 their control in any bonds or other obligations issued by a
9 local government pursuant to the Metropolitan Redevelopment
10 Code or by any agency vested with metropolitan redevelopment
11 project powers under the Redevelopment Law; provided that the
12 bonds and other obligations shall be secured by a pledge of
13 ~~[property or]~~ revenues ~~[or combinations thereof]~~ that is of
14 sufficient value to equal the principal and interest of the
15 bonds at maturity. The bonds and other obligations shall be
16 authorized security for all public deposits. Nothing contained
17 in this section with regard to legal investments shall be
18 construed as relieving any person of any duty of exercising
19 reasonable care in selecting securities."

20 SECTION 9. Section 3-60A-33 NMSA 1978 (being Laws 1979,
21 Chapter 391, Section 33, as amended) is amended to read:

22 "3-60A-33. REVENUE BONDS--BOND SECURITY.--The principal
23 of, the interest on and any prior redemption premiums due in
24 connection with the revenue bonds shall be payable from,
25 secured by a pledge of and constitute a lien on the revenues

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1 out of which the bonds shall be made payable. In addition,
2 they may be secured by a mortgage covering all or any part of
3 the project or upon any other property of the user or both by a
4 pledge of the revenues from or a financing agreement for the
5 project or both as the local government in its discretion may
6 determine; but no local government shall be authorized by the
7 Redevelopment Bonding Law to pledge any of its property or to
8 otherwise secure the payment of any bonds with its property,
9 except that the local government may pledge the ~~[property of~~
10 ~~the project or]~~ revenues from the project."

11 SECTION 10. A new section of the Tax Administration Act
12 is enacted to read:

13 "[NEW MATERIAL] DISTRIBUTION--METROPOLITAN REDEVELOPMENT
14 FUND.--A distribution for a metropolitan redevelopment project
15 pursuant to the Metropolitan Redevelopment Code shall be made
16 to the metropolitan redevelopment fund in accordance with a
17 notice filed by a municipality or county pursuant to Section
18 3-60A-21 NMSA 1978 with respect to a dedication of a gross
19 receipts tax increment."

20 SECTION 11. Section 7-1-6.12 NMSA 1978 (being Laws 1983,
21 Chapter 211, Section 17, as amended) is amended to read:

22 "7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION
23 GROSS RECEIPTS AND COMPENSATING TAXES.--

24 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
25 shall be made to each municipality for which the department is

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1 collecting a local option gross receipts tax and municipal
2 compensating tax imposed by that municipality in an amount,
3 subject to any increase or decrease made pursuant to Section
4 7-1-6.15 NMSA 1978, equal to the net receipts attributable to
5 the local option gross receipts tax and municipal compensating
6 tax imposed by that municipality, less any deduction for
7 administrative cost determined and made by the department
8 pursuant to the provisions of the act authorizing imposition by
9 that municipality of the local option gross receipts tax and
10 municipal compensating tax and any additional administrative
11 fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

12 B. A transfer pursuant to this section may be
13 adjusted for a distribution made to a tax increment development
14 district with respect to a portion of a gross receipts tax
15 increment dedicated by a municipality pursuant to the Tax
16 Increment for Development Act.

17 C. A transfer pursuant to this section shall be
18 adjusted for a distribution made to the Local Economic
19 Development Act fund pursuant to Section [~~5 of this 2021 act~~]
20 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by
21 a municipality pursuant to Subsection B of Section [~~2 of this~~
22 ~~2021 act~~] 5-10-17 NMSA 1978.

23 D. A transfer pursuant to this section shall be
24 adjusted for a distribution made to the metropolitan
25 redevelopment fund pursuant to Section 10 of this 2023 act and

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1 with respect to the amount dedicated by a municipality pursuant
2 to Section 3-60A-23 NMSA 1978."

3 SECTION 12. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
4 Chapter 211, Section 18, as amended) is amended to read:

5 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
6 GROSS RECEIPTS AND COMPENSATING TAXES.--

7 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
8 shall be made to each county for which the department is
9 collecting a local option gross receipts tax and county
10 compensating tax imposed by that county in an amount, subject
11 to any increase or decrease made pursuant to Section 7-1-6.15
12 NMSA 1978, equal to the net receipts attributable to the local
13 option gross receipts tax and county compensating tax imposed
14 by that county, less any deduction for administrative cost
15 determined and made by the department pursuant to the
16 provisions of the act authorizing imposition by that county of
17 the local option gross receipts tax and county compensating tax
18 and any additional administrative fee withheld pursuant to
19 Section 7-1-6.41 NMSA 1978.

20 B. A transfer pursuant to this section may be
21 adjusted for a distribution made to a tax increment development
22 district with respect to a portion of a gross receipts tax
23 increment dedicated by a county pursuant to the Tax Increment
24 for Development Act.

25 C. A transfer pursuant to this section shall be

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1 adjusted for a distribution made to the Local Economic
2 Development Act fund pursuant to Section [~~5 of this 2021 act~~]
3 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by
4 a county pursuant to Subsection B of Section [~~2 of this 2021~~
5 ~~act~~] 5-10-17 NMSA 1978.

6 D. A transfer pursuant to this section shall be
7 adjusted for a distribution made to the metropolitan
8 redevelopment fund pursuant to Section 10 of this 2023 act and
9 with respect to the amount dedicated by a county pursuant to
10 Section 3-60A-23 NMSA 1978."

11 SECTION 13. REPEAL.--Section 3-60A-24 NMSA 1978 (being
12 Laws 1979, Chapter 391, Section 24) is repealed.

13 SECTION 14. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2023.

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underscored material = new
[bracketed material] = delete

25
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City of Las Cruces

City Council Action and Executive Summary

23-083

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

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

1st Reading: **Adopted:** January 3, 2023

Drafter: Sergio Ruiz **Department:** City Manager's Office

Program: Council and Community Support **Line of Business:** Council and Community Support

Title: **A RESOLUTION TO ESTABLISH A PILOT PROGRAM FOR THE INSTALLATION OF HYGIENE STATIONS THROUGHOUT THE CITY OF LAS CRUCES.**

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

PURPOSE(S) OF ACTION:

To establish a pilot program for the installation of hygiene stations throughout the City of Las Cruces.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

To establish a pilot program for the installation of hygiene stations throughout the City of Las Cruces to abate any nuisance that negatively affects public health and safety by aiding indigent individuals.

Hygiene stations will help to eliminate the waste management on the sidewalks and streets adjacent to our City's businesses and that interferes with the comfortable enjoyment of life and property; and hygiene stations will help to mitigate all disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.

Hygiene station waste will provide portable toilet facilities, handwashing stations, and all waste will be contained within storage containers; and hygiene stations can improve the quality of life for those living on the streets by maintaining personal hygiene, improving health, and overall well-being.

Hygiene stations have the potential to reduce the number of citations and criminal charges that result from individuals simply seeking space to manage their personal hygiene; and the hygiene stations resolve public health safety issues by combating the spread of the COVID-19 virus and other infectious risks and significantly lowers the possibility of hand/touch transmitted diseases.

Hygiene stations assure a clean and safe environment for our City by expanding access to hygiene facilities; and hygiene stations provide reliable and sufficient hygiene facilities that will maintain the health and welfare of housing insecure populations and hygiene stations will help address sanitation and health concerns of the Las Cruces community and bring dignity to our homeless residents.

Provide funding to coordinate services for people experiencing homelessness, provide street-based educational outreach, needs assessments, and resource linkage.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution in support of establishing a pilot program for the installation of hygiene stations throughout the City of Las Cruces.
2. Vote "No"; this will not approve the Resolution in support of establishing a pilot program for the installation of hygiene stations throughout the City of Las Cruces.
3. Vote to "Amend"; this could amend the Resolution based on direction of Council to staff.
4. Vote to "Table"; this could delay the adoption of the Resolution in support of establishing a pilot program for the installation of hygiene stations throughout the City of Las Cruces.

RESOLUTION 23-083

A RESOLUTION TO ESTABLISH A PILOT PROGRAM FOR THE INSTALLATION OF HYGIENE STATIONS THROUGHOUT THE CITY OF LAS CRUCES.

The City Council is informed that:

WHEREAS, to establish a pilot program for the installation of hygiene stations throughout the City of Las Cruces to abate any nuisance that negatively affects public health and safety by aiding indigent individuals; and

WHEREAS, hygiene stations will help to eliminate the waste management on the sidewalks and streets adjacent to our City's businesses and that interferes with the comfortable enjoyment of life and property; and

WHEREAS, hygiene stations will help to mitigate all disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches; and

WHEREAS, hygiene station waste will provide portable toilet facilities, handwashing stations, and all waste will be contained within storage containers; and

WHEREAS, hygiene stations can improve the quality of life for those living on the streets by maintaining personal hygiene, improving health, and overall well-being; and

WHEREAS, hygiene stations have the potential to reduce the number of citations and criminal charges that result from individuals simply seeking space to manage their personal hygiene; and

WHEREAS, the hygiene stations resolve public health safety issues by combating the spread of the COVID-19 virus and other infectious risks and significantly lowers the possibility of hand/touch transmitted diseases; and

WHEREAS, hygiene stations assure a clean and safe environment for our City by expanding access to hygiene facilities; and

WHEREAS, hygiene stations provide reliable and sufficient hygiene facilities that will maintain the health and welfare of housing insecure populations; and

WHEREAS, hygiene stations will help address sanitation and health concerns of the Las Cruces community and bring dignity to our homeless residents; and

WHEREAS, provide funding to coordinate services for people experiencing homelessness, provide street-based educational outreach, needs assessments, and resource linkage.

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

(I)

THAT the City Council affirms its support for the adoption of a pilot program for the installation of hygiene stations throughout the City of Las Cruces, and

(II)

Agenda Item #7.4.

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

DONE AND APPROVED this day of

Agenda Item #7.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



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 INTENSITY), 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.

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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

Agenda Item #9.1.

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 INTENSITY), 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

Agenda Item #9.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

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.

BINNS II LTD CO-
#12-29-03
REC No. 0346599
BK 487, PG 1725-1732
DEC 31, 2003

FOUND IRON ROD
TRACT 'C'
POINT OF BEGINNING

SISBARRO ET UX
REC No. 078358
BK 794, PG 957
MAR 07, 2007

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, RESTRICTIONS, AND RESERVATIONS OF RECORD.

LEGEND

- SUBJECT TRACT BOUNDARY LINES AND CORNER
- ZONE TRACT LINES AND CORNER

LOT 3
RETTA LEWIS
ESTATES,
AMENDED
PR 18, PP
686-687
MAY 14, 1997
SISBARRO ET UX
REC No. 078358
BK 794, PG 957
MAR 07, 2007

BINNS II LTD CO-
#12-29-03
REC No. 0346599
BK 487, PG 1725-1732
DEC 31, 2003

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

N43°46'46"W 1294.00'

894.50'

209.17'

326.00'

N46°13'14"E

400.00'

386.93'

S40°29'49"W

104.51'

18.23'

S46°13'14"W

209.17'

N43°46'46"W 596.10'

400.00'

S46°15'37"W 204.00'

326.00'

N46°13'14"E

400.00'

S43°46'46"E

386.93'

S54°37'38"W

233.33'

S31°16'45"E

493.02'

N65°57'40"E

704.96'

224.01'

S37°25'28"W

204.00'

LOT 1
SANDHILL VILLAGE
PHASE #1, REPLAT No.
PR 20, PP 234-236
FEB 06, 2003

ALAMADEA SOUTHRIDGE
PARTNERS LTD
REC No. 0230417
OCT 11, 2002

LOT 1
SANDHILL VILLAGE
PHASE #1, REPLAT No. 1
PR 20, PP 234-236
FEB 06, 2003

GRANADOS ET UX
BK 402, PG 1783
MAR 04, 2003

BINNS II LTD CO-
#12-29-03
REC No. 0346599
BK 487, PG 1725-1732
DEC 31, 2003

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
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2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

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EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

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PROPOSED ZONE C-2
0.939 AC

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9.776 AC

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(NO CHANGE)
9.776 AC

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(NO CHANGE)
9.776 AC

TRACT 'D'
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TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

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PROPOSED ZONE C-3
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EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

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PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

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PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

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PROPOSED ZONE C-3
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TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

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PROPOSED ZONE C-3
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2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

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(NO CHANGE)
9.776 AC

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PROPOSED ZONE C-2
0.939 AC

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PROPOSED ZONE C-3
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TRACT 'A'
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2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

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PROPOSED ZONE C-2
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PROPOSED ZONE C-3
4.904 AC

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2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

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PROPOSED ZONE C-2
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PROPOSED ZONE C-3
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EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

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PROPOSED ZONE C-2
0.939 AC

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EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

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EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

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PROPOSED ZONE C-2
0.939 AC

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2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
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2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

TRACT 'C'
EXISTING ZONE M1/M2
(NO CHANGE)
9.776 AC

TRACT 'D'
PROPOSED ZONE C-2
0.939 AC

TRACT 'D'
PROPOSED ZONE C-3
4.904 AC

TRACT 'B'
PROPOSED ZONE C-3
4.904 AC

TRACT 'A'
PROPOSED ZONE M1/M2
2.979 AC

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.



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 Rinconada 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 Parcel 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

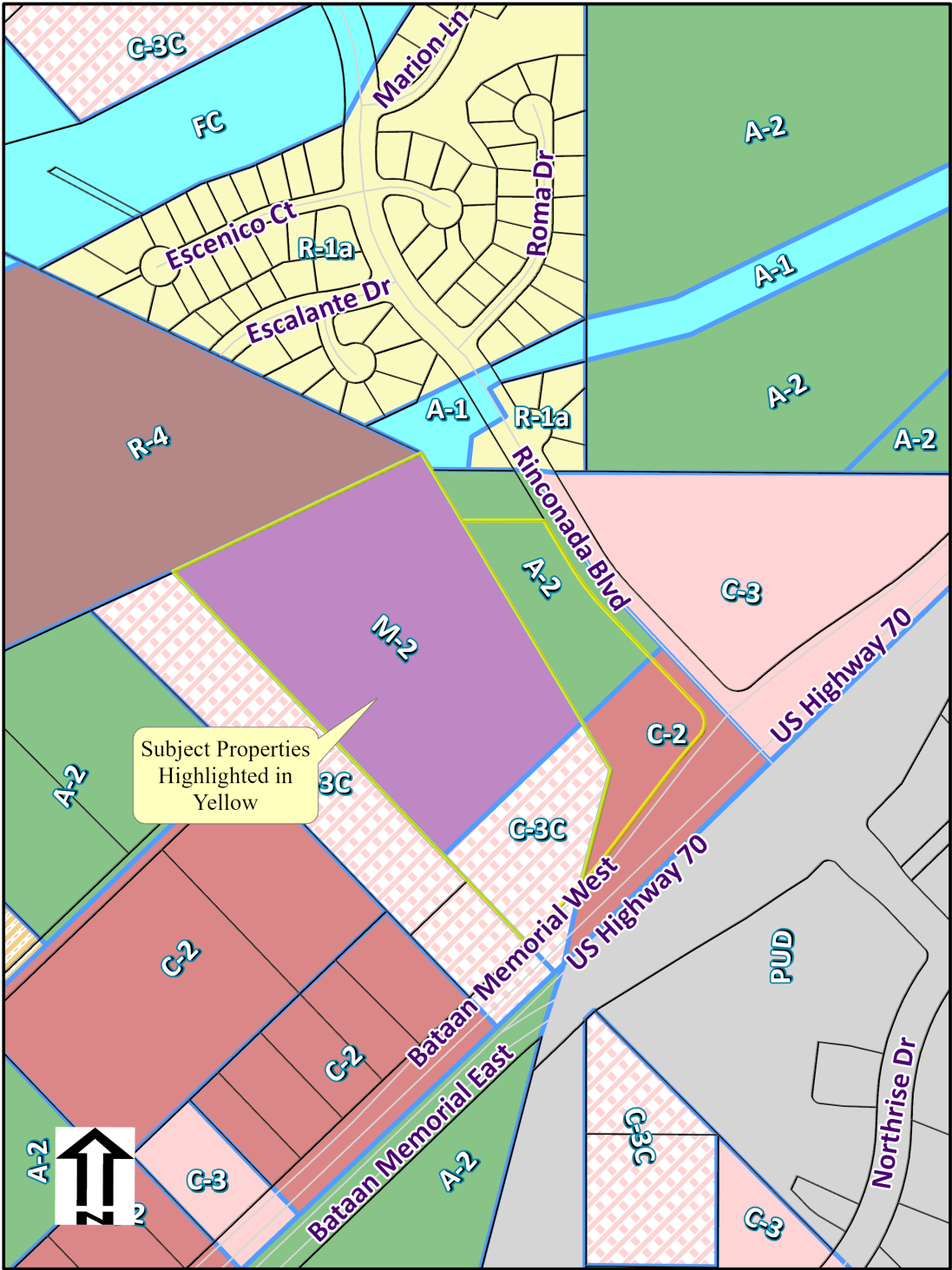
PUBLIC NOTIFICATION AND INPUT: Notice of a Public Hearing was mailed to all property owners within 500 feet of the subject property on July 09, 2021. Staff has not received any input for the proposal at the time this report was drafted.

