CITY COUNCIL
AGENDA

Monday, December 4, 2023 at 1:00 PM

Council Chambers

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

CITY OF LAS CRUCES

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

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

CONSENT AGENDA

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

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1. OPENING CEREMONIES

1.1. Pledge of Allegiance - Councilor Corran.

1.2. Pets of the Week.

1.3. Jobs of the Week.

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

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

3. PUBLIC PARTICIPATION

4. READ CLOSED MEETING STATEMENT

4.1. Read November 20, 2023 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

6.1. Special Work Session of October 23, 2023. 4 - 25

Special Work Session - Oct 23 2023 - Minutes - Pdf

6.2. Work Session of October 23, 2023. 26 - 35
Work Session - Oct 23 2023 - Minutes - Pdf

6.3. Regular City Council Meeting of November 6, 2023. 36 - 66
City Council - Nov 06 2023 - Minutes - Pdf

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

7.1. RESOLUTION NO. 24-056: A RESOLUTION PROVIDING FOR THE DETERMINATION OF REASONABLE NOTICE OF MEETINGS OF THE CITY COUNCIL AND ITS BOARDS, COMMITTEES, AND COMMISSIONS FOR CALENDAR YEAR 2024. 67 - 74
Resolution No. 24-056 - Pdf

7.2. RESOLUTION NO. 24-057: 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 2023/2024 4% LOW-INCOME HOUSING TAX CREDIT PROCESS. 75 - 86
Resolution No. 24-057 - Pdf

7.3. RESOLUTION NO. 24-058: A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF $150,000 FOR BOOKS AND PERIODICALS WITH BAKER TAYLOR BOOKS, INC. OF ATLANTA, GEORGIA, SUBJECT TO APPROVED BUDGET APPROPRIATIONS. 87 - 90
Resolution No. 24-058 - Pdf

7.4. RESOLUTION NO. 24-059: A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 18-19-008 WITH CENTER FOR TRANSPORTATION & THE ENVIRONMENT OF ATLANTA, GEORGIA, TO INCREASE THE CONTRACT AMOUNT BY $70,500.00 TO $458,247.02 PLUS APPLICABLE GROSS RECEIPTS TAX FOR ADDITIONAL SERVICES. 91 - 120
Resolution No. 24-059 - Pdf

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

8.1. RESOLUTION NO. 24-060: A RESOLUTION APPEALING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 26, 2023, FOR A 24-FOOT VARIANCE TO THE FRONT YARD SETBACK IN ORDER TO RETAIN A CONSTRUCTED CARPORT ADDITION ON A PROPERTY LOCATED AT 4093 WINTERS STREET. THE SUBJECT PROPERTY ENCOMPASSES 0.12 + ACRES AND IS ZONED R-1BC (SINGLE-FAMILY HIGH DENSITY- CONDITIONAL). SUBMITTED BY CATHERINE SILVA, PROPERTY OWNER (23VO0500101). 121 - 149
Resolution No. 24-060 - Pdf

8.2. RESOLUTION NO. 24-061: A RESOLUTION AMENDING RESOLUTION 23-027 FUNDING PRIORITIES AND ALLOCATIONS TO VARIOUS LAS CRUCES NON-PROFIT ORGANIZATIONS FOR THE CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS 150 - 164

ESTABLISHED BY THE AMERICAN RESCUE PLAN ACT (ARPA) AND REPURPOSING PREVIOUSLY AWARDED FUNDS TO CITY LED PROJECTS.

Resolution No. 24-061 - Pdf

8.3. RESOLUTION NO. 24-062: 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 FY2024 BUDGET. 165 - 484

Resolution No. 24-062 - Pdf

8.4. COUNCIL BILL NO. 24-010; ORDINANCE NO. 3052: AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, (LCMC) CHAPTER 11, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE PREVENTION CODE, BY REPEALING THE ADOPTED 2015 EDITION OF THE INTERNATIONAL FIRE CODE AND ENACTING THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE AS AMENDED WITH CERTAIN RELATED APPENDICES. 485 - 547

Ordinance No. 3052 - 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. 24-011; ORDINANCE NO. 3053: AN ORDINANCE APPROVING A ZONE CHANGE FROM R-4 (MULTI-DWELLING HIGH DENSITY – LIMITED RETAIL AND OFFICE) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR A PROPERTY ENCOMPASSING 0.812 + ACRES AND LOCATED AT 6281 REYNOLDS DRIVE. SUBMITTED BY GABRIEL ORTIZ, REPRESENTATIVE. (23ZO0500124). 548 - 574

Ordinance No. 3053 - Pdf

10.2. COUNCIL BILL NO. 24-012; ORDINANCE NO. 3054: AN ORDINANCE AMENDING ORDINANCE NO. 3028, UPDATING THE PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., TO ADD AN ADDITIONAL $2,800,000 TO GO TOWARDS RENOVATIONS OF MULTIPLE FACILITIES. 575 - 683

Ordinance No. 3054 - Pdf

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

12.1. Presentation request SSGRT Series 2023A 684 - 689

13. ADJOURNMENT

City of Las Cruces

MINUTES

Special Work Session

Monday, October 23, 2023 @ 10:00 AM

City Council Chambers, City Hall

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

ABSENT:

1. DISCUSSION OF A NON-BINDING TAX INCREMENT DEVELOPMENT DISTRICT (TIDD) MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY (NMSU).

1.1

Chris Faivre, Deputy Director Economic Development introduced the topic.

Scott Eschenbrenner, Special Assistant to President introduced NMSU presenters.

Harry Relkin, Sage Land Solutions gave background.

Kim Murphy, Consultant gave presentation.

Mayor Miyagishima said the Regents approved this back in July approved to move forward with the City?

Kim Murphy said yes sir.

Mayor Miyagishima said the first one feasibility study for the proposed areas. Councilor Abeyta, we met with you all a couple of weeks ago that was one of her biggest concerns and questions. Were you able to put anything together just to give us an idea where the $200 million specifically was going to come from?

Kim Murphy said the feasibility study which I indicated is part of the MOU and again this is somewhat high level, but we believe it's reasonable. It indicates that the City would generate through Gross Receipts Tax and Property Tax would generate a little over 200 million dollars over the life of the TIDD which is 25 years from the first issuance of the long term bond. Right now the City of Las Cruces gets no tax revenue

except what it gets out of the Courtyard Hotel and what little bit they might get out of the Convention Center which have been annexed into the City. The rest of the land for the large part is not within the city limits and therefore the City collects no gross receipts tax or property tax from this property. With a TIDD these lands would have to be annexed and they would be the subject of a separate pre-annexation agreement which will address a whole variety of issues. Out of that $200 million we're proposing $145 million would go through the TIDD to finance public infrastructure that would be owned by the City or owned by the University.

