CITY COUNCIL
AGENDA

Monday, December 16, 2024 at 1:00 PM

Council Chambers

Mayor
Eric Enriquez

Mayor Pro Tem
Johana Bencomo

Councilors
Cassie McClure
William Mattiace
Becki Graham
Becky Corran
Yvonne Flores

CITY OF LAS CRUCES

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

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

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

CONSENT AGENDA

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

6.2. Regular City Council Meeting of November 18, 2024. 24 - 36
City Council - Nov 18 2024 - Minutes - Pdf

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

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

8.1. RESOLUTION NO. 25-071: A RESOLUTION APPROVING A PRECOMMITMENT OF CITY FUNDING FOR A FEDERAL LOW-INCOME HOUSING TAX CREDIT PROJECT FOR AN AFFORDABLE MULTI-FAMILY HOUSING DEVELOPMENT, SUBJECT TO AWARD OF SAID TAX CREDITS BY THE NEW MEXICO MORTGAGE FINANCE AUTHORITY AS PART OF THEIR 2024/2025 9% LOW-INCOME HOUSING TAX CREDIT PROCESS. 37 - 40
Resolution No. 25-071 - Pdf

8.2. RESOLUTION NO. 25-072: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2025 BUDGET. 41 - 76
Resolution No. 25-072 - Pdf

9. BOARD APPOINTMENTS

10. NOTICE OF PROPOSED ORDINANCE(S)

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

10.1. COUNCIL BILL NO. 25-018; ORDINANCE NO. 3089: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO TAXABLE MUNICIPAL GROSS RECEIPTS TAX (ONE-HALF PERCENT) REVENUE BONDS, SERIES 2025 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $21,000,000 FOR THE PURPOSE OF PAYING, DISCHARGING, AND SATISFYING THE CITY'S RISK MANAGEMENT MEASURES ENTERED INTO IN THE FULL AND FINAL RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT IN CONNECTION WITH ESTATE OF TERESA GOMEZ, ET AL. V. CITY OF LAS CRUCES, ET AL., CIV-23-00952 AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A NEGOTIATED PUBLIC SALE WITH AN UNDERWRITER; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN A PRICING CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE AND BOND PURCHASE AGREEMENT FOR THE SALE OF THE SERIES 2025 BONDS; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS. 77 - 107
Ordinance No. 3089 - Pdf

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT

MINUTES
Work Session
Tuesday, November 12, 2024 @ 1:00 PM
City Council Chambers, City Hall

PRESENT: Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, Councilor Cassie McClure, and Councilor William Mattiace

ABSENT: Councilor Becky Corran and Mayor Eric Enriquez

1. READ CLOSED MEETING STATEMENT

1.1

The Las Cruces City Council met in closed session and only discussed those limited items as stated in the posted notice to conduct an Audit Exit Conference FY24 for City of Las Cruces, South Central Solid Waste Authority, Metro Narcotics, Mesilla Valley Regional Dispatch Authority, and Animal Services Center of the Mesilla Valley, which is closed pursuant to NMSA, Section 12-6-5 to 12-6-14.

2. JOBS OF THE WEEK

2.1

None.

3. PETS OF THE WEEK

3.1

Carol Nielson, Animal Services Center of the Mesilla Valley presented Pets of the Week.

4. AGENDA ITEM

4.1 STATE LEGISLATIVE PRIORITIES.

Barbara Bencomo, Chief Administrative Officer gave the overhead presentation.

Natalie Green, Housing and Neighborhood Revitalization Administrator continued the overhead presentation.

Larry Horan, Lobbyist continued the overhead presentation.

Christine Rivera, City Clerk continued the overhead presentation.

Natalie Green continued the overhead presentation.

Larry Horan continued the overhead presentation.

Councilor Flores said last year this tax on alcohol we visited with legislators, and I am still not clear on the difference. It seems like the one that Micaela Cadena is behind actually addresses lowing the price of liquor. That is what she said. Was that in the bill? You lower the price of liquor, the tax goes down, but I am not referring to the tax. I just want to know whether that is how that bill was proposed?

Larry Horan said I am not sure of how it ended up last year but the one that she has proposed and presented on this year would be an increase from 2% to 3%. So, it would be a 1% increase, and it would be on per drink. So, if you went in and and bought an alcoholic beverage it would be on the actual sales, so it is like a sales tax. Currently the alternative proposal is taxation at a wholesale level. Right now, they tax on volume at the wholesale level and the proposal with Representative Ferrary and Senator Sedillo-Lopez would increase that and create a tiered structure. So, like craft brews and craft wineries and craft distilleries would pay a rate based on volume when they are selling but if you had Anheuser-Busch is a higher volume, they would pay a higher tax rate, so it is a three-tier structure. It also included an additional fee of $0.28 and I would need to confirm on the volume or if it was on per drink that they create a fee to pump into that fund. So that has several moving pieces, but it is a wholesale tax or a use tax versus sales tax.

Councilor Flores asked for the consumer?

Larry Horan said correct and one of the potential issues is if it is a use tax every time you have a point of sale that is the taxable incident that you have thousands of taxpayers. At a wholesale level there is many less wholesalers, a dozen, eighteen something like that so it is easier to track and collect at a wholesale level. That will be something that they have to decide what they want to do.

Councilor Flores asked I also have a question on the MRA and what Albuquerque wants to do, and they want to have an eminent domain on the district?

Larry Horan said that is correct. They want to have the authority to utilize eminent domain within the boundaries of the district.

Councilor Flores asked what is the justification or the rationale for that?

Larry Horan said I will speculate. I can't tell you with certainty, but they did have a proposal for a property tax on vacant commercial buildings in downtown Albuquerque that didn't pass. So, an educated guess would be that if you had property owners that you are not able to get to comply on certain things that would give them the authority to utilize eminent domain if necessary. I am not sure that is their reasoning, but it seems to make sense based on the ordinance they proposed.

Councilor Flores said I have a question on the anti-donation and the septic tanks. Septic systems is the word that was on the monitor here, what exactly does that mean and how would it be implemented?

Larry Horan said the actual implementation the way at least in context we have it or proposing it is that you give broad authority at the state level saying local governments can create a program to fund utilities to private property owners. Essentially based on what you almost would see in a Local Economic Development Act. That would give you the city council the authority to create the criteria of the actual program. You could have criteria for who it is available for, funding sources, if it is an application process, a grading process, it would allow you to have that authority to create the program that fits best in the needs of the community.

Councilor Flores asked that doesn't include the hookup, correct?

Larry Horan said it would. It would be on private property so that is the difference, that is the change. You could use public dollars on private property if we are successful at passing the bill. Constitutionally you can do that now you just don't have the enabling legislation to say go ahead and do it.

Councilor Flores asked what enabling legislation would you need? The legislation would just reiterate the law or whatever the state has approved?

Larry Horan said the way the Constitutional Amendment reads, it says you can utilize public funding for essential household services if the legislature passes enabling legislation so that is the next step. That is why we have to pass the bill.

Councilor Flores asked how feasible is that going I be? I think a lot of people will argue that it falls under the purview of anti-donation clause but have advocated against that rational because it is a health and safety issue and all citizens, everyone, septic tanks are going to deteriorate, and it is overwhelmingly expensive to remove the septic tank. To only have the septic tank removed and then the resident has to, or the owner of the structure then has to pay for the hookup. What about the lines that go up along the property lines? Would all of that be included?

Larry Horan said yes if we are able to pass the enabling legislation because this creates a new exemption to the anti-donation clause. It is bad luck to say anything less than difficult to pass at the legislature but the septic system problem here is an example that we used in testimony when they were advocating for the constitutional amendments so I don't think they will be surprised to hear about the problem and as of now we have not heard of any opposition to the concept of us allowing for utilities to be an exemption to the anti-donation clause.

Councilor Flores asked how is the money going to be distributed or dispersed among all of the municipalities in the state of New Mexico? I imagine a lot of cities still rely on septic tanks. So, is there going to be a huge allocation, like millions upon millions of dollars, is there an allocation clause in that?

Larry Horan said no, this bill wouldn't have any funding attached to it but what it would do is allow local governments to utilize whatever type of funding, whether it is grants, whether it is federal money where there is local general fund and also in concept we are allowing to bond against it, so if you have an ability to bond and wanted to create a fund so that every potential. We are trying to make it as flexible as we can so that way you have enough flexibility to obtain funding it.

Councilor Graham said just a quick question. I think we will probably invite our friends up from the Animal Welfare Trust Bill. I believe you said HB 191?

Stacy Sutton Kerby, Member of the Public said I am with Animal Protection Voters, it is House Bill 191.

Councilor Graham said I just grabbed the draft from the session earlier this year. Are you looking at pretty similar language, kind of just reintroducing?

Stacy Sutton Kerby said very similar language although there has been some discussion around which would be the agency or board or commission that would disperse the grant money. In the draft from last session, it was Department of Finance but going forward we are looking at some possible other entities. That is with input from the author as well as legislative council on what would make the most sense for in dispersing grant money.

Councilor Graham said anyone interested in this I would definitely recommend looking over this. Extra funding for shelters is good enough but this actually has really broad reach into empowering, mitigating threats to public safety, reports of animal cruelty so it goes far beyond what even I would just think of as a typical shelter support.

Stacy Sutton Kerby said I would agree with your reading of the last draft from 2024 that the intent of the legislation is meant to build out capacity not only by doing things such as making money available for construction projects, renovations, purchasing equipment, but also empowering the shelters and nonprofit partners that they work with in their communities to do things like, animal wellness, vaccination clinics, chipping, education, the kinds of things that help keep pets, excuse me companion animals in their homes and keep them from coming into the shelter in the first place as well as possibly providing funding for training for animal services and animal control officers.

Councilor McClure asked was it about $30 million that our overall request are?

Barbara Bencomo said we have 11 projects, $27 million potentially although as I mentioned, some of them still being developed.

Councilor McClure asked typically do we expect a third to come through? Is that what we hope for?

Barbara Bencomo said I mentioned that the last two years we received about the same amount just under $12 million. The ask between those two years vary widely though so we came in at that same dollar amount but with very different total asks. I couldn’t really speak to a trend.

Larry Horan said it really depends. One of the things it depends on is whether or not we get any of the statewide funding by the Governor’s request. I am not going to remember the year but Governor Martinez had year of the water and we got a lot that year because we had lot of projects that fit that and part of that artsy science of it is trying to predict what that priority is going to be from both the legislators and the Governor to try and tap into all that available funding so that is why what we are really trying to come up with a project is to try and hit the trends in legislators of what they like, what the Governor is indicating which can also change in the middle of a session what the Governor wants to fund so we try and hit those highlights so that is really hard to say.

Councilor McClure asked I was also curious too, how do you make this strategy because for one hand the septic thing would have requested is $1.6, with things being more expensive why aren’t our asks more for some of these things?

Larry Horan said the dollar amounts that the legislators have to fund even if their available funding is higher the request go up proportionally. Typically, last year if they have a senator write off of $4 million, they are going to get $100 million in requests, maybe $50 million and so as a house member. So even if their number goes up everybody’s ask goes up. Even though the dollar amounts go up it is really difficult to move the needle much for them. Everyone is competing for the same dollars.

Barbara Bencomo said last year we did an analysis of all of our own legislators’ expenditures or allocations of capital outlay and Larry is absolutely right when you look at the districts that they are serving. They are looking at a wide geographical area and many different kinds of needs in the districts so yes, we are competing with many other communities and local governments, and I definitely saw especially from the last session just because we didn’t ask for more money doesn’t mean we are necessarily getting it because of that distribution of assets or requests from the other communities as well.

Councilor McClure said I was going to ask if that is a sort of strategy thing to say. We are going to be doing much more regional say with the library mobile we are going to hit a lot more people that might be something that they would look to more kindly?

Barbara Bencomo said absolutely, that is some of the feedback we received directly from the legislators. They are looking for regional projects to support as you know they have been very supportive of our Community of Hope. We looked at some of our own asks for example with the library that I mentioned that is a regional resource for our community. Some of the police response vehicle request also serves the larger region. What we heard from the legislators i`s yes, they want to fund things in their districts but they want also things that have a regional impact. So that certainly was part of the consideration for developing the proposed priorities that we brought forward today.

Councilor McClure asked can we double dip? So, if you have the Governor will support something and gives funding can GRO money say support that in the same way to? Could then the legislator then work together with cross, put that together, I guess?

Barbara Bencomo said yes, we could potentially as you said double dip. For example, last year for our Amador Crossing Project we got funds from both the Governor and for the legislators for that. The GRO money is a little bit different in that typically what we are talking about is capital outlay, so we are looking at larger capital projects. The GRO funds can fund now especially studies or smaller equipment. It may not be capital can be complementary and one thing that we are considering and for example Larry recommended we add to the GRO list for example the police drone program that is complementary to the capital outlay that we are requesting for the Real Time Crime Center which includes drone pods on facilities in order to make that program work better. So yes, we do try to look for some complementary programs along with the capital outlay requests.

Mayor Pro Tem Bencomo said one quick thing around the active transportation plan. Are you able to get us some of the projects that have been funded with those allocations from the past? I think it makes us better advocates when we go up there to talk about this is the impact you have had already, and this is what can continue to happen. I am unfamiliar with those projects.

Barbara Bencomo said that is such a great request and question because that is something that we have been working towards and some of the feedback that we got from the legislators this year is that they would like to have an annual report and so what we are working towards is a December report so that we can look at the funds that were previously received and get some more detail about how those funds were used and what the community impact was for that funding and that way you all will be able to have that as well to speak to that when you advocate for especially ongoing projects.

Mayor Pro Tem Bencomo said I think there was just two projects. I didn’t write the other one but one of them for sure is the Real Time Crime Center which you had the only funding source left to cover would have been about $800,000 and I am wondering why we just don’t include that in the ask especially since the Governor has made public safety a priority.

Barbara Bencomo said what we brought forward for you today is definitely in development. We want to provide an idea of the scope of the project, the dollars and we can certainly make adjustments going forward and certainly with your guidance.

What we really want to do today is really just find out, are we on the right track with the kinds of projects that we are proposing for capital outlay because what we need to do is now turn it around into a resolution for you all to consider at your December 2nd meeting. We will use that resolution so that we can then provide the state with their portal with our list of projects and the capital outlay request. So, we can absolutely make adjustments to those requests, and this go round as we have been developing these numbers for you it is sort of coming to light for us as well where we have big gaps, where we have small gaps and we can certainly make adjustments to that requested amount.

Mayor Pro Tem Bencomo said since 2018 with this current administration, Las Cruces has not fared well when it comes to the Governor's portal. What suggestions do you have that we can break through with some of these request?

Larry Horan said it is what we are doing and is why we are successful last year. If I remembers right, we got money for a Real Time Crime Center and Amador Crossing from the Governor. So, we figured out what the priority was going to be, and we have projects ready for that. Not only when we do that, we have good advocacy from Mayor, council, and staff for those projects during the sessions. We hit all three of the high points. The trick is hitting the right projects for the right priorities. Like streetlights and lighting is on here because during the Public Safety Summit the Governor talked about lighting and community. Real Time Crime Center is back. You see water back because that is what we are trying to do and coming up meeting with the Governor's staff a couple of sessions ago meeting with the Governor it all makes a difference and the advocacy has been much more active the last several years. With council and staff it has been very good and I just think that is why we have been successful. So, I think that is what we need to keep hitting on and when you all came to Santa Fe the messaging was very good and the meetings were very good and so I think that is what we need to continue.

Mayor Pro Tem Bencomo said thank you Larry, I appreciate that affirmation and you are right that we are on the right track and just so that I am clear on the IPRA updates, I know that historically it has been really difficult to advocate for IPRA because it almost automatically feels like what are you trying to hide, though what you presented today Christine was really reasonable in terms of the heaviness that IPRA has. Larry you had mentioned that this is an initiative being undertaken by other city clerks, Municipal League and you even said the Press Corp?

Larry Horan said Municipal League has met with both the New Mexico Foundation for Open Government and the New Mexico Press Association. To answer your question, the difference and I had a good discussion with AJ Forte who is the Executive Director of the Municipal League. What they are trying to do is find common with the Open Government Advocates. Meaning IPRA being available for the public looking for the press in their view of what the intent of IPRA was, not necessarily the monetization or commercialization of information and so by finding common ground with them they are much more likely to reach a compromise because that is usually where it becomes difficult is Foundation for Open Government in particular are very zealous protectors of open records and so finding common ground versus being an adversarial to them would be helpful.

Mayor Pro Tem Bencomo said lastly, I wanted to say big kudos to the anti-donation legislation. I was wondering how that was going work if we were going up there with a Las Cruces specific piece of legislation and how strange that would be but this sort of broader legislation to allow other local government, I think is important. If there is anything I can do in reaching out to other colleagues and other city councils, please let me know and that way we can advocate together. I think that would be really important. Also thank you Natalie for the housing priorities and the initiatives that you mentioned and codifying some of those pieces is going to be really important and I look forward to hearing from you again soon Larry on more of the specific pieces of legislation that are more making their way through.

Councilor Flores asked there is the rainy-day fund, the general fund, how much money is in there?

Larry Horan said the general fund budget last year was somewhere between $10.6 and $11.1 but that was for outgoing expenses. What the legislature has done that there is several now permanent funds, early childhood education fund, the rainy day which I forget the proper name passed by reference of Larry Larrañaga that trippers once oil prices reach a certain level, has over $3 billion in it. There is different funds now because what they have done to protect those revenues we have gotten in the last couple of years is they have created a lot of pockets like that so they are putting money away for future down turns. There is not just one rainy day fund there is a lot.

Councilor Flores asked are any of those funds being invested somewhere where we could see it grow and we could have it dispersed to our rainy-day people here in the state of New Mexico?

Larry Horan said they are all invested in one form or another, so they are generating revenue. For instance, the severance tax permanent fund where capital outlay would come from if they didn't have cash. Every year we have capital outlay, it's based upon the return of that permanent fund and issuing on bonds as it relates to it so that is typically the structure the legislature creates. It is invested and then they will utilize some of the growth in the revenue from those funds. So, the Animal Protection Fund if it starts at $30 million the idea being the $30 million corpus grows and the available funding in the out years becomes more for that dedicated purpose of the fund.

Councilor Flores asked is there any analysis of what prospectively these funds could earn given all the ups and downs and all that sort of stuff on the market?

Larry Horan said there is and that is provided by the Legislative Finance Committee. I don't know right off the top of my head by committee but their staff would do the analysis on the budget and they also have a consensus budget group which is made up of the legislative Finance Committee Taxation and Revenue Department and Department of Finance Administration and so they all collaborate also on not just budget projections and then they have knowledge of what the funds are doing in the projections for those funds.

Councilor Flores asked in your estimation and if you don't want to answer don't but it just seems like there is billions of dollars and those billions of dollars must be generating more billions so why and with all due respect to the senator that said we don't want to pierce that in any way draw the money out but it would be interesting to see what all the asks are of the legislature from the different municipalities and entities here in New Mexico to see how much money would have to be disbursed to meet those asks and those needs more than asks. We are not asking for a multi-million-dollar movie theater or something like that. Has anyone ever done something like that? A good mathematician or someone who really knows the market?

Larry Horan said what has happened in the past few sessions especially since we have had this excess revenue, the Municipal League in particular has been working on those types of efforts and also the administration so roads. They have been funding a lot of road projects that have been unfunded in the past. A couple of years ago we did airports. They are looking at water systems and water projects for local governments this year. What is that need and is there a mechanism for using some of those funds to fund those. So to your overall question about the billions that are stocked away, what is still in the mind of some legislators although there aren't as many left to remember it but as recently as 2016 the state budget, they had a .5% reserve and we had to cut Medicaid K-12 education they kept funding to local governments so even though we are a little high spot here and even as recently as 2020 after Covid the price of oil went to -$50 a barrel and so we see these giant swings so they are reluctant to spend cash and that is why they have created a lot of these funds for the future so that way if we have another down turn they can fund basic state government and continue to fund in some of these capital priorities to spending the cash and then not being able to fund the essential functions that they see in state government. There has been since 2009 there has been three gigantic swings like that we have endured. So, there is a little bit of budget shortfall PTSD amongst legislators.

Clint Thacker, Executive Director Animal Services Center of the Mesilla Valley said I just want to say that we are in favor of the Animal Welfare Trust Fund. Letter of recommendation or support was sent to them with our letterhead, and I just ask that the city do the same.