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?

Agenda Item #9.1.

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?

Agenda Item #9.1.

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.

Agenda Item #9.1.

- 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.

Agenda Item #9.1.

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.

Agenda Item #9.1.

- 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.

Agenda Item #9.1.

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.

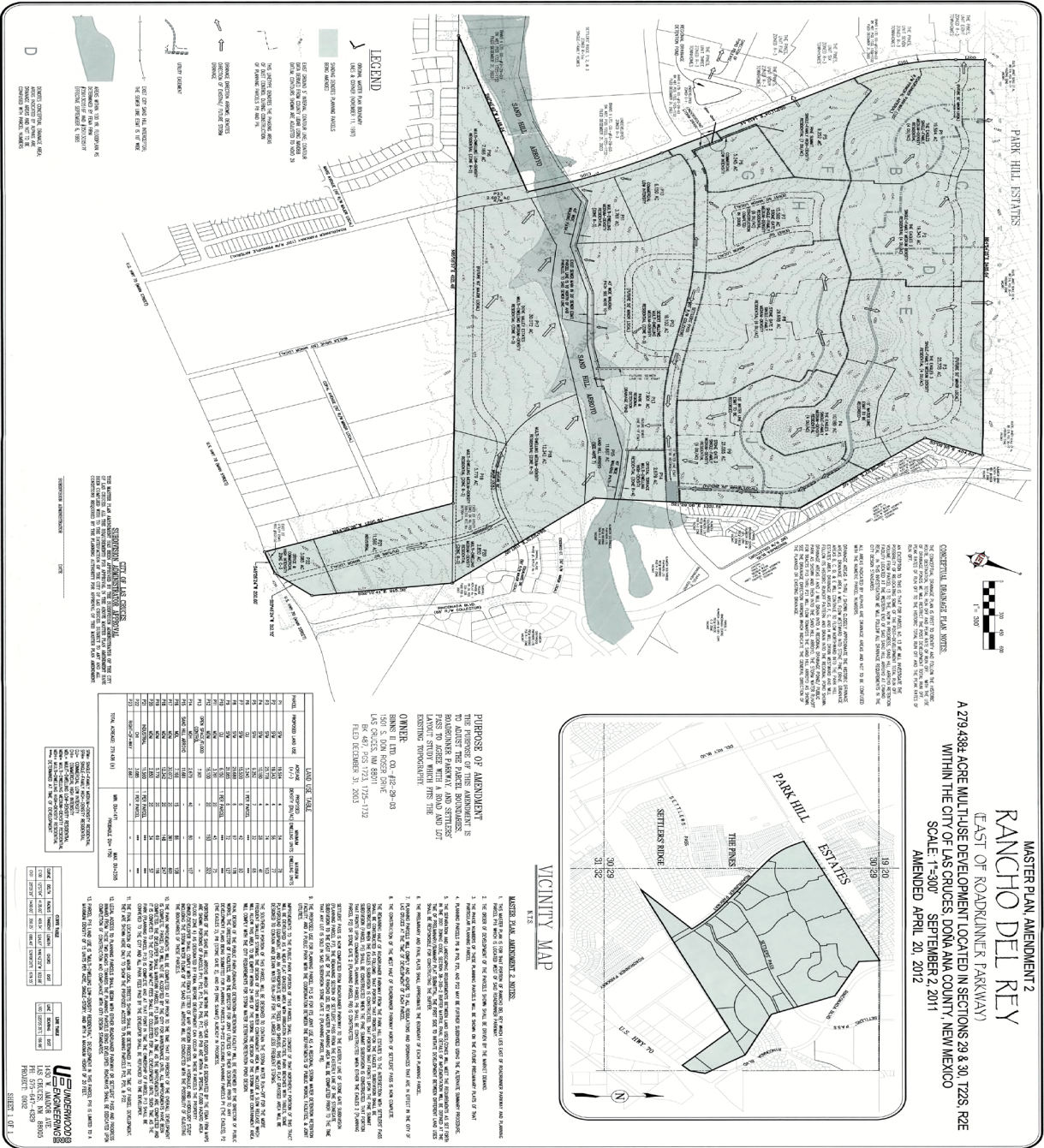
H-Rogers: It is.

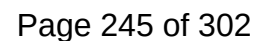
Castillo: Correct.

Weir: Okay. All right, thank you.

ATTACHMENT 5

Existing Master Plan Amendment #2





**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.

1 Vega: I second.

2

3 Gordon: All in favor?

4

5 MOTION PASSES UNANIMOUSLY.

6

7 Gordon: Commissioner Thomas, are you here? Can you hear us?

8

9 Thomas: I'm here. Can you hear me?

10

11 Gordon: Yes. Thank you.

12

13 **III. APPROVAL OF MINUTES**

14

15 **a. June 22, 2021**

16

17 Gordon: All right. Now I need an approval of the minutes. Can I have a motion
18 please?

19

20 Bennett: I make a motion that we approve the minutes.

21

22 Gordon: Is there a second?

23

24 Muniz: I second the motion.

25

26 Baum: Yes. I will call the roll for you. Board Member Thomas.

27

28 Thomas: Yes.

29

30 Baum: Thank you. Board Member Smith.

31

32 Smith: Present.

33

34 Baum: This is for approval of the minutes. I will need a yes or no, please.

35

36 Smith: Yes. Thank you.

37

38 Baum: Board Member Bennett.

39

40 Bennett: Yes.

41

42 Baum: Board Member Muniz.

43

44 Muniz: Yes.

45

46 Baum: Board Member Vega.

1
2 Vega: Yes.

3
4 Baum: Board Member Gordon.

5
6 Gordon: Yes.

7
8 Baum: Thank you.

9
10 Gordon: All right.

11
12 MOTION PASSES UNANIMOUSLY.

13
14 **IV. POSTPONEMENTS - NONE**

15
16 Gordon: There are no postponements.

17
18 **V. PUBLIC PARTICIPATION**

19
20 Gordon: Is there any public participation here this evening that would like to address
21 something that is not on the agenda? All right. Seeing none.

22
23 **VI. CONSENT AGENDA - NONE**

24
25 **1. Metro Verde South Phase 3E and 3F Final Site Plan:** A request for a Final
26 Site Plan, known as Metro Verde South Phase 3E and 3F, located within the
27 Metro Verde South Planned Unit Development (PUD). The proposed
28 subdivision encompasses 9.357 + acres, is zoned PUD (Planned Unit
29 Development), and is located at the southeast corner of Red Hawk Golf Road
30 and Peachtree Hills Road. The Final Site Plan proposes 91 single-family
31 residential lots and one tract to be dedicated to the City of Las Cruces for
32 drainage. Submitted by Sierra Norte Development Inc., property owners.
33 (21ZO3000047)

34
35 **2. Escondido at Alameda Ranch Preliminary Plat:** A request a preliminary plat
36 known as Escondido at Alameda Ranch within the Alameda Ranch Planned
37 Unit Development (PUD). The proposed subdivision encompasses 33.46 +
38 acres is zoned PUD-R-3 (Planned Unit Development, Multi-Dwelling Medium
39 Density), and is located east of Calle Abuelo and Pegasus Road. The
40 preliminary plat proposes a gated 135 single-family residential lot subdivision
41 with three tracts to be dedicated to the City of Las Cruces for drainage.
42 Submitted by Souder, Miller and Associates, representatives.

43
44 Gordon: All right, then we can move to the consent agenda. There are two items on
45 the consent agenda this evening. I need a motion to approve the consent
46 agenda.

1
2 Vega: A motion to approve.

3
4 Bennett: I'll second.

5
6 Baum: Board Member Thomas.

7
8 Thomas: Yes.

9
10 Baum: Board Member Smith.

11
12 Smith: Yes.

13
14 Baum: Board Member Bennett.

15
16 Bennett: Yes.

17
18 Baum: Board Member Muniz.

19
20 Muniz: Yes.

21
22 Baum: Board Member Vega.

23
24 Vega: Yes.

25
26 Baum: Board Member Gordon.

27
28 Gordon: Yes.

29
30 **VII. OLD BUSINESS - NONE**

31
32 Gordon: All right, there's no old business.

33
34 **VIII. NEW BUSINESS**

- 35
36 **1. Rancho Las Fincas Preliminary Plat:** A request for a preliminary plat and
37 associated road improvement waiver for an 8-lot single-family residential gated
38 community known as Rancho Las Fincas. The proposed subdivision
39 encompasses 9.357 + acres, is zoned RE-M (Residential Estate Mobile), is
40 located at 4821 Dunn Drive. Submitted by Moy Surveying, representative.
41 (20CS0500119)
42

43 Gordon: Then we can move to new business. The first item on the agenda is item
44 number one, Rancho Las Fincas Preliminary Plat. Before we vote on this,
45 I'd like to make a comment of what we plan on doing this evening for that
46 item. Because the item calls for basically two votes, one on a plat and one

1 on a road waiver, so we will split this in half. We'll take one vote on the plat
2 and one vote on the road waiver. So John, if you want to go ahead. Do we
3 have to make a motion first to do that? You have to make a motion to
4 approve this.
5
6 H-Rogers: Chair Gordon. I would like to maybe encourage the Commission to make
7 a motion to suspend the rules, meaning that you're going to split it in two
8 and vote on it as two separate items. And that should be sufficient for at
9 least that portion. And then of course you can vote to make a motion to
10 hear it altogether.
11
12 Gordon: Okay. Then I need a motion to suspend the rules to split item number one
13 into two parts; one to vote on the plat and one to vote on the road waiver.
14
15 Bennett: I make a motion to suspend the rules on the preliminary plat and the waiver.
16
17 Smith: I second that motion.
18
19 Baum: Board Member Thomas.
20
21 Thomas: Yes.
22
23 Baum: Board Member Smith.
24
25 Smith: Yes.
26
27 Baum: Board Member Bennett.
28
29 Bennett: Yes.
30
31 Baum: Board Member Muniz.
32
33 Muniz: Yes.
34
35 Baum: Board Member Vega.
36
37 Vega: Yes.
38
39 Baum: Board Member Gordon.
40
41 Gordon: Yes. All right. John.
42
43 Castillo: Good evening, Mr. Chair, Commission. As Commissioner Gordon stated,
44 this is going to be two separate items that you will be voting on separately.
45 Today it's for the approval of the Rancho Las Fincas Preliminary Plat and
46 the associated road improvements waiver.

1
2 Gordon: Can you speak in the microphone?

3
4 Muniz: Yes, I can't hear you.

5
6 Castillo: So the current conditions of the property, it's located currently right now the
7 northwest corner of Dunn Drive and Aldrich Road. It is approximately 9.35
8 acres, and it's currently zoned REM which is our Residential Estate Mogul.
9 As it sits right now it's an undeveloped vacant tract of land. From our zoning
10 map we can see here it is the one that's highlighted with the checkered type
11 pattern. The aerial map right here shows which property it is.
12

13 So what they're proposing for the preliminary plot is an eight single-family
14 residential lot gated community. It's going to provide one interior roadway
15 to provide access off of Dunn Road. Associated with this was a road
16 improvements waiver request for Aldrich Road to provide the necessary
17 road improvements such as sidewalks, curb and gutter, and asphalt. As
18 part of this request, the developer was going to propose to extend utilities,
19 essentially gas and sewer, in lieu of the roadway improvements.
20

21 This is the proposed preliminary plat. At the time reviews were sent out to
22 all relevant agencies, staff approved the preliminary plat. However, staff
23 did deny the road improvements. This was then taken to the Development
24 Review Committee or DRC. Discussions took place and they did provide a
25 recommendation to the Planning and Zoning Commission. Notices were
26 also sent out to the surrounding properties within a 500 foot radius. We did
27 receive one e-mail in regards to signage located along Aldrich Road and
28 adjacent properties, not necessary to the concern of the actual development
29 of the subdivision.
30

31 Staff recommendation, approved to the preliminary plat based on the
32 following findings which was that it complies with the City of Las Cruces
33 Subdivision Code and the City of Las Cruces Design Standards. The
34 proposed preliminary plat complies with all requirements of the 2001 Zoning
35 Code. And it was approved by the DRC on June 2, 2021. Staff did propose
36 a recommendation of denial for the road improvement waiver request based
37 on the fact that the Rancho Las Fincas Preliminary Plat complies with the
38 requirements and standards of the Las Cruces Subdivision Code and
39 Design Standards. Based upon review of the relevant City staff at this
40 moment, we have nothing that really enforces the development of utility
41 extensions on the property. They are allowed to use propane and gas so
42 at that moment we don't have anything solid. DRC on June 2nd did approve
43 the preliminary plat and provided a recommendation of denial for the road
44 improvement waiver. Today's options are to vote "yes" to approve, vote
45 "no" to deny, or vote "yes" with conditions, or to vote to table.
46

1 Gordon: All right. Thank you John. Is there anybody here from the petitioner who
2 wishes to speak? All right then, seeing none. Are there any of our
3 Commissioners would like to make some comments? All right. Seeing
4 none. Then I have a comment. I think the road improvements certainly
5 would not contribute any benefit to the area or certainly improve safety or
6 access for police and fire. Since the petition does not involve the
7 development of the property putting on Aldrich Road this is another reason
8 to grant the waiver. So the approval, so that is my opinion. I think that it's,
9 I was out there, I did my site visit. I looked at Dunn Road, there's certainly
10 no reason there to do anything, that's a paved road. But Aldrich Road is
11 just a gravel enhanced dirt road. And the property at this time is not slated
12 to have borders on Aldrich Road, it's slated for improvement or for
13 development. So I don't think there's any reason that we should grant a
14 waiver that won't be necessary. So in that case, I guess we have to, now I
15 guess make a motion on part one which is the plat. So if I could have a
16 motion to approve the plat, item number one.
17
18 Bennett: I make a motion to approve the plat for item number one.
19
20 Gordon: Is there a second?
21
22 Smith: I second the motion.
23
24 Baum: Board Member Thomas.
25
26 Thomas: Yes. I vote yes. Complies with (*inaudible*) and the Elevate Las Cruces.
27
28 Baum: Thank you. Board Member Smith.
29
30 Smith: I vote yes. it complies with the Elevate Las Cruces Comprehensive Plan,
31 and I think it's also complies with the (*inaudible*) plan.
32
33 Baum: Board Member Bennett. Mr. Smith, can you please turn your microphone
34 off. Thank you. Sorry.
35
36 Bennett: I vote yes based on staff recommendation and it meets all zoning codes.
37
38 Baum: Thank you. Board Member Muniz.
39
40 Muniz: I will vote yes. My vote's based upon staff recommendations and they've
41 met all conditions.
42
43 Baum: Board Member Vega.
44
45 Vega: I vote yes. It complies with zoning code and based on staff
46 recommendation.

