

SPECIAL CITY COUNCIL MEETING AGENDA

Friday, June 5, 2020 at 9:30 AM

Mayor
Ken Miyagishima

Mayor Pro-Tem
Kassandra Gandara

Councilors
Tessa Abeyta-Stuve
Gabriel Vasquez
Johana Bencomo
Gill Sorg
Yvonne Flores



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

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

**Individuals may view meetings live at
lascruces.civicweb.net**

The health, safety and well-being of our residents and businesses are a top priority for City Council and the leadership in Las Cruces. As such, and consistent with and in support of the direction from Gov. Michelle Lujan Grisham and the New Department of Health public health order the Special Council Meeting will be held via video conference. In an effort to seek public input we ask that if you have comments/concerns/questions please e-mail your Councilor as follows:

District 1 – kgandara@las-cruces.org
District 2 – tstuve@las-cruces.org
District 3 – gvasquez@las-cruces.org
District 4 – jbencomo@las-cruces.org
District 5 – gsorg@las-cruces.org
District 6 – yflores@las-cruces.org
Mayor – mayor@las-cruces.org

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).

Page

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

2. **COVID-19 UPDATE**

3. **RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION**

- 3.1. RESOLUTION NO. 20-166: A RESOLUTION AUTHORIZING AN AMENDMENT TO CITY OF LAS CRUCES CONTRACT NO. 20-690-3200-16732-A WITH FAMILIES AND YOUTH, INC. OF LAS CRUCES, NEW MEXICO FOR AN INCREASE OF \$42,480 FOR ADDITIONAL SERVICES TO THE JUVENILE CITATION PROGRAM FOR THE PARKS AND RECREATION DEPARTMENT FROM APRIL 1, 2020 TO JUNE 30, 2020 (PROCUREMENT NO. 19-20-139).

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[Resolution No. 20-166 - Pdf](#)

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

- 4.1. COUNCIL BILL NO. 20-042; ORDINANCE NO. 2934: AN ORDINANCE

26 - 31

AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE IV "FACE COVERINGS IN RETAIL AND COMMERCIAL BUSINESSES," SECTIONS 9-42 THROUGH 9-46.

[Ordinance No. 2934 - Pdf](#)

5. **OLD BUSINESS**

- 5.1. COUNCIL BILL NO. 20-037; ORDINANCE NO. 2929: AN EMERGENCY ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE IV "FACE COVERINGS," SECTIONS 9-42 THROUGH 9-46. 32 - 37

[Ordinance No. 2929 - Pdf](#)

6. **ADJOURNMENT**

**20-166****Type of Action:**☒ **Resolution**☐ **Ordinance**☐ **TIDD Resolution**

Council Action and Executive Summary

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6
1st Reading:	Adopted: June 5, 2020
Drafter: Donny Prosis	Department: Financial Services
Program: Purchasing	Line of Business: Procure-to-Pay

Title: A RESOLUTION AUTHORIZING AN AMENDMENT TO CITY OF LAS CRUCES CONTRACT NO. 20-690-3200-16732-A WITH FAMILIES AND YOUTH, INC. OF LAS CRUCES, NEW MEXICO FOR AN INCREASE OF \$42,480 FOR ADDITIONAL SERVICES TO THE JUVENILE CITATION PROGRAM FOR THE PARKS AND RECREATION DEPARTMENT FROM APRIL 1, 2020 TO JUNE 30, 2020 (PROCUREMENT NO. 19-20-139).

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

PURPOSE(S) OF ACTION:

To authorize an amendment to City contract No. 20-690-3200-16732-A.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On August 19, 2019, City Council approved Resolution No. 20-026 for the acceptance of various grant awards for various City departments through an amendment to the City's adopted Fiscal Year 2020 (FY20) budget. The grant acceptance approval authorized an agreement between the City and the State of New Mexico's Children, Youth & Families Department to improve the State of New Mexico's Juvenile Justice System by decreasing the incidences of juvenile delinquency in the community while increasing the emphasis on prevention and early intervention in juvenile justice services in the amount of \$309,811. This \$309,811 is to be spent on the Juvenile Citation Program (JCP) in the amount of \$253,811.00; and the Juvenile Assessment Reporting Center (JARC) in the amount of \$56,000.00.

The City awarded a contract to Families and Youth, Inc. (FYI) of Las Cruces, New Mexico with a total not to exceed \$56,000.00 to provide JARC services including a continuum of cost-effective services and temporary, non-secure alternatives to detention for youth who have been arrested or referred to the juvenile probation office or are at risk of such referral. The City will not utilize all the funding allotted for JCP in FY20 and requests that budgeted amount be added to the FYI contract for the JARC to ensure all grant funds are expended prior to the grant termination date of June 30, 2020. The additional \$42,480.00 requested will provide a sufficient contract amount for the additional services for the JARC through the end of the fiscal year.

SUPPORT INFORMATION:

[19-20-139 Contract Amendment 20-690-3200-16732-A](#)

[BAR Request Approved with Justification FY20](#)

[Families & Youth, Inc. Agreement 20-690-3200-16732-A](#)

ANNUAL BUDGET APPROVAL:

☐ Yes

☐ No

Agenda Item #3.1.

☒ N/A

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
\$286,451.00	\$230,451.00	\$42,480.00

Additional Budgetary Information:	Funding Source(s):
Budget line item accounts for the FY20 NM CYFD grant agreement in the Other Operating Grant Fund (#2100) for Project code # 11850 will be adjusted to accomodate the additional funding to FYI in Purchased Services, and decrease the amount utilized by JCP for salaries and other expenses.	20552002-721080-11850

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

- ☐ Yes
- ☐ No
- ☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and an amendment to contract No. 20-690-3200-16732-A.
2. Vote "No"; this will not approve the Resolution, nor the amendment to contract No. 20-690-3200-16732-A.
3. Vote to "Amend"; this could modify the Resolution based on direction by Council to staff.
4. Vote to "Table"; this will delay authorization of the amendment, preventing the additional services to the Juvenile Citation Program.

RESOLUTION 20-166

A RESOLUTION AUTHORIZING AN AMENDMENT TO CITY OF LAS CRUCES CONTRACT NO. 20-690-3200-16732-A WITH FAMILIES AND YOUTH, INC. OF LAS CRUCES, NEW MEXICO FOR AN INCREASE OF \$42,480 FOR ADDITIONAL SERVICES TO THE JUVENILE CITATION PROGRAM FOR THE PARKS AND RECREATION DEPARTMENT FROM APRIL 1, 2020 TO JUNE 30, 2020 (PROCUREMENT NO. 19-20-139).