Lorenzo Alba, said I just want to remind you know that you set precedence last year when by showing up over there, so I hope that we see all of you over there again because it made a big impact in our community on how many millions of dollars that we were able to bring in. If you don't show up and you don't allow staff to show up nothing happens, but you all were there. You all showed up at the Governor's, you showed up at the meetings. I saw a lot of you in the Round House and that made a huge impact on our community. I think that is how it should have been for a long time. But I think if all of you guys are there allowing the administration to do their thing, they are pretty good at what they do but also the department heads make a huge impact in actually getting the facts to the legislators and really making an impact on showing them exactly what we are doing with the funding and how we are spending it. I intend to be there a lot. Hopefully I will run into you guys, and we will be able to do this work together but let's do it. Let's go get the money. This community deserves it. What we are trying to do at the Community of Hope is huge. It is a lot bigger than all of us. It is not easy for everybody to understand what we are trying to accomplish there. Just come and visit. Come and spend some time with us. Remember that it is not just the unhoused that we are serving there. We are serving low-income families there at Casa de Peregrinos. That is our largest demographic and what we are doing now in that building should be evidence that we are actually doing good things with the money, 20% growth year over year on what we are doing. That is showing that we can do something special with that money. If you all want to tag team a legislator let me know. I am really good at advocacy and God has given me that gift.

Steven Jones, Member of the Public said I would like to thank the council for entertaining funding for the library and library services. I believe that libraries bring communities together. It is long overdue that we address the library and library services. The bridge gaps between our differing communities and bring a critical resource to every person in Las Cruces.

4.2 ANIMAL CARE AND CONTROL ORDINANCE.

Brad Douglas, City Attorney gave the overhead presentation.

Councilor Corran said I think we are against capacity in a number of spaces, and I think we have to build in those things to address those capacity related issues. That is spay and neuter capacity, we have like three or four tools that we can use that we are using in varying degrees of ability that I think we need to put more effort into and that is partly why I think that delayed enforcement is important. Educational period that we could allow us to perhaps expand that capacity in a number of ways more meaningfully. To me I really want to know that we are on the ASCMV Board, we know that most animals that go to the ASCMV, which the city funds come from animal control right? That capacity there is strained. There are too many animals going in which is fundamentally the issue, right? That is why we don't want any more animals to be born. That is why mandatory spay and neuter is a question of our budget I would argue because right now we are subsidizing spay and neuter on the back end of animals going into ASCMV, so where are we paying for this? I do want to not create a situation that leads to higher rates of impoundment to the Animal Services Center and taking animals away from people that would otherwise care for their animals and that is why even the tethering conversation is a really tough one because animals getting lose out of people's yards is a huge problem and those folks aren't necessarily bad pet owners, patently I don't think and so for me I am really glad we are having this conversation and I think we can keep having this conversation but for me those are the things that I see as measures and I want us to protect against that is punishing low income pet owners who can't afford this or it's an eight week at best $300 venture to get one animal in the market spayed or neutered properly. That is a capacity issue, right? It is incumbent for us to address if we are going to compel people to do that and then also making sure that we are not creating a situation where we are increasing the population going to the ASCMV inadvertently because we have written something into our ordinances that leads to animals being removed from homes that would otherwise be able to care for them. For me those are the two big things that I think are achievable in this conversation and I think just having this conversation and even saying we value spay and neutering and I would argue microchipping should be a very similar thing. We should be micro chipping just the same. Only about 15% of the animals they pick up have microchips, so we don’t even know who they belong to to get them to spay and neuter. I guess for me having this conversation now thinking about updating our ordinance and the conversations of the educational period and us making a concerted effort to fund spay and neuter in the various ways that we can try to, for me those are the things that I am concerned about. I feel like this draft does a really good job of addressing some of those things, so I just want to speak to my desire for this to be about building capacity and not creating capacity issues in the community and/or at our shelter. So those are the two values that I hope we can really make sure come through in this conversation and I feel that you all have done a really good job of trying to get to that space. I am curious to hear more and what other folks are saying and what folks are thinking but I really appreciate you all working on this.

Councilor Flores said I am happy to see that there is a balance here. I have been active with the animals, this committee, well was for about seven years and we did the whole thing about how many members should be there and Becki Graham stepped up and that was wonderful. I know that the community who is in support these are all animal lovers, and we spent a lot of time reviewing the statutes or the requirements and you know we spent a lot of time talking about what constitutes a bird, a chicken, and horses, all that sort of stuff but we are focusing now on pets. Is that correct? Or is it going to be a total revamp?

Brad Douglas said what I think that this proposed draft does is it is a comprehensive overhaul. Which does not mean that all of our existing code is going away. I don’t necessarily want that, but I do think that the majority of the provisions would apply to companion animals, but it is not solely for companion animals.

Councilor Flores asked is this going to be a revision within the statutes we have now?

Brad Douglas said yes.

Councilor Flores asked can you go back to page 7? In paragraph 2 or the second bullet point, it is recommended that the requirement have delayed enforcement i.e 12-18 months or any other time period as deemed appropriate by council. This is kind of ambiguous to me because is the 12-18 months from the time an owner gets a dog or is it 12-18 months in terms of the age of the pet? I will tell you why because my son’s roommate had a Shiba Inu and my son kept telling me that he kept telling his roommate to get her spayed and he said no she is too young. She is only a few months old well low and behold, my son’s dog Dexter made love to her, and they produced one baby, and I have that baby now. But the point though is that she was only six months old and that is the part that I find, have delayed enforcement. I don’t know how we can supervise this. This language here is not part of the new provisions of the statute?

Brad Douglas said no councilor, but it can be. If it is ambiguous that is my fault. What I meant to say here was that if the city of Las Cruces, meaning you all, eventually adopt a mandatory spay and neuter policy that no enforcement of that mandatory spay and neuter ordinance be enforced for a time period as identified by you all and I would recommend in the interim what that time period is if it were to pass that LCPD and Animal Control engage in community outreach and education. Councilor just to clarify a little proposed in this draft, like I said it is a draft it is not set in stone for good reason, and I am going off of my memory, but I believe the recommended age for a feline, a cat is five months or more which I believe comports with most national standards and recommendations. For smaller breeds of K9 I believe that it is four or possibly five months or older and then for larger breeds of dogs so it is not to stunt growth I believe that it would be nine months or older is the current recommendation.

Councilor Mattiace asked we can get to passing this pretty quickly, correct? If we are pleased with the overdraft or overhaul and then you want 12 months or 18 months where the departments will educate and get the word out about the new law, correct?

Brad Douglas said that is what I would recommend. Whenever there is a legislative change, it can have wide reaching affect like this, not always but usually I prefer a phased in approach or delayed implementation so that we can do our due diligence and educate the members of our community with regard to what our new responsibilities might be.

Councilor Mattiace asked with this planned education who will be in charge of that, and do you have any idea of the planning and how it will be implemented with veterinarian’s city wide, social media and pet owners? Is there a plan already enforced that is going to be immediately used as we approve this?

Brad Douglas said with regards to who would engage in education and outreach I think that probably most appropriately LCPD and Animal Control are subject matter experts, are boots on the ground. The people that it would affect the most, I would be happy to volunteer my services to help in any way that I can but as far as an educational campaign I think it would be most appropriately up to Animal Control and/or PD.

Councilor Mattiace asked do we have any idea, any words on the plan?

Joy Wiitala, Police Lieutenant said yes, I would agree with Brad here that we have conceptualized the whole process however nothing has been sort of written in stone, so to speak. I think first and foremost we want to see if the ordinance is actually passed to come up with a final draft and then take our next steps from there but this is why we are highly suggesting that we do have educational processes similar to any other ordinances that have changed within the city we need to get the education out to the people whether that be through social media but a lot of the time it can even be through projects on foot. In other words, going into the neighborhoods and addressing the neighborhoods we see could potentially be possibly more of a concern regarding this area that maybe they don’t have spayed and neutered animals and making sure that we are educating individuals when it will be implemented and when it will take place.

Councilor Mattiace said I like that idea and that is working with the neighborhood associations would be ideal. My first month on the job I had to go after a pack of dogs that had been roaming and killing cats over there on Good Shepherd and Union Drive. It was five or six dogs, and it took a couple like four or five weeks to address that and so I think that is very important that we work in the neighborhoods because that is where I get most of my calls from. We have one neighbor his dog has been loose now thirteen times. I think the overhaul for this ordinance and getting it passed is very important to the residence. Thank you all. I want to thank you, our Legal Department, Animal Control and Police Department for getting this on the books as quick as possible.

Lt. Joy Wiitala said along those lines we could potentially use more of our strategized policing model looking at our statistics as far as where those stray animals like you mentioned are coming from.

Mayor Pro Tem Bencomo said I personally think that I can get behind most of this. I have pretty serious concerns about mandatory spay/neuter policies, and I will tell you why. One of the biggest things is I think we can do that kind of programing without mandatory spay/neuter. We can do the educational programing that we are talking about without using the criminal justice system to try to get to our goal. The other thing I will say is that in all my research consistently I find animal advocacy organizations speaking out against mandatory policy. The ASPCA, against mandatory policy. The Best Friends, against it. The National Animal Interest Alliance, against it. The No Kill Movement, against it. The American Veterinary Medical Association, against it. The data consistently shows that mandatory policies do not work and in fact have disproportionate impacts on poor people. So I feel like a little bit of déjà vu Brad that I am sitting here in front of you again saying this policy has an unintended intended consequence on disproportionately poor folks and we can think about more creative solutions than just going through Municipal Court and then just giving poor folks another ticket and before we and hopefully in the future get rid of the $100 failure to appear warrant that is just a debtors court. These kinds of policies have not shown the evidence to say that they are actually reducing the number of animals on the street. These kinds of mandatory policies are not getting us to where we want to. So, let’s look at things that are. Otherwise, I think I can get behind most of this and I will look more into the tether piece but honestly I struggle with that. That is how I got my dog, my little baby Santo was tethered for a very long time in this man’s home and that is how he came to the shelter before we adopted him so again I feel like I can get behind the majority of this proposal but I will not be able to support a mandatory spay/neuter and I just need to say that right now because I think it will have perhaps an opposite impact and I think that we can even with the tether piece or the loose piece and I am throwing a curve ball here a little bit the source of income discrimination ordinance we passed last year or a couple of years ago codes and housing approached that policy with landlords in a very educational manner and not a punitive manner because we know that is actually most effective in getting people to comply with new policies is through education and not punitive measures so I will stand strongly by that and hope that we can come to a positive and civil meeting agreement place on this because that is just not something that I can support at this moment but everything else I think I am able to.

Councilor Flores said after hearing Mayor Pro Tem about the downside of mandatory spay and neuter I am not sure I am behind it however has there been any effort to form a 501c(3) to fund the spaying and neutering of animals?

Brad Douglas said I can't speak to that right now with regard to a 501c(3) formed by advocates. As I stated earlier Councilor Corran was instrumental in getting the $80,000 appropriation for SNAP recipients and that should be to fund either free or reduced cost spay and neuter. I think that is a great thing. It is a great move forward but of course the funding need is probably excess of that is what I wanted to say.

Councilor Flores said unless there is a fund that is going to pay for that spaying and the neutering it is going to be hard and on a lot of people.

Kathe Stark, Member of the Public said I am with Animal Advocates for Change. I wanted to address the points that you raised with the national organizations. If you dig into those studies and what they are saying and what we have been saying all along is that you need to remove the barriers for those low-income people which is number one, phase it in, number two, there has to be some funding and there is $80,000 and we thank you for that. We have a very generous community. We have some rescues here that we will tell you will put up six dogs on Next Door and say we need $75 a piece for spay/neuter and within 24 to 48 hours they have got it. So, the whole goal of the phase in period is to number one, build that capacity and we have presented some ideas in the past of how we can do that. Number two, look at the funding. Look at the vacant position at the ASCMV. The other thing that you need to understand is state law and our current ordinance state that when you reclaim an animal from the ASCMV you get it spay/neutered or you get a voucher, and have it done, or you get an intact permit. So, there is really nothing different there. We have talked with animal control. The intent is not to go into the community and say that dog looks like it is intact, you have got to have it spayed and neutered or here is a citation. It is to connect those people to the resources programs that we are trying to build to eliminate the provisions which the national organizations have said yes if you don't do this it's a barrier and it penalizes people that should not be penalized. We have tried to build that into the whole thing.

Geri Wheelis, Member of the Public said I am with Animal Advocates for Change. I think if you read the studies closely that Mayor Pro Tem cited, you will notice again it was not that mandatory spay/neuter does not work, it does not work if it is not funded. If you expect low-income people to pay for it themselves, it is not going to work. The city has to back these programs with funding and that was what the bottom line of the study stated too, but mandatory spay/neuter does lower intake at shelters. It does obviously lower population controls. There are many, many benefits to it with spay and neuter and I think if you thoroughly read the studies, and we can also provide you with other ones and the proposed ordinance you all will come to that conclusion.

Stuart David, Member of the Public said I have been here about six months. I worked on similar ordinances when I lived in rural North Carolina and a little quick note on tethering is when I did a deep dive in some research there on anti-tethering laws, I really expected to see that they were from California or Massachusetts or from really liberal areas. If you take a look, it was the opposite. They were mostly from the rural deep south, and they were almost always in response to somebody either getting maimed or killed by a chained dog. It's really a public health issue to because those dogs that are chained are so anti-social, kids get in the yard they get mauled and then they pass a law, so I just wanted to bring that up. But I what I really want to talk about was spay/neuter. Again, we passed similar ordinances in rural North Carolina, Buncombe and later in Asheville and mandatory is a scary word. I know it is and we saw that when we saw that word to but first place this isn't mandatory because A, you can get an intact animal permit and B, nobody is going door too door. It is only if there is a problem with the animal, and C, you can have a letter from a veterinarian to. So don't let mandatory scare you and also the people who came up here and the people who traveled down here from Santa Fe you all seem to nod and support this $30 million for sheltering for animal welfare and I hope you do I think that is a great deal but I would also like to point out that in the end we really want less sheltering. That is what we want is less money for sheltering and if we get behind spay and neuter that is going to be our outcome.

Mayor Pro Tem Bencomo said I just want to clear up perhaps some miscommunication. I do believe in spay/neutering. I am not saying that I don't believe in spay/neuter programs.

Jim Wilcox, Member of the Public said let me tell you a story about Tony. Tony loves to run around at the park and he likes to run up and scare children and engage in casual sex and he is running around and because Tony is a six-year-old dog, and he is part Setter part Lab and so he has been doing this for a number of years and now Tony has about six little puppies that he has fathered. He is not paying any puppy support and there are out there just running around and now since it is has been so long some of those puppies have grown up and they are doing the same thing. There is now 22 decedents of Tony and Tony gets out. His owners they try, they block, you can see the bricks they put up and he still figures out a way to get out. So, when you take care of the problem at this stage you remove the problem for the future and one of the things that is that is important to understand to understand is how many chances do, we give somebody to take care of the problem before we say we have given you enough chances. If two times is not enough, maybe it is three times or X number of times in a certain period of time, but something needs to be done. Our hands should not be held tied because there is some potential problems. When you are passing legislation don't make it so hard that it is so restrictive that you don't do anything because an adage is that it is better to do something then to plan many things that you never do.

Clint Thacker, Executive Director of ASCMV said for the mandatory spay and neuter we are, ASCMV is in favor of the ordinance however we are very concerned about the compliance of this ordinance or ordinance change. How are people going to be compliance when we ourselves ASCMV when we are back logged for surgeries ourselves. We have a veterinary shortage nationally. It is not regional. It is national issue. We cannot fill this veterinary position that we have. So, my worry is that of compliance. The next one that I am worried about is something that was said earlier about enforcement will be upon impound. That means the animals at the ASCMV we have no jurisdiction to enforce any ordinance. We are not an enforcing agency. So that will have to fall back on Animal Control some way or another to be clear on that. I don't want anything extra for our staff to have to do for that part. There is also an issue with community cats that are in this ordinance where it still has a river, a river ordinance that says a feral or community cat cannot be released within a half mile of the river and that is an issue for us. It takes a lot of resources to relocate a cat. It is not taking it to another place and just releasing it. It is a resource burden, experience or an issue that is very difficult to complete. Again, we are in favor, but we are worried about the who, what, when, why, and how basically.

Stacy Sutton Kirby, Member of the Public said I am with the Animal Protection Voters. First of all, I want to say that the national organizations do take a different perspective than state level organizations and local governments and city council members and that is because at the national level they are not operating shelters and operating animal control. I would agree with the folks that have stepped up to the mic of taking the balanced approach of A, having a grace period in educational window phasing in an ordinance as well as providing resources to people so that they can come into compliance is what I have seen in my experience as an advocate that is where you get the best results. The point is not to give people tickets to make it unaffordable for someone to have a companion animal and certainly not to cause a situation where an animal would be relinquished to a shelter because a person could not come into compliance. So, the communities where we have seen it work the best are where folks come together. It sounds like there is already $80,000 in SNAP, a Spay/Neuter Action Program, and planning out that timeline with those resources and getting that educational campaign out there. That is where we have seen it work the best.

Cheryl Hain, Member of the Public said I am the Direcort of Animal Spaces Rescue here in town. I just want to say that the lack of this is causing such a pressure on those of us who spend our lives trying to help these animals. We are not paid, it is our money. We have probably four rescues who have worked together on getting dogs to T or C to Dr. Allared who is a wonderful vet by the way to get spayed and neutered. We have done between the four of us I know we have done well over 500 a year. Your spay and neuter program here in town has done 1,000 and the last year that they have reported so we are equally working on that to the best of our ability. My experience has not been that people don't want to spay and neuter their pet. My experience has been that they can't afford it, so I understand that but when given an option that is affordable in doable and they can have help with it, we get very little push back. I have had maybe three people, we had one that let us spay all its females but didn't want its males spayed. That I think was a cultural thing on his side but in general we have talked. We have done several hoarding cases with the County Animal Control where we have gone in and we fix them, we chipped them, we have gotten them their shots, we have taken the puppies and got them out of state. My rescue, one of our big initiatives is to get most of these animals out of here completely. I go all the way to Delaware and Connecticut, and Wyoming. I have been all over the place because they don't have puppies there because they have spay and neuter. I don't like the word mandatory because it is not 100%.

Diane Starbuck, Member of the Public said I am with Animal Advocates for Change. I would like to address Clint Thacker's concerned about there not being enough veterinarians here or that he feels that the whole thing is going to be put on the animal shelter. That is not true. We have spoke to six local vets who are willing to do weekend clinics here. There is a MASH organization willing to come down to Las Cruces and do 200 animals a weekend and there has been interest within the state of other vets coming down to Las Cruces to help us out also. So, I think this could all be worked out. The resources are here. If you look for them the resources are here and its logistic and financial, but I feel those issues could be worked out.

Sarah Smith, Member of the Public said I support spay and neuter as well, but I as well am concerned about the word mandatory and criminalization around this particular issue. If enforcement is only happening through animal control, I think you are going to have a very low number of people who are jumping up to say I want to go get my pet spayed or neutered. If you use education, if people knew how many animals were dying in the shelter regularly, I think that would help people understand the problem better and if there was a way for you to do free spay/neuter or even offer an incentive, I don't know if you could do $50 off of your utility bill, you would have people lining up to say we want to get our animal spay and neutered instead of trying to use the force of law and going through this other path which really to me doesn't seem like you are going to get many people who are wanting to do that if you are just trying to rely on animal control. I am hoping that maybe you guys can look at those other approaches. I have some serious concerns over using criminalization, petty misdemeanors, potential for fines, potential for jail time along with this. I don't think this quite makes sense in the context of this. I am hoping that you can find something that is a little bit more nuanced than going that direction.

Brenda Browning, Member of the Public said my first time at a council meeting and my first time speaking in public in this town. I have another point that I would like everyone to consider. We are talking about tethering. Consider a senior alone in a house, she has her favorite pet, she is not rich enough to own the house, it's a landlord's house. She doesn't have a fence. The dog needs to go outside, needs to go potty, may or may not be able to use a potty pad and trust me they don't like it. The obvious simple solution is a small tether near the back door. She can clip it on, she doesn't have to take that step down into the yard that may be a risk to her health and safety. She can tether her dog, allow it out for fifteen/twenty minutes and bring it back in. If you mandate no tethering, she will have to give up her dog. She has to live alone. I want you to consider it.

Brad Douglas said with regard for the tethering the way that the proposal is written now would allow for very limited tethering. Tethering wouldn't be eliminated altogether I believe under the proposed language tethering would be allowed for up to an hour a day.