Agenda Item #9.1.

1
2 Baum: Board Member Gordon.
3
4 Gordon: I vote yes based on findings, my site visit, staff recommendation, and its
5 ability to go along with the Elevate Las Cruces. That case. Okay. So the
6 vote is then 6:0. Okay. Then we go on to item number two, which would
7 be the road waiver.
8
9 Castillo: Point of order Commissioner Gordon.
10
11 Gordon: Yes.
12
13 Castillo: I do have a member of the public that would like to speak about the road
14 improvements portion at least.
15
16 Gordon: All right. Thank you. No problem. Is that person in the chamber?
17
18 Castillo: Yes sir.
19
20 Gordon: Oh, okay. Before you begin sir would you please state your name?
21
22 Boje: Professor David Michael Boje, PhD.
23
24 Gordon: Okay. And I have to swear you in before you speak. Do you swear or affirm
25 that the testimony you're about to give is the truth and nothing but the truth
26 under penalty of law?
27
28 Boje: I do.
29
30 Gordon: Thank you. Go ahead sir. Thank you.
31
32 Boje: You're welcome. Let's see. I live directly across the street from the property
33 that has the proposed waivers. So I'd like to speak to it. I'm diagonally
34 across about nine acres, no six acres, about six acres, horse ranch. I am
35 welcoming the Rancho Las Fincas development. So I would like to raise a
36 couple of issues with the City if that's permissible.
37
38 Gordon: Sir you can speak whatever you like.
39
40 Boje: Thank you. Okay, there's a no dumping fine of \$300 according to Section
41 City Code, 19-45. For the past week, this Lazy Boy chair has been dumped
42 on the roadside. There's been no action. Would call for the enforcement of
43 Section 19-45. According to that regulation that is littering and it's illegal
44 dumping.
45

1 The street signs on the corner of Dunn and Aldrich where the proposed
2 development will take place, we would like to see that development. But as
3 you can see in two through ways Dunn and Aldrich, there is a single stop
4 sign on one of the four corners. That stop sign was placed by the City, but
5 it's placed inappropriately because that's actually the land of the New
6 Mexico public land, the State Land Office. It's confused with the Bureau of
7 Land Management, but I've checked out and I've talked to the people and
8 they've done site visits and I want to explain problems with the installment
9 of the street sign at Aldrich and Dunn and the lack of stop signs on the four
10 corners. When you come down Aldrich on the paved section, it does say
11 pavement ends, no City services. However there is City services to the right
12 on Aldrich but no City services to the left. In speaking to the former City
13 manager the reason for this is there's one holdout person that doesn't even
14 live there that is afraid that the taxes will be raised, so there's no street
15 maintenance on that part of Aldrich even though it's on the City ...

16
17 Gordon: Sir, excuse me for interrupting you.

18
19 Boje: Yes sir.

20
21 Gordon: I will allow you to speak whatever you like, as far as pertaining to the road
22 waiver is concerned. All these other items, I think are legitimate concerns
23 ...

24
25 Boje: Right.

26
27 Gordon: That you could probably address the respective City departments such as
28 traffic and whatever takes care of dumping and street signs. But if you have
29 something to say about the roadway waiver that we appreciate your limiting
30 your comments.

31
32 Boje: Okay. Well, my understanding of the word roadway is it's the road Aldrich,
33 the entrance from Aldrich. And right now it's a dangerous intersection. And
34 the plan is we understand the new owners have said they're going to put up
35 a six foot wall, that rock wall which is a good improvement, however you
36 won't be able to see oncoming traffic in either direction.

37
38 The other thing is the water is being polluted in the area, including on the
39 property and all around the four parts of that stop area on Aldrich and Dunn
40 where the new property is being waived. The City plan for 40 years
41 includes the water. These are two maps from your City plan. There are no
42 City no dumping signs in the whole area of this part of the East Mesa. And
43 we feel we're being treated differently than Sonoma Ranch. This is a county
44 sign. And there's a reason why the county can't put up signs that I'm going
45 to explain to you now. And that is because the encroachment of illegal
46 vehicle traffic. There used to be, when I moved there 14 years ago, barbed

1 wire fence, and to the right was public land, and the county had their
2 easement where they could put up no dumping signs. I know that you have
3 other things to talk about, but if you're going to move to that part of Las
4 Cruces and East Mesa, there's some severe problems that need to be
5 addressed. This is the only sign and I got this put up after an effort of 14
6 years.

7
8 Gordon: Sir, again, I'm sorry to interrupt you, but you're not addressing the item of a
9 road waiver. Let me try to explain something to you what a roadway
10 basically is.

11
12 Boje: All right. Yes sir.

13
14 Gordon: The road waiver is the City is going to require that that portion that borders
15 the property along Aldrich Road make certain road improvements such as
16 sidewalks, drainage, sewer, streetlights. That's what a road waiver is in
17 reference to. It has nothing to do with dumping or water drainage or full
18 stop signs. So I like again, I think all those comments are fine. I have no
19 problem with you making them.

20
21 Boje: Okay.

22
23 Gordon: But I think you should direct them specifically to the City.

24
25 Boje: Okay, I appreciate your reprimand.

26
27 Gordon: I'm not reprimanding. I'm just trying to explain.

28
29 Boje: I appreciate your correction. And I would like the opportunity to finish my
30 presentation for two minutes.

31
32 Gordon: Yes sir.

33
34 Boje: All right. There is nightly gunfire, almost on a nightly basis of AR-15s in the
35 area and Mike Tellez, who lives also directly across and would like to speak
36 to you. Here's the gunfire, including not only semiautomatics, but actual
37 machine guns. We have called the sheriff's office. The sheriff's office
38 doesn't realize that that green bordered area that the City has, that the new
39 properties inside of it, but if you're in this part of the East Mesa, there is no
40 sheriff coming out, there is no City police coming out to enforce the law.
41 And I spoke to fish and game today, and they said they're willing to start
42 coming out. But we need to have the City Council make it clear to codes
43 enforcement who come on these properties, what is the jurisdiction of the
44 City, what is the jurisdiction of the county, what is the jurisdiction of the state
45 and the federal government. So that's what I'm speaking to. I want to just
46 back up here. How do I backup? Let's see. Previous. Okay. All right.

1
2 I want to give you an idea what it sounds like at night on this neighborhood.
3 *RECORDED SOUNDS PLAYED.* I don't know if you can hear the gunfire
4 but that's Single gunfire, That's AR-15 semiautomatic, and it's also the bump
5 work of this record. I am a Vietnam veteran. And I do not like to have
6 automatic, semiautomatic fire. I did my service to the country. And I don't
7 like it. My neighbors are afraid to walk in the area. When I spoke to a lady
8 who said that she goes to this pond one time to see what was there, and
9 people were firing AR-15s. And a young boy was firing it and the bullet
10 whisked her ear and she said to the man, please stop. He said, get out of
11 here. This is a violation of the law for recreational vehicles to be in this area.
12 It is a violation to be burning tires and trees and illegal dumping. And to
13 have a tax rating of one in this area is kind of unconscionable. And I'm
14 done, I know you have other things to do. But I appreciate it if you would
15 look into how to communicate the actual regulations of the City to residents
16 so that the off road, illegal vehicle traffic stops. I have a \$35 permit to be
17 on public land. I pay for that permit to the State Land Office. It does not
18 entitle for a motor vehicle to go anywhere else but on the official roads. It
19 doesn't allow to go from Wilt and Davis off Aldrich into this property. And I
20 know you have other things to do, and I appreciate the time you've taken to
21 listen to me. I'm done.
22

23 Gordon: Thank you sir. I'll tell you what I'd like you to do. I personally can't take
24 these issues to City Council or the relevant departments of the City. But if
25 you would certainly make a list of those items of your concern, dumping, full
26 stop signs, and a water ponding, and anything else that you think you would
27 like to have the City in to look into, if you'll please just make a list and
28 perhaps give it to someone in the Community Development department and
29 they could pass it on to certain departments. I hope that will take care of
30 these problems for you. I can understand your concern. And they're
31 concerned that I probably would have if I lived there. But again sir thank
32 you for your comments.
33

34 Boje: Thank you. I've been a resident of Las Cruces for 23 years. Love it. Love
35 the East Mesa. I've been there for 14 years. But these problems are
36 ongoing, and it's your responsibility to correct them. Thank you, sir.
37

38 Gordon: Is there anyone else who has any comments?
39

40 Castillo: Mr. Chair. I do have Moy Surveying who is the representative for the road
41 improvement waivers on behalf of the property owner.
42

43 Gordon: Okay. Sir before you start will you please speak your name.
44

45 Magallanez: Anton Magallanez.
46

1 Gordon: Okay, before you speak I'd like to swear you in please. Do you swear or
2 affirm that the testimony you're about to give is the truth and nothing but the
3 truth under penalty of law?
4

5 Magallanez: I do.
6

7 Gordon: All right. I thank you sir. Go ahead.
8

9 Magallanez: Thank you. Thank you all. Good evening. Just to clarify, one of the things
10 I wanted to mention was that when John was giving the presentation, he
11 stated that we were able to have gas along with propane at the site. I don't
12 want to speak at a term for him, but what I think he meant to say was that
13 because of where the location of the property is, we're actually allowed to
14 have propane along with septic. And so the big question at this point is the
15 septic. We've worked with the utility department to talk about our
16 opportunities for gas so that we don't place propane tanks on the sites once
17 the proposed development is approved, if it in fact, well it since it has been.
18 And so what the City utility department is willing to do is bring gas from
19 Davis across down through Aldrich and then we will in turn tie our road into
20 Dunn Drive. So the City utility department, not at the cost of the developer,
21 will bring gas service to what would be our new proposed roadway and we
22 will tie into the service there. So then that would eliminate us having the
23 requirement of propane tanks, which I think is a benefit, on the proposed
24 development here.
25

26 The second one, which is where the road waiver comes into play, is that
27 since we are not required to tie into the sewer system since we are far
28 enough away, we're proposing that we have a waiver for the road
29 improvements on Aldrich, for all road improvements on Aldrich, the 600 feet
30 and in turn the owner is willing to provide sewer through an adjacent lot that
31 they have which would then connect down into their road, thus eliminating
32 the need for septic tanks also on this site. Because of those costs, we know
33 that it's hard for them to manage both of them, and so what we're hoping
34 for by requesting this road waiver is that we can have the road waiver in
35 place, and then they would agree to in fact not place septic systems. If the
36 road waiver unfortunately wasn't, I think they might have to forego the cost
37 of placing a sewer system and then opt for septic tanks on their lots.
38

39 So with that said, I mean we just recently saw a huge ordinance that was
40 unanimously voted for residents tying into sewer systems at their lots
41 helping to not create more of a groundwater contamination issue with more
42 septic tanks. And I think this is an area in question, and so I think the
43 proposed waiver, which would then in turn trigger the sewer system in place,
44 would allow us to not continue to compound that problem as it exists. When
45 we were working with staff and through the DRC process, they did state that
46 Aldrich was a very low significant road, as we've seen Davis and Dunn have

1 its improvements built out through recent paving projects. And
2 unfortunately Aldrich didn't make the cut. And for those reasons, the other
3 the other concern, when we did in fact vote and received denial for the
4 waiver through staff recommendation, every staff member mentioned, you
5 know I just can't find areas in the code that can support the waiver, which
6 kind of threw me for a little bit of a loop because I don't think there would be
7 areas in the code that would align very closely with the waiver or else we
8 wouldn't be in fact asking for a waiver. So yes, we are requesting a waiver
9 for the Aldrich improvements. We did have one staff member vote in favor
10 for that. And I think because of helping to not continue to compound that
11 septic water pollution as Dr. Boje mentioned, issue along with staff
12 mentioning that Aldrich is already a very low significant road. We're hoping
13 that we could receive approval for our waiver. Thank you.

14
15 Gordon: Excuse me sir, don't leave.

16
17 Magallanez: Yes sir.

18
19 Gordon: Is there anyone from the Commission has any questions? All right, if not, I
20 do.

21
22 Magallanez: Yes sir.

23
24 Gordon: I was informed that on Aldridge there is gas and sewer. Is that correct?
25 That's what you said.

26
27 Magallanez: There is neither of those services at this time on Aldrich.

28
29 Gordon: I'm sorry, from Dunn I guess. On Dunn.

30
31 Magallanez: Dunn.

32
33 Gordon: Not Dunn. Sorry, Davis. I'm sorry. Davis, okay.

34
35 Magallanez: Yes sir. You're correct.

36
37 Gordon: So I also was told that there is water on Dunn. Is that also correct?

38
39 Magallanez: Yes sir.

40
41 Gordon: Will you be tying into that for your water?

42
43 Magallanez: Yes sir. I'm sorry.

44
45 Gordon: So there will be no need for wells or anything.