Councilor Abeyta said I wanted to see really the numbers and the methodology done to create this feasibility study, given the research that I have done over the Albuquerque TIDD and looking to see the types of projects being utilized here. We have a lot of investments into research, we have some areas that don't seem to be high yield producing areas and so that's why I really wanted to look at those numbers to see where they came from. If that's something you have available for us today that is really what I was looking for?

Kim Murphy said it certainly is available and we will be as we move through this project and collaboration we are going to be performing a whole new financial feasibility study. The one that we created for the University was really just to establish the potential of moving forward. We're not going to rely on what we have done we're going to be working with your staff and others of our consultants we have. We are going to have municipal finance people as part of our team. We're going to have bond counsel as part of our team. We are going to have civil engineers that are going to cost out the infrastructure. We are going to have architects to cost out the building improvements. When we have those inputs then we will be able to show you how Gross Receipts Tax gets generated largely through retail and other kind of commercial businesses. Like the UNM south campus that proposed quite a bit of commercial and retail development those Gross Receipts Taxes they went into infrastructure that actually went into the science and technology park up there. That's where the job creation comes so we use the Gross Receipts Taxes from retail and commercial to actually fund the expansion of the Research Park which really is the job creation engine. I don't have it right now, but we have a whole financial model of spread sheets that we can walk through. The point is that we're going to do that again. We are going to hire experts to move forward and will work with your staff, your finance people, with your municipal development people, we will agree on the assumptions, and we'll show you specifically how this project can perform the way we estimated it would perform during our preliminary feasibility study.

Councilor Graham asked why is the City being asked to invest future taxpayer proceeds and development owned by NMSU? What specifically are the benefits for Las Cruces taxpayers with supporting data? I see you started to delve into that, and I appreciate it. I see a list that will be a part of the MOU as exhibit B. There are some very demonstrable benefits specifically to the University area definitely in terms entrepreneurial and job opportunities. But my larger question is how will this impact the Las Cruces community as a whole? We have the example of the downtown TIDD and obviously the nature of any TIDD it is restricted to a certain geographic area, but I think it's pretty clear to see the benefits to the entire community of the downtown TIDD. I am a little less clear how people not specifically in the University area are

going to benefit from this very significant investment of resources, time, staff time when we're talking about the proposed NMSU TIDD and let me give a specific example. We are really delighted that we have our two recent Metropolitan Revitalization Area designations El Paseo/South Solano Corridor and the West Picacho Corridor. How my fear being the more we invest in this new development the less resources, time, bandwidth we have for these projects which we're already committed to addressing some of the most disadvantaged areas of the City. I recognize that was a lot of words in a larger question of spirit and a specific example of two areas, that I'm personally invested in as in the whole city. How will this support what we're trying to do in other areas?

Kim Murphy said this project would not take away from those projects, would not take away from any current project or initiative that you have for any other area of the City. This is new money that would come into the City that you don't already have. In terms of the vision it's really set out very well in your Elevate Las Cruces Master Plan, which calls for Aggie Uptown to be an urban center an area of future growth and development. It also calls out for Arrowhead Park to be a primary employment district within the city. This is very consistent with your comprehensive plan, and it actually implements the objectives and goals within your comprehensive plan. This project takes no money away from any other project, takes no existing tax revenue at all. The process of doing the financial analysis it sets the existing base of tax revenues from these properties that the City is receiving and the word increment in the whole TIDD means it's only the revenue above that base the new money that gets dedicated to public improvements. We will recognize the existing revenue that being generated, and I don't imagine it's very much we will recognize that and make sure that the City continues to receive that money. Only the money above that would be used to fund the public infrastructure. The bottom line this takes no current tax revenue from the City and dedicates it to any other area of the City or any other project. It's totally new money.

Councilor Graham said I have some more specific detailed questions but Mayor what I'd like to do is turn it over to my colleagues for the bigger picture knowing we're on limited time.

Mayor Miyagishima asked can you go back to the map that showed the new TIDD boundaries? I think what you were trying to explain Mr. Murphy is the blue area which is the University area right now or at least a strip of area at the University. The City is already receiving Gross Receipts income and so if we had a base of let's say a million dollars it's going to the General Fund from that strip. That would be our base the City would still get that just anything above that. The City would get, let's say 25% of all the revenue that's generated outside of the base. Is that what you were trying to say?

Kim Murphy said yeah it would be a percentage that you would as a governing body would determine what that percentage is of the new money that's coming into the City that would be dedicated to the TIDD.

Mayor Miyagishima said only because it's germane to what Councilor Graham asked is so right now our City of Las Cruces staff is the one who works on the TIDD projects.

I think what Councilor Graham was asking were you expecting the City Staff to still work this TIDD that's going to be here from the University, does the University have something similar? If we're going to do something we figure out what the cost is and then we charge them let's say 3% this is in addition to all the other. There's time staff is going to have to be utilizing in other areas, maybe Ifo is going to have to hire some more people. I think that is what Councilor Graham was also wanting to know about housing we'll get to that later. Do you see what I'm saying as far as if we start taking away staff to work on this TIDD is that going to hurt and impact the residents right now who are trying to do other projects in the City and not necessarily outside in this new area?

Kim Murphy said we would hope that this Body and this Administration would be supportive of staff working with us. We have consultants, the University has other departments that would be important resources in terms of their campus planning, University architect, physical plant, utilities departments so they would be working with us as well. We're working toward the goal of creating new revenue out of the development of these properties that doesn't exist right now.

Harry Relkin said talking about what Kim said in regard to the question about staff diversion of time obviously it will take time working together that's the purpose of the MOU. First to just augment the University and the Regents have committed to spend several hundreds of thousands of dollars if the MOU is executed as their contribution above and beyond their own staff time in order to get the right experts to try to answer your questions. In addition to that under the TIDD law there is an opportunity to recoup out of the TIDD revenues administrative cost of creating the TIDD. In addition to we could build that into the TIDD development agreement that the City we'd have to come up with whatever the right way of judging what that is, but the City could be compensated back for its administrative cost in moving forward with the joint effort as well as of course the University.

Councilor Bencomo said the Regents have committed a set of resources for this proposal. What is the required set of resources from the City's part that must be required now before we get to the big new shiny revenue?

Chris Faivre said I believe each department would probably need to speak to that. I know off the top Community Development is going to be very involved from a time standpoint with the annexation and Sara Gonzales with the Community Development Department has been working with NMSU on that. It might be best for her to come up here and give you a bit of a timeline as it relates to Community Development and those efforts. I know Finance will have a big role in this as well as Public Works and maybe each of those departments can kind of speak to their involvement as they see moving forward.