Mary Rodriguez, Member of the Public said I want to talk about both the tethering issue and the spay/neuter mandatory word. First on the tethering, I had a deaf dog and I am a huge animal advocate, I have been my whole life and I had this deaf dog and I lived in a rural community where there were no fences and so when I let him out I put him on a trolly and unfortunately he would run to the end of it and he messed up his neck and I have always felt horrible about that because it is my fault that he did that. That is my lesson on tethering. As far as the spay/neuter goes you probably all heard I did come from a city in California where mandatory spay/neuter has been in effect since the 90's and what that looks like after a long period of time and nobody thinks about people who don't spay/neuter as criminals ever, that is just not what we do. When something is considered the right thing to do, they just do it. It's like when you put a new stop sign in people aren't just going to run it. They are just going to eventually do it. The education piece is totally relevant. I just feel like I need to say that it works. We watched the shelters go from like the shelter has 400 dogs and the county has the same amount of people, and their full shelter is like 40 dogs because they aren't having puppies and kittens left and right and there aren't stray animals running around. I had notes on Next Door on all the ridiculous things I see there because there are just too many animals in this community.

Susan Richardson, Member of the Public said I am a really new to this cause and I just want to say this is my first council meeting, usually I am at county meetings because that is where I live is out in the county and all the work that has been put in by everyone on this subject is just phenomenal to me because for the longest time, I have been here since 1984 and for the longest time I look at the numbers that are coming out of the animal shelter even from August to September to October and they just keep growing and growing and growing and listening to people who work on this on a daily basis, okay there is not enough manpower, there is not enough resources, there is not enough money, there is not enough education so I really want you to support these efforts and these bills because we have got to start somewhere and yes we have state laws and we have this and we have that but I feel like now we are honing in and revising and updating them and making sure that there aren't any loopholes but one thing I didn't hear today was the fact that some of these cases that have been videotaped there is a big discrepancy when people are viewing them from what the rescuers see versus animal control sees. So in the future I would like for you to dove into the procedures for animal control, what constitutes animal abuse because there was an 18 month old dog, a year and a half and she looked like she was nine or ten and she had to wheeled out of the shelter in a wagon and she looked like she was ten years old and she was only 18 months.

April Nastazi, Member of the Public said I am with the K911 Academy. What nobody is bringing aware is that we have had 3 human deaths and an arm amputation in the last three years. Our dog bite numbers have increased in the last 200%. The Animal Service Center is adopting out aggressive dogs knowing that they are known biters. I don't believe they are educating them well enough. Our dogs now days are highly sensitive. You and I grew up when you could throw a pot lid on the ground and a dog goes hey, what is that? Now days you drop a pot lid and its oh my God, it almost ate me! Our dogs are highly sensitive and then our people kill themselves. How many people killed themselves during Covid? We have been fearmongered and who feels their energy? The dogs feel the people's energy, they react. I specialize in aggressive behaviors. I specialize now in energy work to help not only the dog, but the person and it is education. I have so many people that come to me that they don't know that those little behaviors that the dog is doing is a telltale sign that if they don't stop and give the dog parameters it is going to get worse. I just wanted to let everybody know, I have not been here in two years. I did give them the Veterinarians Association, they do have a pamphlet, a thick book, they have had all the lawyers, and all the veterinarians teach communities how to lower dog bite numbers and I gave it to this council two years ago. One of the councilors I believe Gandara wanted to hear about my program, and I do a free workshop once a month where I teach people how to interact with their aggressive dog and how to interact with that dog and other dogs and people. I am willing to teach, and I have been doing this for over eighteen years so I can help some way.

Mayor Pro Tem Bencomo said I think it is important that we are very clear about this kind of ordinance because I heard a couple of folks say it is not about ticketing, it's not about making people criminals, however the section under penalty says, any person who violates a provision of this ordinance shall be deemed guilty of a crime thus giving someone a criminal record. So, I don't want us to be naive about what this ordinance is and what these kinds of penalties can bring to someone when this is very much about disproportionately putting poor folks through the criminal justice system.

Councilor Graham said how I see this, this is my third year on council, and I feel like this is the issue that has simultaneously the most passion and the most inertia and I think that, and I am as guilty of this as anyone, it is such a cliché to where you sacrifice progress for perfect. No ordinances are perfect. No plans are perfect and at the end of the day it all comes down to people. One thing before I forget, Lt. Wiitala, one thing I would be interested to hear is exactly what Mayor Pro Tem was speaking to and that is your discretion in your role as a law enforcement officer. I understand the concern that you have is completely true and completely real and I do want to hear what discretion law enforcement officers would have should we pass this ordinance in terms of does it have to be automatically no that is it? It's a fine, it's jail, it is whatever. Should this ordinance pass we have 12 to 18 months for education. We have 12 to 18 months to get funding in order. We have 12 to 18 months to finally find an umbrella for all of you sitting in here today and all of the hundreds of other people who are not hear today but who have the passion and are probably not here today because they are out doing the work. I see this as an opportunity for the city to finally step up and create the space where we can all work together toward a common goal and it is just one of those things that I have just finally reached the point where we are not going to do anything unless we do something and that is kind of where I am right now.

Lt. Joy Wiitala said I agree with you. I do believe that inaction is not the way to go. That we do need to take action on an ordinance. I think that we have heard an overwhelming concern today in reference to whether we classified spay and neuter as mandatory. I think that is what probably needs to be addressed the most. I think that with that what studies you go to you will discover it isn't going to be an issue with an education component. There does obviously need to be the veterinary services within the area as well and so again my thought is that is not as simple as passing an ordinance. It also takes action on a larger scale to include potentially some budget funding with that again what are the next steps? Again, this is one of those things where we have proposed this ordinance, it is in draft status, obviously as in draft status it can change but like any other I think larger concern within our community it is going to take more than just the ordinance.

Councilor McClure said I just want to thank you guys very much for coming out and showing your support for this. I just want to say that over my time of almost a year that it is has been people who have made change and to a large extent is us up here, but it is people who are working together that affect change and I just want to thank you guys for coming.

Councilor Flores said I want to thank all of you here. I hope we really do reach a resolution on this issue but most of all I just want to thank all of you for doing this for the community and for our animals that we love so much.

Mayor Pro Tem Bencomo said thank you for mentioning that. We don't have to agree on every single line in here for me to feel deeply grateful for the advocacy that you all do.

Brad Douglas said I feel that this was a helpful exercise. I understand all of the concerns that have been voiced on this dais today. We will continue working. Progress is not always linear. We will keep working, thank you all for your time and attention. I would like to thank LCPD and Animal Control and our community advocates and community partners as well.

5. ADJOURNMENT

5.1

Councilor Yvonne Flores moved, seconded by Councilor Becki Graham, to adjourn at 3:46 p.m.

RESULT:	**Carried**
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Becki Graham
AYES:	Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, Councilor Cassie McClure, and Councilor William Mattiace
ABSENT:	Councilor Becky Corran and Mayor Eric Enriquez

Mayor

City Clerk

MINUTES
City Council
Monday, November 18, 2024 @ 1:00 PM
City Council Chambers, City Hall

PRESENT: Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

ABSENT:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR CORRAN.

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

Councilor Corran recognized the participants of the Know Your City sessions.

Councilor Corran presented Chantelle Yazzie-Martin with a proclamation for Native American Heritage Month.

Councilor Corran presented Sarah Smith and Walter Stewart with a proclamation for ASTM Manual 36 Day.

Councilor Corran presented Debbie McAllen with a proclamation for 40 Years of Progress by the Family Violence Prevention and Services Act.

Councilor Corran presented Gentry Roberts with a proclamation for National Apprenticeship Week.

1.3 JOBS OF THE WEEK.

Sarah Raney, New Mexico Workforce Connection presented Jobs of the Week.

1.4 PETS OF THE WEEK.

Carol Nielson, Animal Service Center of the Mesilla Valley presented Pets of the Week.

1.5 NEW LEAD AND COPPER RULE.

Steven Perez, Deputy Director of Regulatory Compliance Las Cruces Utilities gave the overhead presentation.

Councilor Corran said I really appreciate this presentation, and I know you all are doing the good work. It is very cool you should go and check out if you haven't seen your own. I understand that you are here to give a mandatory required information point. Real quickly for everyone at home maybe give a quick, I don't know why I feel the need but maybe because this is a public health messaging thing but just a quick summary, one you are required to talk about this and were required to send all of these things to everyone because in places in the country many places have significant amounts of lead pipes which are in fact problematic for the municipal water systems but all of the things that you all have inspected we have no lead probably because the time that Las Cruces as most places were built in Las Cruces, right?

Steve Perez said that is correct.

Councilor Corran said so 15,000 have been proven they don't have lead so there is not like something to necessarily have a big panic about, I guess would be my thing. One, this is a mandatory thing that we have to figure out and inspect and communicate about, as I think this is part of that and the last part is most places not universally I am not making some sweeping statement but so far there have been no lead pipes found going into people's home and 15,000 inspections that you all have already done, correct?

Carl Clark, Assistant Utilities Director said 50,000 is a little high. I think we only have approximately 15,000.

Councilor Corran said I just sort of wanted to bring it back to and folks do not have to do this inspection at home. It is very likely that you don't have lead pipes and we are going to get around to your house anyway at some point.

Carl Clark said correct.

Councilor Flores asked are you finding certain parts of the city that do have lead pipes?

Steve Perez said none at all.

Councilor Flores asked not even the older homes?

Steve Perez said I already have a priority inspection list in which customers that suspect that they have lead lines I send somebody out to their homes immediately and we have not found any still. Most of the oldest homes that we are seeing like in the 100 and 90 year range we see that their service lines have been replaced with plastic pipe.

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

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Susan Cabello, Member of the Public said I am the Executive Director of Downtown Las Cruces Partnership. I wanted to start off giving a shout out to Councilor Cassie McClure who did a walk through the district with us and talked to some businesses. They were very excited about it, and it went very well. I hope you do that again with us. Also, I want to thank Sarah Booth and Elizabeth Puckett from the library here, they did a really great merchants meeting for us. Showing us all the business innovation technology at the library and all the things that they could help with like Excel, like personalized Excel. Anyway, we got library cards. It was really fun, really great meeting. So, thank you guys for letting that happen. Also want to tell you that Small Business Saturday is coming soon. It is the Saturday after Thanksgiving, so it is going to be the 30th of November this year. We are, by we Downtown Las Cruces Partnership, the Arts and Cultural District are hosting a red-carpet event on the plaza. So, we are going to have a red carpet. We are going to have a step and repeat like you guys have. We are going to have some paparazzi, which are just volunteers screaming your name and we are going to take some pictures. It is going to be a really cool photo op for our superstars of the event which are our shoppers who are downtown. I am hoping that our businesses downtown use that promotion to kind of double down on what they are doing. It is not to augment what is already going on not to overshadow anything. Anyway, to try and get people to the plaza but to our brick and mortar locations downtown as well as the Farmer's Market, right? On Saturday downtown is always Small Business Saturday regardless of what we are calling it. Small Business Saturday is also a tax holiday for small businesses. So, a great opportunity for you take you family, whoever is left over from Thanksgiving, maybe you just need a few hours outside with them. Walk downtown, go to the Farmer's Market and enjoy the holiday with us. Lastly, I want to remind you that Chile Drop is coming. It is sooner than you think. It is always December 31st.

Juan Garcia, Member of the Public said the recent Work Session covered the subject of spaying and neutering companion animals. A shortage of veterinarians capable of performing this critical procedure is troubling but it is only part of the larger crisis. For over four years we have seen a horrifying spike in crime that threatens the very fabric of our neighborhoods. I met with Dr. Debra of Pet Doctor 911 on Sunday, yesterday which is located on North Main, and her words echo in my mind. She posted this on Facebook, "we have had so many wonderful people in our community that have written on Facebook about the break ins so I will post here what I know. I was told that the guys we have on tape and the one I caught in our side yard were a gang group called Scorpions. They work for the Gulf and Sinaloa Cartels pushing Fentanyl. Las Cruces better get a handle on this, or we are in trouble. I am told it will not go away. At night they come out like roaches from that arroyo seco. They have no fear or remorse of course. As you know I opened Pet Doctor 911 on October 5,, 2024, to be able to help you Las Cruces with your pet urgent emergency care needs on weekends, 8 a.m. to 6 p.m. We are deeply saddened that on the morning of October 26th we had a break in and thieves stealing our safe which contained all paperwork and receipts, medicines, laptop, and more and trashing parts of the clinic. It will take a long time for insurance to help, and it is not likely that it will cover losses. We would like to stay up and running for the sake of you and your pets. To that end we decided to start a Go Fund Me page. We would appreciate any help." The theft of a safe is too massive for any individual to move hinting that organized criminal involvement underscores the escalating danger. The perpetrator was caught on camera brazenly using the stolen laptop plugged into an outdoor outlet. Less crime than Albuquerque as Senator Cervantes reminds us is a hallow comfort. Our council seems more concerned with sparing "poor people" from fines for illegal activity they commit than protecting those "poor people" who strive to serve to uplift our community despite the growing threats of lawlessness. Thousands of dollars paid by business owners for protection is the price of doing business in Las Cruces due to the failure of this city to protect its citizens. You have to pay to serve the community. Let that sink in.

Jim Hurst, Member of the Public said on May 2nd of this year the Mayor and the CCIA held a religious service at the main entrance of our City Hall in honor of National Day of Prayer. There are no public records of the event. It was not recorded on the city calendar. The city council did not approve it and was unaware of it. After several inquiries to the Mayor's office a staffer informed me that what I thought was a public religious service was a private meeting held by the Mayor. I think the Mayor's office was less than candid and the National Day of Prayer service held here was anything but a private meeting. In truth it was a public religious service authorized by the Mayor. My questions for the Mayor are, does your office grant you the authority to use city government facilities for religious purposes without city council approval? Why didn't you give the people through their elected officials a say in this matter? Will you ever tell the full truth about this meeting? To the city council, a request that you hold the Mayor accountable to the New Mexico Constitution. Ask yourself if a religious service at the main entrance of this building on a weekday at noon and officiated in part by the Mayor and the Police Chief conforms to the letter in spirit of our State Constitution, Amendment II, Section 11, "no person shall be required to attend any place of worship or support any religious sect or denomination". By using city facilities for religious purposes in holding religious services at City Hall you are requiring all the good people of Las Cruces to support a meeting of a religious sect. This is forbidden by the constitution. The National Day of Prayer service held at City Hall violates the New Mexico Constitution in both letter and spirit and must cease. To the Mayor, please cease using city facilities to exercise and promote your religion. For the city council please pass a resolution forbidding use of City Hall for religious meetings.

Lisa Parrot, Member of the Public said I want to thank you for having the National Day of Prayer service here. This is paid for by the people, the taxpayers of this country, this city. No one is required to come. If someone chooses not come, that is totally with their prerogative but someone who thinks that they can stop other people from worshiping freely is a problem.

Jorge Aguirre, Member of the Public said I also oppose the National Day of Prayer. Churches don't pay taxes they can do it somewhere else other than a public facility. I am here because times are tough, and we seem to have even more difficult times ahead of us. If steep tariffs on imports are imposed as national plans seems to suggest all matter of cost would increase dramatically for everybody. When things go up in price, poverty expands, homelessness and desperations grows and with that crime also expands and when crime grows people lose their empathy and their patience. I am all for doing something about it but the problem about the macho tough approach against the vulnerable is that it doesn't work. It is very expensive, and it doesn't solve the problem. New vulnerable people keep falling in the same trap. I am all in for doing something about crime and homelessness and I do like investments that make us feel better about crime, but I do prefer investments that help us solve the actual problem which is what we need to do to get rid of the actual poverty trap. Our problem is poverty. People are falling into addiction and desperation because they are unable to afford the basic stuff. Many of the reasons for people to fall into poverty and stay trapped are out of or control. That is a national problem after all, but we are at least partially responsible for some of the poverty created by the high cost of the local housing and transportation services. Removing parking requirements from our city code will improve our local construction companies' ability to build low cost, higher density housing at a profit which would increase supply, reduce housing inflation, create jobs, and improve our local economy but we also need transportation solutions that don't make us poorer. Every aspect of car ownership is a drain on wealth and when we continue to invest most of our city resources on car centric infrastructure, we are giving our citizens no choice but to impoverish themselves to have a vehicle. Cars are a bottomless pit of expenses for citizens and governments alike. They produce noise, pollution, traffic, make us sicker, sedentary and more divided but above all they make us poor. Instead of that lets invest in infrastructure that allows citizens to safely travel the city without having to buy a car. The use of personal transportation devices is on the rise worldwide. They are cost effective. More efficient than cars and provide all the freedoms of bicycles promise without many of the drawbacks and unlike bicycles they are small enough that they can be carried in a public transportation bus for a comfortable trip from origin to destination. To conclude we must be willing to give up our comfort with cars and with the way that we do things in the past so that we can chart a new path that brings prosperity shared for all members of our community.

Fred Miller, Member of the Public said I just wanted to agree with Jim Hurst that religious ceremonies, etcetera don't belong on city property. Saying that you can't do it here is not saying that you can't do it at all interfering with someone else's freedom to do it. Say you can do it somewhere else. I agree with that sentiment.

4. ACCEPTANCE OF AGENDA

Councilor Becky Corran moved, seconded by Councilor Johana Bencomo, to accept the agenda as presented.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

5. CITY COUNCIL MINUTES

5.1 REGULAR CITY COUNCIL MEETING OF OCTOBER 21, 2024.

5.2 WORK SESSION OF OCTOBER 15, 2024 AND OCTOBER 28, 2024.

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

6.1 RESOLUTION NO. 25-059: A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICES AGREEMENTS WITH MILLER ENGINEERS, INC. DBA SOUDER, MILLER & ASSOCIATES; TERRACON CONSULTANTS, INC.; ZIA ENGINEERING & ENVIRONMENTAL CONSULTANTS, LLC ALL OF LAS CRUCES, NM, AND GEOLOGIC ASSOCIATES, INC. DBA DANIEL B. STEPHENS & ASSOCIATES AND PARKHILL, SMITH & COOPER, INC. DBA PARKHILL BOTH OF ALBUQUERQUE, NM, TO INCREASE THE ANNUAL NOT-TO-EXCEED AMOUNT TO $2,000,000 PLUS APPLICABLE TAXES PER VENDOR, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (22-23-036 ENVIRONMENTAL ENGINEERING SERVICES).

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

7.1 RESOLUTION NO. 25-060: A RESOLUTION AMENDING THE FY2025-2030 CAPITAL IMPROVEMENTS PROGRAM.

Cynthia Campo, CIP Analyst gave the overhead presentation.

Councilor Becky Corran moved, seconded by Councilor Becki Graham, to Approve Resolution No. 25-060.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Becki Graham
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

7.2 RESOLUTION NO. 25-061: A RESOLUTION APPROVING THE AMENDED AND RESTATED MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION (MPO) JOINT POWERS AGREEMENT FOR THE GOVERNANCE OF THE MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION.

Andrew Wray, Regional Transportation Manager gave the overhead presentation.

Councilor Mattiace asked can you be specific on the governing board again, the representatives?

Andrew Wray said there are three Las Cruces city councilors, three Dona Ana County commissioners and three Town of Mesilla trustees from the political units and then the NMDOT District 1 engineer is also a voting member of our board. For this year the city's delegation is Mayor Enriquez, Councilor Corran is serving as the Chair this year and Councilor McClure is our third member here from the city.

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to Approve Resolution No. 25-061.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Becky Corran
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

7.3 RESOLUTION NO. 25-062: A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT DEFINING THE ROLES AND RESPONSIBILITIES OF THE CITY OF LAS CRUCES AND THE MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION.

Andrew Wray, Regional Transportation Manager gave the overhead presentation.

Councilor Corran said I want to take a moment to first thank Ms. Bencomo in particular for really helping throughout this process. Thank you so much for your support and for Andrew for persisting in the face of a lot of logistical challenges throughout and still ongoing but we will say most of them are past by now, but it really represents a lot of work and so thank you for doing that and making this process happen. I really quickly want to highlight the MPO. I know that it is necessarily not something we think about. Last week we had super interesting presentations. So if this peaks your interest at all, last year $70 million about went through the MPO to infrastructure projects in our community and so it definitely is notable in terms of the federal government views money going into literally our roads, primarily sidewalks, roads, trails, etcetera and so I think that was really interesting and then also something if you are interested for what the MPO contributes, the new safety report to which last week we heard a really interesting and compelling presentation about all of the traffic fatalities from the year 2022 in the MPO district. It was very compelling. That data is included in the MPO annual safety report that is coming out right now. So just in terms of everyone here if you not necessarily if this is the only time that you interface with the MPO it is meaningful to the community and I just really want to appreciate both the role the MPO plays in our city sort of the way we keep things moving on infrastructure projects but also thank you to Andrew in particular for leading this charge and making this happen. I know it hasn't been easy, and so I know I just really want to extend that gratitude to you in this moment.