- 1 Magallanez: Correct. No need for well, no need for septic if the road waiver, you know.
2
- 3 Gordon: Okay. So basically what you're asking us to do to help you avoid to pay the
4 large cost of the road improvements that you feel are not necessary, you
5 will have then the minimal cost of now extending sewer from Davis and gas
6 to your property for this new development.
7
- 8 Magallanez: Yes. Through talks with the City though however, they have already agreed
9 to tie, not at the expense of the owner, gas from Davis through Aldrich and
10 then up to where our street would intersect Dunn and our new proposed
11 street. So we would be placing a gas service line within the compound or
12 confines of our road tying into what would then be at that time an existing
13 City gas line.
14
- 15 Gordon: All right I understand. Does everybody on the Commission understand
16 that?
17
- 18 Bennett: I do.
19
- 20 Gordon: Are there any questions?
21
- 22 Vega: I have a question.
23
- 24 Gordon: Commissioner Vega. Go ahead.
25
- 26 Vega: So in terms of cost difference, this is my first in person meeting, so I'm
27 probably going to have a lot of questions. But in terms of the cost to
28 developer versus City, if we were to grant the waiver, how significant are
29 we looking at?
30
- 31 Magallanez: I don't know if I have the answer that question. I know when I, and the
32 owner is here and I know that they've reached out to some of the contractors
33 to try and start to estimate what those cost differences are. I know that it is
34 not feasible for them to provide both improvements to Aldrich and a sewer
35 line. Although I know there might be, we have to remember that it's 600
36 feet of frontage for the Aldrich improvement, with the sewer line they would
37 be going the full length of the road and then through another adjacent
38 parcel, which is just to the west, tying into potentially placing a new manhole
39 into Davis Road. So I don't have dollar to dollar comparison as to what it
40 would cost to do Aldrich versus the sewer system, however, I don't think
41 that the sewer system is going to be by any means inexpensive as well,
42 because they do have to traverse that much distance, and then of course
43 place a new manhole and make sure everything is at grade.
44
- 45 Gordon: Commissioner Muniz.
46

1 Muniz: Yes, I have a question. I'm a little confused. You have a choice, am I correct
2 of putting in sewer lines or septic tanks?
3
4 Magallanez: Yes ma'am.
5
6 Muniz: I find that a lot of homeowners who have septic tanks hook up with the
7 sewers and it's quite an expense. You're already, am I understanding that
8 you're already not that far from sewer line hookups, so wouldn't it be more
9 profitable for you to update the streets in the development, hooking
10 everything up to the sewers?
11
12 Magallanez: Correct. I mean ...
13
14 Muniz: Because people don't really like septic tanks, that's a yearly fee to clean
15 them and pollution. And we're looking at environmental things today. And
16 maybe I misunderstood you, you have a choice? Why aren't you taking the
17 choice of upgrading and connecting to City sewers?
18
19 Magallanez: Well you're right. So because of the proximity of this parcel, they are not
20 within the minimum footage required to have to in fact by code connect to a
21 sewer system. So they're far enough away to then have the option if they
22 chose to, the owner that is, when development comes to either place
23 propane tanks and/or place septic tanks. Now, this is a gated private
24 community. And I have two of the six household members back there with
25 us right now. So they're not looking to necessarily develop this at this point
26 in time and sell it to anybody outside. So they're okay with incurring the
27 cost of whatever that septic maintenance may be for however long they in
28 fact do. But they've already told me which cousin and daughter and spouse
29 are getting which lots. So it is a small scale development because we are
30 only looking at eight lots. I agree 100% with what you're stating in terms of
31 the maintenance that a septic system has, however we are looking at eight
32 lots versus anything larger than that in terms of a subdivision size.
33
34 Gordon: All right. Thank you. Is there anyone else? All right. Let me just ask you
35 something else and make sure that we all understand. I know that to do
36 road improvements is not just a little thing. It's a matter of putting in
37 sidewalks and gutters and streetlights and paving the road. And we're
38 talking about a distance of maybe, I don't even know how many feet it is on
39 your property.
40
41 Magallanez: 600.
42
43 Gordon: How many?
44
45 Magallanez: 600.
46

1 Gordon: All right. So it's almost ludicrous to pave and do all these things for 600 feet
2 and the rest of Aldridge stays the way it is. Really there's no point. There's
3 nothing in the future that looks like there's going to be any development out
4 there that's going to require road improvements. So based on that, I think
5 really the best thing to do is to go ahead and have them bring the sewer
6 and gas in from Davis, and whatever your cost is of hooking up to that, I
7 think solves a lot of problems and certainly reduces the amount of your
8 financial exposure. Is that what you're saying?
9

10 Magallanez: Yes sir. And I think the other thing to point out is it as Dr. Boje mentioned,
11 Aldrich currently is only servicing one side of the road with you know BLM
12 land south of that. And then of course the portion that we would be paving
13 would only then, you'd have four houses that don't in fact have any paving
14 until it reaches Davis. So it does seem like a really small stretch to pave
15 such a small area.
16

17 Gordon: All right. Thank you. Is there anyone else who has some comments from
18 the audience?
19

20 Thomas: I have a comment.
21

22 Gordon: Is that Thomas? I'm sorry, Commissioner Thomas is that you? I can hardly
23 hear you.
24

25 Thomas: This is Commissioner Thomas. Can you hear me now?
26

27 Gordon: Yes, go ahead.
28

29 Thomas: So I wanted to know how far, how much of Aldrich is there then and is the
30 condition of the road the same the whole length of Aldrich?
31

32 Gordon: I believe it is. I think Aldrich all the way down is nothing more than in a dirt
33 gravel road. Is that correct? How far down does it go? I'm not familiar with
34 as far down as what I looked. Doctor.
35

36 BOJE SPEAKING, NOT AT THE MICROPHONE.
37

38 Thomas: Does anybody know?
39

40 Gordon: Okay. I think the gentleman at the dais knows the answer to that. Sir could
41 you please state your name for the record?
42

43 Tellez: My name is Michael Tellez.
44

45 Gordon: All right. Excuse me, John do you know the answer?
46

1 Castillo: Commissioner Gordon. Aldrich Road is, so Aldrich road has, it's not
2 completely asphalt, it's a mix of gravel and asphalt, but it does go all the
3 way down from Davis to Dunn. So basically, the preliminary plat portion of
4 it would be 600 feet. The remaining lots would not have those necessary
5 requirements such as sidewalks, curb and gutter.
6
7 Gordon: All right. Okay. Thank you. Commissioner Thomas does that answer your
8 question?
9
10 Thomas: I have a further question. And so if they did do the road, they would only be
11 doing half of it right?
12
13 Castillo: Yes, they would only be doing half. They would just be doing their portion
14 of it.
15
16 Thomas: So they'd only be doing one half of 600 feet of a road that how long do you
17 think the entire road is?
18
19 Gordon: I'm sure the road must be at least a half a mile long.
20
21 Castillo: I believe it's between half a mile to a mile.
22
23 Gordon: Right. It's quite long.
24
25 Thomas: Okay. So they would just be doing this fairly small section and only half of
26 the road on this this (*inaudible*) road that the rest of us (*inaudible*) kind of
27 gravel and asphalt. So I don't see any reason to do that.
28
29 Gordon: Right.
30
31 Thomas: In that 600 feet of (*inaudible*) road, half of 600 feet of the road and make it
32 different from the entire rest of the road.
33
34 Gordon: Okay. Is it Commissioner Thomas. Is that it? Thank you.
35
36 Thomas: That's it. Thank you.
37
38 Gordon: Okay. Sir do you still like to speak?
39
40 Tellez: Yes.
41
42 Gordon: Okay. I'm sorry. Would you repeat your name again, please.
43
44 Tellez: My name is Mike Tellez.
45

1 Gordon: All right. Before you speak I have to swear you in. Do you swear or affirm
2 that the testimony you're about to give is the truth and nothing but the truth
3 under penalty of law?
4

5 Tellez: I do.
6

7 Gordon: Thank You. You go ahead sir. Thank you.
8

9 Tellez: I'm a resident of the corner of Dunn and Aldrich, directly across the street
10 from this proposed development is going to take place. My question is, well
11 first of all I do welcome the new development. I have no problem with the
12 improvements that are proposed to this area. My questions are, shouldn't
13 the City require before any more development takes place up there,
14 shouldn't the City be making an effort to bring in all the utilities? After all,
15 we are in the City limits. There's currently no gas in my area. There's no
16 sewer. The only reason we have water is because the City bought out
17 Jornada Water you know a few years back. And other than that the only
18 improvement that's ever taken place in the last 30 years back in the late 80s
19 when the City incorporated that area, when it annexed that area, is the
20 payment of Dunn Street, and that was done without any utilities in place.
21 So it seems to me like you know the City should be doing their part and it
22 shouldn't be fair on the new owners to have to shell out all the costs.
23 Shouldn't the City have some sort of responsibility to bring in all the utilities
24 to make just like the rest of the City? Because another thing is it just seems
25 like that particular part of the City is one area that's been forgotten for the
26 last 30 years. It's like we don't matter out there.
27

28 Gordon: I understand your concern, but perhaps Mr. Weir from Community
29 Development will be able to answer your question.
30

31 Weir: Mr. Chairman, Committee Members. This is David Weir, Deputy Director,
32 Community Development Department. Mr. Tellez, the City policy is usually
33 for development to pay for itself when a subdivision such as this comes in.
34 They're responsible for extending all of the utilities and streets to support
35 that. That's the way our development ordinances read. And so the other
36 projects within the East Mesa would be something that would have to be
37 dealt through the City Council's budgeting process and capital improvement
38 projects. But tonight we're just talking about this particular development
39 and the requirements the code has for them to subdivide the property.
40

41 Tellez: It just somehow doesn't seem fair that they should put, the new owner
42 should be forced to shell out the entire cost when the City has taken no
43 effort, nothing to do anything for the last 30 years or so.
44

45 And another thing too is no one's brought up the fact that there are no fire
46 hydrants out there. And how can you allow development without adequate

1 fire protection? Like I said, I don't have anything against them coming up
2 there but shouldn't the City be making an effort to at least install fire hydrants
3 out there.
4

5 Gordon: I tell you I do have a suggestion for you. I think these are legitimate
6 concerns. And I think I would also be concerned about the same things.
7 Perhaps you might address these concerns to your City Councilor in your
8 district. And I would want to speak to him or her directly, and bring these
9 concerns to him or her and see if there's something that she can give you
10 either a good answer or perhaps do something about it.
11

12 Tellez: Well, I just thought maybe what, what I said might have something to do
13 with the outcome of whether you approve this or not.
14

15 Gordon: All right. Well thank you sir.
16

17 Tellez: Okay, and I guess that's all I got to say.
18

19 Gordon: All right. Thank you.
20

21 Thomas: Can I say something?
22

23 Gordon: Commissioner Thomas.
24

25 Thomas: Yes.
26

27 Gordon: Go ahead.
28

29 Thomas: So that you see my *(inaudible)*. And *(inaudible)* pretty *(inaudible)* streets
30 and *(inaudible)* the sidewalks and streets, utilities and all *(inaudible)* were
31 put in by developers and the builders. And when people *(inaudible)* those
32 lots they're paying *(inaudible)*. So in areas *(inaudible)* they were *(inaudible)*
33 with that kind of *(inaudible)*. It's up to the *(inaudible)* to go and put
34 *(inaudible)* put that stuff in. You need to pull *(inaudible)* road *(inaudible)*
35 somebody *(inaudible)* street to do that. The City will help you. Sometimes
36 the City has *(inaudible)* help finance. So that's what I would *(inaudible)* talk
37 to the *(inaudible)*.
38

39 Gordon: All right thank you Commissioner Thomas. All right, is there anyone else in
40 the audience who has anything to say? If not, then I'd like to entertain a
41 vote on the second part of this.
42

43 AUDIENCE MEMBER SPEAKING, NOT ON THE MICROPHONE.
44

45 Gordon: Sir, does it only pertain to the road waiver and nothing else? All right, I'll
46 give you a minute. Just state your name again, please.

1
2 Boje: Professor David Boje.
3
4 Gordon: Thank you.
5
6 Boje: It's been said that this is a gravel road on Aldrich with some paving. To be
7 more accurate between Porter and Dunn it is paved, it just doesn't have
8 sidewalks. The City also comes regularly after the monsoon rains and does
9 sweeping of that portion of Aldrich. After you go eastward at Dunn on
10 Aldrich, then it is gravel all the way to the end. So if this development,
11 actually if the City meets them and does sidewalks around the property it's
12 actually going to continue the sidewalks already on Dunn and then move
13 them to the west through the property. So that is a development that is
14 worth considering. Thank you.
15
16 Gordon: All right, thank you sir. All right. Is there anyone else? All right, John.
17
18 Castillo: So as I mentioned before, this is a recommendation for approval of a road
19 improvements waiver. The next step after you provide your
20 recommendation we will go to City Council for approval
21
22 Gordon: All right then. Do we need another motion or do we have the motion? All
23 right we need another motion then. All right we had the vote. We have to
24 make another motion to, according to the item is to deny the waiver. If you
25 can please vote, and if you vote yes you must state your cause. You want
26 to call the roll? All right, I'm sorry, I have to correct myself. We have to
27 make a motion to either approve or deny the waiver.
28
29 Bennett: I'll make a motion to approve the waiver.
30
31 Gordon: I need a second.
32
33 Smith: I second the motion.
34
35 Gordon: All right. So then we need a motion. All right so now we need a vote. Can
36 you call the roll please?
37
38 Baum: Yes sir. Board Member Thomas.
39
40 Thomas: So we're voting to approve the waiver.
41
42 Baum: Yes we are.
43
44 Thomas: And we're not voting for the denial (*inaudible*)?
45

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1 Gordon: Commissioner Thomas. To make sure we are clear because we're having
2 difficulty understanding what you're saying. Are you voting to deny or
3 approve?
4
5 Thomas: I'm asking (*inaudible*) being asked to vote to approve the waiver.
6
7 Gordon: All right then we didn't hear what you said, I'm sorry.
8
9 Thomas: We're being asked to vote to approve the waiver.
10
11 Gordon: Right, well how do you vote?
12
13 Thomas: I vote to yes to approve the waiver, because I can see that only half of 600
14 feet doesn't (*inaudible*) worth doing.
15
16 Gordon: All right. You can call the roll then.
17
18 Baum: Yes. Board Member Smith.
19
20 Smith: I vote yes to approve the waiver.
21
22 Baum: Board Member Bennett.
23
24 Bennett: Yes, I vote to approve the waiver due to financial hardship that would accrue
25 from building out Aldrich and the benefit to the environment to add the City
26 sewer.
27
28 Baum: Board Member Muniz.
29
30 Muniz: I vote to approve the waiver. We've had this problem come up before and
31 I thought staff was going to talk to us about it. It's quite an expense on
32 homeowners. And this is a small private development. So and it's going to
33 come up again because people have property out there and they're
34 developed trying to approve it. And this is a hindrance to improving some
35 of that property. We need to have something I believe that's more
36 consistent when we have this problem come up.
37
38 Baum: Board Member Vega.
39
40 Vega: I motion to approve.
41
42 Baum: I your need reasoning, please. Thank you.
43
44 Vega: Just based on some of the comments here today and the fact that the road
45 is already halfway done, makes sense to complete it.
46

1 Baum: Thank you. Board Member Gordon,

2
3 Gordon: I vote to approve based on the fact that this is, would be very costly and I
4 think some of the things that they're planning on doing by extending the gas
5 lines and the sewer lines are a very good solution to this problem. So
6 therefore I vote yes, I vote to approve. All right, I think that takes care of
7 that item.
8

9 **2. Valley Drive Industrial Park Master Plan:** A request for a master plan known
10 as Valley Drive Industrial Park. The master plan proposes the development of
11 3-12 industrial lots that will be developed in phases. The subject properties
12 encompass 7.72 ± acres, are zoned M-1/M-2 (Industrial Standard) and are
13 located on the west side of Valley Drive at 2000 and 2100 S. Valley Drive and
14 275 W. Farney. Submitted by Souder, Miller and Associates, representatives.
15 (21CS0500002)
16

17 Gordon: All right. Can we move on now to item number two, which is the Valley
18 Drive Industrial Park Master Plan? Can I have a motion please? Somebody
19 please make a motion.
20

21 Bennett: I make a motion to approve item number two.
22

23 Gordon: Is there a second?
24

25 Vega: Second.
26

27 Gordon: John.
28

29 Castillo: Okay. Today, we're going to bring you the Valley Drive Industrial Park
30 Master Plan. We are requesting approval of the master plan. It is the
31 subject property west of Valley Drive. it's located on multiple parcels. It
32 comprises 7.69 acres and it's currently zoned M-1/M-2. The properties are
33 developed industrial commercial use lots.
34

35 Here's a zoning map that shows the zoning designation. Here's an aerial
36 image. The proposal of the master plan is going to subdivide three existing
37 lots for future development of industrial lots into three to 12 industrial use
38 lots utilizing an alternate summary process. It will connect two existing lots
39 through Farney Lane, and it also meets the requirements of the Subdivision
40 Code Design Standards and the 2001 Zoning Code. It's also supported by
41 Elevate Las Cruces as it falls into the regional commercial place type.
42

43 Here's an image of the proposed master plan. As we can see from here,
44 the old Coca Cola company is the larger lot in the middle. It will be
45 subdivided into three or less lots depending on what's moving in, as well as
46 the other two adjacent lots. Public notice was sent to all relevant agencies.