Councilor Bencomo said honestly that would be great because for me this is the critical piece. I'll just tell you sort of what I'm trying to get at because we've committed time, sweat and tears if you will to two Metropolitan Redevelopment Areas for two critical areas of our City. To me this all raises issues of equity and development for whom? There is these two pathways between now and the implementation of this new

TIDD and the implementation of two Metropolitan Redevelopment Areas. To me that is the concern of capacity and for me the priorities are the two Metropolitan Redevelopment Areas. I think that is sort of what I'm trying to get at in terms of staff capacity and resources that need to be allocated now?

Sara Gonzales, Interim Senior Planner said from a processing standpoint staff would be looking at approximately 8 months to do the annexation. The annexation process is very time consuming in the sense that we do have to work with outside agencies, we're not just working with internal staff so besides the point that we are also working with Public Works, Utilities, Fire Department, Police Chief through all of our resources we also have to reach out to EBID. We have to work with BLM, State Land Office, and Dona Ana County. They have their own processes in place that also take place. They have their public hearings to let know what's coming into the City limits or how those resources will be reallocated. We have a timeframe also from the time we actually receive the annexation we go through annexation, zone change and master planning. We want to see all of these into fruition to understand exactly what the City is bring into the City limits and how they'll be processed through the actual implementation and how they'll be done through the construction portion. There will be multiple departments, multiple staff members as well as multiple entities outside helping us through this process.

Councilor Bencomo asked can you go back to the portion in your presentation where you have your timeline? You're saying it would take 8 months to do the annexation process. Their timeline is City Council would approve annexation by April 2024. Is that what your hoping that would happen? Ok so can you talk a little bit about this discrepancy of time here?

Sara Gonzales said I think from the timeline presented we would be looking at I know there is a discussion about a pre-annexation. I'm not sure how that follows or how that would follow through our legal team. If that's something we are able to do but with that we would be looking at documents being submitted very shortly. We don't have boundaries; we don't have property zoning so with that timeline we'd be looking at probably a couple of months after meeting that deadline unless we're putting staff on to a limited timeframe.

David Weir, Deputy Director Community Development said annexation is a process we have ordinances in place and so really we have to follow those deadlines. Once it's submitted then we do the review, and it goes through. Sara was giving you a general what a normal annexation would take place. Really that process needs to be initiated and then the steps need to take place for it. It's rather difficult to give you a definitive timeline today.

Councilor Bencomo said thank you for bringing up that annexation policy I'm sort of reviewing that in preparation for today. I know as part of that process the City must lead a fiscal impact analysis, it has to go through P&Z. It has to go through some public input process. For a project this size and I'm going to ask you a big question and you might not have the answer, but I really think it's important to ask it. What do you think the sort of dollar commitment that an annexation process would take? About

how much do think it will cost?

David Weir said I don't have an estimate for that on that cost. Staff time would something that would be part of the Community Development's budget. Any outside study we would have to get someone to take a commitment on that, you're probably talking a minimum of $25,000 for that fiscal analysis and so that's a minimum and a ballpark figure.

Councilor Bencomo said there is a part in the presentation that I wanted to read will quick that I think for me was sort of raising the equity flags. It's under real estate market opportunities said, "Aggies Uptown and Arrowhead Park can capture a significant portion of this growth with NMSU being the region's leader in higher education and employment approximate to several neighborhoods with the highest household income and net wealth". For me as I think about what I'm sort of hearing it would be all hands on deck in order to meet some of these deadlines that then would further push our priorities for these two MRA's that are trying to have an impact on the quality of life of a very different population in our community. For me you know as I think about the timing of this to me doesn't feel right. I think about the priority we've placed on implementing our two MRA's and not too long ago several months ago when we implemented them I heard from staff that they we're concerned that we wanted to do two MRA's that there was a concern of capacity for us. This Council pushed on that, and we really feel like these two MRA's are critical to the quality of life for our community. The staff said look there's capacity issues. Now we're saying we're adding this third very big project to that. I do have concerns that this would push what I consider two of our biggest priorities right now which is the implementation of these two MRA's. I will leave it there if you'd like to respond. I would be happy to hear your thought on that.

Kim Murphy said the only thing is I would say certainly those are very important and valuable additions to your community to the entire community. I would just go back to your comprehensive plan that recognized that as an institution New Mexico State University is a major employer in this area and will continue to grow and I understand according to Scott and Wayne that their enrollment is very much improved this year. They're an economic engine for the whole south part of state. This TIDD would provide additional opportunities for the University to expand their footprint and create opportunities for the entire population.
Councilor Bencomo said I do have concerns that we're creating opportunities for a pretty specific set of folks in the community. I would love to continue collaborating with New Mexico State University on things like, I just read an article the fentanyl crisis is ravaging college campuses. I would love the opportunity to work with NMSU on how we tackle that. I would love to work with NMSU on how we tackle issues of student homelessness. There are different absolutely areas where I believe we can collaborate in a much more meaningful and strategic way. Not that this is not meaningful, again I have serious concerns about the equitable nature of this project.

Kim Murphy said I would only say having worked at the University of New Mexico for 25 years, I understand all those things you just mentioned. I understand your perspective and I appreciate it very much. Universities do lots of things, do many

things for the community both in terms of social benefits, social uplifting of various populations just the fact that you can enroll in an institution of higher ed now particularly with our support for tuition and so forth the State is providing those are tremendously beneficial. The point is that the University do just so many things that this project would not take away from any of those initiatives that you mentioned that the University decided to work on or working on currently. This is just another special focus that we think would be mutually beneficial to the University, to the City and to the entire region. Not taking away from those initiatives that occur daily in the various departments and research organizations within the institution.

Mayor Miyagishima said I appreciate the comments made by my colleagues, but I just want to circle back to the MRA which for those in the audience or those listening stands for Metropolitan Redevelopment Area. I think a couple of the key items besides taking an area to rehab or re-develop it and also to build community building also a big part of that is economic development. I think this lends itself to increasing the overall per capita. That's one of the things that we charge Ifo with is bringing in businesses to raise the level of income here of our residents. I don't think it was necessarily just saying it's just for this area here that's being proposed. Everyone is eligible for getting a job and work at these areas if we can lift that up I think is what the key is. I appreciate the comments that were made. I just wanted to touch on that a little bit.