The City Council is informed that:

WHEREAS, on August 19, 2019, City Council approved Resolution No. 20-026 for the acceptance of various grant awards for various City departments through an amendment to the City's adopted Fiscal Year 2020 (FY20) budget; and

WHEREAS, the grant acceptance approval authorized an agreement between the City and the State of New Mexico's Children, Youth & Families Department to improve the State of New Mexico's Juvenile Justice System by decreasing the incidences of juvenile delinquency in the community while increasing the emphasis on prevention and early intervention in juvenile justice services in the amount of \$309,811, to be spent on the Juvenile Citation Program (JCP) in the amount of \$253,811.00; and the Juvenile Assessment Reporting Center (JARC) in the amount of \$56,000.00; and

WHEREAS, the City awarded a contract to Families and Youth, Inc. (FYI) of Las Cruces, New Mexico with a total not to exceed \$56,000.00 to provide JARC services including a continuum of cost-effective services and temporary, non-secure alternatives to detention for youth who have been arrested or referred to the juvenile probation office or are at risk of such referral; and

WHEREAS, the City will not utilize all the funding allotted for JCP in FY20 and requests that budgeted amount be added to the FYI contract for the JARC to ensure all grant funds are expended prior to the grant termination date. The additional \$42,480.00 requested will provide a sufficient contract amount for the additional services for the JARC through June 30, 2020.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Las Cruces:

(I)

THAT an amendment to Contract No. 20-690-3200-16732-A in the amount of \$42,480.00 is authorized, increasing the not to exceed amount to \$98,480.00 annually through June 30, 2020.

(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

Mayor

ATTEST:

City Clerk

Moved by:

Seconded by:

AYES

NAYS



AMENDMENT NO. 1

CLC No. 20-690-3200-16732-A Juvenile Citation Program

This amendment, made this _____ day of June, 2020 by and between the CITY OF LAS CRUCES and Families and Youth, Inc. of 1320 S. Solano Dr., Las Cruces, NM 88001.

WITNESSETH

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated August 27, 2019, the parties hereby agree as set forth below:

The following provisions are added:

1. ARTICLE III. Limitation of Cost is amended to a total amount of monies payable to the Contractor under this Agreement shall not exceed NINETY-EIGHT THOUSAND, FOUR HUNDRED EIGHTY DOLLARS AND ZERO CENTS (\$98,480.00).

Subject to the modifications set forth in this amendment, the above referenced original agreement dated August 27, 2019 between the parties is hereby ratified and confirmed.

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

FAMILIES AND YOUTH, INC

CITY OF LAS CRUCES

BY: _____
Name
Title

BY: _____
Chenyu "Alex" Liu
Purchasing Manager

Date

Date

APPROVED AS TO FORM

City Attorney

April 28, 2020

Y-20-257

Cindy Varela, Grant Management Unit Manager
CYFD
1120 Paseo De Peralta
Santa Fe, NM 87502

Subject: Budget Adjustment Request

Dear Ms. Varela,

The City of Las Cruces Continuum is requesting a budget adjustment due to the following:

A reduction in referrals from the Juvenile Probation Office for JCP Levels I, II, and Level III which is reflective of a continuous trend over the last 3 years. As part of another important initiative for youth in this area, the JPO implemented a new process for substance abuse, which emphasizes prioritizing those youth to attend counseling/rehabilitation in lieu of the JCP.

Second, a new target population of at-risk youth was identified by the continuum that involved a partnership with Las Cruces Public Schools and the Community School Program. However, due to the COVID-19 restriction this was put on hold.

Third, the COVID-19 restrictions has placed some unforeseen challenges in operating the JCP and JARC. Valuable time was lost in regrouping to establish and implement new methods of conducting sessions for our youth and families. This further impacted our timeline in processing juvenile class 3 citations and scheduling our classes. Despite the challenges and obstacles, the continuum has formulated some new processes, via social distancing communication, and have been able to serve our clients effectively. Both the JARC and JCP has utilized video conferencing and telephone means for the intakes and client sessions. By May 1 the JCP will be conducting full term sessions for all JCP levels.

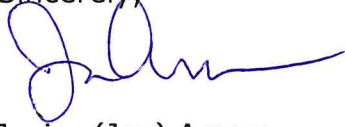
We appreciate the guidance and direction received from the CYFD-JJAC unit in working through these challenging times.

On that note, we would like to move from unspent grant funds \$2,000.00 (JCP 1), \$10,480.00 (JCP 2), and \$30,000 (JCP 3)—total of \$42,480 to the JARC. Of that total \$42,480, \$42,000 would be moved to the JARC (case management) and the

Agenda Item #3.1.

remaining \$480 to (intake). The JARC currently has exhausted all original funds and continues to experience a case management flow.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jay Amaro', with a stylized flourish extending to the right.

Javier (Jay) Amaro
Juvenile Diversion Program Supervisor/Juvenile Citation Program/Youth Services
575-541-2349, jamaro@las-cruces.org

cc: Robert Nunez, Recreation Services Administrator
cc: Sonya L. Delgado, Parks & Recreation Director

CHILDREN, YOUTH and FAMILIES DEPARTMENT BUDGET, PROGRAM and UNIT ADJUSTMENT FORM

Adjustment No.: 1 ☒ Budget Revision
 Date: 4/21/2020 ☒ Program Funds
 Grantee Name: City of Las Cruces ☐ Match Funds
 Contract No.: 20-16732 ☐ Component Adjustment
 Program Name: Juvenile Citation Program - City of Las Cruces ☐ Project Description Revision
☐ Project Schedule Revision

* Use only whole numbers

Line Item Appropriation	Existing Budget	Increase	Decrease	Amended Budget
Continuum Coordinator	\$22,360.00			\$22,360.00
Travel	\$1,000.00			\$1,000.00
Youth Sub Committee	\$300.00			\$300.00
4% Admin	\$11,916.00			\$11,916.00
JCP II Assessment	\$17,100.00		\$2,480.00	\$14,620.00
Intake	\$10,280.00			\$10,280.00
Class	\$36,000.00		\$4,000.00	\$32,000.00
Final Client Report	\$21,125.00			\$21,125.00
Follow-Up	\$42,000.00		\$4,000.00	\$38,000.00
JCP I Assessment	\$7,800.00		\$2,000.00	\$5,800.00
Intake	\$4,680.00			\$4,680.00
Class	\$3,600.00			\$3,600.00
Final Client Report	\$8,450.00			\$8,450.00
Follow-Up	\$4,500.00			\$4,500.00
JCP III Assessment	\$3,000.00			\$3,000.00
Intake	\$1,800.00			\$1,800.00
Class	\$36,000.00		\$18,000.00	\$18,000.00
Final Client Report	\$3,900.00			\$3,900.00
Follow-Up	\$18,000.00		\$12,000.00	\$6,000.00
JARC Intake	\$8,000.00	\$480.00		\$8,480.00
Case Management	\$48,000.00	\$42,000.00		\$90,000.00
Totals:	\$309,811.00	\$42,480.00	\$42,480.00	\$309,811.00

*Cannot Decrease under \$300.00

Justification:

Continue on a separate page...