Councilor Becky Corran moved, seconded by Councilor Becki Graham, to Approve Resolution No. 25-062.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Becki Graham
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8. BOARD APPOINTMENTS

8.1 BILL KINSELLA JR

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to appoint Bill Kinsella Jr to the Oversight Committee.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.2 ADOLF ZUBIA

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to appoint Adolf Zubia to the Oversight Committee.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.3 MICHAEL COCHRAN

Councilor Johana Bencomo moved, seconded by Councilor Becky Corran, to appoint Michael Cochran to the Oversight Committee.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Becky Corran
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

9. NOTICE OF PROPOSED ORDINANCE(S)

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

9.1 COUNCIL BILL NO. 25-015; ORDINANCE NO. 3086: AN ORDINANCE CHANGING THE CONDITIONS OF THE M-1/M-2C (INDUSTRIAL STANDARD-CONDITIONAL) FOR A PROPERTY ENCOMPASSING APPROXIMATELY 1.19 ACRES AND LOCATED AT 1013 PARKHILL DRIVE. THE ZONE CHANGE SEEKS TO REMOVE AN EXISTING CONDITION ON THE PROPERTY. SUBMITTED BY BORDERLAND ENGINEERS AND SURVEYORS.

Council agreed to bring it forward.

9.2 COUNCIL BILL NO. 25-016; ORDINANCE NO. 3087: AN ORDINANCE AUTHORIZING A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND CH INDUSTRIAL ACQUISITIONS, LLC FOR THE SALE OF APPROXIMATELY 22.40 ACRES OF MUNICIPALLY OWNED LAND WITHIN THE LAS CRUCES INNOVATION AND INDUSTRIAL PARK FOR THE PURCHASE PRICE OF SEVEN HUNDRED NINETY-FIVE THOUSAND TWO HUNDRED DOLLARS ($795,200) IN

ACCORDANCE WITH PROVISIONS OF LCMC 1997, SECTION 2-1312.

Council agreed to bring it forward.

9.3 COUNCIL BILL NO. 25-017; ORDINANCE NO. 3088: AN ORDINANCE TO AUTHORIZE THE CONVEYANCE OF A CITY-OWNED VACANT PARCEL KNOWN AS PARCEL NUMBER 4-007-135-366-477 (AKA 905 S CAMPO ST.), TO MESILLA VALLEY PUBLIC HOUSING AUTHORITY FOR THE DEVELOPMENT OF AFFORDABLE HOUSING AS AUTHORIZED UNDER THE STATE OF NEW MEXICO'S AFFORDABLE HOUSING ACT (THE ACT) NMSA 1978 CHAPTER 104, IN CONJUNCTION WITH THE CITY'S AFFORDABLE HOUSING GENERAL OVERSIGHT ORDINANCE.

Council agreed to bring it forward.

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

10.1 COUNCILOR MCCLURE

I wanted to give a shoutout to Utilities for coming in and giving the presentation. I am alittle worried about the ARTs if I am going to be honest, but it is going to be fine. I appreciate them sort of giving a demonstration of what this could look like for people who might have been a little scared about lead.

10.2 COUNCILOR MATTIACE

None.

10.3 COUNCILOR GRAHAM

To dove tail on Councilor McClure’s comment, I am 100% not capable of doing this myself so I am glad that I have the option to call on the experts if needed.

I just wanted to quickly share from our recent Community Schools Partnership Board. The schools shared out some of what they did with funding that they received from the City of Las Cruces. I think it is a really cool list because it shows how different the seven schools are and that is part of the power of community schools to be able to tailor their programing to whatever the kids and the families and the staff need. So, this helped fund washer and dryer installations and a fall break reading camp, sports teams and equipment, some family events, shade canopies, a mural project in one of the schools, field trip insurance and fees, science experiment supplies, and a school TV news station resources and that one really hit home for me because I am a former school TV news anchor. As always, I think our community schools are bright spots in the city and just always want to acknowledge and admire them when I have the chance.

10.4 COUNCILOR CORRAN

Tomorrow the Mayor and I are both presenting at the NMSU Outreach Conference. So, I just want to sort of go to the idea of us partnering very heavily with NMSU as we move forward, and I really appreciate the efforts that have been made. In fact, this isn’t exactly partnering with NMSU but I do think that they are engaged with the upcoming public meeting on the widening of University which is a planned roadway development this evening at 5:30 at the Zia Middle School cafeteria there will be a public meeting on that project. This is about widening University from Avenida de Mesilla to South Main, so it is one of those transportation projects that we alluded to when we were talking about the MPO. Just wanted to give a quick heads up that is happening tonight.

Also, again I appreciate city administrations ongoing efforts to maintain our relationship with Memorial Medical. On Wednesday night at 5:30 there will be a public board meeting so that folks can come in and hear and exchange ideas with MMC and I don't think this has happened in quite some time, so I do want to express my gratitude to everyone who has been advocating for changing relationships and increased accountability and transparency in that relationship so thank you for that effort and Wednesday at 5:30 if folks care to join for that event.

10.5 COUNCILOR FLORES

I just want to report on the City Art Board at the meeting that was held last week. They are now planning for a lot of things. They are adding however they are adding one new member Chadi, wants to introduce the performing arts. At this point the City Art Board is getting ready for the Chalk Walk Public Art Month 2025 and the city owned property for public art and so there is a lot going on. One of our members is Dr. Adam Amador and he is the principal at Alma d'Arte and they will be having an event and the City Art Board was invited. Those are the highlights of the committee, and all of the members are very hard working. I want to thank them publicly for that and as well as the Quality of Life Department, Carol Brey attends these meetings which is really refreshing because past directors of the Quality of Life didn't attend and so she is very engaged as is Rebecca Slaughter. I want to thank them for their participation and attending our meetings.

10.6 COUNCILOR BENCOMO

I really have just one thing even though election day feels like a million years ago from today. I wanted to take the opportunity to thank the members of our community for approving the GRT increase and really think a lot of folks were able to see that this is an investment in themselves and their families and in our future and so I really just wanted to take the opportunity to thank them and to let you all know that I am really excited to engage in a community driven process to better understand what projects our community are in need of right now and I think it is incredibly exciting opportunity to participate in some participatory budgeting processes and I just wanted to say that and thank you again for the community investing in yourselves in this way.

10.7 MAYOR ENRIQUEZ

I just wanted to come back and say thank you to our voters for the increase in the GRT. It is what we classified as public safety and critical infrastructure, but it is also opportunities for an investment of a long-term financial stability for our community for our city and we thank you.

Last week I attended the NLC National League of Cities. They were celebrating their 100 years of being an organization and the City of Las Cruces has been a member of the NLC for 50 years, so I was honored and privileged to receive this plaque for 50 years of being a member of the NLC. It was a great place to network, connect best practices. Irene Parra from Economic Development was also in attendance and next year it is in Salt Lake City, Utah and I encourage council if you would be interested in going to the National League of Cities and other staff it would be a great opportunity and it is close by, and we have a friend there already. It is something to be proud of for Las Cruces and being a member and it is not only that it is a leadership of the past and it is something to look forward to in the future that we continue this.

One other thing I wanted to mention, I am a big sports fan and so I just had to share this with you, Aggie Women's Basketball. Since you all are going to be attending the NMSU Outreach, I had the opportunity before I went to Tampa to attend one of the Women Aggie basketball games and last year and part of this year an individual at the WNBA in college Caitlin Clark, she took WNBA, women's basketball to a whole other level, and I have to share this. There is an Aggie Basketball player by the name Molly Kaiser that plays with New Mexico State University, and she is exciting to watch. The game I went to she put up 35 points. We need to go and support and see her play and I wanted to say this publicly because they don't get the recognition, they don't get the attention. The attendance is very low but let's see what we can do to support them because we do have a superstar in the making there at NMSU.

11. CITY MANAGER REPORT

11.1 IKANI TAUMOEPEAU

I did have GRT on the list, but I appreciate those who have brought it up already. It is something that we and as staff is preparing to come bring to your options on how to assess and move forward with the projects that were highlighted to the voters on that end and taking your priorities and goals to have and putting them all together. Working through Budget Retreat on that and looking to months in the new year we will have something prepared, and I will use our meetings and public meetings to see what we can do to involve the public and involve you all on a process that makes sense.

In addition, I wanted to give a heads up on December 17th, the Budget Retreat has been set up. We are looking for vision goals and priorities from city council. That will be held at the Fulton Center. That will be in the morning and early afternoon and that is something that we wanted to do Budget Retreat to do our best to get staff and council outside of the norm and to get the creative juices flowing we take them outside of this room and so that is why I am announcing it here. Last year we went to the Convention Center and so this year we plan on going somewhere different, the Fulton Center there and we may change the location for the CIP as well so things to look forward to, to get the creative juices flowing but we look forward to hearing from you all council and the razzle dazzle that you will bring to hear from your goals and vision for this upcoming year and we intentionally moved it to December so that we could put it earlier for our budget process so that our department heads and our deputies can hear from you all of what your goals and visions are and to see what we can do to implement it in our budget this year.

Additionally we have Memorial Medical Center, there is a board disposition that I am in and the City Manager has a seat on that board and they are bringing back the public board meeting which pre-Covid is what I am told was the last time they did a public meeting and so it has been a few years but they are holding it on this Wednesday, 5:30 to 6:30. It will be held on the first floor on the Annex Building, first floor conference room of the MMC building. The MMC board plans to update the community and there will be Q&A. So, anyone who is interested we ask that you attend, especially councilors, Mayor and Mayor Pro Tem. Any of you all who would like to be there you are more than welcome to be there, it is for everyone.

I just spoke to Viola through text. I wanted to give kudos to her, to Brad, our City Attorney, Viola is our City Auditor for those chiming in at home and then also I want to give kudos to our City IG, Charles as well for your help in getting the Oversight Committee and the parameters and the structure updated. So, thank you, it has been a few months, but it is going to be worth it for the clarity that it brings. So, I just wanted to thank them and Viola shares just to give everyone an update that the first because of your approval today the first meeting should be sometime in November or December is what she is anticipating for the Oversight Committee. So, I just want to give you all a heads up on that.

Parks and Recreation will offer Thanksgiving break a three-day camp for kids kindergarten through fifth grade at Meerscheidt Rec Center beginning November 25th. Camp hours will be from 7:30 a.m. to 5:30 p.m., Monday through Wednesday. The fee is $20 per child due at registration. Call 575-541-2610 if interested. Food/meals will be provided.

From Community Development this is a shout out to those who attended the Veteran’s Day Parade commemorating Veteran’s Day. It was a highly successful event with spectators lining Main and Water Street. This year the city had five grand marshals who were first responders from various city departments including Fire, Police, and Fleet. There was 67 parade floats and entries and thank you to Mayor Enriquez and General Turner, Commander of White Sands Missile Range who officiated the Veteran’s Day Parade.

12. ADJOURNMENT

12.1

Councilor Johana Bencomo moved, seconded by Councilor Yvonne Flores, to adjourn at 2:52 p.m.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Yvonne Flores
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Mayor

City Clerk

25-071

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	December 16, 2024
Drafter:	Natalie Green	**Department:**	City Manager's Office
Program:	Housing and Neighborhood Services	**Line of Business:**	Housing and Neighborhood Services

Title:	**A RESOLUTION APPROVING A PRECOMMITMENT OF CITY FUNDING FOR A FEDERAL LOW-INCOME HOUSING TAX CREDIT PROJECT FOR AN AFFORDABLE MULTI-FAMILY HOUSING DEVELOPMENT, SUBJECT TO AWARD OF SAID TAX CREDITS BY THE NEW MEXICO MORTGAGE FINANCE AUTHORITY AS PART OF THEIR 2024/2025 9% LOW-INCOME HOUSING TAX CREDIT PROCESS.**

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

PURPOSE(S) OF ACTION:
Approve precommitment for a LIHTC

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City) recognizes the pressing need for affordable housing, as highlighted in the 2021-2025 Consolidated Plan, which indicates a shortage of nearly 5,600 rental units for low-income households. In response, the Mesilla Valley Public Housing Authority has submitted a request for funding assistance to the City Manager's Office for Paseos Verdes Phase I. The project is applying for 9% Low-Income Housing Tax Credit (LIHTC) funding through the New Mexico Mortgage Finance Authority (MFA). Successful 9% LIHTC applications are those that leverage local government resources and efficiently use tax credits. City funding offers an opportunity to support projects that directly address the affordable housing needs of the community.

The proposed resolution seeks a preliminary funding commitment of approximately $1.35 million and a waiver of any applicable permit and impact fees. This project will be developed in approximately three phases, resulting in 218 affordable multifamily units located near Campo and Arizona within the El Paseo Metropolitan Redevelopment Area, with close access to various amenities.

Funding is also contingent upon the agency being certified as a Qualified Grantee, by City Staff and the New Mexico Mortgage Finance Authority. The LIHTC funding process requires agencies to apply with MFA to be eligible for tax credit funding. The development is requesting a commitment for the allocation of City funds be made prior to December 31, 2024, to meet LIHTC application deadlines City Council approval is required for any allocation of additional City funding

PLAN(S):
City Council Strategic Plan, Other, Department Strategic Business Plan, 2021-2025 Consolidated Plan, Elevate Las Cruces

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: $0 **AVAILABLE AMOUNT:** $0 **EXPENDITURE AMOUNT:** $1,350,000

Funding Source(s):

Overall Budget Impact:
No funding source has been identified. Council will need to identify a funding source at funding commitment/loan approval.

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes" to approve funding commitment to support an affordable housing development project including applicable permit and impact fee waivers contingent upon the project receiving a 9% LIHTC funding award from MFA and the developer's certification as a Qualified Grantee.
2. Vote "No" this action will not approve funding commitment supporting affordable housing development project subject to the project receiving a 9% LIHTC funding award from MFA and the developer's certification as a Qualified Grantee.
3. Vote to "Amend" this will direct staff to modify the Resolution.
4. Vote to "Table" this would postpone the Resolution and the City Council would need to provide direction to staff.

RESOLUTION 25-071

A RESOLUTION APPROVING A PRECOMMITMENT OF CITY FUNDING FOR A FEDERAL LOW-INCOME HOUSING TAX CREDIT PROJECT FOR AN AFFORDABLE MULTI-FAMILY HOUSING DEVELOPMENT, SUBJECT TO AWARD OF SAID TAX CREDITS BY THE NEW MEXICO MORTGAGE FINANCE AUTHORITY AS PART OF THEIR 2024/2025 9% LOW-INCOME HOUSING TAX CREDIT PROCESS.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) recognizes the need for affordable housing with the 2021-2025 Consolidated Plan reflecting a shortage of nearly 5,600 rental units in the City for low-income households; and

WHEREAS, the City has received a request from the Mesilla Valley Public Housing Authority for funding assistance to create affordable housing for the 2024-2025 9% LIHTC process; and

WHEREAS, the project is applying for 9% Low-Income Housing Tax Credit (LIHTC) funding through New Mexico Mortgage Finance Authority (MFA); and

WHEREAS, successful applications for 9% LIHTC awards are projects that leverage additional resources from local governments and efficiently use tax credits; and

WHEREAS, this City funding also provides an opportunity to invest funds in projects that directly address the low-income affordable housing needs in the community; and

WHEREAS, the recommendation is to allocate up to $1.35M and a waiver of any applicable permit and impact fees contingent upon the project being awarded 9% LIHTC funding; and

WHEREAS, in order to meet LIHTC application deadlines the project is requesting a commitment for the allocation of City funds be made prior to December 31, 2024; and

WHEREAS, City Council approval is required for any allocation of additional City funding.

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

(I)

THAT the preliminary commitment of $1.35M and a waiver of any applicable permit and impact fees for Paseos Verdes is hereby approved and contingent upon the project being awarded 9% LIHTC funding allocation pool and being certified as a Qualified Grantee.

(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

25-072

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	December 16, 2024
Drafter:	Gaby Prats	**Department:**	Financial Services
Program:	Grants Administration	**Line of Business:**	Fiscal Management
Title:	**A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2025 BUDGET.**		

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

PURPOSE(S) OF ACTION:
To accept awarded grants and amend the FY2025 budget.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (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 Summaries
Attachment "A" - Grant Listing
Attachment "B" - PD - FFY23 BJAG NMDPS Executed Agreement.pdf
Attachment "C" - MPO - FFY25 Award FTA Section5303 Award Letter

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:

☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Various **AVAILABLE AMOUNT:** Various **EXPENDITURE AMOUNT:** Various

Funding Source(s):
Various

Overall Budget Impact:
Please refer to Exhibit "A" Fund Summaries

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 grant awards as presented and amend the City's FY2025 Budget.
2. Vote "No"; this will not approve the Resolution to accept the grant awards as presented and amend the City's FY2025 Budget.
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.

RESOLUTION 25-072

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2025 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 FY2025 City Budget and accepts all grant awards as shown in the Fund Summary, Exhibit "A", attached hereto and made part of this Resolution, are hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

____

ATTEST:

____

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES

Exhibit "A"

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2024-25

		7490 METROPOLITAN PLANNING ORGANIZA 2024-25		
	Original Budget	**Amended Budget**	**Req. Adjustment**	**Adjusted Budget**
RESOURCES				
Beginning Balance	$ 321,619	0	0	321,619
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	19,822	19,822	0	19,822
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	605,744	724,033	104,376	828,409
State Grants	0	0	0	0
Local Grants	21,707	43,686	26,094	69,780
Debt Service	0	0	0	0
Total Revenues	**647,273**	**787,541**	**130,470**	**918,011**
TOTAL RESOURCES	**$ 968,892**	**787,541**	**130,470**	**1,239,630**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	590,735	885,653	130,470	1,016,123
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 590,735**	**885,653**	**130,470**	**1,016,123**
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	**$ 378,156**	**(98,112)**	**0**	**223,507**

CITY OF LAS CRUCES

Exhibit "A"

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2024-25

	2100 SPECIAL REVENUE REIMB GRANTS 2024-25			
	Original Budget	**Amended Budget**	**Req. Adjustment**	**Adjusted Budget**
RESOURCES				
Beginning Balance	$ 270,735	0	0	270,735
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	185,500	185,500	0	185,500
Federal Grants	15,245,266	17,573,407	92,100	17,665,507
State Grants	7,421,065	8,184,567	0	8,184,567
Local Grants	0	3,856	0	3,856
Debt Service	0	0	0	0
Total Revenues	**22,851,831**	**25,947,330**	**92,100**	**26,039,430**
TOTAL RESOURCES	**$ 23,122,566**	**25,947,330**	**92,100**	**26,310,165**
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	9,300,103	11,160,103	0	11,160,103
Legal	0	0	0	0
Las Cruces Police Department	4,248,063	4,592,470	92,100	4,684,570
Las Cruces Fire Department	1,415,683	1,251,217	0	1,251,217
Utilities	378,926	385,367	0	385,367
Economic Development	4,860,889	4,309,028	0	4,309,028
Internal Audit	0	0	0	0
Assistant City Manager-400	148,183	233,737	0	233,737
Human Resources	0	0	0	0
Financial Services	366,296	359,855	0	359,855
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	150,000	310,190	0	310,190
Parks & Recreation	0	615,441	0	615,441
Community Development	277,223	277,223	0	277,223
Quality of Life	1,479,056	2,426,441	0	2,426,441
Public Works	230,196	51,638	0	51,638
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 22,854,616**	**25,972,710**	**92,100**	**26,064,810**
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	**$ 267,950**	**(25,380)**	**0**	**245,355**

Attachment "A"

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/20/2024
Grant Team Representative: Gabriela Prats
Grant Award Amount: $ 104,376.00
Council Budget Adjustment Date: 12/16/2024
Grant Agreement #: M01850
Grant Effective Date: 10/01/2024
Grant Reversion Date: 09/30/2025
Funding Agency: New Mexico Department of Transportation (NMDOT)

PROJECT INFORMATION

Grant Project Title: Mesilla Valley Metropolitan Planning Organization FFY25 FTA Section 5303 Funds
Type of Funding: Federal Passthrough to State
Type of Grant: Non-Competitive/Entitlement Recurring
Grant Type: State
Match Amount: $ 26,094.00
Match Description: Local Cash Match
Match Percent/Ratio:
Match Source:
City Fiscal Year: FY2025
Funder Fiscal Year: FFY2025
Grant Scope of Work:

This grant award from the Federal Transit Administration Section 5303 MPO Funds through the New Mexico Department of Transportation (NMDOT) for operations of the Mesilla Valley Metropolitan Planning Organization.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ YES ☑ NO

DEPARTMENT INFORMATION

Implementation Dept: 460- Comm. Development
User Dept: SELECT

Line of Business: Metropolitan Planning Organization
Program: Metropolitan Planning Organization
Project Manager: Andrew Wray
Phone: 575-528-3070
Email: awray@lascruces.gov

Line of Business:
Program:
Project Manager:
Phone:
Email:

Check box if implementation and user departments are the same: ☑

ACCOUNT STRINGS:

Fund Number - Organization Number - Object Number - Amount for Revenue and Expense
(2100 for General Grants/4100 for Capital Grants)

Please copy project 24081 for the expenditure lines as MPO is requesting project # 25081.