Councilor Corran said I also want to echo the same concerns about capacity within the City and diverting resources not just City staff but of future businesses considering the area. I think it's creating a competitive environment where businesses and housing may be attracted to a different kind of folks. I think that subsidizing that is problematic. My questions are really more for Scott probably they are related to land use and community input specifically to the use of the land. Did you know that NMSU is in the top 10 land grab Universities? The native land that they've taken from folks in New Mexico has contributed about $20.5 million to the Universities budget over time. I provide that as context because as recently as April of 2023 faculty and students at NMSU were questioning the campus Master Plan how it was vetted and who was included in that process. I am hoping you can describe how it was vetted and how many people participated in it? You all sort of mentioned our Elevate Las Cruces Plan that had over 4000 individual participants who contributed to it and really help us understand what our community was looking for. I don't have a sense that this happened with the campus Master Plan because a number of the land uses have been objected to by both tribes in the community and students and faculty at NMSU. I'd be curious since that will be the primary sort of guide. From the initial MOU it appeared that the City's processes for public input would not apply to this annexed part. I'm curious where was the community input in the campus Master Plan and could you describe the specifics of that please?

Scott Eschenbrenner asked were you on the employee council at the time.

Councilor Corran said faculty senate.

Scott Eschenbrenner said faculty senate I apologize and also we had Councilor

Graham who work with us on. I remember working with you directly on writing the Master Plan.

Councilor Graham said I was just a technical editor, but I was there.

Scott Eschenbrenner said you were certainly there I believe you did in 2017. We did our Master Plan in house as you recall during that time frame we were really struggling for funds. Typically this is something that would go out and we'd hire a national firm a big firm to come in and do this. We were challenged economically so it was a monumental effort to do it in house, so we worked through facilities, we worked vetting, but to say that the Master Plan was run through the community of Las Cruces, no it was a Master Plan that was run through the University system and the final approval came through the Board of Regents. That is how that plan was done. Speaking about the Native American concerns I know we've had meetings myself and Wayne Savage and others and trying to understand what those concerns are. How do we mitigate those concerns? I think a lot of it has to deal with Tortugas Mountain which is a sacred area for the Native American Communities here in town. Obviously they brought some new perspective for me helping to understand what that is. Basically that is a sacred area and what you'll see in these development plans is it will hold those grounds sacred, and we won't develop on the mountain. We develop some areas that may be in close proximity but those areas those areas have already been developed that is where our rodeo team is. It is where our engineering has some research projects. It's where Ag has a research project up there we don't anticipate getting any closer to the Tortugas Mountain. I hope maybe I've helped answer a little bit of the question. If I haven't I hope I can clarify it.

Councilor Corran said just to clarify in the original MOU that we saw the last time this was going to come forward it said that all community input would be dictated by the University processes not the City of Las Cruces processes for land development correct?

Scott Eschenbrenner said I think what the Regents have said is they're concerned about land use planning. That is still a State entity and under State statutes the Regents are in control over that land. They would like to have the final say or have say and in coordination with the City in working together what the final use would be. Since it's under State Statute the Regents are in control of that land the Regents are expecting to have the final say on developments that occur in there with input from the City.

Councilor Corran said input that would look like?

Scott Eschenbrenner said I think just part of our collaboration we would probably prepare an update. We're working on updating our Master Plan that would certainly come with input from the City. We would like to have some folks that have community development maybe sit on that committee and help us work through that and collaborate that way moving forward.

Mayor Miyagishima said just to kind of add to that. I think I brought this up at our last,

when we first met as far as one of the things that the Council is wanting to do is as mentioned to Utilities on any new area is that they be pretty much all electric construction as far as Utilities. Plus it's cheaper and that's one thing there, I can't speak for them but strongly wanted to be adhered to. As far as you all trying to figure out where everything is going to go sure that has to be in collaboration with us both. I think that is a big key. I think the areas out there are some gas already has been laid out. That doesn't mean you have to hookup to it. I think that is going to be really crucial. What I was thinking also we could probably invite a member from Tortugas to be able to at least have a chance to kind of sit at the table and make sure we're being respective to some of their concerns. I just want to say if I didn't mention it before that if we do move forward with this non-binding MOU it allows both the University and more importantly the City to direct Ifo to have his staff figure out a lot of these questions. It can still come back, and the Council can say no we're not going to do it. This is a lot of work that's why they need to have something written for Ifo to have and say ok now we can use the staff to start doing their resources. I just want to be very clear when this in a non-binding MOU they're still going to have to bring something back to Council. Most likely it will be after I leave but nonetheless it's up to the Council to approve it and move it even further. This is just to get them to get both staffs working together to start figuring out is this something here how much it's going to cost and things of this nature. I just want to point that out, that's all.

Councilor Abeyta said along the lines that we were going for what you just mentioned as far as who would be kind of in control of sort of this process. I do have a question once the land is annexed does that then mean that all City policies and ordinances need to be followed within that TIDD?

Harry Relkin said that is an excellent question on land use and ultimate control. A good example to look at I think is the UNM south campus TIDD. The big difference between it and this one other than one is in Albuquerque one is UNM, and one is in Las Cruces, and one is New Mexico State which is enough of a difference in and of itself. The big difference is that land was already annexed into the City. Almost all of UNM's campus have been annexed in. The way it works from a legal is a bit of a dance because the State Law says local government cannot zone State. They have had to work collaboratively in order to meet the needs of the development of the campus and the campus areas. In the TIDD example what gets developed under an MOU almost identical to the one we are proposing to you except this one you reference the annexation issue because it didn't exist when the original MOU was created with UNM and City of Albuquerque. There has to be developed a TIDD Master Plan that describes land uses, not each little building but overall land uses that then will come back to you and to the Regents for approval. There will be a Master Plan for the TIDD area that you will be seeing the City has had input in under the City's guidelines and the University under its goals and guidelines and we come up with something in terms of that Master Plan that works for both entities. That's the value of the collaboration. That's how land use would be evolved. The University maintains land use control but to get the TIDD revenues it will have to comport with the TIDD Master Plan. It actually requires long term cooperation between the two entities to make it work and just as a side in we recognize that at UNM Albuquerque and we set up a working group to continue the process going forward with any of the development there made-up of both City and University.

Dr. Tim Pitts, Deputy Director Building Development said I think the City may have a little difference of opinion I'm not going to make any legal statement here. I leave that up to your lawyer to explain to you the legalities of this one. It's my understanding under our code that private development is under the purview of the City. When it comes to issues of what can be developed where and so on they're absolutely correct when it comes to University issues and things that are operational issues for the University the City has no say on how they operate. We wouldn't ask to have any of that at least Community Development would not. When it comes to issues like alcohol licensing, where someone can let's say have a cannabis facility, where somebody can have those sorts of things the State is going to ask your approval on those sorts of things is going to have to come through the City on those things. This is the way we handle it on lots of University property right now for instance the Pan Am Center is all University property but those are all permitted through the City. They go through business registrations with the City. We work very closely with the University, we have no interest in going against what their goal is. You're the land use authority for the City of Las Cruces and private development is under your purview. That is my understanding of how things are so there is probably some difference of opinion, but I believe I can work with Scott's office very closely to make sure we're all in agreement of what we're doing is working properly for both sides.