1 They all supported the master plan. And there was notice sent out to the
2 surrounding properties. Staff at the time that the presentation was made
3 and reports were done, there was no phone calls or e-mails in regards to
4 the proposed master plan. The Design Review Committee met on June 16,
5 2021, to review the subdivision from an infrastructure, utilities improvement
6 standpoint. After some discussion, the DRC recommended approval for the
7 proposed master plan. Staff recommends approval based on the following
8 findings; the master plan meets the objectives of a master plan and required
9 by the subdivision code. Based upon review by City staff the proposed
10 master plan complies with the 2001 Zoning Code, the Subdivision Code,
11 and the Design Standards. Today, we do have an option to vote "yes" to
12 approve, vote "no" to deny, vote "yes with conditions or vote to table.
13
14 Gordon: All right. Thank you John. Is there anyone from the petitioner who is
15 requesting to make a statement? All right sir state your name please.
16
17 Pompeo: Good evening Mr. Chairman. Paul Pompeo with Southwest Engineering.
18
19 Gordon: All right you know I must swear you in. You've done this before.
20
21 Pompeo: Yes sir.
22
23 Gordon: Do you swear or affirm that the testimony you're about to give is the truth
24 and nothing but the truth under penalty of law?
25
26 Pompeo: Yes I do.
27
28 Gordon: Thank you. Go ahead.
29
30 Pompeo: Thank you Mr. Chairman. I did have a short presentation, however, it
31 mimics a lot of what staff has already presented so I'll put that aside. I stand
32 here to take any questions that the Commission might have. This is a pretty
33 straightforward application. We're looking at redeveloping underutilized
34 industrial property into more opportunities with smaller lots so as to bring
35 more business to that area of Las Cruces. And so I stand for questions.
36 Thank you Mr. Chairman.
37
38 Gordon: All right. Thank you. Any questions from the Commission? Seeing none.
39
40 Pompeo: Thank you Mr. Chairman.
41
42 Gordon: Are there anybody from the audience who wishes to make a comment or
43 have a question? All right. Then seeing none. Then we can have a vote.
44
45 Baum: Board Member Thomas.
46

1 Thomas: I vote yes based on *(inaudible)* from the staff, the subdivision *(inaudible)*.
2 And I think it's a good idea to *(inaudible)* lot, which would encourage more
3 small *(inaudible)*.
4

5 Baum: Thank you. Board Member Smith.
6

7 Smith: I vote yes, based on site visit and also with compliance with Elevate Las
8 Cruces and also just the redevelopment of an already previously industrial
9 area.
10

11 Baum: Board Member Bennett.
12

13 Bennett: I vote yes, meets zoning code, supports Elevate Las Cruces, and based on
14 staff recommendation.
15

16 Baum: Board Member Muniz.
17

18 Muniz: I'm going to vote yes upon the recommendations of staff. And I hope once
19 it's built, the buildings *(inaudible)* don't sit empty because we need jobs in
20 the City.
21

22 Baum: Board Member Vega.
23

24 Vega: I vote yes, based on a site visit and staff recommendation.
25

26 Baum: Board Member Gordon.
27

28 Gordon: I vote yes, based on findings and my site visit and staff recommendation.
29 And certainly it will definitely do something to *(inaudible)* here and perhaps
30 bring in some new jobs. Thank you. I guess that's 6:0. Okay.
31

32 **3. Rancho Del Rey Master Plan Amendment No. 3:** A request for an
33 amendment to the Rancho Del Rey Master Plan. The amendment is to adjust
34 the master plan boundary to include 3.94 acres into parcels P21 and P22 and
35 to create a secondary access to the north of Parcel P3. Submitted by
36 Underwood Engineering, representatives. (21CS0500051)
37

38 Gordon: Is it all right for us to take items three and four together?
39

40 H-Rogers: Chair Gordon, Members of the Commission. Yes, we can hear both the
41 master plan and the zoning change related to Rinconada Industrial Park
42 together. Again, I do recommend that there be a motion to suspend the
43 rules so those could be heard together and then voted upon separately.
44

45 Gordon: Okay. All right then I need a motion to suspend the rules that we, all though
46 that we will discuss both these items but vote on them separately, item three

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1 and number of item four. Can I have a vote please? I need a motion. I'm
2 sorry.
3
4 Vega: I make a motion to suspend the rules so that we can vote on both of these,
5 or combine them.
6
7 Gordon: All right. A second?
8
9 Smith: I second that motion.
10
11 Gordon: All right. Roll.
12
13 Baum: Board Member Thomas.
14
15 Thomas: Yes.
16
17 Baum: Board Member Smith.
18
19 Smith: Yes.
20
21 Baum: Board Member Bennett.
22
23 Bennett: Yes.
24
25 Baum: Board Member Muniz:
26
27 Muniz: Yes.
28
29 Baum: Board Member Vega.
30
31 Vega: Yes.
32
33 Baum: Board Member Gordon.
34
35 Gordon: Yes. Okay John.
36
37 Castillo: Thank you Commission. Today we have the Rancho del Rey Master Plan
38 Amendment No. 3 and the corresponding zoning change. Current
39 conditions are the Rancho del Rey Master Plan which is currently 279.43
40 acres. Today we will be looking at changes that encompass 14.64 acres
41 and incorporates 3.95 acres into the master plan. The subject properties
42 are located in the northwest corner of Rinconada Boulevard and Bataan
43 Memorial East. It is consistent of multiple parcels and it does contain a
44 vacant and developed commercial and industrial uses. The current zoning
45 right now as it stands is M-1/M-2 Industrial Standard, C-3C commercial high

1 intensity with a condition, and A-2 which is a defunct zoning designation
2 from our 1981 Zoning Code.

3
4 Here's a zoning map of our subject properties. Here's an aerial view. In the
5 lower left hand corner it is a commercial development as a business center.
6 The master plan modifies the boundaries of two planning parcels
7 designated as P21 and P22. And it will also incorporate 3.95 acres of
8 undeveloped land into those boundaries. As part of this, there is going to
9 be an additional roadway providing access to Rinconada Boulevard and
10 Bataan Memorial East. The amendment also proposes five commercial
11 industrial use lots that will follow boundary lines of the associated
12 Rinconada Industrial Park Preliminary Plat that we'll be hearing after this.
13 The amendment also proposes a secondary access to the north along what
14 we call planning parcel P3 for future roadway development and providing
15 access to Park Hill Estates.

16
17 Here is the proposed master plan. As you can see the zoomed in one is
18 the secondary access for the future local roadway. This one is the boundary
19 adjustments, as we can see we're incorporating this 3.95 acres into the
20 boundary. And this is a land use table depicting what the new parcels are
21 going to be.

22
23 The second part of this is a zone change proposal. The subject property is
24 conformed to associate the Rinconada Industrial Park boundaries and
25 corresponding zoning districts. The proposed zones are going to be for lots
26 one and two which are a stacked zoning of M-1/M2 and C-3. This will allow
27 for any changes of businesses within that shopping center as well as
28 provide the ability to increase the density of industrial standards. Lot three
29 is going to be M-1/M-2 which is our industrial standard. Lot four will be a C-
30 2 commercial medium density zoning district. And lot five will be C-3 as
31 well.

32
33 At the time reviews were sent out to all relevant agencies staff had no major
34 concerns for the approval of the master plan. At the time of the
35 presentation, and staff reports that were sent out, staff did not receive any
36 phone calls or e-mails. The staff recommendation is that P&Z is the final
37 authority on the master plan and a recommending body to City Council on
38 the rezoning. Individual motions and votes for each proposal are needed.
39 Staff recommends approval of both proposals based on the following: The
40 master plan and rezoning are consistent with submittal requirements
41 outlined in Section 38-2 of our zoning code and Article 2 of the Subdivision
42 Code. We also based upon staffs analysis, the proposal meets the intent
43 of the Comprehensive Plan Elevate Las Cruces and outlined in Section 38-
44 2 of the Zoning Code as amended and fulfills the purpose of the Las Cruces
45 Municipal code Section 2-382. This master plan amendment and rezoning
46 is also harmonious and not out of character with the uses and existing

1 zoning districts of the surrounding area. On July 14th, our Development
2 Review Committee met and recommended approval of the master plan
3 amendment. Today your options are to vote "yes" to approve, vote "no" to
4 deny, or vote "yes" with conditions.

5
6 Gordon: All right. Thank you John. Anyone from the public who has something to
7 say?

8
9 Binns: For your record my name is Eddie Binns.

10
11 Gordon: Okay, sir. I know you're familiar with this also. I have to still swear you in,
12 Do you swear or affirm that the testimony you're about to give is the truth
13 and nothing but the truth under penalty of law?
14

15 Binns: I do.

16
17 Gordon: Thank you. Go ahead sir.

18
19 Binns: Good afternoon. And hello Sharon Thomas. Wish she was here so we
20 could wave at each other.

21
22 Thomas: *(inaudible)*.

23
24 Binns: Anyway, John, you did a good job in presentation. And I can't resist the
25 opportunity to get up and visit with you folks just a little bit. John, would you
26 help me out and pull out the master plan amendments, we'll start with that
27 and give you a little bit of history of way we think. Number one, you can see
28 over in our lower right hand corner, the area that is ballooned is a roadway
29 that goes from my project into the Park Hill subdivision. This was a roadway
30 that was negotiated between developers to provide a fire exit into that region
31 for the benefit of the neighborhoods given it's a better fire access. And also
32 it gave us an access for a sewer line to feed an area that was questionable
33 whether we could feed it. So there's a no brainer so to speak.
34

35 If we take a look below, let's blow up the industrial subdivision a little bit
36 there and see it. Okay, again you can see that the new proposed road in
37 the subdivision goes into a cul-de-sac. In looking at good development, I
38 feel that we did not need industrial traffic traveling through an industrial area
39 entering into a residential area. So that we isolated the industrial activity
40 with a cul-de-sac and closed the road which was proposed at one point in
41 time to go back in through a residential subdivision. And again, to me that's
42 a no brainer and it's a thing that makes a better project for me and all the
43 other people involved. The new road that is proposed to come in there,
44 obviously, we've had a go through the highway department and we have
45 had approvals and grants and such and negotiated the acceleration lanes
46 on that particular item. So that those things are moving *(inaudible)* there.

1
2 John help me out and let's go to the map area that shows boundaries a little
3 bit better. The area that shows boundaries. There we go. This one gives
4 a little better explanation. The large area there that says subject property
5 is property that has been zoned industrial, and this back portion, for the last
6 30, 40 years, it was zoned a long time ago. The small odd-shaped property
7 to the right hand side there next to Rinconada is a piece of property that I
8 just acquired through a property exchange with the City of Las Cruces. That
9 property was acquired in a trade to enlarge the Veterans Park so that the
10 park grew by another five acres for parking and improvements to access to
11 behind the dam. And in exchange this piece of tract of land was acquired
12 in that exchange. This piece of land carried an agriculture or an unzoned
13 situation when it was acquired, because it had been sitting in abeyance for
14 that time. So therefore looking at it nobody wants to live on the corner of
15 Rinconada and Highway 70. And it's a natural for some form of commercial
16 activity. And that's why we're asking for commercial activity on that corner,
17 because it's what is logical use and best use is. The industrial activity is still
18 standing there and is doing a little cleanup as far as the boundaries are
19 concerned so that they comply with the lot lines of the new subdivision. But
20 it gives you a little explanation of what's going on and what I think is good
21 planning. And it's an opportunity to visit with you folks just a little bit and
22 give you an idea of what's going on. The subdivision layout is, again simple
23 lots blocked off for potential use for future development activity. With that,
24 I think I've said enough and I will leave the door open. I'd be glad to answer
25 any questions you all might have regarding it. And thank you for your time.

26
27 Gordon: Mr. Binns. Thank you. Thank you very much. Does anybody have any
28 questions of Mr. Binns?

29
30 Bennett: I don't have any questions. I just wanted to thank you for that breakdown.

31
32 Gordon: Then I think that we might be ready for a vote. All right, then can we get a
33 motion to vote on number one, which will be the approval of the master plan.

34
35 Bennett: I make a motion to approve the master plan.

36
37 Gordon: Can we get a second?

38
39 Smith: I second that motion.

40
41 Gordon: All right. Could you call the roll please?

42
43 Baum: Board Member Thomas.

- 1 Thomas: I vote yes based on staff recommendations and (*inaudible*) with Elevate Las
2 Cruces, and also because (*inaudible*) industrial areas (*inaudible*) for a long
3 time (*inaudible*) to see this happen.
4
- 5 Baum: Thank you. Board Member Smith.
6
- 7 Smith: I vote yes based on staff recommendation, also it appears to be best use of
8 that that property.
9
- 10 Baum: Board Member Bennett.
11
- 12 Bennett: I vote to approve based on staff recommendation and the conversation
13 today.
14
- 15 Baum: Board Member Muniz.
16
- 17 Muniz: I'll vote yes on staff's recommendation and I like the idea that this plan is for
18 the present but he's also, the development he's looking toward the future
19 also development there.
20
- 21 Baum: Board Member Vega.
22
- 23 Vega: I vote yes. I think that was a very helpful overview also. It supports the
24 Elevate Las Cruces and based on staff recommendation.
25
- 26 Baum: Board Member Mr. Gordon.
27
- 28 Gordon: Based on findings, my site visit, staff recommendations, Elevate Las
29 Cruces, and I think this is an excellent choice for this piece of land. It's been
30 sitting there vacant as long as I've been living in Las Cruces. And I hope
31 that we get some nice development in there that will also provide us with
32 some jobs. Therefore, I guess we have a vote 6:0. Thank you.
33
- 34 **4. Rinconada Industrial Park Zone Change:** A request for a zone change for
35 multiple properties/parcels from A-2 (Agriculture 1981 Zoning Code), M-2
36 (Industrial Standard), and C-3C (Commercial High Intensity-Conditional) to C-
37 2 (Commercial Medium Intensity), C-3 (commercial High Intensity) and M-1/M-
38 2 (Industrial Standard). The properties are located west of Rinconada
39 Boulevard and north of Bataan Memorial West at 3403 Rinconada Blvd and
40 3497 Bataan Memorial West in the proposed Rancho Del Rey Master Plan
41 Amendment No. 3. Submitted by Underwood Engineering, representative.
42
- 43 Gordon: All right. All right. Then we can move on to the next item, which is the
44 Rinconada Industrial Park Preliminary Plat. Oh, I'm sorry. Forgot already.
45 We need a vote on the zone change. Can I get a motion to approve?
46

1 Bennett: I make a motion to approve the zone change.

2
3 Gordon: And a second please?