See attached worksheet for account details.

Capital Assets: ☐ YES ☑ NO

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Date to Accounting: 11/20/24
Project Number: 25081
Project Created By:
Set-Up Date:
Accounting Comments:

Attachment "A"

	Fund	Org	Object	Description	Amount	Variance %	Variance Amount	Budgeted Amount
REV:	7490	7490	599100	FEDERAL GRANTS	104,376.00			
MATCH:	7490	7490	599300	LOCAL & OTHER GRANTS	26,094.00			
EXP:	7490	70546001	601000	ADMINISTRATIVE SALARIES	52,120.00	45.5%	$ 7,288.17	$ 59,408.17
	7490	70546001	601010	CLASSIFIED	0.00	0.0%	$ -	$ -
	7490	70546001	601040	PART-TIME - SEASONAL	0.00	0.0%	$ -	$ -
	7490	70546001	601120	FICA MEDICARE	1,028.00	0.9%	$ 143.75	$ 1,171.75
	7490	70546001	601130	FICA SOCIAL SECURITY	4,393.00	3.8%	$ 614.29	$ 5,007.29
	7490	70546001	601140	PERA	13,120.00	11.5%	$ 1,834.63	$ 14,954.63
	7490	70546001	601160	DENTAL INS	278.00	0.2%	$ 38.87	$ 316.87
	7490	70546001	601170	HEALTH INS	6,680.00	5.8%	$ 934.09	$ 7,614.09
	7490	70546001	601180	WORKERS COMPENSATION	12.00	0.0%	$ 1.68	$ 13.68
	7490	70546001	601200	CLOTHING ALLOWANCE	0.00	0.0%	$ -	$ -
	7490	70546001	601230	LIFE AND DISABILITY INS	56.00	0.0%	$ 7.83	$ 63.83
	7490	70546001	601260	RETIREMENT HEALTH CARE INS	1,420.00	1.2%	$ 198.56	$ 1,618.56
	7490	70546001	701000	SUPPLIES GENERAL	750.00	0.7%	$ 104.88	$ 854.88
	7490	70546001	701020	SOFTWARE	750.00	0.7%	$ 104.88	$ 854.88
	7490	70546001	701040	ADVERTISING	281.00	0.2%	$ 39.29	$ 320.29
	7490	70546001	701060	PRINT & COPY FEES	81.00	0.1%	$ 11.33	$ 92.33
	7490	70546001	701080	POSTAGE AND FREIGHT	188.00	0.2%	$ 26.29	$ 214.29
	7490	70546001	701180	MINOR EQUIPMENT	1,155.00	1.0%	$ 161.51	$ 1,316.51
	7490	70546001	721070	PROFESSIONAL/TECHNICAL SERVICE	10,592.00	9.3%	$ 1,481.13	$ 12,073.13
	7490	70546001	721080	PURCHASED SERVICES GENERAL	21,185.00	18.5%	$ 2,962.39	$ 24,147.39
	7490	70546001	760000	TRAVEL	375.00	0.3%	$ 52.44	$ 427.44

Attachment "A"

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/14/2024
Grant Team Representative: Perla Galindo
Grant Award Amount: $ 92,100.00
Council Budget Adjustment Date: 12/16/2024
Grant Agreement #: 23-JAG-LASCR-SFY25
Grant Effective Date: 07/01/2024
Grant Reversion Date: 06/30/2025
Funding Agency: New Mexico Department of Public Safety (NMDPS)

PROJECT INFORMATION

Grant Project Title: 2023 Edward Byrne Memorial Assistance Grant
Type of Funding: Federal Passthrough to State
Type of Grant: Non-Competitive/Entitlement Recurring
Grant Type: State
Match Amount: 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: 0.00
Match Source: N/A
City Fiscal Year: FY2025
Funder Fiscal Year: FFY2023
Grant Scope of Work:

The Las Cruces Police Department (LCPD) is requesting this amount to purchase, install, and train officers to use six (6) Dual Purpose Modular (DPM) Surveillance systems.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ YES ☑ NO

DEPARTMENT INFORMATION

Implementation Dept: 320- Police
User Dept: SELECT

Line of Business: Administration- PD
Program: Administration-PD
Project Manager: Sean Mullen
Phone: 575-528-4101
Email: smullen@lascruces.gov

Line of Business:
Program:
Project Manager:
Phone:
Email:

Check box if implementation and user departments are the same: ☑

ACCOUNT STRINGS:

Fund Number - Organization Number - Object Number - Amount for Revenue and Expense
(2100 for General Grants/4100 for Capital Grants)

REV: 2100-20232006-599100 - $92,100.00
EXP: 2100-20232006-808000 - $92,100.00

Capital Assets: ☑ YES ☐ NO

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Date to Accounting: 11/14/24
Project Number: 25056
Project Created By: Josie Trevino
Set-Up Date: 6/24/24
Accounting Comments:

Subgrantee Name: City of Las Cruces
Subgrantee Agreement Number: 23-JAG-LASCR-SFY25
Award Amount: $92,100.00
Subgrantee UEI Number:J3ZLWA2K1X47
Grant Term: July 1, 2024 – June 30, 2025

2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Award

This Subgrant Agreement made effective July 1, 2024, by and between the New Mexico Department of Public Safety, acting through the Administrative Services Division - Grants Management Bureau (GMB) herein referred to as the "**BUREAU"** and the **City of Las Cruces**, serving as the Fiscal/Fiduciary Agency for the **Las Cruces Police Department,** as the Program herein, jointly referred to as the "**SUBGRANTEE.**"

WHEREAS, this Subgrant Agreement is made by and between the Bureau and the Subgrantee, pursuant to The Edward Byrne Memorial Justice Assistance Grant (JAG) Program, specifically authorized under 34 U.S.C. §§ 10151 - 10158, (CFDA #16.738) which is the primary provider of federal criminal justice funding to state and local jurisdictions. JAG funds support all components of the criminal justice system, from multi-jurisdictional drug and gang task forces to crime prevention and domestic violence programs, courts, corrections, treatment, and justice information sharing initiatives. JAG funded projects may address crime through the provision of services directly to individuals and/or communities and by improving the effectiveness and efficiency of criminal justice systems, processes, and procedures; and

WHEREAS, the New Mexico Department of Public Safety is the designated State Administering Agency (SAA) in New Mexico that may apply for the JAG formula grant and administer funds to other state agencies and local units of government. The NMDPS is responsible for conducting coordinated and transparent strategic planning, along with the implementation of structural reforms that improve the administration of justice. Strategic planning is utilized to analyze crime trends, evaluate the priorities of all segments of the criminal justice system, set out a plan for reducing crime and victimization, and guide the use of the grant funds. The Bureau is, therefore, responsible for: coordination of JAG funds among state and local justice initiatives; preparation and submission of the state JAG application; administration of JAG funds including establishing funding priorities; distribution of funds; supervision of the Subgrantees' compliance with all Bureau of Justice Assistance (BJA) special conditions and provisions. The Bureau provides ongoing assistance to subgrantees; and is responsible for submitting financial reports, programmatic reports, performance measures, any other necessary subgrant information, and closes out the awards to BJA. The Bureau is responsible for the fiscal management of this award and will provide leadership and technical assistance to all subgrantees in identifying programmatic needs, preparing JAG subgrant proposals, and administering JAG subgrant awards; and

WHEREAS, it is necessary for the subgrantee to enter into this Subgrant Agreement with the Bureau in order to receive and expend funds from the JAG Program for the purpose of implementing activities that qualify for funding under the JAG Program; and

NOW, THEREFORE, the parties hereto do mutually agree as follows:

SECTION ONE: PURPOSE

1. The purpose of the Agreement is to specify and delineate the rights and duties of the parties hereto as described in the 2023 JAG program solicitation, and any other relevant rules, laws, and regulations. JAG funds may be used for state and local initiatives, technical assistance, training, personnel, law enforcement

overtime, equipment, supplies, contractual support, and information systems for criminal justice. The award shall not be used for research and development. The funding for the 2023 JAG award is as follows:

Federal Award Identification Number: 15PBJA-23-GG-03009-JAGX
Award Date: September 22, 2023
Amount Awarded: $2,107,023.00
Total Subgrantee Pass through: $1,896,321.00
Federal Award Identification Number: 107000275
CFDA #16.738

2. The NMDPS and the New Mexico Drug Enforcement Advisory Council (DEAC) have vetted the adoption of two main purpose areas for the 2023 Byrne JAG grant application. Program purpose areas for the FY2025 funding cycle have been limited to:

A. Law Enforcement Programs

B. Prevention and Education Programs

SECTION TWO: SCOPE OF WORK

- The subgrantee agrees that it shall implement its program as detailed in their submitted 2023 Edward Byrne Justice Assistance Subgrant (JAG) Program Application (attached and incorporated herein as Attachment A). Specifically, the subgrantee shall use grant funds to achieve the following goals and objectives.
  - **Goal #1 – Complete grant acceptance process and purchase camera systems.**
    - **Objective: Purchase and receive cameras before 2/28/2025.**
  - **Approved Grant Funding for Implementation of Goals and Objectives is as follows:**
    - **DPM camera systems @ $92,100.00.**

  TOTAL FUNDING = $92,100.00

- The subgrantee agrees to, at a minimum, demonstrate an emphasis on effective, evidence-based strategies that use intelligence and all available data to focus on reducing violent crime and drug trafficking. A detailed program description is incorporated herein as part of the Subgrantee's Application (attached and incorporated herein as Attachment A).
- The subgrantee agrees to provide all the necessary qualified personnel, materials, and facilities to implement the program described herein.

SECTION THREE: TERMS OF THIS SUBGRANT AGREEMENT

1. This Subgrant Agreement shall become effective July 1, 2024, and shall terminate on June 30, 2025.
2. The subgrantee may not obligate, expend, or request any funds under this award until a budget reflecting the final award amount has been received and approved by the Bureau; and
3. The Bureau shall evaluate the subgrantee's program's progress to determine if the subgrantee is on track to expend funds by the end of the Subgrant Agreement period. Spending reviews are scheduled to occur at mid-year and after the third quarter of the grantee period. If it appears funds will not be fully expended

by the end of the Subgrant Agreement period, the Bureau will make a recommendation to the DEAC Budget and Funding Sub-Committee to amend the Subgrant Agreement's budget in an effort to revert funds. This action may occur prior to the end of the Subgrant Agreement period to allow for funding to become available for other subgrantee programs.

A. If extenuating circumstances exist, applicants may petition the DEAC Budget and Funding Sub-Committee for relief from the reversion of unexpended funds.

B. Upon review and analysis of the petition, the Budget and Funding Sub-Committee through the Bureau shall forward their recommendation to the Secretary of the Department of Public Safety for disposition.

C. In all cases, the Secretary of the Department has the final authority in determining if the reversion shall occur.

4. This Subgrant Agreement constitutes the entire agreement between the parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document, or its amendments, is not part of this Subgrant Agreement and not enforceable pursuant to this Subgrant Agreement. Performance of all duties and obligations herein shall conform with, and shall not contravene, any state, local, or federal statutes, regulations, rules, or ordinances.

5. In the event that, due to unusual circumstances, it becomes apparent that this agreement cannot be brought to full completion within the time period set forth in this Section, the Subgrantee shall notify the Bureau, in writing, at least forty-five (45) calendar days prior to the termination date of this Agreement to request a Subgrant Agreement extension.

SECTION FOUR: SUBGRANTEE DUTIES AND RESPONSIBILITIES

Subgrantee must adhere to the following duties and responsibilities, and other terms and conditions under this Subgrant Agreement in order to receive the compensation described in Section Five.

1. Act in the capacity as the fiduciary for this Program.

2. Include the Subgrant Agreement number on all correspondence and submittals to the Bureau.

3. Have the program commenced and operational within ninety (90) days of the last signatory executing this Subgrant Agreement. If the subgrantee's program has not commenced or is not operational within ninety (90) days, the subgrantee must report in writing to the Bureau the steps taken to initiate the program, the reasons for delay, and the expected starting date prior to the end of the ninety (90) days. Additionally, subgrantee must obtain an extension, in writing, from the Bureau prior to the end of the ninety (90) days. If an extension is not obtained prior to the ninety (90) days, the subgrantee's program, at the Bureau's discretion, may be terminated and, if the Program is terminated, the BJA funds allocated to that program will be redistributed to fund other BJA programs.

4. Submit all program-related contracts, subcontracts, agreements, and subsequent contracts to the Bureau for review and approval prior to execution.

5. Provide the Bureau for its review for compliance and approval in writing, prior to any overtime being reimbursed, the overtime policy for all participating agency(s), if applicable.

6. Retain all records that pertain to the amount and disposition of the funds from all sources budgeted for the Subgrant Agreement period, descriptions of all expenditures made, the reason the expenditure was made, and the benefit received by the subgrantee for the expenditure, the amount and nature of all

contributions from other sources, and such other records as the Bureau shall prescribe. Such records shall be preserved for a period of not less than six (6) years following completion of the Subgrant Agreement.

7. Understand and agree that the Bureau, Department of Justice (DOJ) (including OJP and the Office of the Inspector General (OIG)) and its representatives, and the Government Accountability Office (GAO), shall have access to and the right to examine all records (including, but not limited to, books, papers, and documents in any form) related to this award, including such records of any Subgrantee, contractor, or sub-contractor.

8. Understand and agree that the Bureau, DOJ, and the GAO are authorized to interview any officer or employee of the subgrantee (or of any contractor or sub-contractor) regarding transactions related to this award.

9. Have both fiscal and programmatic personnel attend trainings when provided by the Bureau.

10. The subgrantee agrees they will submit to the Bureau for review and approval any curricula, training materials, or other written materials that will be published, including web-based materials and web site content, or any publications (written, visual, or audio, but excluding press releases, notices, newsletters, and issue analyses) issued by the subgrantee describing programs funded in whole or in part by this agreement. The subgrantee shall submit the above-stated material to the Bureau at least forty-five (45) working days prior to the targeted dissemination date or public release. All materials must contain the following:

    "This project was supported by Grant No. <AWARD_NUMBER> awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice."

11. The subgrantee agrees to have a representative attend quarterly Drug Enforcement Advisory Council (DEAC) meeting and be able provide a report on program progress if requested.

12. The subgrantee agrees to submit the minutes from all quarterly Region Board meetings to the Bureau;

13. The Bureau reserves the right to conduct periodic on-site monitoring visits upon reasonable notice to the subgrantee prior to each visit. Further, the subgrantee understands that it may 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.

14. Per 2 C.F.R. §200.313 requirements, post-award property standards will continue to be managed for all equipment purchased with Federal grant funds over $5,000.00. The NMDPS GMB requires that Property/Equipment Inventory Reports continue to be provided annually by the deadline of January 30 until disposition of all property/equipment purchased with these grant funds with a fair market per-unit value of over $5,000.00, or it is transferred, replaced, or otherwise disposed of. No property or equipment shall be disposed of without prior approval by the NMDPS GMB. Records for property and equipment acquired with Federal funds must be retained for (3) three years after the close of the grant award. Title, use, management (including record keeping, internal control, and maintenance), and disposition of equipment acquired by Subgrantee or its Subgrantee(s) with Subgrant Agreement funds, will be governed by the provisions of NMAC 2.20.1 and 45 CFR 74.34 or 45 CFR 92.32, as applicable.

15. The subgrantee should enforce the federal law that protects federal employees against reprisal for whistleblowing. A whistleblower is an employee of Federal contractor, subcontractor or grantee who

discloses information that the individually reasonably believes is evidence of gross mismanagement of a Federal contract or grant; gross waste of Federal funds; abuse of authority relating to Federal contract or grant; substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

In addition, under the National Defense Authorization Act of 2013 (NDAA), it is illegal for an employee of a Federal contractor, subcontractor, or grantee to be discharged, demoted or otherwise discriminated against for making a protected whistleblower disclosure. Also, under Presidential Policy Directive (PPD-19), an action affecting access to classified information cannot be taken in reprisal for protected whistleblowing.

In the event that a DOJ contractor, subcontractor and grantee report allegations of what they reasonably believe to be wrongdoing, and believe that retaliation has occurred, they may file a complaint under the NDAA with the OIG which will investigate the matter. Information on how to report suspected reprisal to the OIG is available at: http://oig.justice.gov/hotline/.

For further information about whistleblower rights and protections, please see the Whistleblower Protection page on OIG's website at: https://oig.justice.gov/hotline/whistlblower-protection.htm.

16. The subgrantee 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. The subgrantee understands that the Bureau will not reimburse any portion of salaries paid for existing general fund employees/staff.

SECTION FIVE: SUBGRANTEE COMPENSATION AND PAYMENT

1. Upon approval of the subgrantee's satisfactory completion of all work and services required to be performed under the terms of this Subgrant Agreement, and in compliance with all other Subgrant Agreement terms herein stated, the Bureau shall reimburse the subgrantee a sum up to, and not to exceed **$92,100.00**.

2. **All payments shall be made on an actual cost reimbursement basis.** The subgrantee shall submit a completed Request for Reimbursement (RFR) form along with all appropriate supporting documentation.

   A. RFR forms shall be submitted to the Bureau for review and approval no later than fifteen (15) days after the end of each month in which there were grant expenditures.

   B. A Final RFR must be submitted to the Bureau for review and approval no later than thirty (30) days following the termination date of this Subgrant Agreement. Failure by the subgrantee to timely submit the final RFR, including all supporting backup documentation, may result in an Administrative Closeout by the Bureau. If an Administrative Closeout takes place, any remaining expenditures may not be reimbursed, which may have a negative effect on Subgrantee's ability to obtain funding in the future.

   C. If there are no expenditures to claim on an RFR, the subgrantee is required to complete the RFR coversheet indicating zero expenditures are being claimed for that month.

   D. No RFR will be processed if, in the judgment of the Bureau, the subgrantee is in violation of any section of this Subgrant Agreement.

3. The subgrantee understands and acknowledges that Reimbursement of travel expenses, if applicable, will be reimbursed per the New Mexico State Per Diem and Mileage Act (10-8-1 through 10-8-8 NMSA 1978), subgrantee's approved travel policy, or the approved federal rates per GSA. Agencies will provide backup to support travel expenditures including but not limited to itemized receipts and/or invoices.
4. Upon the completion of this Agreement, any portion of subgrantee's unexpended funds revert back to the New Mexico Department of Public Safety.
5. No matching requirement exists for this program.

SECTION SIX: SUBGRANTEE REPORTING REQUIREMENTS

It is necessary for the Bureau to evaluate the progress of the Program, therefore, the subgrantee is required to complete and submit programmatic reports.

1. The subgrantee shall submit Quarterly or Semiannual Progress Reports. Progress reports shall be submitted within 15 days after the reporting period ends, for the life of the award to the Bureau for review and approval. The final report will be due no later than fifteen (15) days after expiration of funding. The schedule is as follows:

   Quarterly: July 1st – September 30th, Progress Report due October 15th

   Quarterly: October 1st – December 31st, Progress Report due by January 15th

   Quarterly: January 1st – March 31st, Progress Report due by April 15th

   Quarterly: April 1st – June 30th, Progress Report due by July 15th

   OR

   Semiannual: January 1st – June 30th, Progress Report due July 15th

   Semiannual: July 1st – December 31st, Progress Report due January 15th

   The Bureau will provide proper guidance for Progress Reports pertaining to this program; and

2. In addition, Monthly Progress Reports must be submitted to the Bureau along with the request for reimbursement. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future high-risk designation.
3. The subgrantee agrees to comply with any additional reporting requirements or information requests imposed by DOJ, NIJ, OJP, OIG, OMB, and the Bureau. The Bureau will notify the subgrantee of any additional reporting requirements as they are imposed.
4. The subgrantee understands and agrees that funds may be withheld (including funds under future awards), or other related requirements may be imposed, if the required information is not submitted on a timely basis;
5. The subgrantee must collect, maintain, and provide to the Bureau data that measures the performance and effectiveness of activities under this award, in the manner, and within the timeframes, specified in

the program solicitation, or as otherwise specified by the Bureau. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

SECTION SEVEN: FUND SUSPENSION OR TERMINATION AND OTHER SANCTIONS

The Bureau, by written notice to the subgrantee, shall have the right to terminate this agreement if, at any time, in the judgment of the Bureau the provisions of this agreement have been violated or the outlined program activities do not progress satisfactorily. In this event, the Bureau may demand a refund of all or part of the funds dispersed to the subgrantee. The Bureau may suspend funding in whole or in part, terminate funding, or impose other sanctions on subgrantee for the following reasons:

1. Pursuant to 28 C.F.R. Part 18, the Bureau may suspend or terminate funding under this award before the completion of the project funded by this award for the subgrantee's failure to comply with the certifications and conditions or with the project's goals, plans and methodology set forth in the approved application. In the case of suspension, the subgrantee will be unable to draw down funds until the Bureau determines that the Subgrantee is in compliance;
2. Failing to comply substantially with the requirements or statutory objectives of the appropriate state or federal law, program guidelines issues hereunder, or other provisions of state or federal law;
3. Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been selected for funding;
4. Failing to submit reports required by Section Six; or
5. Filing a false certification with the application, this Subgrant Agreement, or in other reports or documents.
6. The subgrantee acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if subgrantee is required to submit one pursuant to 28 C.F.R. Section 42.302) that is approved by the Office for Civil Rights, is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the Subgrantee is in compliance.
7. Failing to make satisfactory progress toward the goals, objectives, or strategies set forth in the Subgrantee's Application;
8. Failing to adhere to the requirements in this Subgrant Agreement;
9. This Subgrant Agreement may be terminated by the subgrantee upon written notice delivered to the Bureau at least thirty (30) days in advance. Such termination does not nullify subgrantees obligations already incurred for performance or failure to perform prior to the date of termination. In any event, this subgrant agreement shall be in effect until completed, unless terminated early pursuant to this Subgrant Agreement.