Mayor Miyagishima said if needed so that the two MRA's are still intact and staff moving forward if needed and you heard it can be reimbursed the City could possibly then hire additional staff to help Sara and whoever is going to be moving in this direction to help get this going?

Dr. Tim Pitts said I think this is really a financing opportunity for infrastructure it's not really about land use, it's not really about these other things at least not at this moment that's what we're looking at how are we going to finance the infrastructure along University and in the Aggie Uptown area and perhaps down into the Arrowhead area. Is it going to come through a TIDD or is the City going to contribute something or it could be State Appropriations or how is that going to get financed? We can always if staff currently is not being asked to do anything outside our normal day to day operations. If someone came in with even a 1000 acres they wanted to annex into the City we'd have the same process. We probably can't meet their timeline. I can be pretty clear about that right now, it would be very difficult for us to meet the timelines, but we can get it done. It's just whether it's on the dates we see here or it's a month later. In terms of the staff currently their not being asked that wouldn't be just a normal daily operation. If we we're asked to do more to say that comes into the issue financing, if our Public Works Department were helping design the streets for instance, yeah we'd might need more staff to be able to accomplish that.

Mayor Miyagishima said Sara mentioned about Dona Ana County and that's true. I don't know if it's changed but they still require one month notice of an annexation. I heard her talking about timelines.

Councilor Abeyta said you know a lot of these projects look to be high dollar so I am assuming that would need to be bonded out? The reason I asked for the feasibility

study really like to look at what that yield would be because if you're going to be bonding. I'm curious if the TIDD doesn't produce that type of money that it's expected to generate what is that liability? What does that look like for even our bond ratings at the City?

Leeann DeMouche, Director of Financial Services said our downtown TIDD is the only one we have that I'm aware of and we actually did what is called Sponge Bonds. We already had a very well-developed area and we had Gross Receipts coming into that area, and also property taxes. We had a very good financial base. As you stated earlier this is new money and you're correct but it's new money that will be going into the TIDD not into the City. If this is a City TIDD in collaboration with NMSU that's what I'm assuming this is then it's the TIDD that would go after the bonding. It really wouldn't affect the City but there probably would be a need for us to work with our bond Counsel, work with you know with our Financial Advisors to see if there's like special funding that we can go after where maybe the first couple of years we may not pay principal or interest. There is creative things that we might be able to do but the bonding would be under the TIDD not under the City. That's the way our current TIDD is we did have Sponge Bonds but what happened was the bonding went to the City, the TIDD turned around and in one day we paid that bond off. That was how we bonded and the only reason we did that was because it was in the Master Plan that we had for the TIDD we said that we would do that. We had the capability and the financial ability to do those Sponge Bonds. This would be totally different, it would be the TIDD that would be taking on that financial burden.

Councilor Abeyta asked then there is no liability on the City if the TIDD does not generate enough money to pay off those bonds?

Leeann DeMouche said that would be my assumption. That is something we'd need to work with our Bond Counsel on since the only TIDD that I have ever worked on is the downtown TIDD. From reading what I have read on TIDD's that is correct.

Kim Murphy said I would echo that. These bonds that would be issued would be in the name of the TIDD. They would be solely the obligation of the TIDD. They would not impact the City. They would not impact the City's credit rating.

Councilor Abeyta said I know there are some concerns about what type of stress this would put on the City's system if we were to move forward. I would be very interested to seeing what that looked like as far as staff time really and that's a cost. Looking at what the staff time is, what type of funding would be necessary for the feasibility study. I'm sure the City wants to have that on our end if we're looking at projects. Seeing as this project would be divided the monies are going to be allocated very differently from what NMSU is going to receive to what the City would receive. To really look and see any sort of cost if that is reflected as well also that NMSU is paying, if it's 75/25 split that NMSU is always paying the 75% for whatever is needed for those types of things.

Mayor Miyagishima said I just remember a 10-12 ratio. Example if the TIDD brings in 1 million dollars a year probably they won't bond more than 10 times that $10-12

million because the money that's coming in is going to pay the bonds. Unless there's money there well the City can do some other things. If it were me just wait until the money is there and that when you start. It's like pay for something when you can afford it, instead of just paying it out.

Councilor Gandara said always exciting to collaborate with my alma mater. I appreciate it so much always finding ways to do that. I have a few questions about the timing. I think you're asking us to decide something even though it's an MOU. I'm interested to know what dates were you already internally having this conversation? When did you present to the Regents? How many times did you present to the Regents? I am really interested in those dates.

Scott Eschenbrenner said this has been an evolving process. I think we actually came and met with the City 5 or 6 years ago when we first started, I've been with the University for 8 years so this has been something that been ongoing. We also have what's called a Regents Real Estate Committee which is made up of two Regent members and some others within the University and four community members as well I think that is important to point out. We've been having these conversations back and forth with this Real Estate Committee. I would say easily four or five years just trying to figure out if this is the right direction to go your question about bonding has certainly come up with NMSU we don't want to do anything to jeopardize our bond rating same with the City. These are all very similar questions that we've been dealing with and trying to work our way through. We've off and on have brought this to the Regents in Executive Session to discuss. The final approval came as you see on here July 17, 2023, in Public Session meeting. To say that it's just been going on for the last six months is, I have been there 8 years and think it's something I've been working on for the majority of my time at the University it's been an evolving process. I think one of the things that is also important to note is we knew UNM was more or less out there in front breaking the water for us and just seeing where the rough spots were. To see that they had such tremendous success not only with the City of Albuquerque but with the State. It really kind of helped forming our opinion to try and think this is the ability to move forward. I'm reminded that we all have a lot on our plate, and I promise you I have an awful lot of plate and City staff does as well. It would be easy not to do this. It be easy to say let's not go down this road. I think the rewards are so much more worth it. When you look at the potential and I'm reminded of downtown Las Cruces before I went to work for the University. I owned an office building right behind the Blackbox Theatre and when the Mayor came on this is one of the first things that came out. How the heck is this thing going to help the City. The challenge is it doesn't help right away in the beginning, it's a slow evolving process. To the Mayor's point you build up a bank account don't you, you try to build up some funds and over time you just try and target a few little projects here and there. Well now you had tremendous success you've had 20 years into it, and you are able to go out and do some big projects and bond some big items and make some major impacts. This TIDD is not going to be much different it's going to be slow in the beginning but the benefits that we'll be able to look at 15-20 years down the road will speak volumes for the efforts we put forward to move forward with this.