I certify the above is required for efficient program operation

Authorized Signature:

Title:

Date:

[Signature] Continuum Coordinator 4/28/20

Authorized Signature:

Title:

☒ Approved

Date:

Grants Management Unit Manager

☐ Disapproved

05/01/2020

Contract Agreement

THIS AGREEMENT is made and entered into by and between the **City of Las Cruces**, a government entity, hereinafter referred to as the "Agency," and **Families & Youth, Inc.**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Agency.

WHEREAS, the Agency is the governmental entity designated to receive and administer State funds from the State of New Mexico Children, Youth and Families Department and the Agency desires to engage and the contractor is willing to provide certain portions of the services outlined pursuant to Article II - Scope of Work.

NOW THEREFORE, the Agency and the Contractor in consideration of mutual covenants and agreements herein contained, do hereby agree as follows:

ARTICLE I. Term of Agreement

THIS AGREEMENT SHALL BECOME EFFECTIVE UPON WHICH IT IS EXECUTED BY AGENCY. This Agreement shall terminate on (June 30, 2020) unless terminated pursuant to Article VI (Termination of Agreement), or Article XXIII (Appropriations). The City of Las Cruces does hereby acknowledge and ratify the acts of performance by Contractor of their commencement of performance on July 1, 2019.

ARTICLE II. Scope of Work

The Contractor shall provide the program of services as set forth in the scope of work which is attached hereto as "Attachment 1 — Scope of Work", and incorporated herein by reference, unless amended or terminated pursuant to Article VI (Termination of Agreement), or Article XXIII (Appropriations), infra. In consideration for the provision of those services, the Agency agrees to purchase, and the Contractor agrees to perform the services identified in the Scope of Work for the Juvenile Assessment and Reporting Center and further detailed in Attachment 2 – Services to be Provided and Budget, Families & Youth, Inc.

ARTICLE III. Limitation of Cost

The total amount of the monies payable to the Contractor under this Agreement shall not exceed FIFTY-SIX THOUSAND DOLLARS AND ZERO CENTS (\$56,000.00). The annual budget is attached hereto as "Attachment 2 — Services to be Provided and Budget" and incorporated herein by reference.

ARTICLE IV. Payment

The Agency shall make monthly payments to the Contractor for services and costs specified in Attachment 2 - Budget. The Contractor shall submit certified and documented invoices and vouchers monthly for actual work performed and expenses incurred to the Agency. The Contractor's failure to submit such payment vouchers, invoices, and supporting documentation within ten (10) days, or any adjusted deadline due to requirements from NM Children, Youth and Families Department, after they are due may result in the non-availability of funds for payment and/or the denial of payment by the Agency.

ARTICLE V. Return of Funds

Upon termination of this Agreement, or after the services provided for herein have been rendered, surplus money, if any, shall be returned by the Contractor to the Agency.

ARTICLE VI. Termination of Agreement

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice: Agency Opportunity to Cure.

1. Except as otherwise provided in Article (VI)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Article XXIII, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES USED BY THE CONTRACTORS DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

ARTICLE VII. Funds Accountability

The parties shall provide for strict accountability of all monies made subject to this Agreement. The Contractor shall maintain fiscal records, follow generally accepted accounting principles, and account for all receipts and disbursements of funds transferred to the Contractor pursuant to this Agreement. The Contractor will include all monies made subject to this Agreement in the annual audit and will provide the Agency with a copy of the annual audit.

ARTICLE VIII. Maintenance of Records

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

The Contractor agrees to allow the Agency and/or the NM Children, Youth & Families Department, to conduct reviews, audits or other inspection of records at any point during the contract period and/or the period of retention.

ARTICLE IX. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

ARTICLE X. Amendments

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article VI herein, or to agree to the reduced funding.

ARTICLE XI. Assignment

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

ARTICLE XII. Applicable Law

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with

Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

ARTICLE XIII. Acquisition of Property

The parties agree that neither party shall acquire any property as the result of this Agreement.

ARTICLE XIV. Liability

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation or requirements applicable to the performance of the Agreement. Each party shall be liable for its actions according to this Agreement subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et. seq., NMSA 1978, as amended.

The Contractor agrees to carry general liability, professional liability, and auto insurance, or the equivalent coverage of, with the City of Las Cruces named as an additional insured in the amounts of \$1,000,000 per occurrence. Provide proof of coverage to the City of Las Cruces within 60 days of the execution of this agreement.

ARTICLE XV. Execution of Documents

The Agency and the Contractor agree to execute any document(s) necessary to implement the terms of this Agreement.

ARTICLE XVI. Sub-Contracts

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval by the City of Las Cruces, who is required to receive prior written approval from the CYFD Secretary or Designee. No such subcontract shall relieve the primary Contractor from any obligations and liabilities under this Agreement, nor shall subcontract obligate direct payment from the Procuring Agency. Contractor must notify subcontractors that they are subject to Article VIII - Maintenance of Records of this agreement.

ARTICLE XVII. Equal Opportunity Compliance

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to follow these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

ARTICLE XVIII. Workers' Compensation

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

ARTICLE XIX. Lobbying Certification

The Contractor, by signing below, certifies to the best of his/her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid by or on the behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. 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 a Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of facts 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.C. (United States Code). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

ARTICLE XX. New Mexico Employees Health Coverage

(Governmental entities are excluded from this provision)

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2018 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwnewmexico.state.nm.us/>.

ARTICLE XXI. Background Checks

CYFD contractors that have or could have primary custody of children for at least twenty hours per week are required to comply with NMAC 8.8.3 et. seq. requiring background checks on any employee, staff, volunteer or student intern, that has direct care responsibilities or potential unsupervised physical access to clients. The contractor must submit to CYFD Background Check Unit fingerprint cards and the appropriate fee for such employees, volunteers or staff required to have background checks. CYFD Background Check Unit will conduct nationwide, state and abuse and neglect background checks on required staff or volunteers in accordance with NMAC 8.8.3 standards. A CYFD eligibility letter must be in the employee, volunteer or staff member's personnel file prior to that individual having any unsupervised direct contact or unsupervised potential access to clients.

ARTICLE XXII. Health Insurance Portability and Accountability Act of 1996

The Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996.

ARTICLE XXIII. Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

ARTICLE XXIV. Suspension and Debarment Form

The Contractor agrees to comply with the guidelines set for the in the Suspension and Debarment Form available from CYFD.