Before imposing sanctions, the Bureau will provide reasonable notice to the subgrantee of its intent to impose sanctions and will attempt to resolve the issue in an expeditious manner.

SECTION EIGHT: SUBGRANTEE CERTIFICATIONS AND CONDITIONS

As a requirement in accepting this award, all Subgrantees must adhere to the following.

1. Compliance with restrictions on the use of federal funds-prohibited and controlled equipment under OJP awards
   Consistent with Executive Order 14074, "Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety," OJP has prohibited the use of federal funds under this award for purchases or transfers of specified equipment by law enforcement agencies. In addition, OJP requires the recipient, and any subrecipient ("subgrantee") at any tier, to put in place specified controls prior to using federal funds under this award to acquire or transfer any property identified on the "controlled equipment" list. The details of the requirement are posted on the OJP web site at https://www.ojp.gov/funding/explore/prohibited-and-controlled-equipment (Award condition:
   Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards) and are incorporated by reference here.

2. Applicability of Part 200 Uniform Requirements
   The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2023 award from OJP.

   The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2023 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2023 award.

   For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at https://ojp.gov/funding/Part200UniformRequirements.htm.

   Record retention and access: Records pertinent to the award that the subgrantee must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the subgrantee (and any subrecipient at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

   In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the subgrantee is to contact the Bureau or OJP promptly for clarification.

3. Requirement to report actual or imminent breach of personally identifiable information (PII)
   The subgrantee (and any subrecipient at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient)

(a) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or

(b) uses or operates a "Federal information system" (OMB Circular A-130). The subgrantee's breach procedures must include a requirement to report actual or imminent breach of PII to the Bureau no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

4. <u>Requirements of the award; remedies for non-compliance or for materially false statements</u>

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the subgrantee that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the subgrantee, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the subgrantee that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period – may result in the Bureau or OJP taking appropriate action with respect to the subgrantee and the award. Among other things, the Bureau or OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or unenforceable, such provision shall be deemed severable from this award.

5. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38
The subgrantee, at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to subgrantee and subgrantee organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to subgrantees that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at https://www.ecfr.gov/cgi-bin/ECFR?page=browse), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

6. Compliance with DOJ regulations pertaining to civil right and nondiscrimination- 28 C.F.R. Part 42
The subgrantee, at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

7. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54
The subgrantee, at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

8. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)
The subgrantee (at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The subgrantee also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the Bureau for guidance.

9. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events
The subgrantee, at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Post award Requirements" in the "DOJ Grants Financial Guide").

10. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2022)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2022, are set out at https://www.ojp.gov/funding/Explore/FY22AppropriationsRestrictions.htm and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

11. Determination of suitability to interact with participating minors
SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the subgrantee, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The subgrantee, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at https://ojp.gov/funding/Explore/Interact-Minors.htm (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors) and are incorporated by reference here.

12. Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at https://ojp.gov/financialguide/DOJ/index.htm), including any updated version that may be posted during the period of performance. The subgrantee agrees to comply with the DOJ Grants Financial Guide.

13. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages subgrantees to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

14. Employment eligibility verification for hiring under the award

A. The subgrantee (and any subrecipient at any tier) must—
   1. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the subgrantee properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).
   2. Notify all persons associated with the subgrantee (or any subrecipient) who are or will be involved in activities under this award of both—
      a. this award requirement for verification of employment eligibility, and
      b. the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.
   3. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).
   4. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

B. Monitoring

The subgrantee's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

C. Allowable Costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

D. Rules of construction

1. Staff involved in the hiring process
   For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all subgrantee officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.
2. Employment eligibility confirmation with E-Verify
   For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the subgrantee may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the subgrantee uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.
3. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.
4. Nothing in this condition shall be understood to authorize or require any subgrantee, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.
5. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any subgrantee, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (https://www.e-verify.gov) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to the Bureau, before award acceptance.

15. Restrictions and certifications regarding non-disclosure agreements and related matters
    No subgrantee under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

    The foregoing is not intended and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

    1. In accepting this award, the subgrantee—

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the subgrantee does or is authorized under this award to make subawards ("subgrants"), procurement contracts or both—

a. it represents that—

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

17. <u>All subawards ("subgrants") must have specific federal authorization</u>

The subgrantee at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at https://ojp.gov/funding/Explore/SubawardAuthorization.htm (Award condition: All subawards ("subgrants") must have specific federal authorization) and are incorporated by reference here.

18. <u>Requirements related to System for Award Management and Universal Identifier Requirements</u>

The subgrantee must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at https://www.sam.gov/. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The subgrantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the subgrantee) the unique entity identifier required for SAM registration.

The details of the subgrantee's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at https://ojp.gov/funding/Explore/SAM.htm (Award condition: System for Award Management (SAM) and Universal Identifier Requirements) and are incorporated by reference here.

This 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).

19. Restrictions on "lobbying"
In general, as a matter of federal law, federal funds awarded by OJP may not be used by the subgrantee, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the subgrantee, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a subgrantee would or might fall within the scope of these prohibitions, the subgrantee is to contact the Bureau for guidance, and may not proceed without the express prior written approval of the Bureau.

20. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed $250,000
The subgrantee must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, $250,000). This condition applies to agreements that -- for

purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at https://ojp.gov/funding/Explore/NoncompetitiveProcurement (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed $250,000)) and are incorporated by reference here.

21. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The subgrantee, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of subgrantees or individuals defined (for purposes of this condition) as "employees" of the subgrantee.

The details of the subgrantee's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)) and are incorporated by reference here.

22. Reporting potential fraud, waste, and abuse, and similar misconduct

The subgrantee must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the Bureau by--(1) mail directed to: New Mexico Department of Public Safety, Attn: Grants Management Bureau, 4491 Cerrillos Road Santa Fe, NM 87507; (2) email to: DPS.GMS@state.nm.us; and/or (3) at (505) 469-5816 (phone).

Additional information is available from the DOJ OIG website at https://oig.justice.gov/hotline.

23. Cooperating with OJP Monitoring

The subgrantee agrees to cooperate with the Bureau and OJP monitoring of this award pursuant to OJP's guidelines, protocols, and procedures, and to cooperate with OJP (including the grant manager for this award and the Office of Chief Financial Officer (OCFO)) requests related to such monitoring, including requests related to desk reviews and/or site visits. The subgrantee agrees to provide to the Bureau and OJP all documentation necessary for OJP to complete its monitoring tasks, including documentation related to any subawards made under this award. Further, the subgrantee agrees to abide by reasonable deadlines set by the Bureau and OJP for providing the requested documents. Failure to cooperate with OJP's monitoring activities may result in actions that affect the subgrantee's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to award funds; referral to the DOJ OIG for audit review; designation of the subgrantee as a DOJ High Risk grantee; or termination of an award(s).

24. Use of program income

The subgrantee agrees that all income generated as a direct result of this award shall be deemed program income. Program income earned during the project period shall be utilized, in accordance with Federal awarding agency regulations or the terms and conditions of the award, in one or more of the ways:

A. Added to funds committed to the project by the grant awarding agency and recipient and used to further eligible project or program objectives.

B. Used to finance the non-Federal share of the project or program.

C. Deducted from the total project or program allowable cost in determining the new allowable costs on which the Federal share of costs is based (when an agency authorizes the disposition of program income as in 1 or 2, program income in excess of any limits stipulated shall be used this way).

All program income must be reported on a monthly basis on the Request for Reimbursement forms.

25. Justice Sharing Information

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The subgrantee must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https://bja.ojp.gov/program/it/gsp-grant-condition. The subgrantee must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information or provide detailed justification for why an alternative approach is recommended.

26. Avoidance of duplication of networks

To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.

27. Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the subgrantee must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 34 U.S.C. 10231(c)-(d). The subgrantee may not satisfy such a fine with federal funds.

28. Protection of human research subjects

The subgrantee must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

29. Confidentiality of data

The subgrantee must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.

30. Law enforcement task force- required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership (www.ctfli.org). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

31. Justification of consultant rate

Approval of this award does not indicate approval of any consultant rate in excess of $650 per day. A detailed justification must be submitted to and approved by the Bureau prior to obligation or expenditure of such funds.

32. Compliance with National Environmental Policy Act and related statutes

Upon request, the subgrantee must assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the Bureau or by a subgrantee. Accordingly, the subgrantee agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the subgrantee agrees to contact the Bureau.

The subgrantee understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the subgrantee, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

A. New construction;

B. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;

C. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;

D. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and

E. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The subgrantee understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The subgrantee further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at https://bja.gov/Funding/nepa.html, for programs relating to methamphetamine laboratory operations.

Application of This Condition to Recipient's Existing Programs or Activities: For any of the subgrantee's or its subrecipients' existing programs or activities that will be funded by these award funds, the subgrantee, upon specific request from the Bureau, agrees to cooperate with the Bureau in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

33. <u>Required data on law enforcement agency training</u>
Any law enforcement agency receiving direct or sub-awarded funding from this JAG award must submit quarterly accountability metrics data related to training that officers have received on the use

of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.

34. Expenditures prohibited without waiver

No funds under this award may be expended on the purchase of items prohibited by the JAG program statute, unless, as set forth at 34 U.S.C. 10152, the Bureau and the BJA Director certifies that extraordinary and exigent circumstances exist, making such expenditures essential to the maintenance of public safety and good order.

35. Use of funds for DNA testing; upload of DNA profiles

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS.

No profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from the Bureau in accordance with BJA.

Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS. Booking agencies should work with their state CODIS agency to ensure all requirements are met for participation in Rapid DNA (see National Rapid DNA Booking Operational Procedures Manual).

36. Submission of eligible records relevant to the National Instant Background Check System

Consonant with federal statutes that pertain to firearms and background checks -- including 18 U.S.C. 922 and 34 U.S.C. ch. 409 -- if the subgrantee uses this award to fund (in whole or in part) a specific project or program (such as a law enforcement, prosecution, or court program) that results in any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the National Instant Background Check System (NICS), or that has as one of its purposes the establishment or improvement of records systems that contain any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS, the subgrantee must ensure that all such court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS are promptly made available to the NICS or to the "State" repository/database that is electronically available to (and accessed by) the NICS, and -- when appropriate -- promptly must update, correct, modify, or remove such NICS-relevant "eligible records".

In the event of minor and transitory non-compliance, the subgrantee may submit evidence to demonstrate diligent monitoring of compliance with this condition (including subgrantee compliance). DOJ will give great weight to any such evidence in any express written determination regarding this condition.

37. Prohibition on use of award funds for match under BVP program
JAG funds may not be used as the 50% match for purposes of the DOJ Bulletproof Vest Partnership (BVP) program.

38. Certification of body armor "mandatory wear" policies, and compliance with NIJ standards
If subgrantee uses funds under this award to purchase body armor, the subgrantee must submit a signed certification that law enforcement agencies receiving body armor purchased with funds from this award have a written "mandatory wear" policy in effect. The Bureau must keep signed certifications on file for any subgrantees planning to utilize funds from this award for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any funds from this award may be used by an agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.
Ballistic-resistant and stab-resistant body armor purchased with JAG award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards and is listed on the NIJ Compliant Body Armor Model List (https://nij.gov/topics/technology/body-armor/Pages/compliant-ballistic-armor.aspx). In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information can be found here: https://nij.ojp.gov/topics/equipment-and-technology/body-armor

39. Extreme risk protection programs funded by JAG must include, at a minimum: pre-deprivation and post-deprivation due process rights that prevent any violation or infringement of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive or procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). Such programs must include, at the appropriate phase to prevent any violation of constitutional rights, at minimum, notice, the right to an in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses; the right to be represented by counsel at no expense to the government; pre-deprivation and post-deprivation heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant in Federal court or promulgated by the State's evidentiary body, and sufficient to ensure the full protections of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive and procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). The heightened evidentiary standards and proof under such programs must, at all appropriate phases to prevent any violation of any constitutional right, at minimum, prevent reliance upon evidence that is unsworn or unaffirmed,

irrelevant, based on inadmissible hearsay, unreliable, vague, speculative, and lacking a foundation, and penalties for abuse of the program.

40. The subgrantee agrees that no funds under this grant award (including via subcontract or subaward, at any tier) may be used for unmanned aircraft systems (UAS), which includes unmanned aircraft vehicles (UAV), or for any accompanying accessories to support UAS.

41. In accepting this award, the subgrantee agrees that grant funds cannot be used for Facial Recognition Technology (FRT) unless the subgrantee has policies and procedures in place to ensure that the FRT will be utilized in an appropriate and responsible manner that promotes public safety, and protects privacy, civil rights, and civil liberties and complies with all applicable provisions of the U.S. Constitution, including the Fourth Amendment's protection against unreasonable searches and seizures and the First Amendment's freedom of association and speech, as well as other laws and regulations. Subgrantees utilizing funds for FRT must make such policies and procedures available to DOJ upon request.

42. De-confliction
A subgrantee shall participate in the case and subject de-confliction process through the New Mexico High Intensity Drug Trafficking Area (HIDTA)/New Mexico Investigative Support Center (NMISC).

43. All funds awarded under this Subgrant Agreement must be used in accordance with federal statutes, regulations, and the terms and conditions of the Federal award.

44. The subgrantee agrees to comply with any additional requirements that may be imposed during the grant performance period if the Bureau determines that the subgrantee is a high-risk grantee.

SECTION NINE: SUBGRANTEE AUDIT REQUIREMENTS

The subgrantee agrees to comply with the 2 C.F.R. 200 Uniform Guidance Subpart F Audit Requirements.

1. The Bureau will review the most recent Audit report as a part of subgrantee monitoring; and

2. The Bureau may request that a Corrective Action Plan be submitted in response to audit findings and recommendations disclosed in the report which may impact the fiscal and/or programmatic management of this grant.

SECTION TEN: AMENDMENTS, MODIFICATIONS, AND SEVERABILITY

1. The subgrantee agrees to make no change in its Application (attached and incorporated herein as Attachment A of this Sub-Agreement), which includes, but is not limited to, subgrantee's goals and objectives and detailed budget, without complying with the Bureau's amendment procedures provided in this Subgrant Agreement and upon the receipt of the Bureau's approval prior to any changes being made.

2. Amendments may be submitted by the subgrantee to request program changes and/or corrections for any programmatic, administrative, or financial change associated with this Agreement;

    a. Upon receipt of the extension request, the subgrantee and the Bureau shall review the work accomplished to date and determine whether there is a need or sufficient justification to amend this Subgrant Agreement to provide additional time for completion of the program. The maximum allowable extension for any program shall be twelve (12) months. An extension is contingent upon the Bureau receiving authorization for the extension of the grant award from the NIJ.

3. The Bureau, by written notice to the subgrantee shall have the right to change and/or correct this Agreement, if at any time, in the judgment of the Bureau the provisions of this Agreement require the Bureau to do so; and

4. The Bureau, by written notice, has the right to deny any amendment or budget modification request.

5. If any provision of this Agreement is held to be invalid, illegal, void, or otherwise unenforceable by a court of competent jurisdiction, such provision may be revised by the Parties, insofar as possible, to cure the defect and give maximum effect to their intent in entering into this Agreement. In any event, such invalidity, illegality, or unenforceability shall not affect other provisions hereof, and the remainder of the Agreement shall continue in full force and effect; and

SECTION ELEVEN: SUBGRANTEE REPRESENTATIVE

The grant representatives listed below are the Federal Awarding Agency, State Administering Agency, and subgrantee representatives responsible for overall fiscal and programmatic supervision of the approved program.

FEDERAL AWARDING AGENCY

Office of Justice Programs	Elaine Smokes
807 7th Street NW	State Policy Advisor
Washington, DC 20531	
Telephone: (202)307-0690	Telephone: (202)598-7139
Email: askOCR@usdoj.gov	Email: Elaine.smokes@ojp.usdoj.gov

STATE ADMINISTERING AGENCY

Department of Public Safety	Oliver Benavidez
4491 Cerrillos Rd.	4491 Cerrillos Rd.
Santa Fe, New Mexico 87504	Santa Fe, New Mexico 87504
	(505) 479-0507
	oliver.benavidez@dps.nm.gov

SUBGRANTEE REPRESENTATIVES

Chief of Police, Jeremy Story	Leeann Demouche, Finance Director
700 N. Main Street	700 N. Main Street
Las Cruces, NM 88001	Las Cruces, NM 88001
(575) 528-2080	(575) 541-2080
jstory@lascruces.gov	ldemouche@lascruces.gov

SECTION TWELVE: AUTHORIZATION OF EXPENDITURES

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Congress of the United States if federal funds are involved, or the State Legislature if State funds involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice being given by the Bureau to the subgrantee. The Bureau is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Bureau. The Bureau's decision as to whether its funds are sufficient for fulfillment of the Agreement shall be final.

SECTION THIRTEEN: WAIVER

The Bureau or subgrantee's failure to require strict performance of any provision of this Agreement shall not waive or diminish the right thereafter to demand strict compliance with that or any other provision. No waiver by either party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

SECTION FOURTEEN: THIRD-PARTY BENEFICIARY CLAUSE

No provision of this Agreement creates in the public, or any member thereof, a third-party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provision of this Agreement.

SECTION FIFTEEN: LIABILITY AND NEW MEXICO TORT CLAIMS ACT

The subgrantee is responsible for any liability associated with the actions or omissions of it or its own employees, including violations of rights and privileges guaranteed under the Laws and Constitution of the United States and New Mexico. Any liability incurred in connection with this Subgrant Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 through 41-4- 30, as amended. No provision of this Subgrant Agreement establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the Bureau or the Sub grantee arising from the performance of this Subgrant Agreement apart from that set forth in the New Mexico Tort Claims Act.

SECTION SIXTEEN: SEVERABILITY

If any term or condition of this Subgrant Agreement shall be held invalid or unenforceable, the remainder of this
Agreement shall not be affected and shall be valid and enforceable.

SECTION SEVENTEEN: INSTRUCTIONS AND FORMS

Instructions and forms necessary to carry out the administration of the grant as outlined in this Agreement are made available by the Bureau. Forms are incorporated into and made part of this Agreement upon completion.

SECTION EIGHTEEN: GRANT CLOSEOUT

1. The subgrantee will close-out the award when it determines that all applicable administrative actions and all required work of the award have been completed. This section specifies the actions the subgrantee must take to complete this process at the end of the period of performance.

   A. The subgrantee must submit, no later than 30 calendar days after the end date of the grant period, all financial, performance, and other reports as required by the terms and conditions of the Federal award. DPS may approve extensions when requested by the Subgrantee, and its decision regarding approval will be determined on a case-by-case basis.
   B. DPS will make prompt payments to the subgrantee for allowable reimbursable costs under the award being closed out.
   C. The subgrantee must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property.
   D. The Bureau will initiate a site visit closeout upon the closing of the grant period to ensure compliance with federal statutes, regulations and the terms and conditions of the federal award.

SECTION NINETEEN: STATUS OF SUBGRANTEE

The subgrantee and its agents and employees are not, by virtue of this Agreement, agents or employees of the Bureau, or the State of New Mexico. The subgrantee, its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles or any other benefits afforded to employees of the State of New Mexico as a result of the Agreement.