Councilor Gandara said you know we've been a part of the TIDD for 8 years and there a lot of work, that was a lot of work before I even got here. I just landed and started to

come to groundbreaking and ribbon cutting of the plaza and then we started seeing the fruits of our labor. I understand that part like many of us weren't on this Council you have a transition of staff and so I just want you to know it gives me pause when you present something like you do and many of the questions, comments from my colleagues eloquently put forth is stuff that I'm concerned about we're just seeing this some of us for the first time and so we've had other TIDD's we understand it's government to government. We had an individual outfit that we hired Strategic Economics to come and really analysis the TIDD prior too, but also give us lessons and learned what we should be asking for. I'll ask by you all I think that we want to see projections. What those public improvement cost, feasibility study, finance plan and I want our bonding legal counsel to really look at that before we say this is feasible this is what we think needs to happen. I think there are some great things in this plan that you have put out particularly on the south side where our Convention Center is, where our MRA will be matching up to University. Where I would say this would be great, this would be a priority for me. It lands very nicely with all the plan that we have for that particular area. The update to University as you know you're in the thick of it right now, but it would be a complete rehab I think.

Adrienne Widmer, Director of Utilities said they would definitely take a look at that and that's some of the stuff we were talking about. I think with the collaboration with NMSU to see what kind of reconstruction would need to occur, where the funds were coming from would definitely be something that Public Works would be looking close at and collaborating with the University.

Councilor Gandara said I have some water questions and things of that sort. When we do that we're putting down all new water systems and conduit and what not. What are your thoughts about what that cost would be because I think you have somewhat of an idea of what it's going to cost to rehab that area specifically?

Adrienne Widmer said in looking at that right now most of the University has been rehabbed as you notice. There's already been upgrades for water, sewer, and natural gas in that area. I think we'd definitely be sitting down with NMSU to see what the increase in water use and what kind of wastewater flows that would either affect our current plant or plans for an additional plant on the southern side and how all that would work out. I think it just a matter of sitting down and doing some collaboration with them to see what they have in mind depending on the type of uses and also affect what kind of water use will be used and what kind of wastewater use will be coming down.

Councilor Gandara asked as you heard they're going to move the Golf Course over I think you have your own water rights?

Scott Eschenbrenner said yes we do have our own water rights. We do have our own water system. We have utilized some of the City's resources with Aggie Uptown we built that to City standards and coordinated that all with the City with respect to that area. The main campus is supplied by the NMSU Public Works area.

Councilor Gandara said I am concerned. I think there are a number of things that

need to happen prior to us entering into, I would say if it's the will of Council to move into a MOU that these things need to be done. I don't think we have the capacity to do it in the time frames you're putting out here. I feel there's a lot there to uncover. I haven't talked to Linda about what the legal ramifications are that are bounding Council. Those are all things that I think need to be discussed and it's a report that we paid for that said we should do all that before we enter into a TIDD. Not that we're entering into a TIDD you're asking us to enter into an MOU and sit down and have a conversation. Continue to be concerned about that because of the capacity that has already been discussed. We have a number of projects and I'm interested in the southside. I'm not sure that you're interested in that as a number one priority. I'm certainly interested in that, and it would fit very nicely. I would say if we're going to do this that's where we need to start.

Mayor Miyagishima said first off let me state this is what they refer to as non-binding MOU in order for us to direct Ifo to have his staff start working on this, this has to be passed. It doesn't mean we're committed. It means this is what triggers Ifo to move forward with the team. If after it comes back in a few months if Council at that time says no then ok, well at least we gave it a shot. This is University one of the top Universities for Engineering College and if they can attract good businesses, high paying jobs that are residents can utilize that's what we want and here's an opportunity to use a mechanism that the State has given us for economic development to be able to generate the income needed to do what all of us want to see here is reduce the percentage of those in poverty and raise the level of income to our residents. I really think that we should at the minimum sign on to this non-binding MOU, however if the Council was to move forward these have to be addressed gentlemen. We have to know whether or not and I think Ifo is going to talk about capacity. In the event we need to hire additional staff I think it was mentioned it could be reimbursed. We need to include someone from the Tortugas Pueblo. An all-electric development has to be addressed. As Mayor Pro Tem said as that book you were talking about the Potential Lessons Learned by Dana Belzer and Daniel Hernandez if we can contract with a lawyer that specializes in TIDD's to make sure the City's interest are taken care of because those can be reimbursed. Those are the minimum I have written, one thing I just want to make sure, and this is something the City needs to look at maybe you all might know Harry is it going to require a super majority for the TIDD? I can't remember when we did that TIDD years ago. There may be one member of Council that does not want to move forward. I don't have a problem with Athletics. I don't know why we didn't include them it's something to think about not right now. I don't see why we can't include that? We've got a lot of momentum right now New Mexico State Athletics that helps generate publicity for the University, for the City and it's fun and it's good.

Ifo Pili, City Manager said just a couple of thought in addition to that Mayor. First of all I wanted to assure the Council that just about all the questions you've asked have been brought up by staff. We have the same questions we've even brought it up in our meetings. I realize there so many points in this process for this to go off the rails. This is a first but there are a lot of deal breakers on both sides the City's side I'll tell you a couple of deal breakers is if we benefit less than what this cost. For them if we take control over any of their land use. I know that's a deal breaker for their Regents. There is a lot of opportunity we have to take this deal off the rails. The only reason

why we're even as staff even you know showing support to bring it forward is none of those conversations happen without this non-binding MOU. Just so you know our eyes are wide open. There were some issues brought up today that weren't brought up which is good to have the feedback. For the most part we've discussed this, we've discussed this internally and we've don't have the answers yet. We do realize that if we stop here then we'll never get there we'll never have the opportunity to discuss. Going to capacity one thing I want to be careful is speaking on behalf of staff. I don't want the message to be out that we can't handle because we are just getting started. There are projects all over that we want and that we're going to continue to go after. There is big economic development projects, there's affordable housing projects, of course the MRA there's all kinds of things that. We want to turn up the heat, we want to keep going, we want to keep moving and so if this goes off the rails now or whatever I just don't want the message to ever be a question of capacity. I think our staff can handle it, we just need to get the resources if that's determined and again then the TIDD should pay for that. The TIDD should pay for any resources that we have to acquire in order to move forward. We're going to demand that as well as you have. Bringing a project of this size shouldn't be a strain. We want to bring bigger we want to keep going and we want to elevate this City in all aspects not only in Tax Increment Projects, not only economic development projects. We have thousands of affordable housing projects that need to come through. I want to make that very clear we are ready we are open for business. If this is going to go off the rails I don't want it to go off the rails because we think we don't have the capacity because I believe we do. Like I said there's going to be a lot of opportunity and it may be quicker, it maybe not, maybe we'll get through this there might be a deal killer subsequent to this meeting. When we start talking about you know how much reimbursement. I personally don't want to bond. I really don't, I don't want to bond if we don't have some type of revenue source coming in on a consistent basis that shows that we can handle the bond. There's a lot going on in this, but we don't ever get to that if we don't have this simple non-binding MOU. That's the only reason going back and maybe I'm beating a dead horse now too. That's the only reason we've even thought about bringing this forward at this point. Regarding capacity as we've talked about we can handle it.