IN WITNESS WHEREOF, the Agency and the Contractor have caused this Agreement to be executed, said Agreement to become effective as of the date set forth below upon which it is executed by Agency Secretary or Designee.

Contractor
Families & Youth, Inc.

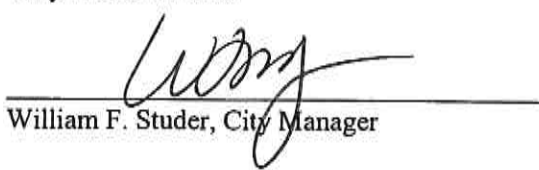

Authorized Signatory

8.27.19
Date

CEO
Printed Title of Authorized Signatory

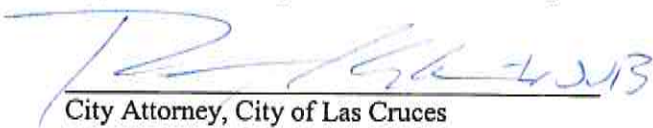
Legal Counsel, Contractor

Agency
City of Las Cruces


William F. Studer, City Manager

8-27-19
Date

Approved as to legal form and sufficiency


City Attorney, City of Las Cruces

08.07.2019
Date

Attachment 1 — Scope of Work

City of Las Cruces

Goal:

To improve the Juvenile Justice System and decrease the incidences of juvenile delinquency in the community while increasing the emphasis on prevention and early intervention in juvenile justice services.

Objective:

To provide a continuum of cost-effective services and temporary, non-secure alternatives to detention for youth who have been arrested or referred to the juvenile probation office or are at risk of such referral.

Activities:

The Contractor shall:

1. Provide the services as defined in Attachment 2 – Services to be Provided and Budget. Any changes or modifications to the services to be provided, hours of operation, or manner in which the services will be provided must be approved by the Agency at least sixty (60) days in advance of any proposed change. At the Agency's discretion, any proposed changes may be brought to the Doña Ana County Juvenile Justice Continuum Board for review and approval. No changes may be implemented by the Contractor until final approval is given by either the Agency or the Continuum Board.
2. Submit to the Agency's Program Manager monthly requests for reimbursement. Such requests will be submitted on Agency Program Invoice and Expenditure Report forms, signed and dated by an authorized agent of the Contractor, to ensure that requests for reimbursement are submitted by the due date of the ten (10) day of the following month, unless otherwise approved by the Agency's Program Manager, in advance;
3. Provide data reports as required by the Agency, NM Children, Youth & Families Department, and/or the federal government, corresponding to the activities described in this Scope of Work. The Agency's Program Manager will provide the data report format. Programmatic data reports will be submitted monthly to the Agency and must accompany the monthly invoice. Failure to submit such programmatic data and financial reports may result in notice to the Contractor of non-availability of funds and/or the denial of payment by the Agency.
5. Provide the Agency standardized progress reports monthly;
6. Submit to the Agency a written "Final Report" prior to the termination of this Agreement and such other reports deemed necessary by the Agency. The Final Report shall contain at a minimum, but not be restricted to:
 - a. a year plan for sustainability of programs/services;
 - b. accomplishments/milestones achieved during this Agreement period;
 - c. statements regarding achievements, obstacles and progress made regarding the performance measures and related outcomes; and

- d. continuing development and improvement of the Comprehensive Strategic Plan for a continuum of detention alternative program and services.
- 7. Attend meetings as required by the Agency.

Duties and Responsibilities:

The Contractor shall:

- A. Ensure that they meet all goals and objectives and completes activities as specified in this contract and in compliance with all applicable state and federal laws.
- B. The Contractor agrees that funds received under this award will not be used to supplant state or local funds but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for program activities.
- C. The Contractor understands that the Agency reserves the right to conduct periodic on-site monitoring visits upon reasonable notice to the Contractor and sub-contractors prior to each visit.
- D. The Contractor understands that it will be subject to additional financial and programmatic on-site monitoring, which may be on short notice, and agrees that it will cooperate with any such monitoring.
- G. The Contractor agrees to demonstrate an emphasis on effective, evidence-based strategies.
- H. Ensure that all programs must commence and be operational within ninety (90) days of the last signatory executing this Agreement. If the Contractor's program has not commenced or is not operational within that timeframe, the Contractor must report in writing to the Agency the steps taken to initiate the program, the reasons for the delay, and the expected starting date prior to the end of the ninety (90) days. If this justification is not received prior to the end of the ninety (90) days, the Contractor's program, at the Agency's discretion, may be terminated and the funds allocated to that program redistributed to other sites or programs.
- I. Submit reimbursement invoices to the Agency no later than ten (10) days after the end of each month, or prior to any deadline required of the Agency by the NM Children, Youth & Families Department. At a minimum, invoice documentation must include:
 - 1. The approved Agency's Program Invoice and Expenditure Report forms; and
 - 2. Any supporting documentation the Agency requires to verify the expense. This includes, but is not limited to invoices, receipts, time sheets, payroll registers, general ledger account reports, and proof of payment.

3. Any supporting documentation the Agency requires to verify the required in-kind match amount. This includes, but is not limited to invoices, receipts, time sheets, payroll registers, general ledger account reports, and proof of payment.
- J. Submit monthly programmatic data reports no later than ten (10) days after the end of each month. The submission of all reports is to be in the Agency provided form and format and is unacceptable in any other formats or handwritten.
- K. Submit a final closeout report outlining all accomplishments, measurement of goals and objectives, and barriers to successful implementation or completion of this program within ten (10) days of the termination date of this Agreement. The submission of all reports is to be in the Agency provided form and format and is unacceptable in any other formats or handwritten.
- L. The Contractor agrees to comply with all additional reporting requirements or informational requests imposed by the Agency, NM Children, Youth & Families Department, Department of Justice, Office of Justice Programs, or the New Mexico Legislature. The Agency will notify the Contractor of any additional reporting requirements as they are imposed.
- M. Communication and details concerning this Agreement shall be directed to the following representative:

Agency

Contractor

Javier Amaro, JCP Supervisor
City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
575-541-2349
jamaro@las-cruces.org

Brian Kavanaugh, CEO
Families & Youth, Inc.
1320 S. Solano, Dr.
Las Cruces, NM 88001
575-556-1623
bkavanaugh@fyinm.org

- N. The Contractor's obligation to the Agency shall not end until all close out requirements are completed. Activities during this period shall include, but are not limited to making final payments, disposing of program assets (including the return of all unused materials, equipment, program income balances, and accounts receivable to the Agency), performance measurement reports and determining the custodianship of records.
- O. The Contractor shall obtain written approval from the Agency for any travel outside the State of New Mexico with funds provided under this Agreement. Per Diem and mileage, and other miscellaneous expense, will be paid in accordance with the Department of Finance and Administration (DFA) Rule 2.42.2 NMAC. The request will be in the Agency provided form and format.
- P. The Contractor will include all applicable provisions of this Agreement in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own sub-contractors.