4
5 Vega: Second.

6
7 Baum: Board Member Thomas.

8
9 Thomas: Yes. I vote yes (*inaudible*), and Eddie Binns description. And I would also
10 like (*inaudible*) to Mr. Binns as companies come there to please work with
11 Workforce Connection to make, so we have (*inaudible*) with the skills so
12 (*inaudible*).
13

14 Baum: Thank you. Board Member Smith.

15
16 Smith: I vote yes, based on staff recommendation and also it meets the objective
17 of the master plan.
18

19 Baum: Board Member Bennett.

20
21 Bennett: I vote yes based on staff recommendation.
22

23 Baum: Board Member Muniz.

24
25 Muniz: Vote yes on the staff recommendations.
26

27 Baum: Board Member Vega.

28
29 Vega: I vote yes, based on staff recommendation.
30

31 Baum: Board Member Gordon.

32
33 Gordon: I vote yes based on staff recommendations. All right. Thank you. Now we
34 have a vote on that for 6:0.
35

- 36 **5. Rinconada Industrial Park Preliminary Plat:** A request for a preliminary plat
37 known as Rinconada Industrial Park. The proposed subdivision encompasses
38 18.598 + acres, is zoned A-2 (Agriculture 1981 Zoning Code), C-3C
39 (Commercial High Intensity – Conditional), M-2 (Industrial Standard), is located
40 east of Rinconada Boulevard and north of Bataan Memorial West, and is part
41 of the proposed Rancho Del Rey Master Plan Amendment No. 3. The
42 preliminary plat proposes five lots for the development of Industrial and
43 Commercial land uses. Submitted by Underwood Engineering,
44 representatives.
45

- 1 Gordon: All right now we can move on to item number five, which is a Rinconada
2 Industrial Park Preliminary Plat. Can I have a motion on that please?
3
- 4 Vega: Make a motion to approve the preliminary plat.
5
- 6 Gordon: And a second.
7
- 8 Bennett: I second that motion.
9
- 10 Gordon: All right. Thank you. John.
11
- 12 Castillo: Once again good evening. This is an association and it's also connected to
13 the Rancho del Rey Master Plan amendment. This is a requested approval
14 for the Rinconada Industrial Park Preliminary Plat. Current conditions of the
15 property are to be located east of Rinconada Boulevard and north of the
16 Bataan Memorial East. It is comprised of multiple parcels that are 18.59
17 acres. as previously stated is currently zoned to M-1/M-2, C-3, and A-2.
18
- 19 So we are proposing five lots which are going to be commercial industrial
20 use lots. There is going to be proposed interior local roadway as explained
21 previously, and it will also provide access to Rinconada Boulevard and
22 Bataan Memorial East. Staff recommendation is approval for approval
23 based on the following findings: The proposed preliminary plat known as
24 Rinconada Industrial Park complies with the requirements and standards of
25 the City of Las Cruces Subdivision Code and Design Standards. It has been
26 reviewed by relevant City staff and complies with all requirements of the
27 2001 Zoning Code. It is also supported by Elevate Las Cruces
28 Comprehensive Plan.
29
- 30 On July 21st, the DRC met and provided a recommendation of approval. It
31 was sent out to all relevant agencies and departments, there was no issues.
32 It also took place at DRC for a discussion. No input was provided from the
33 public as it was sent out to surrounding properties. Today's option is to vote
34 "yes" to approve, vote "no" to deny, or vote "yes: with condition."
35
- 36 Gordon: All right. Thank you. Is there anyone from the public or anyone, I'm sorry
37 is there anyone from the presenter of the petitioner who would like to make
38 a comment? If not anybody from the audience? Mr. Binns you'd like to say
39 something? Since you're already sworn in.
40
- 41 Binns: I'm still swore in. Just my first rodeo.
42
- 43 Gordon: Okay.
44
- 45 Binns: I don't have a whole lot to add. But I have an opportunity to stand up and
46 visit with you folks for just a half a minute. And I think what we're looking at

1 is (*inaudible*) standard. But what I've got to say is a thank you to ladies and
2 gentlemen in this room that are listening to this stuff back and forth.
3 Unfortunately, the majority of Las Cruces has no idea of what you guys put
4 up with, how many hours you spend trying to see that Las Cruces is
5 developed in a reasonable manner. And I tried to make people aware of
6 people such as you that donate your time to a planning and zoning staff to
7 try to see things are done reasonable. And it gives me an opportunity to
8 express from not only I but from some of the other developers in the area a
9 thank you for spending the time and effort that you do trying to see Las
10 Cruces built in a reasonable manner. And I thank you, and sorry you have
11 to put up with so much crap sometimes.
12

13 Gordon: Mr. Binns. Thank you very much for those kind words. We certainly do
14 appreciate it. We will hope that we will continue to do the same in the future.
15 Okay, then we move on to item number five, which is the Rinconada
16 Industrial Park Preliminary Plat. Can I have a vote to approve?
17

18 Vega: I make a motion to approve.
19

20 Bennett: I'll second. All right, then John. We need a roll call.
21

22 Baum: Board Member Thomas.
23

24 Thomas: I vote yes, (*inaudible*) recommendation and again we need (*inaudible*) say
25 so.
26

27 Baum: Board Member Smith.
28

29 Smith: I vote yes, based on the staff recommendation. Also the neighborhood
30 character and compatibility. I know this area continues to grow residentially;
31 I think it's important that we have areas for commercial development too. I
32 think that'll help minimize far as like travel that people make to shop and
33 also to just, it just helps with just the livability of that area.
34

35 Baum: Board Member Bennett.
36

37 Bennett: I vote yes, based on staff recommendation, meets development standards
38 of the zoning code and Elevate Las Cruces as well.
39

40 Baum: Board Member Muniz.
41

42 Muniz: I'm voting yes on staffs approval.
43

44 Baum: Board Member Vega.
45

1 Vega: I vote yes. It supports Elevate Las Cruces and based on staff
2 recommendation.

3
4 Baum: Board Member Gordon.

5
6 Gordon: I vote yes on staff recommendations, my site visit, and it does meet the
7 zoning code requirements, and certainly will hope the Elevate Las Cruces.
8 All right then thank you John.
9

10 **6. Zoning Code Amendments for Cannabis Uses:** Various amendments to
11 Chapter 38, Zoning Code, of the Las Cruces Municipal Code for the purpose
12 of adding cannabis related uses to ensure compliance with the State of New
13 Mexico Cannabis Regulation Act. The following sections are subject to
14 amendments:
15

- 16 • Sec. 38-21. Specific Definitions;
- 17 • Sec. 38-31. Residential Zoning Districts A. 2. (Single-Family Rural
18 Residential Zoning Districts, Zoning District Descriptions);
- 19 • Sec. 38-32. Office, Commercial and Industrial Zoning Districts B. 2.
20 (Commercial Zoning Districts, Zoning District Descriptions)
- 21 • Sec. 38-32. Office, Commercial And Industrial Zoning Districts C. 2.
22 (Industrial Zoning Districts, Zoning district Descriptions);
- 23 • Sec. 38-32. Office, Commercial, and Industrial Zoning Districts C. 2.
24 (Industrial Zoning Districts, Zoning District Descriptions);
- 25 • Sec. 38-32. Office, Commercial, and Industrial Zoning Districts C. 2.
26 (Industrial Zoning districts, Zoning District Descriptions);
- 27 • Sec. 38-33 Matrix Land use Table and Parking
- 28 • Sec. 38-33c Agriculture & Equestrian Land Uses;
- 29 • Sec. 38-33g Retail Land Uses;
- 30 • Sec. 38-33i Manufacturing & Related Land Uses, Including Associated
31 Assembly, Processing, Packaging, and Compounding;
- 32 • Sec. 38-53 Conditional Uses; and
- 33 • Sec. 38-54 Special Use Permits.
34

35 Gordon: Then we move to the last item on the agenda, which is item number six
36 which is zoning code amendments for cannabis use.
37

38 H-Rogers: Good evening Members of the Commission. Let me go ahead and open
39 the presentation. All righty, I'll go ahead and get started if that's all right.
40 Katherine Harrison-Rogers for the record. Hopefully most of you are aware
41 but back in March the Cannabis Regulation Act otherwise known as House
42 Bill II, was approved by the state to legalize recreational cannabis for adult
43 use. The state has organized the Cannabis Control Division, it's part of the
44 state's Regulatory and Licensing Division. They're responsible for the
45 licensing and regulation of cannabis uses throughout the state. The City of
46 Las Cruces also plays a role. We are in charge of determining the most

1 appropriate land uses or zones for which those types of uses can occur.
2 We process the business registrations related to this. And of course we're
3 applying the building codes as it relates to the various types of occupancies,
4 be it retail or manufacturing or things of that nature. September 1st we have
5 some hard deadlines in terms of what we do with cannabis in the City.
6 September 1st the Cannabis Control Division will begin processing permits
7 for the producers, those are the growers, the micro businesses, and also
8 licensed medical cannabis businesses. Because of that, we need to
9 respond and establish some guidance in our land use codes, namely
10 zoning, to accommodate these types of uses.

11
12 We're anticipating also September 1st that we will begin doing business
13 registrations for these producers and the micro businesses and the licensed
14 medical cannabis businesses. Starting January 1, 2022, the state will begin
15 issuing server permits, and also the commercial medical licenses and start
16 accepting all application types, so that's those retail businesses. And we
17 will also begin doing business registrations for all the other cannabis
18 business types. April 1st, it's anticipated that those retail sales of cannabis
19 will begin.

20
21 So with that little history, I'm going to talk about some of the land use
22 implications. This is a really large, growing and producing operation. This
23 is a cannabis operation. And apologies, I don't recall if this one is in Indiana
24 or if this one was in Canada. So the Cannabis Regulation Act outlines what
25 we, as a municipality can do. We can control the time, the manner, and the
26 place of the cannabis businesses including density. We cannot restrict
27 transportation, prohibit operation, prohibit or limit signage. We can't require
28 the relocation of existing businesses such as the medical cannabis
29 dispensaries, and we can't prohibit personal use or production. So what we
30 have done and what's been presented before you today, and I'm going to
31 give you a nice summary so that it's not as complicated as perhaps it may
32 have seemed in your packet. We are modifying certain code sections to
33 accommodate these uses. This does not include any changes to our
34 overlays as they stand today. That's because they are unique and require
35 oftentimes additional public hearings in front of the board specific to those
36 overlays. But we will get to that. But this is to accommodate the rest of the
37 City at least for the time being.

38
39 So with that we are adding specific definitions to 38-21 where all of our
40 definitions live. We are adding some uses specific to our residential zoning
41 districts, our office and commercial districts, as well as our industrial
42 districts. We are adding these uses to our land use table and parking
43 requirements. We are adding these specifically to some agricultural and
44 equestrian land uses, retail land uses, and again manufacturing and other
45 types of land uses, as well as adding some conditions, and some of these
46 uses with special use permits.

1
2 Now these are just a listing of the sections in the code that are being
3 affected. I'm going to talk about what that really means in a nice, tidy
4 summary for you. So these recommendations are for cannabis retail to add
5 those to the C-1, which is our low intensity commercial zone, neighborhood
6 commercial is what that is. Adding those to C-1 and adding those to C-3.
7 These are all of our commercial zones in the City. We're recommending
8 that there be no consumption in the C-1 zone. The reason behind that is
9 because the C-1 zone really is intended for those small neighborhood
10 commercial types of uses. And at this time the City doesn't allow for bars
11 or taverns at that location, so it made sense to us that there wouldn't be
12 consumption sites at that location.
13

14 We're also recommending that cannabis industry, that would be your
15 growers, your manufacturers that produce various types of extracts, the big
16 packaging and warehousing types of uses, be located in our standard
17 industrial zone, which is the M-1/M-2 and M-3 zone, which is our more
18 intensive industrial zone. Cannabis research laboratories, again we are
19 recommending that those be allowed in all of the industrial zones with the
20 inclusion of our technology zone, which really is geared towards research.
21 The reason behind that is the cannabis research is allowed to do some
22 larger scale cultivation research and things of that nature.
23

24 And then we're recommending that cannabis micro businesses, this is our
25 version of a micro business, the state's version I'll explain that in a little bit
26 more detail in a second, we're recommending that those be allowed in our
27 agriculture and low density, single-family residential zones, specifically
28 equestrian estate, EE and REM, which is residential estate and mobile, with
29 a special use permit. Now the reason behind that is because those specific
30 zones allow for horticulture of all types, and they also allow breweries and
31 wineries at those locations with a special use permit if of course those crops
32 are grown on site. So it's a logical transition for that.
33

34 In terms of the state's definition of micro business, which there's several
35 different variations, there's a producer, there's the vertically integrated micro
36 business, the maximum amount of plants that can be grown at those
37 locations is 200 adult plants. And these are allowed not just at this location,
38 but they're also allowed in all of the industrial zones that we've outlined here.
39 And there is an opportunity in the code, if not otherwise allowed, to be able
40 to utilize our Infill Development Process to then allow those at other
41 locations as well, specifically those underutilized or vacant lots or buildings
42 around the City. You've seen many of those types of projects come before
43 you in terms of those Infill Development Projects. It is a free process, and
44 it is an expedited process the City does for people who qualify.
45

1 There are some conditions that we're recommending. We're
2 recommending that all cannabis uses be 300 feet from a school or daycare.
3 Now the state has very specific requirements in terms of essentially what
4 that can be. They are trying to prevent I guess jurisdictions perhaps from
5 making those distances too great, and so this is actually the cap, the
6 maximum cap of distance from a school or daycare that we can apply. We
7 can't require more than this. And so we're requesting the maximum that
8 was recommended by the state.

9
10 For cannabis retailers, I'm going to talk about these buffers in a little bit more
11 detail. One of the elements that's listed in the house bill is that we can
12 control density, time, place, and manner. We're recommending 300 feet
13 from single-family residential zones, and 1000 feet from other cannabis
14 retailers, that's in between. I'm going to talk about some of the public input
15 we've received thus far about that and also some of the discussions that
16 took place at City Council yesterday evening.

17
18 Again, one of the provisions that we've added is that these could be closer
19 if a Special Use Permit was obtained and would go before this Commission.
20 In terms of the cannabis industry, again it's going to be 300 feet from a
21 school or daycare. In addition to that there is the ability as part of the
22 conditional uses to allow accessory retail as part of industry. That's
23 something that's already outlined for most of our industrial uses. It is
24 capped though; it really has to be primarily industrial or manufacturing or
25 growing. And then of course, you can have a little retail shop attached to
26 that. Again, cannabis micro business with a Special Use Permit in the EE
27 or REM zones, that would be accessory to a primary residence, you would
28 have to live on site, it would be limited to no more than the 200 mature plants
29 if you were to be growing on site. The products for sale must be grown on
30 site and then located fully in an enclosed accessory building. And we're
31 requesting that they be 100 feet from other residences. If you recall these
32 zones are actually large lot zones, and so generally the 100 foot distancing
33 is predominantly not an issue to be able to achieve that on these lots that
34 are that are half acre, acre, and larger.