Mayor Miyagishima asked this money that's generated for the University does that go to for lack of a better word their General Fund to help with their cost? We're seeing more and more Universities struggling to bring in revenue from all sources whether it's from the State, whether it's through tuition things of this nature. If this was to work would they be able to at least benefit through that way as well?

Scott Eschenbrenner said NMSU is blessed with an abundance of land that not many Universities have. It's an un-utilized resource and that's part of the reason I was hired on 8 years ago is to try and find ways to convert this into revenue streams. It's a way to help augment our mission which is educating and community outreach and that's what we'll continue to do with these funds.

Mayor Miyagishima said by doing so if this was to move forward and started working that helps the Universities the coffers to help take the burden off the constantly putting on the back of the students and the parents who pay for it. I wanted to know if it went to a special enterprise fund wasn't touched and it can't be used to help augment the

budget.

Councilor Bencomo said I think we're also not taking into consideration that this governing body is in transition currently and so we're sort of making this big decision that a brand new Council has to see through. That I think is slightly unfair this is a significant fiscal investment; this is not small potatoes right I mean it's not. We're asking a really big question to a governing body that's in transition that's number one. Number 2 you said there were some non-negotiables. I think for me it's really important to understand the non-negotiables you mentioned on the cost benefit to the City. Like I have so many questions and we scheduled this on a 10:00 before another meeting and it just feels like we're not being given enough time to answer all the questions that I have. I have so many questions about the environmental impacts of the golf course moving. I have questions about the annexation process and maybe I'm naïve. I just don't understand how we annex land? The City will then be responsible for all the maintenance, the utilities, all of that. Yet the City will not have governing power over that annexed land? To me that is really hard for me to sort of swallow. I have all of these questions that then I'm being asked to decide in two weeks. I understand this timeline, but it just feels there's a sense of urgency that I understand. I hope you understand why to me it feels really heavy to then turn around in two weeks. I don't know Ifo what you think about those things. The third thing is there has been very little public input on this. What was the process for the downtown TIDD to come into fruition? For the Royal Crossing TIDD there was a lot of public comment.

Leeann DeMouche said it was a lot, there was a survey I think was actually done. We actually had to take it out to vote. This is a little different though, this is barren land and NMSU. I know that there probably might be some contact on part of the area where there's some private locations. It was almost I want to say a three year process. I think we started this in 06 and it finally started in 09.

Councilor Bencomo said I'm not saying it has to be a three year process. I don't think it can be a two week process frankly. This idea of the public input, I heard from a couple of folks about the new gas station that's going up at Aggie Uptown that the surrounding area not everybody is excited about that. There's already been sort of tension that's been rising between community members and the way that some of this is being developed. I think more tension will continue to build if there's no opportunities for public input.

Mayor Miyagishima said November 6th is the action on this non-binding MOU. Today's meeting is just to vet some of the concerns Council has so that when the eventual actual vote for the TIDD which would take place sometime next year comes to being these should probably be incorporated, or it probably won't go. November 6th is just to get the Council to pass resolution for them to use for their application and to get the ball started. There's going to be an actual another approval I think there it is on April 2024 more or less for the actual vote on a TIDD. This is just to get staff engaged working with the University to answer some of these questions that many of you have provided. I was just writing down some of these things so that they would have a record of what is that Council is concerned about.

Councilor Bencomo said the way I read the MOU we are saying we are committing a set of resources to this plan. My biggest concern has not really been addressed yet, which I think staff would need time to look it over around given this timeline the resources it would take to implement this TIDD and what that would do to the planned implementation of our two MRA's that is a big question I would like answered. To me this MOU is this non-binding MOU to me it's still a commitment. I just want to note that.

Ifo Pili said my response is similar to what the Mayor was saying. I agree with you Councilor I wouldn't have suggested to approve anything that creates the TIDD certainly not before a new Council something of that magnitude. The only thing that I like I mentioned this is if you're willing to consider a non-binding MOU. I really don't think there is much of a commitment we're not saying much besides when it talks about committing resources it's really just staff time. I think anything with the potential of being worth something to the City we should look at it. We should commit staff time to do it. As far as anything of substance that you're going to approve I wouldn't suggest to do it within a two week period. I wouldn't suggest you approve anything based on information you have right now. We still have things to duke out before we even bring it back to you for consideration. We would not bring anything to you with all these unanswered questions and just throw it on you. I totally get where you're coming from and if were not for this MOU. From staffs perspective we've talked about it I'll be very open with you this MOU is probably less important to us then it is to them and going back to the Regents and saying hey you did one. The City's done one so this will allow us to commit resources. This isn't that important to us. It's so they can go back and say you know what at least the City's willing to commit time and there going to be willing to a least look at this. There are a lot of unchecked boxes that we need to go down the list on. I don't think there's anything of substance that this MOU gives us as far as commitment. To be honest with you we will commit the resources in the way of staff time. I think somebody mentioned this earlier we'll get projects all the time that's just part of our responsibility whatever project comes forward. I speak for my own boxes the upside is pretty high, however I don't know if that is going to take us off the rails anyway. I'm sure everyone of us up here has boxes that we need to check, and they all obviously need to be checked before we do that. Going back to the MRA's that is our number one priority when it comes to redevelopment. I don't think it takes away I think you're talking about staff time there will be obviously we're going to have to split time but there's projects all over this City. We have 10 number one priorities right now in the queue that we're already split on. I don't know if that will be much of an issue. I do think this is close enough to the MRA that there could be a lot of synergy there. There can be a lot of collaboration that might help. We won't know any of this until we really get down into what the numbers are. What their feasibility. I will also say internally we want to run our own, we won't come to the table with just a third party or what they're saying. We want to know internally just our benefit selfishly with the City why is this good for us? Then we will compare. The real issue comes down whether or not we think this MOU is something that is binding or something important. It seem it's a lot more important to NMSU than it is to us.