- Q. The Contractor, as well as all sub-contractors, is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.
- R. The Contractor agrees to comply with applicable restrictions on sub-contracts that do not acquire and provide a Data Universal Numbering System (DUNS) number. This special condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).
- S. The Contractor agrees that award funds may not be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. This restriction does not apply to the use of funds for any federal, state, tribal or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities. Any such activity funded under this Agreement must be reported to the Agency immediately.
- T. The Contractor is encouraged to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this contract, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers, as pursuant to Executive Order 13513. "Federal Leadership on Reducing Text Messaging While Driving", 74 Fed. Reg. 51225 (October 1, 2009).
- U. The Contractor understand and agrees that any training or training materials developed or delivered with funding provided under this contract must adhere to the Office of Justice Programs Training Guiding Principles for Grantee and Subgrantees, available at <http://www.ojp.usdoj.gov/funding/ojptrainingguidingprinciples.htm>.
- V. Mandatory Reporting Information: Under New Mexico law, all persons are mandatory reporters of suspected abuse or neglect of children. If the contractor suspects abuse or neglect in the audited facilities, the contractor must contact the New Mexico Statewide Central Intake Hotline (SCI) at 1-855-333-SAFE or #SAFE from a cellphone.

The Agency shall:

- A. Reimburse Contractor for verified services provided and incurred costs as stated in Attachment 2 — Services to be Provided and Budget.
- B. Provide information and/or make referrals for training and technical assistance.
- C. Based on periodic program and fiscal reviews, the Agency retains the sole discretion to reduce the budget of Contractors who do not provide sufficient services, do not submit the required programmatic and financial reports as required, or do not expend funds under this Agreement in a timely manner. The Agency retains the sole discretion to reduce contract amount and reallocate the resulting funds to a Contractor that is able to provide the required services during the contract period. Additionally, any funds not used per the budget as stated in Attachment 2 — Budget shall revert unless otherwise allowed by the Agency in writing.

D. The Agency will review:

1. Sub-contracts and programs for accomplishment of Outcomes and Performance Measures as set forth in this Agreement.

Data Collection:

As a condition of funding, the Contractor agrees to report, at minimum, the following demographics, core measures and performance measurements. Demographics:

- A. City, State and Zip Code for each youth served;
- B. Race/Ethnicity;
- C. Population Served:
 1. At-Risk Youth;
 2. First Time Offender;
 3. Repeat Offender;
 4. Sex Offender;
 5. Status Offender; and
 6. Violent Offender.
- D. Youth Currently in Detention;
- E. Gender:
 1. Male;
 2. Female; or
 3. Transgender.
- F. Age;
- G. Geographic Location:
 1. Urban;
 2. Tribal;
 3. Rural; or
 4. Frontier.
- H. Other Population Information:
 1. Mental Health;
 2. Substance Abuse;
 3. Truant/Dropout; or
 4. Pregnant.

Core Measures:

- A. New youth admissions during this reporting period;
- B. Number of program youth carried over from previous reporting period;
Total number of youth in the program
- C. Total number of youth who exited the program during the reporting period;
- D. Number of youth who exited the program having completed the program requirements during the reporting period;
- F. Percent of youth who successfully completed the program;

- G. How many youth is your program designed to serve;
- H. Number of current program youth who had an arrest during the reporting period;
- I. Number of current program youth who were committed to a juvenile facility during the reporting period;
- J. Number of program youth who had a re-arrest during the reporting period;
- K. Number of program youth who were re-committed during the reporting period;
- L. Number of program youth who were re-sentenced/received a subsequent consequence during the reporting period;
- M. Number of program youth with gang activity;
- N. Number of program youth who reported being satisfied with the program; O. Total number of program families; and
- P. Number of program families who report being satisfied with the program.

CYFD Performance Measures:

- A. Alternatives to Detention:
 - 1. Number of detention alternative program options;
 - 2. Number of program youth receiving risk assessments (RAI); and
 - 3. Number of program youth who return to all scheduled hearings.

Program Specific Performance Measures:

D. JARC:

- 1. The JARC provides for comprehensive assessment and case management services for youth 10-17 years of age who have either been cited for an offense or exhibit behaviors consistent with receiving a citation.
- 2. The JARC will provide staff resources to respond to incidents from referral sources, to include police and JPO, 24 hours a day with the ability to provide full JIFF assessments within 24 hours of the time contacted.
- 3. Case Management services and reasonable follow-up services will be provided to the youth not referred to the JCP programs, with ninety (90) percent of those youth participating in evidence-based program services offered within the community.
- 4. Referrals to one of the three (3) Juvenile Citation Program (JCP) levels will occur fifty (50) percent of the time.
- 5. The JARC processes juvenile citation referrals to JPO within 48 hours to assist in reducing the number of youths who fail to appear at JPO to address delinquency referrals.
- 6. The JARC will maintain on one hundred (100) percent of the youth it serves all information required to meet the grant requirements, including referral information to evidence-based programs and other information as required by the City or NMCYFD.

PULL TOGETHER

1. If Contractor's information is on PULLTOGETHER.org, Contractor is responsible for ensuring that their contact information is current on the website. Updated information may be sent to info@pulltogether.org.
2. If Contractor's information is not on PULLTOGETHER.org and they would like to request that their information be on the website, please send a request to info@pulltogether.org.
3. If printed materials or printed items are purchased utilizing funds under this contract, those items will be on a Pull Together template or have the Pull Together logo. To obtain the template or logo please email info@pulltogether.org.
4. Contractor is responsible for reaching out to three other non-profits or organizations in their area that are serve child and families to discuss how to better collaborate and deliver services in a coordinated manner. A list of non-profits or organizations may be found on PULLTOGETHER.org.

Attachment 2 — Services to be Provided & Budget

City of Las Cruces

Provide services to the City of Las Cruces Juvenile Citation Program (JCP) through the Juvenile Assessment and Reporting Center (JARC) as operated by Families and Youth, Inc. (FYI). JARC aims to identify and responsively intervene in patterns of negative behavior of at-risk youth and system-involved youth. The JARC will provide an immediate, informed and concentrated response to youth. JARC will have staff available to provide services during specific hours as agreed to between the Contractor and the Agency. FYI will be reimbursed for the services provided to JCP as described below and at a rate defined by the Agency through the NM Children, Youth & Families Department annual operating grant. FYI will provide the necessary in-kind match requirement as defined below.