SECTION TWENTY: ATTACHMENTS AND CERTIFICATIONS

1. Attachments listed below are incorporated into and made part of this Subgrant Agreement. The below listed certifications must be completed and returned to the Bureau along with this Agreement. They are incorporated and made part of this Subgrant Agreement upon execution.

   A. Subgrantee's Application (Attachment A)
   a. Certification of Compliance with Equal Employment Opportunity Plan ((EEOP) Requirements (Certification 1)
   b. Certified Assurances including Uniform Crime Reporting and Supplanting (Certification 2)
   c. Privacy Certification (Certification 3)
   d. Overtime Certification (Certification 4)

THEREFORE, the subgrantee and the Bureau do hereby execute this Subgrant Agreement as witnessed by the signatures below:

SUBGRANTEE:

By: ______________________ Date: 7/20/24.
Signature of Certifying Official

Ikani Taumoepeau City Manager

By: ______________________ Date: 7/19/24
Program Agency Director

Jeremy Story Police Chief
Printed Name Title

DEPARTMENT OF PUBLIC SAFETY:

By: ______________________ Date: 8-14-24
Signature of Cabinet Secretary/Awarding Official

Jason R. Bowie
Printed Name

Reviewed as to legal form and sufficiency, Office of Legal Affairs

By: ______________________ Date: 6/24/24
General Counsel

Matthew Chavez
Printed Name

APPROVED AS TO FORM:

______________________ 7/19/24
City Attorney Date

Attachment "C"

New Mexico DEPARTMENT OF TRANSPORTATION
MOBILITY FOR EVERYONE

August 21, 2024

Andrew Wray
Mesilla Valley MPO Officer
Mesilla Valley Metropolitan Planning Organization
P.O. Box 20,000
Las Cruces, New Mexico 88004

RE: Award Letter for Federal Fiscal Year (FFY) 2025 Federal Transit Administration (FTA) Section 5303 MPO Funds

Dear Mr. Wray:

The 2024 FTA Section 5303 federal funding level for the Mesilla Valley MPO is $104,376.00 under Memorandum of Agreement #M01850. The match required from the MPO is $26,094.00 Please invoice the NMDOT quarterly, starting after December 31, 2024 for these funds that will begin on October 1, 2024.

Original invoices and quarterly reports should be submitted through Blackcat.

A copy of invoices and quarterly reports should be sent to your contacts at the New Mexico Department of Transportation's Government to Government Unit.

Pursuant to the reporting requirements of 2 CFR Section 200.331 for pass-through entities, please see the enclosed Attachment A.

Please contact Kevin Olinger at 505-469-3595 if you have questions on the Department's processes for FTA Section 5303 funding.

Sincerely,

DocuSigned by:
F04AA67603334A9...

Kevin Olinger
Transit Bureau Chief, Transit and Rail Division
New Mexico Department of Transportation

CC:
Tony Ogboli, FTA
Luci Nears, FTA
Valerie Sherman, NMDOT
Delilah Garcia, NMDOT

Michelle Lujan Grisham
Governor

Ricky Serna
Cabinet Secretary

Commissioners

Vacant
Commissioner
District 1

Gary Tonjes
Commissioner
District 2

Hilma E. Chynoweth
Commissioner, Vice Chairman
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

3089; Council Bill 25-018

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	December 16, 2024	**Adopted:**	January 6, 2025
Drafter:	Erika Jaquez	**Department:**	Financial Services
Program:	Treasury	**Line of Business:**	Revenue Management

Title:	**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO TAXABLE MUNICIPAL GROSS RECEIPTS TAX (ONE-HALF PERCENT) REVENUE BONDS, SERIES 2025 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $21,000,000 FOR THE PURPOSE OF PAYING, DISCHARGING, AND SATISFYING THE CITY'S RISK MANAGEMENT MEASURES ENTERED INTO IN THE FULL AND FINAL RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT IN CONNECTION WITH ESTATE OF TERESA GOMEZ, ET AL. V. CITY OF LAS CRUCES, ET AL., CIV-23-00952 AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A NEGOTIATED PUBLIC SALE WITH AN UNDERWRITER; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN A PRICING CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE AND BOND PURCHASE AGREEMENT FOR THE SALE OF THE SERIES 2025 BONDS; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.**

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

PURPOSE(S) OF ACTION:
Issue debt.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City Charter authorizes City Council to borrow money by ordinance and the City is authorized by State Statute Section 3-31-6 (C) NMSA 1978 to issue revenue bonds. The City intends to use the proceeds of up to $21,000,000 Taxable Municipal Gross Receipts Tax (MGRT) Revenue Bonds, Series 2025 to pay, discharge, and satisfy the City's risk management measures entered into in the full and final release of all claims and indemnity agreement in connection with *Estate of Teresa Gomez, ET AL. V. City of Las Cruces, ET AL.,* CIV-23-00952 and paying the cost of issuance of the bonds. These bonds will be payable from the 2nd one-quarter percent increment of municipal gross receipts tax and the 3rd one-quarter percent increment of municipal gross receipts tax. The City anticipates receiving the bond proceeds on or before February 21st, 2025, with the bonds having a 20 year maturity.

Due to timing of submitting these documents for review, only a preliminary ordinance will be attached as an Attachment for the first reading. After the first reading, the final ordinance is prepared by Bond Counsel. Bond

Counsel prepares the preliminary documents incorporating the final parameters for the sale of the bonds. A clean and redlined copy of the final bond ordinance will be provided in the agenda packet for the meeting at which the final adoption is scheduled. Upon sale of the bonds, the City Manager presents the details confirming the sale was within the authorized parameters to Council.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance authorizing the issuance of up to $21,000,000 MGRT, Series 2025 bonds.
2. Vote "No"; this will not approve the Ordinance, thus not authorizing the issuance of up to $21,000,000 MGRT, Series 2025 bonds.
3. Vote to "Amend"; this could delay the issuance of the bonds.
4. Vote to "Table"; this could delay the issuance of the bonds.

ORDINANCE 3089; COUNCIL BILL 25-018

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO TAXABLE MUNICIPAL GROSS RECEIPTS TAX (ONE-HALF PERCENT) REVENUE BONDS, SERIES 2025 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $21,000,000 FOR THE PURPOSE OF PAYING, DISCHARGING, AND SATISFYING THE CITY'S RISK MANAGEMENT MEASURES ENTERED INTO IN THE FULL AND FINAL RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT IN CONNECTION WITH ESTATE OF TERESA GOMEZ, ET AL. V. CITY OF LAS CRUCES, ET AL., CIV-23-00952 AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A NEGOTIATED PUBLIC SALE WITH AN UNDERWRITER; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN A PRICING CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE AND BOND PURCHASE AGREEMENT FOR THE SALE OF THE SERIES 2025 BONDS; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Bond Ordinance unless the context requires otherwise.

The City Council is informed that:

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico and is operating as a home rule City pursuant to Article X, Section 6 of the Constitution of the State and the Charter of the City; and

WHEREAS, the City has previously enacted (i) Ordinance No. 385 adopted on July 6, 1981 with an effective date of January 1, 1982 (the "2nd Quarter Percent Increment of MGRT Ordinance") which imposes an increment of municipal gross receipts tax at a rate of 0.25% of the gross receipts reported or required to be reported by persons engaging in business within the City, with certain specified exemptions and deductions pursuant to Section 7-19D-9 NMSA 1978, as amended, and (ii) Ordinance No. 427 adopted on June 7, 1982 with an effective date of January 1, 1983 (the "3rd Quarter Percent Increment of MGRT Ordinance" and together with the 2nd Quarter Percent Increment of MGRT Ordinance, the "Tax Ordinances") which imposes an increment of municipal gross receipts tax at a rate of 0.25% of the gross receipts reported or required to be reported by persons engaging in business within the City, with certain specified exemptions and deductions pursuant to Section 7-19D-9 NMSA 1978, as amended; and

WHEREAS, the City previously entered into a Loan Agreement with the New Mexico Finance Authority dated July 27, 2018 (the "2018 NMFA Loan") in the original aggregate principal amount of $1,419,664, now outstanding in the aggregate principal amount of $219,538, payable from and secured by a first lien, but not an exclusive first lien, on the 2nd one-quarter percent increment of municipal gross receipts tax; and

WHEREAS, the municipal gross receipts revenues derived pursuant to the Tax Ordinances are being pledged to the Bonds herein authorized; and

WHEREAS, the Pledged Revenues are collected by the Revenue Division of the New Mexico Taxation and Revenue Department, and are remitted to the City after deductions for administrative costs pursuant to Section 7-19D-7 NMSA 1978; and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides as follows:

C.Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor; and

WHEREAS, other than the 2018 NMFA Loan, the Pledged Revenues have not been pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council has entered the Full and Final Release of All Claims and Indemnity Agreement in connection with *Estate of Teresa Gomez, et al. v. City of Las Cruces, et al.,* CIV-23-00952 which provides for two payments by the City in an aggregate amount that exceeds the revenue available to the City for such purpose in a single fiscal year; and

WHEREAS, the City has determined that there is an urgent public need for the Project to be funded with certain proceeds of the Bonds; and

WHEREAS, Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, permit the City to issue revenue bonds for the Project and to pledge the Pledged Revenues to the payment of interest on and principal of revenue bonds; and

WHEREAS, the Council hereby determines that the Project is for a municipal purpose within the meaning of Section 3-31-1(D) NMSA 1978; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Bonds be issued with a first lien, but not an exclusive first lien, on the Pledged Revenues; and

WHEREAS, the proposed form of this Bond Ordinance has been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Bonds in a negotiated public sale to the underwriter of the Bonds (the "Purchaser") pursuant to a Pricing Certificate supplementing this Bond Ordinance and a Bond Purchase Agreement to be executed by the City Manager or City Financial Services Director (each a "Delegate") as the Delegates, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Bonds set forth in the Pricing Certificate be within the parameters set forth in this Bond Ordinance; and

WHEREAS, the specific principal amounts, interest rates, maturity dates, prices and other final terms and other features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy will be established in the Pricing Certificate; and

WHEREAS, the City Council has determined that it is in the best interests of the City to authorize the issuance of the Bonds pursuant to this Bond Ordinance.

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

(I)

Section 1.Definitions. As used in this Bond Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Act” means the general laws of the State, including Sections 3-31-1 to 3-31-12, 6-14-1 through 6-14-11, 7-19D-9 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, the Tax Ordinances, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

“Bond Insurance Policy” means the financial guaranty insurance policy, if any, issued by an insurance company or financial or other institution insuring the payment when due of the principal of and interest on the Bonds as provided therein.

“Bond Ordinance” means this City Ordinance No. ___ adopted on January 6, 2025, as supplemented by the Pricing Certificate.

“Bondholder,” “holder,” “owner” or “Owner” means the registered owner of any Bond as shown on the registration books of the City for the Bonds, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the Bondholders shall mean the Holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of all Bonds then outstanding.

“Bond Purchase Agreement” means the Bond Purchase Agreement by and between the City and the Purchaser related to the sale of the Bonds to the Purchaser.

“Bonds” or “Series 2025 Bonds” or “2025 Bonds” means the City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025 authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

“Business Day” means a day on which commercial banks in the city in which the principal office of the Paying Agent and Registrar is located are open for conduct of substantially all of their business operations.

“Charter” means the home rule charter of the City submitted to Las Cruces City Commission on January 7, 1985, and approved by the voters of the City on March 5, 1985, as amended and supplemented.

“City” means the City of Las Cruces, in the County of Doña Ana and State of New Mexico.

“City Council” means the City Council of the City or any future successor governing body of the City.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

“Continuing Disclosure Undertaking” means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser.

“Depository” means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

“Escrow Deposit Agreement” means any agreement for the deposit of the Acquisition Fund pending payment for the costs of the 2025 Project.

“Event of Default” means any of the events stated in Section 25 of this Bond Ordinance.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including, to the extent applicable, the fees, compensation, costs and expenses paid or to be paid to the Paying Agent and Registrar, the Insurer and legal fees, financial advisor fees, expenses and applicable gross receipts taxes, costs of printing and distributing the Preliminary Official Statement and the Official Statement, rating fees and accounting fees and expenses.

"Fiscal Year" means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the City as its fiscal year.

"Fitch" means Fitch Ratings, Inc., its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Bond Ordinance and not solely to the particular section or paragraph of this Bond Ordinance in which such word is used.

"Independent Accountant" means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City who (i) is, in fact, independent and not under the domination of the City, (ii) does not have any substantial interest, direct or indirect, with the City, and (iii) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

"Insured Bank" means a bank or savings and loan association insured by an agency of the United States.

"Interest Payment Date" means each June 1 and December 1, commencing June 1, 2025 (or such other date specified in the Pricing Certificate).

"Moody's" means Moody's Investor Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"2018 NMFA Loan" means the Loan Agreement between the City and the New Mexico Finance Authority dated July 27, 2018 in the original aggregate principal amount of $1,419,664, and constituting a first lien, but not an exclusive first lien, on the 2nd one-quarter percent increment of municipal gross receipts tax.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

"Official Statement" means the final disclosure document relating to the issuance and sale of the Bonds.

"Outstanding" or "outstanding" when used in reference to bonds means, on any particular date, the aggregate of all Bonds delivered under this Bond Ordinance except:

A.those cancelled at or prior to such date or delivered or acquired by the City at or prior to such date for cancellation;

B.those otherwise deemed to be paid in accordance with Section 28 or Section 31 of this Bond Ordinance;

C.those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the City and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course.

"Parity Bonds" or "Parity Obligations" means the 2018 NMFA Loan and bonds or other obligations hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues on parity with the Bonds, as provided in Section 20 of this Bond Ordinance.

"Parity Subordinate Obligations" means bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

"Paying Agent" means the City Treasurer, as agent for the City for the payment of the Bonds or any other entity at the time appointed Paying Agent by resolution of the City Council.

"Permitted Investments" means, but only to the extent permitted by applicable laws of the State or ordinances of the City, the following:

A.Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B.Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1.<u>U.S. Export-Import Bank</u> (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership.
2.<u>Farmers Home Administration</u> (FmHA)
Certificates of beneficial ownership
3.<u>Federal Financing Bank</u>
4.<u>Federal Housing Administration Debentures</u> (FHA)
5.<u>General Services Administration</u>
Participation certificates
6.<u>Government National Mortgage Association</u> (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations
7.<u>U.S. Maritime Administration</u>
Guaranteed Title XI financing
8.<u>U.S. Department of Housing and Urban Development</u> (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C.Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1.<u>Federal Home Loan Bank System</u>
Senior debt obligations

2.Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”)
Participation Certificates
Senior debt obligations
3.Federal National Mortgage Association (FNMA or “Fannie Mae”)
Mortgage-backed securities and senior debt obligations
4.Student Loan Marketing Association (SLMA or “Sallie Mae”)
Senior debt obligations
5.Resolution Funding Corp. (REFCORP) obligations
6.Farm Credit System
Consolidated system wide bonds and notes

D.Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

E.Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F.Certificates of deposit, savings accounts, deposits accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

G.Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements.

H.Commercial paper rated, at the time of purchase, “Prime - 1” by Moody's and “A-1” or better by S&P.

I.Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

J.Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody's and “A-1” or “A” or better by S&P.

K.Repurchase Agreements for 30 days or less must follow the following criteria.

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1.Repos must be between the City and a dealer bank or securities firm

a.Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's, or

b.Banks rated “A” or above by S&P and Moody's.

2.The written repo contract must include the following:

a.Securities which are acceptable for transfer are:

(1)Direct U.S. governments, or

(2)Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)

b.The term of the repo may be up to 30 days

c.The collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

d.Valuation of Collateral

(1)The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

(a)The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3.Legal opinion which must be delivered to the City:

a.Repo meets guidelines under state law for legal investment of public funds.

L.The State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the State Treasurer.

“Pledged Revenue Fund” means the Gross Receipts Tax Revenue Fund established in Section 16 of this Bond Ordinance.

“Pledged Municipal Gross Receipts Tax Revenues” or “Pledged Revenues” means the revenues derived from the 2nd one-quarter percent increment of municipal gross receipts tax and 3rd one-quarter percent increment of municipal gross receipts taxes imposed pursuant to the Tax Ordinances, (a) which tax equals, subject to the exemptions specified in Section 7-19D-7 NMSA 1978, 0.50% of the gross receipts reported or required to be reported by persons engaging in business in the City, (b) which amounts are dedicated to general fund purposes and (c) which amounts are collected and, after deductions for administrative costs and disbursements for tax credits, refunds, and the payment of interest applicable to such municipal gross receipts tax and subject to any increase or decrease pursuant to Section 7-1-6.15 NMSA 1978, are distributed monthly by the Revenue Division of the Taxation and Revenue Department of the State of New Mexico to the City pursuant to Sections 7-1-6.1, 7-1-6.12 and 7-19D-9 NMSA 1978; and provided that, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term “Pledged Revenues” does not include any other local option gross receipts tax income, the state shared gross receipts tax revenues received by the City, or any hold harmless distributions received by the City pursuant to Section 7-1-6.46 NMSA 1978 as amended).

“Preliminary Official Statement” means the initial disclosure document relating to the issuance and sale of the Bonds.

“Pricing Certificate” means one or more certificates executed by the City Manager or City Financial Services Director, dated on or before the date of delivery of the Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the procurement of any Bond Insurance Policy and (x) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Ordinance.

“Purchaser” means the best bidder for the Bonds.

“Rating Category” means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

“Registrar” means the City Treasurer, as agent for the City for transfer and exchange of the Bonds or any other entity at the time appointed by resolution of the City Council.

“Reserve Fund Insurance Policy” means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

“S&P” means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“State” means the State of New Mexico.

“Tax Ordinances” means, collectively, (i) City Ordinance No. 385 adopted by the City Council on July 6, 1981 with an effective date of January 1, 1982, imposing the second 0.25% increment of municipal gross receipts tax and (ii) City Ordinance No. 427 adopted by the City Council on June 7, 1982 with an effective date of January 1, 1983, imposing the third 0.25% increment of municipal gross receipts tax pursuant to Sections 7-19D-1 et. seq. NMSA 1978, as amended.

“2025 Acquisition Fund” means the City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025, Project Acquisition Fund” established by Section 16 of the Bond Ordinance and for payment of the 2025 Project costs.

“2025 Debt Service Fund” means the “City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025, Debt Service Fund” established in Section 16 of this Bond Ordinance.

“2025 Minimum Reserve” means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Bonds, (ii) the maximum annual debt service on the outstanding Bonds, or (iii) 125% of the average annual debt service on the outstanding Bonds. The 2025 Minimum Reserve shall be recalculated every year on or about June 1.

“2025 Project” means paying, discharging, and satisfying the City’s risk management measures entered into in the Full and Final Release of All Claims and Indemnity Agreement in connection with *Estate of Teresa Gomez, et al. v. City of Las Cruces, et al.,* CIV-23-00952 for the benefit of the City and its residents and paying Expenses related to the issuance of the Bonds.

“2025 Reserve Fund” means the “City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025, Reserve Fund” established by Section 16 of this Bond Ordinance.

Section 2.<u>Ratification</u>. All action heretofore taken (not inconsistent with the provisions of this Bond Ordinance) by the City Council and the officers of the City, directed toward the Project, the issuance of the Bonds for the Project and the sale of the Bonds to the Purchaser in accordance with the parameters in this Bond Ordinance be, and the same hereby is, ratified, approved and confirmed.

Section 3.<u>Authorization of the 2025 Project</u>. The 2025 Project and the method of financing the 2025 Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the 2025 Project as set forth in the Pricing Certificate and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

Section 4.<u>Findings; Declaration</u>. The City Council hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A.The 2025 Project is needed to meet the needs of the City and its inhabitants.

B.Moneys available for the 2025 Project from all sources other than the issuance of revenue bonds are not sufficient to defray the cost of the 2025 Project.

C.The Project is for a municipal purpose as set forth in Section 3-31-1(D) NMSA 1978 and the Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D.It is economically feasible to defray, in part, the cost of the 2025 Project by the issuance of the Bonds.

E.The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2025 Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

Section 5.Bonds – Authorization, Parameters and Detail.

A.Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, revenue bonds to be designated as the "City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025" in an aggregate principal amount not to exceed $21,000,000, and the issuance, sale and delivery of the Bonds is hereby authorized.

B.Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025. The Bonds shall be issued subject to the following parameters:

(i)The Bonds shall be issued in an aggregate principal amount not to exceed $21,000,000 for the 2025 Project.

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

(iii)The final maturity of the Bonds shall not be later than June 1, 2046.