35
36 So I have some examples of some grow facilities, some large, some small
37 in terms of how they could be done. Just some photos, some of them can
38 be quite large when we're talking about some of the industrial grow areas,
39 indoor and outdoor. Some examples of retailers, you know it looks like a
40 pharmacy or any other sort of small boutique retail.

41
42 We do have some policy considerations that have come about from a
43 survey, a work session that we had with City Council, as well as a public
44 meeting that we held, I think that was about a week ago. One of the
45 questions was related to buffers, I'd like to talk about that first. That's maybe
46 a little out of order of the slide, but it's one of our biggest concerns in terms

1 of the distancing buffers to try to control densities within the City. The New
2 Mexico Cannabis Chamber of Commerce actually did support a 600 foot or
3 less buffer between businesses. I would like to point out that alcohol uses
4 currently in the City, and pharmacies are not buffered from one another or
5 from residential zones. And we don't have density limitations at this point
6 in time. I do want to point out though, that alcohol was sort of self-regulated
7 in terms of the densities that could occur in the City until very, very recently.
8 The State of New Mexico had very limited number of alcohol permits that
9 were available for people to purchase around the state. Of course those
10 limitations have been lifted. So at this point in time the City has never limited
11 the density of alcohol locations. But that's something that might change in
12 the future depending upon what happens with the lifting of those restrictions
13 by the state. Do you want to say that we do have some buffers throughout
14 the City, for example I realize this is not apples to apples, but I just do want
15 to point out there are some buffers that we do have in the City. Adult uses,
16 we do have several buffers related to those. Amusement parks have
17 buffers. Body shops and paint booths have buffers. And the extraction of
18 raw materials have buffers. Again, this is an entirely different industry but I
19 do want to point out some of them do exist in our code.
20

21 In terms of what occurred at City Council work session, it really was a split
22 discussion in terms of whether or not the distancing buffer was supported
23 in full or if there was a thought process behind whether or not it should be
24 reduced. I did hear from some Councillors that one was supportive of the
25 1,000 feet, others were supportive of 600, or perhaps a City block, which is
26 about 300 feet. And there were some questions about maybe exploring
27 whether or not we should buffer at all and perhaps to do a little bit more
28 research about that.
29

30 And I did want to speak about consumption areas as well. The way that the
31 state has it listed is they really don't differentiate between indoor and
32 outdoor consumption areas in terms of how that's licensed. But we did want
33 to point out that we do have some concerns about informed consent, and
34 outdoor smoking. So for example, if we had several outdoor consumption
35 areas and people were to be in an area where they were exposed to that
36 secondhand smoke, it could be problematic. And so at this point in time
37 we're actually recommending that a condition be added to this for
38 consumption areas in particular, that they be limited to indoors, and also be
39 in compliance with the Clean Indoor Air Act as amended.
40

41 It should be noted that the House bill actually says we may have
42 consumption areas, we're not obligated to have them throughout the City.
43 But I do want to point out that we don't exclude alcohol consumption areas.
44 And so it doesn't really make logical sense at least in a land use sense to
45 exclude those as well together.
46

1 And so at this point in time staff is recommending approval of these
2 particular amendments, with some of the considerations that we've outlined,
3 that I just did discuss about the indoor consumption areas and perhaps
4 leave it up to this Commission and City Council to determine whether or not
5 they're comfortable with that 1,000 foot buffer, or if there's a preference to
6 reduce that moving forward. And today your options are to approve, to
7 deny, vote "yes" with conditions, or to table. I would like to point out this is
8 just a recommending body to City Council. And while we're feeling pretty
9 confident about the amendments that we've drafted thus far, there is a
10 possibility that they could be amended at City Council. And with that I stand
11 for any questions. And it does look like we have several people in the
12 audience. So I'm sure there will be some public participation.
13
14 Gordon: All right. Thank you Katherine, for that presentation. Very nice. But before
15 we continue I think we're going to need a motion to approve the zoning code
16 amendments for cannabis use. So can I have a motion please?
17
18 Bennett: I make I make a motion to approve the cannabis uses amendment.
19
20 Gordon: I have a second.
21
22 Vega: I second.
23
24 Gordon: Did the Commission have any questions? I didn't think so. Go ahead.
25 Maybe roll call on the motion. Well, I thought we would vote on that first but
26 okay. All right can I ask, is there anybody in the audience who wished to
27 speak? I only see one person, two people. Two. All right then. Can
28 someone please come forward and we can start? Yes. I guess you could
29 have as much up to five minutes. We're not having that many people. So
30 before you start, can we please have your name?
31
32 Pacheco: Derek Pacheco for the record.
33
34 Gordon: All right. And I have to swear you in. Do you swear or affirm that the
35 testimony you're about to give is the truth and nothing but the truth under
36 penalty of law?
37
38 Pacheco: I do.
39
40 Gordon: All right. Go ahead sir.
41
42 Pacheco: Thanks for having me. I just wanted to voice my opinion for the residential
43 buffer zones that are a potential for this. If we enact more rules on top of
44 what we already have, we have lots of governing bodies including codes,
45 and all sorts, right. If we start enacting rules as far as distance that don't
46 match with other rules such as alcohol consumption distances and available

1 locations next to residential, then we're kind of re-stigmatizing the entire
2 plant and we're not trying to do that. So I'm asking you to consider dropping
3 any sort of buffer zones for sales and consumption as related to residential.
4 Thank you.

5
6 Gordon: All right. Thank you. Someone else? All right. Please state your name.

7
8 Pearson: Alyssa Pearson.

9
10 Gordon: All right. Can I swear you in please?

11
12 Pearson: Yes sir.

13
14 Gordon: Do you swear or affirm that the testimony you're about to give is the truth
15 and nothing but the truth under penalty of law?

16
17 Pearson: I swear.

18
19 Gordon: Thank you. You can continue the.

20
21 Pearson: Yes. So for the most part I want to say the rules that have been proposed
22 so far exceeded my expectation. My biggest concern that I have is with the
23 cannabis industry proposed rule. What I noticed in the presentation is we
24 saw what industrial grows looked like, we saw what small grows look like,
25 we saw what retail locations look like, but there was no visualization of what
26 production looks like. And part of the reason for that might be that
27 production can vary. It can vary from a huge industrial manufacturing
28 facility, where you have volatile compounds, where you have potential for
29 explosion. There was a big explosion at an extraction plant in Albuquerque.
30 So I understand why the tendency is to think of those things as being
31 industrial processes. However, there are ways of producing cannabis and
32 cannabis products that aren't in line with traditional industrial processes, in
33 line with the City's already existing cottage industry zoning regulations, light
34 manufacturing regulations. That's what a lot of cannabis manufacturing is
35 going to look like. You're going to see small commercial kitchens, where,
36 especially for the micro producers, the micro businesses, you know maybe
37 a stove, maybe an oven, just a standard kind of commercial kitchen. So
38 this idea that we would need an industrially zoned lot to make gummy bears
39 is a ridiculous burden, well maybe that's a little strong word. It is an undue
40 burden especially on small businesses. And in line with the Elevate Las
41 Cruces plan and the recommendations, you're looking for things like
42 economic equity, you're looking for things like entrepreneurship. And if
43 you're forcing us to get industrial land, which is limited, which is expensive,
44 you're also creating this potential for out of state, out of City businesses to
45 come in, swipe up that land, raise the prices, and that's going to push small
46 producers out. That's going to limit entrepreneurship. And it's not in line

1 with the rationale that you've used for other, for bakeries for candy
2 manufacturers. So I hope that maybe there can be a consideration to add
3 to the rules a light industrial process, or in light industrial cannabis industry.
4 Does the board have any questions for me?

5
6 Gordon: Does anyone on the Commission have any questions? I see none. All right.
7 Seeing none. But thank you.

8
9 Pearson: Thank you.

10
11 Gordon: I think that these comments are well taken. I think perhaps you should plan
12 on attending a meeting with City Council when they take this matter up and
13 present your same arguments.

14
15 AUDIENCE MEMBER SPEAKING, NOT AT THE MICROPHONE.

16
17 Gordon: Well, the minutes from tonight's meeting will go to City Council so I'm sure
18 that they will see your comments and perhaps someone will take notice of
19 it and perhaps even think of doing something in respect of what you've said.
20 So thank you. All right, if there's no one else perhaps now we could have a
21 vote on the approval of the zoning code amendments for cannabis uses.

22
23 Baum: Board Member Thomas. Board Member Thomas.

24
25 Thomas: I would like to have (*inaudible*) I have a few questions.

26
27 Gordon: We never heard you ask one.

28
29 Muniz: Trying to get ...

30
31 Gordon: I'm sorry then, go ahead.

32
33 Thomas: So I want to ask Katherine. The two questions here were wanting to
34 (*inaudible*) that alcohol distances and cannabis distances to be the same.
35 And that don't force small growers (*inaudible*) to have to buy commercial
36 land. Both of those included in what we're voting on?

37
38 H-Rogers: Commissioner Thomas. You were asking about wanting to make alcohol
39 buffer distances as well as the distances for cannabis retailers the same, is
40 that correct? It's really hard to hear you so I'm trying to interpret.

41
42 Thomas: Thank you. Yes. What the gentleman asked that what's being suggested
43 for cannabis does not match with alcohol.

1 Gordon: Commissioner Thomas. We're having a lot of difficulty in understanding
2 what you're saying. I don't know if it's a connection you have with your
3 telephone. But you can try that again, please.
4

5 Thomas: The suggestion was that the cannabis distance should match the alcohol
6 distance.
7

8 H-Rogers: Commissioner Thomas. So you're recommending that we do away with the
9 buffers? Is that correct? Is that what I'm hearing?
10

11 Thomas: I'm asking if the gentleman's right, that we, that the buffer that he doesn't
12 *(inaudible)* in there.
13

14 H-Rogers: So currently the way it's written there is a recommendation to have a 300
15 foot buffer from single-family residential zones. And then of course the
16 1,000 foot buffer between business locations. But again, we've had a lot of
17 feedback on those and so if you have a recommendation to remove those
18 or modify those, that would be something that would need to come from you
19 at this point in time.
20

21 Thomas: My other question was the comment about please don't force them to have
22 to buy commercial land. Is that how it's written?
23

24 H-Rogers: Commissioner Thomas, Members of the Commission. The way we have
25 the language is that for what we're calling producers, manufacturers, things
26 of that nature, they would be limited to the industrial zones, with the
27 exception of the micro businesses, which would be allowed in the
28 agricultural zones, EE and REM, with a Special Use Permit. Further, there's
29 the ability for people to obtain an Infill Development Process approval for
30 eligible properties if they were to go through that to maybe allow those on
31 those underutilized or vacant properties throughout the City.
32

33 Thomas: Okay. Thank you.
34

35 H-Rogers: You're welcome.
36

37 Gordon: So did I hear her ask for a motion?
38

39 Thomas: No, I didn't ask for anything. I was only asking for clarification.
40

41 Gordon: All right. Thank you. All right, then if there isn't anything else, now can we
42 vote?
43

44 Muniz: I've added my light on. I'd like to ask staff a question. Have you talked to
45 other communities who have legalized medical and recreation sales of
46 marijuana? And if you have, have you shared, have they shared problems

1 with you and successes. I go to Colorado quite a bit and I know that they've
2 had some problems. And I just wonder has staff gone out to other
3 communities to see how they've worked things out.
4

5 H-Rogers: Thank you for the question. Commissioner Muniz, Members of the
6 Commission. Yes staff, including City management, has been really
7 involved in looking at other communities in terms of how they've handled
8 this. One of the unique things about California and Colorado for that matter
9 is that the state gave them an opt in or an opt out ability in terms of whether
10 or not municipalities or counties wanted to consider recreational cannabis.
11 The State of New Mexico has not given us that option. We are obligated to
12 do it. And we've been speaking with the Municipal League, other
13 jurisdictions within New Mexico, to determine sort of the best methods by
14 which to do that. But we are somewhat unique in terms of how it's being
15 handled specifically here compared to some of the other states.
16

17 Muniz: Thank you.
18

19 H-Rogers: You're welcome.
20

21 Smith: Katherine.
22

23 H-Rogers: Yes.
24

25 Smith: Before we vote, I did have some concerns about the buffer as far as outdoor
26 consumption site. I know the analogy was used of bars serving alcohol, you
27 know you can have bars beside each other and people can sit outside and
28 consume alcohol. But I think with the use of cannabis outside, if you have
29 two or three cannabis businesses beside each other where there's outdoor
30 consumption, there is a density that could be created with secondhand
31 smoke, which doesn't occur with alcohol consumption. That would be one
32 of my concerns with eliminating any buffers between businesses for on site
33 or outdoor consumption.
34

35 H-Rogers: Thank you. Members of the Commission, Commissioner Smith. Yes, so
36 one of the concerns that staff has and we've brought up is informed consent
37 and being exposed to that secondhand smoke. And one of the
38 recommendations while not written into the language that you were
39 provided in your packet, but that was discussed tonight, is that perhaps
40 those consumption areas be limited to indoor only. It would have to be a
41 motion made by this Commission if you were if you wish to move forward
42 that way, or as you stated continue to have those buffers between retailers.
43

44 Gordon: Right now I see a hand from the audience. Do you wish to speak? All right,
45 then come forward.
46

1 Estrada: My name is ...
2
3 Gordon: Please state your name.
4
5 Estrada: Randy Estrada.
6
7 Gordon: I have to swear you in. Do you swear or affirm that the testimony you're
8 about to give is the truth and nothing but the truth under penalty of law?
9
10 Estrada: Yes.
11
12 Gordon: All right sir go ahead.
13
14 Estrada: Okay. This is a comment on the idea of treating, going about the informed
15 consent. My question here is, is it because of a health concern or is it an
16 intoxicant? How is it that we're metering this? Because we don't treat
17 tobacco the same way. And that is another regulated substance that we
18 allow in a consumption area that is covered by the bill, for how it is allowed
19 in those areas, whether they be casinos or already preapproved tobacco
20 consumption areas. I believe that that is another additional stigmatization
21 of how something works. You are already informing the idea that I'm going
22 into a nonclean air space with tobacco, whether you accept that that is not
23 a carcinogen is for you to decide. That is not the difference between
24 cannabis and tobacco, it becomes the same issue. Are you going into
25 smoke? Yes or no?
26
27 That's really all I have to say is you decide that you go into a smoky area,
28 you're exposing yourself to carcinogens and all kinds of just bad health
29 effects in many different ways. So I just look at it that way. You already
30 know you're walking into an area; it's already been approved; we should
31 look to see how it is that we then meter those experiences for individuals.
32 Do we put signage to let someone know, this is a fully open smoking area
33 both cannabis and tobacco is allowed? So another consideration for the
34 City to go about thinking about these kinds of things. Because if we're
35 taking away the stigma of it being a prohibited substance, something that
36 we've had prohibition, then we should look at it as how it is we already use
37 substances that are regulated. Thank you.
38
39 Gordon: All right. Thank you sir. Is there anyone else? Sir in the back do you want
40 to speak? All right. I see your hand was up. I'm sorry. Commissioner
41 Smith, are you willing to make a motion to that effect?
42
43 Smith: Yes, I make a motion that we vote on, the cannabis zoning.
44