- 1. Intake: The intake process is the initial meeting with the youth during which the case manager gathers information to address the immediate and presenting needs to encourage their engagement and retention. Youth referred to JARC will complete the self-administered Juvenile Inventory for Functioning (JIFF), a hands-on, interactive computerized assessment inventory. The JIFF is empirically-based, developed, and validated means of assessment that asks questions spanning across ten (10) life domains (subscales) important to youth functioning, interest, and strengths-based coping skills: schools, peer relations, compliance at home, family environment, peer influences, unsafe community behaviors, feelings, self-harm potential, substance use and health related needs. A priority needs assessment is generated from the information gathered on the JIFF, and the results assist staff in directing each youth toward the appropriate supportive services and community resources. The JARC will provide a monthly report on the services provided to youth during the overnight hours of 10:00pm to 8:00am to allow for assessment of needs.

Payment will be made based on completed JIFF assessment or service plan:
Based on 200 youth: Intake @ \$40.00/each \$8000.00

- 2. Case Management: Integrated case management services are crucial in order to coordinate and monitor multiple systems of response and services from the time of the initial referral through the provision of services and follow-up. Case management services ensure youth receive JARC services, and those services are coordinated through the JARC, in a timely, appropriate, efficient, and effective manner.

Payment will be for case management of unduplicated youths:
Based on 1200.00 hours Youth Case Management @ \$40.00 \$48,000.00

- 3. In-Kind Match Requirement: As a subcontractor for the JCP program, FYI is required to provide a minimum 40% in-kind match for the total amount of the subcontract:

In-Kind Match 40%: \$22,400

- 4. Submit the following monthly programmatic data reports: youth registry, activity log, invoice, and supplemental JARC report no later than Five (5) business days after the end of each month. The submission of all reports is to be in the Agency and City provided form and format.


**2934; Council
Bill 20-042**

Council Action and Executive Summary

Type of Action:
☐ Resolution

☒ Ordinance

☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6		
1st Reading:	June 5, 2020	Adopted:	June 19, 2020
Drafter:	Barbara DeLeon	Department:	City Manager's Office
Program:	Council Support	Line of Business:	Council Support
Title:	AN ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE IV "FACE COVERINGS IN RETAIL AND COMMERCIAL BUSINESSES," SECTIONS 9-42 THROUGH 9-46.		

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

PURPOSE(S) OF ACTION:

To approve an ordinance.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 11, 2020, New Mexico Governor Michelle Lujan Grisham issued an Executive Order declaring a state of public health emergency and invoked her executive powers as authorized by the All Hazard Emergency Management Act and the Emergency Licensing Act in response to the declared pandemic of the COVID-19 virus. The United States Centers for Disease Control and Prevention ("CDC") and the New Mexico Department of Health have recommended that members of the public, when they need to interact with others outside the home, and especially in setting where many people are present, should cover their mouth and nose to prevent inadvertently spreading COVID-19. One key transmission method for the COVID-19 virus is through respiratory droplets that people expel when they breathe, cough, or sneeze and people can be infected with the COVID-19 virus and be asymptomatic but still be contagious. People can also be infected and contagious 48 hours before developing symptoms when they are pre-symptomatic. Many people have mild symptoms and do not recognize they are infected and contagious, and they can unintentionally infect others.

The Governor, on May 15, 2020, announced the extension of the current public health order and directed businesses to ensure all employees have face coverings or masks and wear them in the workplace at all times when in the presence of others, except when eating, drinking, or exercising, or unless otherwise advised by a health care provider. Individuals also must wear a face covering in public settings, except when eating, drinking, or exercising. Businesses are advised to offer face coverings to customers.

This ordinance requires the use of face coverings by the public in retail and commercial businesses.

ANNUAL BUDGET APPROVAL:

☐ Yes

☐ No

☒ N/A

Agenda Item #4.1.

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

- ☐ Yes
- ☐ No
- ☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote yes, this will approve the Ordinance and require the use of face coverings by the public in retail and commercial businesses.
2. Vote no, this will not approve the Ordinance, and will maintain the requirements of the Governor's Order.
3. Vote to amend, this would allow the City Council to modify the Ordinance.
4. Vote to table, this would postpone consideration of the Ordinance and staff would require further direction from City Council.

ORDINANCE 2934; COUNCIL BILL 20-042

AN ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE IV "FACE COVERINGS IN RETAIL AND COMMERCIAL BUSINESSES," SECTIONS 9-42 THROUGH 9-46.

The City Council is informed that:

WHEREAS, New Mexico Governor Michelle Lujan Grisham, on March 11, 2020, issued an Executive Order declaring a state of public health emergency and invoked her executive powers as authorized by the All Hazard Emergency Management Act and the Emergency Licensing Act in response to the declared pandemic of the COVID-19 virus; and

WHEREAS, the United States Centers for Disease Control and Prevention ("CDC") and the New Mexico Department of Health have recommended that members of the public, when they need to interact with others outside the home, and especially in setting where many people are present, should cover their mouth and nose to prevent inadvertently spreading COVID-19; and

WHEREAS, one key transmission method for the COVID-19 virus is through respiratory droplets that people expel when they breathe, cough, or sneeze and people can be infected with the COVID-19 virus and be asymptomatic but still be contagious; and

WHEREAS, people can also be infected and contagious 48 hours before developing symptoms when they are pre-symptomatic and many people have mild symptoms and do not recognize they are infected and contagious, and they can unintentionally infect others; and

WHEREAS, the New Mexico Department of Health issued a Public Health Emergency Order on May 15, 2020, to require businesses to ensure all employees have face coverings or masks and wear them in the workplace at all times when in the presence of others, except when eating, drinking or exercising, or unless otherwise advised by a health care provider and to require individuals to wear a face covering or mask in public settings except when eating, drinking, or exercising; and

WHEREAS, the City of Las Cruces continues to be supportive and cooperative with the Governor's Executive Orders, state public health orders, and CDC guidance and seeks to enable local enforcement of the crucial preventative measures that may mitigate the spread of COVID-19 and support the gradual limited re-opening of businesses and public life.

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

(I)

THAT the Las Cruces Municipal Code 1997, Chapter 9, "Emergency Management" is hereby amended as reflected below to include Article IV, "Face Coverings in Retail and Commercial Businesses," Sections 9-42 through 9-46, to read as follows:

ARTICLE IV – FACE COVERINGS

Sec. 9-42 – Short title; purpose.

- A. This section may be cited as the Face Coverings Ordinance.
- B. In support of an emergency which has been declared by the City of Las Cruces, the State of New Mexico and/or the Federal Government, and to preserve the peace, health, welfare, and safety in the City of Las Cruces when guidance from the State and Federal government warrants the use of Face Coverings, it is necessary to direct the use of Face Coverings in retail and commercial businesses in the City of Las Cruces.