(iv)The Bonds shall be payable solely from, and shall constitute a first lien, but not an exclusive first lien, upon the Pledged Revenues.

(v)The Bonds shall be sold to the Purchaser pursuant to a negotiated public sale.

(vi)The maximum sale price of the Bonds shall be not more than $21,000,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii)The underwriter's discount shall not exceed 1.00% of the principal amount of the Bonds.

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

(ix)The Bonds shall be issued as federally taxable bonds pursuant to the Code.

(x)The Bonds may be subject to optional redemption and/or mandatory sinking fund redemption as set forth in the Pricing Certificate.

(xi)The Bonds may be issued with a Bond Insurance Policy as determined by the City Manager or City Financial Services Director.

C.The City Manager or City Financial Services Director are hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, to execute and deliver the Pricing Certificate establishing the final terms of the Bonds and to enter into a Bond Purchase Agreement with the Purchaser, all within the parameters established in the Bond Ordinance.

D.The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of $5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on June 1, 2025 (or such other date as specified in the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

Section 6. Redemption of Bonds.

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

B. Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph A of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Section 7. Filing of Manual Signatures. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Mayor or Mayor Pro Tem and City Clerk may each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8. Execution and Authentication of Bonds.

A.Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor or Mayor Pro Tem and shall be attested with the facsimile or manual signature of the City Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor or Mayor Pro Tem and City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

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

Section 9.Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10.Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the “Record Date”). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 11.Registration, Transfer, Exchange and Ownership of Bonds.

A.Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption as herein provided, or (ii) after the mailing to registered owners of notice calling such Bonds or portion thereof for redemption as herein provided. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C. Owner of the Bonds. The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Lost Bonds. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

E. Additional Bonds. Executed but unauthenticated Bonds are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F. Charges. For each new Bond issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Bond requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than $50,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

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

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

Officers of the City are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of this Bond Ordinance, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent, Registrar or the City to the Depository as provided in the Bond Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the City to the Depository.

Section 12.Special Limited Obligations. All of the Bonds and all payments of principal, premium, if any, and interest thereon whether at maturity or on a redemption date, together with any interest accruing thereon, shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues, which revenues are so pledged and are payable as set forth in Section 17 of this Bond Ordinance. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and each of the Bonds shall recite that it is payable and collectible solely out of the Pledged Revenues, pledged as set forth in this Bond Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to the payment of the Bonds, in its sole discretion.

Section 13.Form of Bonds. The forms, terms and provisions of the Bonds shall be substantially in the form set forth below, with such changes therein as are not inconsistent with the Bond Ordinance.

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF NEW MEXICO COUNTY OF DOÑA ANA

CITY OF LAS CRUCES, NEW MEXICO

TAXABLE MUNICIPAL GROSS RECEIPTS TAX (ONE-HALF PERCENT) REVENUE BONDS,

SERIES 2025

Bond No. _______ $_________

INTEREST RATE	MATURITY DATE	DATE OF BOND	CUSIP
% per annum	June 1, _____	_________ , 2025	_____

REGISTERED OWNER: _________________________________

PRINCIPAL AMOUNT: __________________________________

The City of Las Cruces (the "City"), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the "Paying Agent"), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on June 1, 2025 and on June 1 and December 1 of each year (each an "Interest Payment Date") thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of $___________ issued in denominations of $5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025 (the "Bonds") issued under and pursuant to City Ordinance No. ____ adopted by the City Council on January 6, 2025, as supplemented by a Pricing Certificate dated February __, 2025 (collectively, the "Bond Ordinance").

The Bonds maturing on and after June 1, ____, are subject to prior redemption at the City's option in one or more units of principal of $5,000 on and after June 1, ____ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Redemption shall be made upon prior notice mailed to each registered owner of each Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or owner a new Bond or Bonds in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar shall not be required (i) to transfer or exchange any Bond during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption, or (ii) to transfer or exchange any Bond or part thereof called for redemption. The Registrar will close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name any Bond is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest in the Bond Ordinance; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Bonds on the Pledged Revenues is an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with, or subordinate and junior to, the lien on the Pledged Revenues of the Bonds Amounts and securities held in the 2025 Debt Service Fund and 2025 Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Bonds.

The Bonds are issued to provide funds to defray in part the costs of paying, discharging, and satisfying the City’s risk management measures entered into in the Full and Final Release of All Claims and Indemnity Agreement in connection with Estate of Teresa Gomez, et al. v. City of Las Cruces, et al., CIV-23-00952 and paying expenses and costs of issuance related to the issuance of the Bonds.

The City covenants and agrees with the owner of this Bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law, and that the Bonds do not exceed or violate any constitutional or statutory limitation of or pertaining to the City.

This Bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the Certificate of Authentication.

IN WITNESS WHEREOF, the City of Las Cruces, New Mexico has caused this bond to be signed and executed on the City's behalf with the facsimile or manual signature of the Mayor or Mayor Pro Tem and the facsimile or manual signature of the City Clerk and has caused the corporate seal of the City or a facsimile thereof to be affixed hereon, all as of the Date of Bond.

CITY OF LAS CRUCES, NEW MEXICO

By____

Eric Enriquez, Mayor

By____

Christine Rivera, City Clerk

(SEAL)

(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

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

Date of Authentication:

City Treasurer of the City of Las Cruces,

New Mexico, as Registrar

By_______________________________________

Erika Jaquez, City Treasurer

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

For value received, ______________________________ hereby sells, assigns and transfer unto ______________________________________ the within bond and hereby irrevocably constitutes and appoints _____________________________________ attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

_____________________________________ _________________________________

Social Security or Tax Identification No. of Assignee___________________________________

Dated: _________________________

Signature Guarantee:

____

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

(End of Form of Assignment)

(End of Form of Bond)

Section 14.[Reserved].

Section 15.Use of Bond Proceeds and Other Funds; Completion of 2025 Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2025 Project.

A.Expenses. An amount necessary, together with other legally available funds of the City, shall be used to pay Expenses.

B.2025 Acquisition Fund. Proceeds derived from the sale of the Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2025 Acquisition Fund. Until the completion of the 2025 Project, the money in the 2025 Acquisition Fund shall be used and paid out solely for the purpose of the 2025 Project in compliance with applicable law. The Acquisition Fund may be held pursuant to an Escrow Deposit Agreement until expended for 2025 Project costs as determined by the City Financial Services Director or City Treasurer.

C.2025 Reserve Fund. No deposit of proceeds of the Bonds, Pledged Revenues or other City moneys into the 2025 Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D.2025 Project Completion. As soon as practicable after completion of the 2025 Project, and in any event not more than 60 days after completion of the 2025 Project, any proceeds remaining unspent (other than any amount retained by the City for any 2025 Project costs not then due and payable) shall be transferred and deposited in the 2025 Debt Service Fund and used by the City to pay principal and interest on the Bonds as same become due.

E. Purchaser Not Responsible. The Purchaser of the Bonds shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

F. Bond Insurance Policy. A Bond Insurance Policy may be obtained in connection with the issuance of the Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the City of the Bond Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy shall be included in the Pricing Certificate.

Section 16. Funds and Accounts. The City hereby creates the following special and separate funds and accounts:

A. 2025 Acquisition Fund. The “City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025, Project Acquisition Fund” to be maintained by the City.

B. Pledged Revenue Fund. The “City of Las Cruces, New Mexico One-Half Percent Municipal Gross Receipts Tax Revenue Fund” (the “Revenue Fund”) to be maintained by the City, into which the City shall deposit the Pledged Revenues.

C. 2025 Debt Service Fund. The “City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025, Debt Service Fund” (the “2025 Debt Service Fund”) to be maintained by the City.

D. 2025 Reserve Fund. The “City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025, Reserve Fund” (the “2025 Reserve Fund”) to be maintained by the City.

Section 17. Deposit of Pledged Revenues and Flow of Funds.

A. Administration of Revenue Fund. So long as any of the Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

B. Debt Service Fund Payments. The following amounts shall be withdrawn from the Revenue Fund (and on parity with other outstanding Parity Bonds), and shall be concurrently credited to the 2025 Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Bonds then outstanding.

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Bonds then outstanding.

C. Credit. In making the deposits required to be made into the 2025 Debt Service Fund, if there are any amounts then on deposit in the 2025 Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph B above shall be reduced by the amount available in such fund for such purpose.

D. Transfer of Money out of 2025 Debt Service Fund. Each payment of principal and interest becoming due on the Bonds shall be transferred from the 2025 Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

E. 2025 Reserve Fund and Reserve Fund Insurance Policy. The City Treasurer or successor, on or before the 150th day after the close of each Fiscal Year, shall prepare a certificate stating the ratio of coverage of Pledged Revenues to the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on the outstanding Bonds and other Parity Obligations (the "Debt Service Coverage Ratio"). No deposit shall be required in the 2025 Reserve Fund upon the issuance of the Bonds or any time thereafter so long as the Pledged Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds. If the Pledged Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2025 Reserve Fund from the first legally available Pledged Revenues so that after 24 months, an amount equal to the 2025 Minimum Reserve will be held in the 2025 Reserve Fund. After funding the 2025 Reserve Fund in an amount equal to the 2025 Minimum Reserve, no additional payments need be made into the 2025 Reserve Fund so long as the moneys therein shall equal not less than the 2025 Minimum Reserve. Such accumulations shall be made from Pledged Revenues second and subordinate to the payments referred to in subparagraph (B) of this Section 17. In the event that the funding of the 2025 Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount of the 2025 Minimum Reserve.

After the funding of 2025 Reserve Fund as aforesaid, if each certificate from the City Treasurer required under this Section 17(E) for two (2) consecutive Fiscal Years indicate that the Debt Service Coverage Ratio is at least two hundred percent (200%) of the maximum annual principal and interest coming due in any subsequent Fiscal Year on the outstanding Bonds and other Parity Bonds, if any, any money or securities in the 2025 Reserve Fund may be transferred to other City funds or accounts, and the procedure provided in the first paragraph of this subparagraph (E) shall be reinstated. The moneys (if any) in the 2025 Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in paragraph (F) and (H) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Bonds resulting from failure to deposit into the 2025 Debt Service Fund sufficient funds to pay the principal and interest on the Bonds as the same accrue.

F. Defraying Delinquencies in the 2025 Debt Service Fund and 2025 Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2025 Debt Service Fund is insufficient to pay principal of and interest on the Bonds then due, then an amount shall be paid into the 2025 Debt Service Fund on such date from the 2025 Reserve Fund (if moneys are then on deposit in the 2025 Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2025 Debt Service Fund from the 2025 Reserve Fund, if any, shall be replaced in the 2025 Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2025 Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by paragraph B of this Section 17. If, in any month, the City shall, for any reason, fail to pay into the 2025 Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2025 Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the 2025 Bonds; provided, however, that any moneys at any time in excess of the 2025 Minimum Reserve in the 2025 Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Any investments held in the 2025 Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2025 Reserve Fund exceeds the 2025 Minimum Reserve, all amounts in excess of the 2025 Minimum Reserve shall be transferred to the 2025 Debt Service Fund and used to pay principal of and interest on the Bonds.

G. Payment of Parity Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by paragraphs B, E and F of this Section 17, any amounts on deposit in the Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Bonds payable from the Pledged Revenues, as the same become due. If funds on deposit in the Revenue Fund are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the 2025 Bonds and any other outstanding Parity Bonds, then the available funds in the Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Bonds, for the payment of principal of and interest on all series of outstanding Parity Bonds and, second, to the extent of remaining available funds in the Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Bonds, for the required debt service reserve fund deposits for all series of outstanding Parity Bonds.

H. Termination Upon Deposits to Maturity. No payment shall be made into the 2025 Debt Service Fund or the 2025 Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2025 Debt Service Fund and the 2025 Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2025 Debt Service Fund and the 2025 Reserve Fund may be used as provided below.

I. Payment of Parity Subordinate Obligations. Subsequent to the payments required by paragraphs B, E, F and G of this Section 17, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided shall be used by the City for the payment of interest on and the principal of the Parity Subordinate Obligations now outstanding or hereafter authorized having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Bonds, issued and payable from the Pledged Revenues, as the same become due. Payments with respect to principal, interest and reserve funds for any such Parity Subordinate Obligations may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional Parity Subordinate Obligations.

J. Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 18. General Administration of Funds. The funds designated in Section 16 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be invested by the City in Permitted Investments or deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys in the 2025 Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the 2025 Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2025 Reserve Fund, value the 2025 Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2025 Reserve Fund. If, upon any valuation, the value of the 2025 Reserve Fund exceeds the 2025 Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2025 Debt Service Fund or may be applied to any lawful purpose; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2025 Reserve Fund may be used to pay the final installments of principal and interest on the Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose.

If moneys have been withdrawn from the 2025 Reserve Fund and deposited into the 2025 Debt Service Fund to prevent a default on the Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2025 Reserve Fund to the 2025 Minimum Reserve. Such repayment shall be made as required by paragraph F Section 17 of this Bond Ordinance.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2025 Debt Service Fund and the 2025 Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Bonds constitute an irrevocable and first lien, but not an exclusive first lien on the Pledged Revenues on parity with the lien thereon of the outstanding Parity Bonds and additional Parity Bonds, if any, hereafter authorized to be issued and payable from the Pledged Revenues, and senior to the lien of Parity Subordinate Obligations on the Pledged Revenues.

Section 20. Additional Parity Bonds and Additional Parity Subordinate Bonds Payable from Pledged Revenues.

A. Parity Bonds Test. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Bonds. Before any additional Parity Bonds are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in the 2025 Debt Service Fund and the 2025 the Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2) The Pledged Revenues received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Bonds shall have been sufficient to pay an amount representing (a) at least 200% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Bonds, (2) other outstanding Parity Bonds payable from and constituting a lien upon the Pledged Revenues, and (3) the Parity Bonds proposed to be issued and (b) at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Bonds, (2) the outstanding Parity Subordinate Bonds, and (3) the Parity Bonds proposed to be issued.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Bonds, (a) any amount of the reserve fund requirement for the additional Parity Bonds is immediately deposited in or credited to the reserve fund for the additional Parity Bonds or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Bonds or outstanding Parity Subordinate Bonds is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Bonds or outstanding Parity Subordinate Bonds, respectively, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Bonds or any issue of outstanding Parity Bonds or outstanding Parity Subordinate Bonds for which such reserve fund was created.

B. Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or City Financial Services Director, that the Pledged Revenues are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity Bonds. The Independent Accountant, City Treasurer or City Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Additional Parity Subordinate Bonds Test. This Bond Ordinance shall not prevent the issuance of additional Parity Subordinate Bonds payable from and constituting a lien upon the Pledged Revenues on subordinate to the lien thereon of the Bonds and other outstanding Parity Bonds. Before any additional Parity Subordinate Bonds are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in the debt service funds and reserve funds for the outstanding Parity Bonds and the outstanding Parity Subordinate Bonds; and

(2) The Pledged Revenues received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Subordinate Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Bonds, (2) the outstanding Parity Subordinate Bonds, and (3) the Parity Subordinate Bonds proposed to be issued.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Subordinate Bonds, (a) any amount of the reserve fund requirement for the additional Parity Subordinate Bonds is immediately deposited in or credited to the reserve fund for the additional Parity Subordinate Bonds or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Bonds or outstanding Parity Subordinate Bonds is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Bonds or outstanding Parity Subordinate Bonds, respectively, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Subordinate Bonds or any issue of outstanding Parity Bonds or outstanding Parity Subordinate Bonds for which such reserve fund was created.

A written certificate or opinion by an Independent Accountant or the City Treasurer or City Financial Services Director, that the Pledged Revenues are sufficient to pay the required amounts under the test in this paragraph C of this Section, shall conclusively determine the right of the City to issue additional Parity Subordinate Bonds. The Independent Accountant, City Treasurer or City Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

D. Superior Obligations Prohibited. The City shall not issue any obligation having a lien on any of the Pledged Revenues pledged by this Bond Ordinance which is prior and superior to the Bonds.

E. Super Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from the Pledged Revenues pledged by this Bond Ordinance and having a lien on the Pledged Revenues subordinate to the lien of the Parity Subordinate Bonds.

Section 21. Refunding Bonds. The provisions of Section 20 of this Bond Ordinance are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding obligations constituting a lien upon the Pledged Revenues, the Bonds or other obligations, or any part thereof, such obligations may be refunded, but only with the consent of the holders, unless the obligations shall then mature or be callable for redemption, or the plan of refunding calls for payment of the obligations at maturity or at a redemption date, regardless of whether the lien priority is changed by the refunding except that superior obligations are prohibited as provided in paragraph D of Section 20 of this Bond Ordinance and except as provided in paragraphs B and C of this Section.

B. Limitation Upon Issuance of Parity Refunding Obligations and Parity Subordinate Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Bonds, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Bonds; or

(2) The refunding obligations are issued in compliance Section 20 of this Bond Ordinance.

No refunding obligations shall be issued with a lien on the Pledged Revenues subordinate to the lien of the Bonds and other outstanding Parity Bonds, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is subordinate to the lien of the Bonds and the other outstanding Parity Bonds and is on parity with the lien on the Pledged Revenues of the outstanding Parity Subordinate Bonds; or

(2) The refunding obligations are issued in compliance Section 20 of this Bond Ordinance.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

(1) The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded; or

(3) The refunding bonds or other refunding obligations are issued in compliance with Section 20 of this Bond Ordinance.

D. Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph C of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Bonds.

Section 22. Equality of Parity Bonds. The Parity Bonds from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Bonds regardless of whether they are actually issued and delivered or incurred at different times.

Section 23. Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

A. Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds as set forth in Section 15 of this Bond Ordinance.

B. Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2025 Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

C. City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any owner of the Bonds.

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

E. Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F. Audits and Budgets. The City will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

G. Other Liens. Other than as described and identified by this Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

H. Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 30 of this Bond Ordinance.

I. Debt Service Fund and Reserve Fund. The 2025 Debt Service Fund and the 2025 Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

J. Surety Bonds. Each municipal official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of such funds.

K. Performing Duties. The City will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds.

L. [Reserved].

Section 24. Preliminary Official Statement and Continuing Disclosure Undertaking.

A. Preliminary Official Statement. The preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds.

B. Continuing Disclosure Undertaking. The officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 25 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 25. Events of Default. Each of the following events is hereby declared an "event of default":

A. Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise.

B. Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C. Incapable of Performing. If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

D. Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs A and B of this Section), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

E. Bankruptcy. The City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Section 26. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 25 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 27. Duties Upon Default. Upon the happening of any of the events of default provided in Section 25 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 28.Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 29.Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and final Official Statement, and the execution of the Bond Purchase Agreement, the Continuing Disclosure Undertaking, and such other documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 30.Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

A.An extension of the maturity of any Bond; or

B.A reduction of the principal amount or interest rate of any Bond; or

C.The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or

D.A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or

E.The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or

F.The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Section 31.Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 32. Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 33. Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 34. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 35. Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 36 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 36. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on January 6, 2025, relating to the authorization and issuance of the 2025. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO TAXABLE MUNICIPAL GROSS RECEIPTS TAX (ONE-HALF PERCENT) REVENUE BONDS, SERIES 2025 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $21,000,000 FOR THE PURPOSE OF PAYING, DISCHARGING, AND SATISFYING THE CITY'S RISK MANAGEMENT MEASURES ENTERED INTO IN THE FULL AND FINAL RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT IN CONNECTION WITH *ESTATE OF TERESA GOMEZ, ET AL. V. CITY OF LAS CRUCES, ET AL.,* CIV-23-00952 AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A NEGOTIATED PUBLIC SALE WITH AN UNDERWRITER; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN A PRICING CERTIFICATE; DELEGATING AUTHORITY TO

THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE AND BOND PURCHASE AGREEMENT FOR THE SALE OF THE SERIES 2025 BONDS; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

A general summary of the Ordinance is:

The Ordinance authorizes the issuance and sale of (1) the City of Las Cruces, New Mexico Taxable Municipal Gross Receipts Tax (One-Half Percent) Revenue Bonds, Series 2025, in an aggregate principal amount not to exceed $21,000,000 for the purpose of paying, discharging, and satisfying the City's risk management measures entered into in the Full and Final Release of All Claims and Indemnity Agreement in connection with *Estate of Teresa Gomez, et al. v. City of Las Cruces, et al.,* CIV-23-00952 and paying the costs of issuance of the Bonds; provides that the Bonds will be payable and collectible from the revenues derived from 0.50% municipal gross receipts tax imposed by the City pursuant to Ordinance Nos. 385 and 427; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or City Financial Services Director to execute and deliver the Pricing Certificate and Bond Purchase Agreement; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds, including the Preliminary Official Statement, Official Statement and Continuing Disclosure Undertaking; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this day of

APPROVED

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ATTEST:

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Moved by:

Seconded by:

AYES

NAYS