1 Gordon: Just a second. All right. Thank you. I understand. All right then I guess
2 we are ready to vote on this amendment. So we have a vote to approve the
3 zoning code amendments for cannabis uses. Can you call the roll?
4

5 Baum: Board Member Thomas.
6

7 Thomas: I vote to approve based on (*inaudible*), on staff and tonight's (*inaudible*).
8

9 Baum: Thank you. Board Member Smith.
10

11 Smith: I vote yes that we approve with the condition that we maintain a buffer for
12 outdoor consumption.
13

14 Baum: Board Member Bennett.
15

16 Bennett: I vote yes to approve based on staff recommendation and commentary
17 today.
18

19 Baum: Board Member Muniz.
20

21 Muniz: I vote yes to approve the amendment.
22

23 Baum: Board Member Vega.
24

25 Vega: Yes, based on staff recommendation.
26

27 Baum: Board Member Gordon.
28

29 Gordon: I vote yes, based on the staff recommendations. Therefore we have a vote
30 of 6:0.
31

32 **IX. COMMISSION COMMENTARY** 33

34 Gordon: All right, then we can move on. Does anybody from the Commission have
35 any comments for this evening?
36

37 **X. STAFF ANNOUNCEMENTS** 38

39 Gordon: All right. Are there any staff announcements? Katherine.
40

41 H-Rogers: Chair Gordon, Members of the Commission. I do want to remind everyone
42 that we are getting close to having a copy for review of our code diagnostic.
43 It's our first phase of Realize Las Cruces, our zoning code and land use
44 code amendments. And the diagnostic is a report that will inform the way
45 the draft is not only structured, but some of the bigger topics of concern.
46 And it's an excellent tool at least to inform you all, what those big concerns

1 are. We're proposing to have a joint City Council and Planning and Zoning
2 Commission work session that will be held August 23rd. So please do
3 reserve that. That would begin at 1:00 p.m. in the afternoon. It is a daytime
4 meeting. So if you're unable to attend, of course we will have the
5 information for you. But by all means we encourage you to attend that
6 meeting. And I know I sent an e-mail about it and you'll be receiving invites,
7 if you haven't already. And, and we look forward to hearing your input and
8 having you all review that code diagnostic and get well on our way towards
9 actually drafting sections of the code.

10
11 Gordon: All right Katherine. If there's nothing else,
12

13 **XI. ADJOURNMENT (7:51)**
14

15 Gordon: Do we have a motion to adjourn? It is now 7:50.
16

17 Bennett: Make a motion to adjourn.
18

19 Gordon: A second.
20

21 Vega: I second.
22

23 Gordon: All in favor Aye.
24

25 MOTION PASSES UNANIMOUSLY.
26
27
28
29

30
31 _____
Chairperson



City of Las Cruces

City Council Action and Executive Summary

**3023; Council
Bill 23-017**

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

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

1st Reading: January 3, 2023

Adopted: February 6, 2023

Drafter: Erika Jaquez

Department: Financial Services

Program: Treasury

Line of Business: Revenue Management

Title: **AN ORDINANCE REPEALING SECTIONS 2-1206 THROUGH 2-1211 AND ENACTING NEW SECTIONS 2-1206 THROUGH 2-1213, LCMC 1997 AS AMENDED, ENTITLED INVESTMENT POLICY.**

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

PURPOSE(S) OF ACTION:

Updating the investment policy.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On July 15, 1985, the City Council enacted and approved Council Bill No. 86-04 Ordinance No. 618, an Ordinance establishing the policy and procedure regarding the deposit and investment of City monies.

On November 21, 2005, the City Council enacted and approved Council Bill No.06-034 Ordinance No. 2244, and Ordinance repealing sections 2-2106 through 2-1214 and enacting new sections 2-1206 through 2-1211

From time to time, it is necessary to review and update the investment ordinance in order to keep pace with changes in the financial environment. The main purpose for the update in the investment policy is to add an investment adviser section and internal controls section.

The City's Finance Select Committee was consulted in making these changes. Additionally, information from organizations such as Government Finance Officers Association (GFOA), the City of Albuquerque, City of Santa Fe, and City of Rio Rancho was used for guidance of the investment policy changes.

SUPPORT INFORMATION:

[Exhibit "A" Investment Policy Ordinance](#)

[Attachment "A" Redlined Investment Policy Ordinance](#)

PLAN(S):

Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

Finance Select Committee

DOES THIS AMEND THE BUDGET?:

☐ Yes

Agenda Item #9.2.

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the update to the Investment Policy in order to keep pace with changes in the financial environment.
2. Vote "No"; this will not approve the update to the Investment Policy in order to keep pace with changes in the financial environment.
3. Vote to "Amend"; this would modify and could postpone the update to the Investment Policy.
4. Vote to "Table"; this would postpone updates to the Investment Policy.

ORDINANCE 3023; COUNCIL BILL 23-017

AN ORDINANCE REPEALING SECTIONS 2-1206 THROUGH 2-1211 AND ENACTING NEW SECTIONS 2-1206 THROUGH 2-1213, LCMC 1997 AS AMENDED, ENTITLED INVESTMENT POLICY.

The City Council is informed that:

WHEREAS, under the authority and direction of Article X, Section 6 of the Constitution of the State of New Mexico in Article V, Section 5.11 of the City Charter of the City of Las Cruces, New Mexico, the Council is required to adopt an ordinance establishing the policies and procedures to be followed in the handling of the depositing and investment of City monies; and

WHEREAS, on July 15, 1985, the City Council enacted and approved Council Bill No. 86-04 Ordinance No. 613, and Ordinance establishing the policy and procedure regarding the deposit and investment of City monies; and

WHEREAS, on November 21, 2005, the City Council approved Council Bill No. 06-034 Ordinance No. 2244, and Ordinance repealing Sections 2-1206 through 2-1214 and enacting new sections 2-1206 through 2-1211; and

WHEREAS, from time to time it is necessary to review and update the investment ordinance in order to keep pace with changes in the financial environment; and

WHEREAS, the main purpose for the update in the investment policy is to add an investment advisor section and an internal controls section; and

WHEREAS, the City's Finance Select Committee was consulted in making these changes; and

WHEREAS, information from organizations such as Government Finance Officers Association (GFOA), the City of Albuquerque, City of Santa Fe, and City of Rio Rancho was used for guidance of the investment policy changes.

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

(I)

THAT the LCMC 1997, Sections 2-1206 through 2-1211 are hereby repealed.

(II)

THAT the LCMC 1997, Sections 2-1206 through 12-1213 are hereby enacted as shown in Exhibit A.

(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

PART II - MUNICIPAL CODE
Chapter 2 - ADMINISTRATION
ARTICLE V. - FINANCE
DIVISION 2. INVESTMENT POLICY

DIVISION 2. INVESTMENT POLICY¹

Sec. 2-1206. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Internal control refers to rules, policies, or procedures adopted to ensure the accuracy of finance and accounting, protection of assets, accountability, and prevention of errors, risks, and fraud.

Investment officer means the finance director or designee.

Liquidity means the ease at which a balance can be converted to cash, or at which a security can be bought or sold in the market.

Market average rate of return means the 3-Month Treasury Bill rate.

Material interest means any financial interest that may, or may appear to, influence judgment.

Portfolio means a collection of securities held by an individual or institution.

Short-term investment fund means a fund that invests in short-term money market investments of high quality and low risk.

SIPC means Security Investor Protection Corporation.

Yield means the annual rate of return on an investment, expressed as a percentage of the investment.

(Ord. No. 2244, § II, 11-21-05)

Sec. 2-1207. Policy declarations.

- (a) It is the intent of this division to establish the authority and procedures for the investment of the city's funds in an effort to:
- (1) Maximize investment returns while minimizing risk;
 - (2) Maintain a level of liquidity to ensure meeting all operational and unanticipated cash needs;
 - (3) Allow for diversification of the city's portfolio in terms of maturity, instrument types and credit to help reduce the overall risk while attempting to safely attain a market average rate of return. The investment officer shall take into consideration economic and other pertinent factors in determining the portfolio's diversification and make changes as necessitated.

¹Editor's note(s)—Ord. No. 2244, §§ I and II, adopted November 21, 2005, amended the Code by repealing former div. 2, §§ 2-1206—2-1214, and adding a new div. 2. Former div. 2 pertained to similar subject matter, and derived from the Code of 1988, §§ 2-101—2-109.

Charter reference(s)—Investment of public funds, § 5.11.

- (b) The criteria for selecting investments and the order of priority shall be as follows:
 - (1) *Preservation and Safety.* Preservation and safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
 - (2) *Liquidity.* The investment portfolio shall remain sufficiently liquid to meet all operating requirements.
 - (3) *Yield.* The investment portfolio shall be designed with the objective of attaining a market average rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs.
- (c) The standard of prudence to be applied by the investment officer shall be the prudent investor rule, which is: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment considering the probable safety of their capital as well as the probable income to be derived." The prudent investor rule shall be applied in the context of managing the overall portfolio.
- (d) Ethics and conflicts of interest. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Officers and employees shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio.

(Ord. No. 2244, § II, 11-21-05)

Sec. 2-1208. Allowed investment instruments.

Under this division, the following are allowed investment instruments:

- (1) United States Treasury obligations. Securities backed by the full faith and credit of the U.S. Government including direct obligations of the U.S. Treasury and obligations of certain U.S. Government agencies and instrumentalities which are guaranteed by the U.S. Treasury.
- (2) United States Government agency and instrumentality obligations. Securities issued or guaranteed by U.S. Government agencies, instrumentalities or sponsored enterprises, with the implicit guarantee of the U.S. Government.
- (3) Obligations of state and local governments, school districts and public authorities which are rated in the top three rating categories by a nationally recognized rating agency.
- (4) Accounts of deposit at federally-insured financial institutions (includes, but is not limited to savings accounts and checking accounts).
- (5) Money market funds, mutual funds, and similar funds whose portfolios consist solely of allowed investments.
- (6) Commercial paper rated not less than A-1, P-1, F-1, also known as "prime" quality, or equivalent by a nationally recognized rating agency.
- (7) Repurchase agreements and forward delivery/purchase agreements whose underlying purchased securities and/or collateral consist of allowed investments described in subsections (1) or (2) of this section with a provider rated, or whose obligations under the agreement are guaranteed by a financial institution rated, in either of the two highest rating categories by a nationally recognized rating agency.

- (8) The "short-term investment fund" or other similar pooled funds maintained by the treasurer of the state.
- (9) Any other investment specifically authorized by ordinance allowing the issuance of bonds or other securities or by an indenture or escrow agreement relating to bonds or other securities.
- (10) Money identified as long-term (money available for investment for more than one year) may be invested in the pools of the New Mexico State Investment Council (SIC). The identified money, specific pools, diversification, and the proposed investment shall be reviewed and approved by the city council no less than once a year.

(Ord. No. 2244, § II, 11-21-05)

Sec. 2-1209. Security for deposits of public money.

Deposit of public money pursuant to subsection 2-1208(4) shall be secured in compliance with applicable state law.

(Ord. No. 2244, § II, 11-21-05)

Sec. 2-1210. Safekeeping of securities.

- (a) No city funds to be invested in negotiable securities shall be paid out unless there is a simultaneous transfer of securities either by physical delivery or, for uncertificated securities, by appropriate book entry to the city or to a third-party safekeeping financial institution acting as agent or trustee for the city, which agent or trustee shall furnish timely confirmation to the city.
- (b) Notwithstanding subsection (a) of this section, securities may be held in street name with an SIPC insured broker or dealer at a level not to exceed the amount of the SIPC insurance plus any insurance provided by an insurance company which has received an A+ rating by A.M. Best and Company.

(Ord. No. 2244, § II, 11-21-05)

Sec. 2-1211. Quarterly reports.

The investment officer shall prepare a quarterly report of the status of the city's investment fund. The report shall include the fund performance for the quarter and a breakdown by type of securities in the portfolio at the end of the quarter as well as current book and market values.

(Ord. No. 2244, § II, 11-21-05)

Sec. 2-1212. Investment adviser.

The city may engage the services of an external investment adviser to assist with the management of the city's investment portfolio in a manner that is consistent with the city's investment policy. The city will retain and act with full discretion on all investment decisions. The adviser must be registered under the Investment Advisers Act of 1940.

Sec. 2.1213. Internal controls.

The investment officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the city are protected from loss, theft or misuse.

Secs. 2-1214—2-1240. Reserved.

PART II - MUNICIPAL CODE
Chapter 2 - ADMINISTRATION
ARTICLE V. - FINANCE
DIVISION 2. INVESTMENT POLICY

DIVISION 2. INVESTMENT POLICY¹

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Investment officer means the finance director or ~~his~~ designee.

Liquidity means the ease at which a balance can be converted to cash, or at which a security can be bought or sold in the market.

Market average rate of return means the 3-Month Treasury Bill rate.

Material interest means any financial interest that may, or may appear to, influence ~~our~~ judgment.

Portfolio means a collection of securities held by an individual or institution.

Short-term investment fund means a fund that invests in short-term money market investments of high quality and low risk.

SIPC means Security Investor Protection Corporation.

Yield means the annual rate of return on an investment, expressed as a percentage of the investment.

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 - (2) Liquidity. The investment portfolio shall remain sufficiently liquid to meet all operating requirements.
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- (c) The standard of prudence to be applied by the investment officer shall be the prudent investor rule, which is: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment considering the probable safety of their capital as well as the probable income to be derived." The prudent investor rule shall be applied in the context of managing the overall portfolio.
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- (2) United States Government agency and instrumentality obligations. Securities issued or guaranteed by U.S. Government agencies, instrumentalities or sponsored enterprises, with the implicit guarantee of the U.S. Government.
- (3) Obligations of state and local governments, school districts and public authorities which are rated in the top three rating categories by a nationally recognized rating agency.
- (4) Accounts of deposit at federally-insured financial institutions (includes, but is not limited to savings accounts and checking accounts).
- (5) Money market funds, mutual funds, and similar funds whose portfolios consist solely of allowed investments.
- (6) Commercial paper rated not less than A-1, P-1, F-1, also known as "prime" quality, or equivalent by a nationally recognized rating agency.
- (7) Repurchase agreements and forward delivery/purchase agreements whose underlying purchased securities and/or collateral consist of allowed investments described in subsections (1) or (2) of this section with a provider rated, or whose obligations under the agreement are guaranteed by a financial institution rated, in either of the two highest rating categories by a nationally recognized rating agency.

- (8) The "short-term investment fund" or other similar pooled funds maintained by the treasurer of the state.
- (9) Any other investment specifically authorized by ordinance allowing the issuance of bonds or other securities or by an indenture or escrow agreement relating to bonds or other securities.
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(Ord. No. 2244, § II, 11-21-05)

Sec. 2-1212. Investment adviser.

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Secs. 2-121~~42~~—2-1240. Reserved.