Sec. 9-43 – Definitions.

Agenda Item #4.1.

Declared emergency

An emergency may be defined as: Public health emergency- an emergency need for health care, medical services, or public health, welfare, or safety initiatives to respond to a disaster, significant outbreak of an infectious disease, bioterrorist attack or other significant or catastrophic event; or Civil emergency- conditions of unrest, including but not limited to riot, civil disturbance, unlawful assembly, hostile military or paramilitary action, war, terrorism, or sabotage. Civil emergency may include actions that evidence mass panic which causes a shortage of basic food, water, health and hygiene products, or other basic life necessities.

Face Covering

Face Covering means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers the nose and mouth and surrounding areas of the lower face. A Face Covering may be factory-made, or may be handmade and improvised from ordinary household materials. The Face Covering should fit snugly but comfortably against the side of the face, include multiple layers of fabric, allow for breathing without restriction, and be able to be laundered and machine-dried without damage or change to shape. Face Coverings need to cover the nose and mouth at all times and should remain in place until take off safely. If a worker's Face Covering moves during work, it needs to be replaced with one that does not need to be frequently adjusted to reduce touching of the face. Face Coverings should be replaced when it becomes dirty, wet, and/or difficult to breathe through.

Note that any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling is NOT a Face Covering under this Order and is NOT to be used to comply with this Ordinance's requirements. Valves of that type permit droplet release from the mask, putting others nearby at risk.

Retail or Commercial Businesses

A retail or commercial business is an entity that distributes goods or provides services to the public and includes, but is not limited to, restaurants, offices, grocery stores and markets, hotels, tour operations, veterinarians, automobile dealerships and services, medical providers, salons, spas, tattoo parlors, gyms, museums and cultural institutions, and casinos.

Sec. 9-44 – Regulations.

- A. Except as specifically exempted below, all members of the public, including children three (3) years of age or older, must wear a Face Covering while they are inside any retail or commercial business.
- B. The above mentioned entities should take reasonable measures, such as posting signs, to remind their customers and the public of the requirement that they wear a Face Covering while inside of or waiting in line to enter the business. Businesses must take all reasonable steps to prohibit any member of the public who is not wearing a Face Covering from entering.
- C. A Face Covering is not required under the following circumstances:
 - a. When eating, drinking, or exercising.
 - b. Any child under the age of three should not wear a Face Mask and parents should seek the advice of a physician.
 - c. Childcare facilities and residential health care, or congregate shelters should follow the recommendations of the CDC and the New Mexico Department of Health.
 - d. When wearing a Face Covering would inhibit the individual's health.

Sec. 9-45 – Penalty.

During a declared emergency, any person who fails to comply with restrictions under Article IV LCMC is guilty of a petty misdemeanor.

Sec. 9-46 - Ordinance termination and renewal.

- A. When the provisions in this ordinance are enacted in accordance with the sections above, they are terminated by resolution of the City Council.
- B. The provisions in this ordinance may be renewed and enacted again by resolution of the City Council.

Agenda Item #4.1.

(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

Mayor

ATTEST:

City Clerk

Moved by:

Seconded by:

AYES

NAYS

**Type of Action:**☐ Resolution☒ Ordinance☐ TIDD Resolution**Council Action and Executive Summary**

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6		
1st Reading:		Adopted:	June 5, 2020
Drafter:	Barbara DeLeon	Department:	City Manager's Office
Program:	Council Support	Line of Business:	Council Support
Title:	AN EMERGENCY ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE IV "FACE COVERINGS," SECTIONS 9-42 THROUGH 9-46.		

TYPE OF ACTION: ☐ Administrative ☒ Legislative ☐ Quasi-Judicial**PURPOSE(S) OF ACTION:**

To approve an emergency ordinance.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 11, 2020, New Mexico Governor Michelle Lujan Grisham issued an Executive Order declaring a state of public health emergency and invoked her executive powers as authorized by the All Hazard Emergency Management Act and the Emergency Licensing Act in response to the declared pandemic of the COVID-19 virus. The United States Centers for Disease Control and Prevention ("CDC") and the New Mexico Department of Health have recommended that members of the public, when they need to interact with others outside the home, and especially in setting where many people are present, should cover their mouth and nose to prevent inadvertently spreading COVID-19. One key transmission method for the COVID-19 virus is through respiratory droplets that people expel when they breathe, cough, or sneeze and people can be infected with the COVID-19 virus and be asymptomatic but still be contagious. People can also be infected and contagious 48 hours before developing symptoms when they are pre-symptomatic. Many people have mild symptoms and do not recognize they are infected and contagious, and they can unintentionally infect others.

The Governor, on May 15, 2020, announced the extension of the current public health order and directed businesses to ensure all employees have face coverings or masks and wear them in the workplace at all times when in the presence of others, except when eating, drinking, or exercising, or unless otherwise advised by a health care provider. Individuals were also advised to wear a face covering in public settings, except when eating, drinking, or exercising. The Emergency Proclamation issued by Mayor Miyagishima on May 15, 2020 specified that, with limited exceptions, all members of the public should wear a face covering when they are in a City of Las Cruces building, property or facility and that operators of City of Las Cruces public transportation should wear face coverings when driving or operating such vehicle.

This ordinance requires the use of face coverings by employees and the public in retail or commercial businesses, in City of Las Cruces facilities, or in any form of public transportation.

ANNUAL BUDGET APPROVAL:☐ Yes☐ No

Agenda Item #5.1.

☒ N/A

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

☐ Yes

☐ No

☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote yes, this will approve the Ordinance and require the use of face coverings by employees and the public in businesses, City facilities, and public transportation.
2. Vote no, this will not approve the Ordinance, and will maintain the requirements of the Governor's Order and Mayor's proclamation.
3. Vote to amend, this would allow the City Council to modify the Ordinance.
4. Vote to table, this would postpone consideration of the Ordinance and staff would require further direction from City Council.

ORDINANCE

AN EMERGENCY ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE IV "FACE COVERINGS," SECTIONS 9-42 THROUGH 9-46.

The City Council is informed that:

WHEREAS, New Mexico Governor Michelle Lujan Grisham, on March 11, 2020, issued an Executive Order declaring a state of public health emergency and invoked her executive powers as authorized by the All Hazard Emergency Management Act and the Emergency Licensing Act in response to the declared pandemic of the COVID-19 virus; and

WHEREAS, the United States Centers for Disease Control and Prevention ("CDC") and the New Mexico Department of Health have recommended that members of the public, when they need to interact with others outside the home, and especially in setting where many people are present, should cover their mouth and nose to prevent inadvertently spreading COVID-19; and

WHEREAS, one key transmission method for the COVID-19 virus is through respiratory droplets that people expel when they breathe, cough, or sneeze and people can be infected with the COVID-19 virus and be asymptomatic but still be contagious; and

WHEREAS, people can also be infected and contagious 48 hours before developing symptoms when they are pre-symptomatic and many people have mild symptoms and do not recognize they are infected and contagious, and they can unintentionally infect others; and

WHEREAS, the New Mexico Department of Health issued a Public Health Emergency Order on May 15, 2020, to require businesses to ensure all employees have face coverings or masks and wear them in the workplace at all times when in the presence of others, except when eating, drinking or exercising, or unless otherwise advised by a health care provider and further, individuals were encouraged to wear a face covering or mask in public settings except when eating, drinking, or exercising; and

WHEREAS, on May 15, 2020, Mayor Miyagishima issued an Emergency Proclamation pursuant to the Emergency Declaration Ordinance which specified that, with limited exceptions, all members of the public should wear a face covering when they are in a City of Las Cruces building, property or facility and that operators of City of Las Cruces public transportation should wear face coverings when driving or operating such vehicle; and

WHEREAS, the City of Las Cruces continues to be supportive and cooperative with the Governor's Executive Orders, state public health orders, and CDC guidance and seeks to enable local enforcement of the crucial preventative measures that may mitigate the spread of COVID-19 and support the gradual limited re-opening of businesses and public life.

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

(I)

THAT the Las Cruces Municipal Code 1997, Chapter 9, "Emergency Management" is hereby amended as reflected below to include Article IV, "Face Coverings," Sections 9-42 through 9-46, to read as follows:

ARTICLE IV – FACE COVERINGS

Sec. 9-42 – Short title; purpose.

A. This section may be cited as the Face Coverings Ordinance.

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- B. In support of an emergency which has been declared by the State of New Mexico and/or the Federal Government, and to preserve the peace, health, welfare, and safety in the City of Las Cruces when guidance from the State and Federal government warrants the use of Face Coverings, it is necessary to direct the use of Face Coverings in the City of Las Cruces.

Sec. 9-43 – Definitions.

Declared emergency

An emergency may be defined as: Public health emergency- an emergency need for health care, medical services, or public health, welfare, or safety initiatives to respond to a disaster, significant outbreak of an infectious disease, bioterrorist attack or other significant or catastrophic event; or Civil emergency- conditions of unrest, including but not limited to riot, civil disturbance, unlawful assembly, hostile military or paramilitary action, war, terrorism, or sabotage. Civil emergency may include actions that evidence mass panic which causes a shortage of basic food, water, health and hygiene products, or other basic life necessities.

Face Covering

Face Covering means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers the nose and mouth and surrounding areas of the lower face. A Face Covering may be factory-made, or may be handmade and improvised from ordinary household materials. The Face Covering should fit snugly but comfortably against the side of the face, include multiple layers of fabric, allow for breathing without restriction, and be able to be laundered and machine-dried without damage or change to shape. Face Coverings need to cover the nose and mouth at all times and should remain in place until take off safely. If a worker's Face Covering moves during work, it needs to be replaced with one that does not need to be frequently adjusted to reduce touching of the face. Face Coverings should be replaced when it becomes dirty, wet, and/or difficult to breathe through.

Note that any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling is NOT a Face Covering under this Order and is NOT to be used to comply with this Ordinance's requirements. Valves of that type permit droplet release from the mask, putting others nearby at risk.

Sec. 9-44 – Regulations.

- A. Except as specifically exempted below, all members of the public, including children three (3) years of age or older, must wear a Face Covering outside their home or other place they reside in the following situations:
- a. When they are inside, or in line to enter, any retail or commercial business.
 - b. When they are inside, in line to enter, or utilizing any City of Las Cruces building, property, or facility, which includes parks.
 - c. When they are waiting for or riding on public transportation including without limitation any bus or city transit vehicle, paratransit, or while they are riding in a taxi, private car service, or ride-sharing vehicle.
- B. Drivers or operators of any public transportation, paratransit vehicle, taxi, private car service, ride-sharing vehicle, or any other vehicle for hire must wear a Face Covering while driving or operating such vehicle, regardless of whether a member of the public is in the vehicle, to reduce the spread of respiratory droplets in the vehicle at all times. This Ordinance does not require any person to wear a Face Covering while driving alone, or exclusively with other members of the same family or household, in a motor vehicle.
- C. All retail and commercial businesses, as well as entities and organizations with workers performing critical government functions, must:
- a. Require their employees, contractors, owners, and volunteers to wear a Face Covering at the workplace and when performing work off-site any time the employee, contractor, or volunteer is:
 - i. Interacting in person with any member of the public;
 - ii. Working in any space visited by members of the public, including but not limited to, reception areas, grocery store or pharmacy aisles, service areas, and other spaces used

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to interact with the public, regardless of whether anyone from the public is present at the time;

- iii. Working in any space where food is prepared or packaged for sale or distribution to others;
- iv. Working in or walking through common areas such as hallways, stairways, elevators, and parking facilities; or

v. In any room or enclosed area when other people (except for members of the person's own household or residence) are present.

D. The above mentioned entities should take reasonable measures, such as posting signs, to remind their customers and the public of the requirement that they wear a Face Covering while inside of or waiting in line to enter the business, facility, or location. Businesses and organizations performing critical government functions must take all reasonable steps to prohibit any member of the public who is not wearing a Face Covering from entering.

E. A Face Covering is not required under the following circumstances:

- a. When eating, drinking, or exercising.
- b. When a person is in a personal office (a single room) where others outside of the person's household are not present as long as the public does not regularly visit the room, but that individual must put on a Face Covering when the workspace does not allow for compliance with appropriate social distancing recommendations, when being visited by a client/customer, and anywhere members of the public or other coworkers are regularly present.
- c. Any child under the age of three should not wear a Face Mask and parents should seek the advice of a physician.
- d. Childcare facilities and residential health care, or congregate shelters should follow the recommendations of the CDC and the New Mexico Department of Health.
- e. When wearing a Face Covering would inhibit the individual's health. Workers with health issues that preclude them from wearing a Face Covering should document those concerns with their employer.

Sec. 9-45 – Penalty.

During a declared emergency, any person who fails to comply with restrictions under Article IV LCMC is guilty of a petty misdemeanor.

Sec. 9-46 - Ordinance termination.

This ordinance will run concurrently with a declared emergency for which guidance from the State and Federal government warrants the use of Face Coverings.

(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

Mayor

ATTEST:

City Clerk

Moved by:

Seconded by:

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