Steve Fischmann, Former State Senator said you've really shown a lot of sophistication and thoughtfulness in the questions that you're asking. It gives me a lot

of faith and confidence going forward. One is personally the idea of the MOU and discussing things I certainly have no objection to that. I think it's great to have those ongoing discussions the University is a huge part of this community, a huge part of who we are and it's future development. In that sense I totally agree with the Mayor and the City Manager in their comments in that regard. On the other hand I have lots of questions similar to all the ones you all have raised about the proposal that's on the table and is that the one that is the final shape that it should be. I don't want to get into all those details. I think it takes a lot more study because there's just a lot of questions there that I have, and I don't need to repeat all the ones you all have raised already. I will raise one point were I think the presentation is probably not accurate it's something for the Council to look into. I think the representation that doing this project with the University does not take away any resources elsewhere in this City is not accurate. I think there is lots of research out there. As a senator in the Legislature we looked at a number of TIDD's and I did a lot of research and a lot of reading. There are a lot of communities that have run into revenue shortages because they've done too many of these projects. The new tax revenue that will be coming in has gotten sucked away into these very specific projects and it creates fiscal stress. The idea that it doesn't take away from anything else going on in the City. Well you might have somebody who is paying 100 percent of their City taxes who's running a business in this neighborhood who decides to relocate to the TIDD, or you have a new business coming in that was going to come in regardless but instead of locating in one area of the City because of the financial incentives goes to the TIDD. My reaction to the kind of overall big picture of the TIDD proposal is a little bit of a grab bag. My first kind of impression in reading the proposal was that essentially it's a grab bag of projects we got uptown, south city and Arrowhead of things the University wants to do. Essentially the annexation is a way for the University to tap into the City taxing authority in order to fund their preferred project for campus. There is nothing wrong with that if the City decides it wants to help fund that. Recognize you're making that long-term commitment and just go into it eyes wide open. My reaction is keeping talking. I don't think this is the exact right proposal, but I think to the extent we can help with development at Arrowhead, help with the development of getting the new campuses going those are certainly worthy goals that we shouldn't just shut the door on we should just keep talking until we get to the right proposal.

Mayor Miyagishima said those are my sentiments exactly. I think again Council's going to have four months to decide if that's where they want to move forward. This is non-binding, it just allows the University and City to begin talking and being able to utilize resources really. Prior to this all we can do, Ifo has other things he has to have it clear that's why we need a vote a resolution that's all the action on the non-binding MOU on November 6th. If we had it here today, we don't this is just to discuss some of these concerns that everyone's brought up. Which I have some too and I inserted them in here. I would like to still have it on November 6th that gives you time to decide. It's still a up or down vote you don't have to vote for it but at least we've given it the best shot we can to the University.

Councilor Flores said the only comment I have is I agree a 100 percent with Senator Fischmann. My concern is the same that businesses who are starting may prefer the TIDD area and businesses that exist may go to the TIDD area. In terms of there being no impact on what the City has to provide, even though our City Manager said that it

wouldn't. I disagree with that with all due respect Mr. City Manager. I do know that I'm here and I've been here for 6 years. I think that sometimes our staff, our departments are overworked. We know that because, just because I'm not going to go into the details. I agree with Councilor Bencomo who has said that there will be a change the day before this is supposedly scheduled for City Council to take action on the MOU. I think we should wait and really think about the implications and the affect it will have on the City and its revenues and its workforce.

Mayor Miyagishima said November 6th is just the formality of the non-binding MOU. It's not the actual TIDD application or MOU, it's just allows even right now is to let the City staff working with the University. I can't emphasize it enough you still have four more months before Council then decides to move forward. I would still like to see it on November 6th that way Council like I said you decide at that time up or down if they want to go for it or not.

Councilor Corran said just to clarify if we vote no on November 6th that means there is no TIDD and there is no chance of the TIDD.

Mayor Miyagishima said that is correct.

Councilor Corran said it seems like a pretty high risk proposal, Mayor.

Mayor Miyagishima said I understand but we got to I think from this point forward say hey we want to work with the University. Hey, let's use the University to help us with this or help us with that. How can we bring more economic development into the community? For those who vote no please don't ever say that we want to do that. We will address the concerns. The City we hired a company an organization to help us with our new Master Plan. I don't see why worst case scenario we couldn't use them for additional staff if needed because it's reimbursable if we need to. I don't think we well. We have a blueprint already our previous TIDD, we know what a TIDD does, we know what it takes, and we know how to do an annexation. The last annexation we did was 2007 Sierra Norte. I think we owe it to the University to a least bring forward a Council action item on November 6th. If the majority says no then ok then the majority spoke. But I think between now and then you will be able to at least hear some of your concerns by members of the public if they reach out to you.

Councilor Corran said just to clarify I'm asking us not to vote on November 6th. I want to voice that. I want us to delay it and make sure we have all the information we need that was not shared today. I would say I'd like to vote yes on this but if I'm forced to make a decision without information I will vote no.

Mayor Miyagishima said the reason why I fast tracked it. One because I'm leaving December 31st. I thought there was some application that needed to go in and I think the timeline. Can someone share with me again why we need it to move this quick?

Councilor Abeyta said one of the reasons the timeline you needed it to move was because of the applications. I think we heard today that given what we need to do with annexation that that timeline already looks different and so we can't proceed as

according to what you have proposed?

Scott Eschenbrenner said we are trying to meet a time frame more or less trying to get it before the State Legislature in January 2025. The reality is we knew this was tight and now the reality is January 2026 and that's if we can get it in a 30-day session. It will probably delay the final timeline of getting a TIDD approved by at least a year.

Mayor Miyagishima said what about November 20th. I mean would that help? Would you still do it with that?

Scott Eschenbrenner said I'm going to look at my group. I think the reality is understanding the annexation requirements and things like that it was an aggressive timeline. We're not trying to run anything through we want to make this right. We're working together and we want to answer all those questions and if takes another year it takes another year. We just have some timelines we're trying to meet in order to do that before the State Board of Finance we have to have this stuff turned in only twice a year and that's either July 1st or January 1st. That's the timeline we're working off of.

Councilor Flores said time to really think about it. Why all of a sudden as you know I wasn't here for part of this? Why is it such a rush and I don't like to be rushed I don't know about anybody else? Especially when this decision and I'm very leery of TIDD's we've been through this before not with you. TIDD's are a big deal and if it's a big deal to NMSU with all due respect I think we should work together. Why are you pushing it this time? Why when we will have at least have one new person on City Council. Being on Council for 6 years now there is a chemistry, there is something that goes on with how you work with people. It's going to be hard for someone to catch up right away. I agree with my colleague Councilor Corran if I have to vote on it November 6th or November 20 I think I would say no. Can you answer this question why the rush? What happened? Did you give a history of why we're in this tight spot right now?

Scott Eschenbrenner said I don't want to try and have the impression of this being rushed and I'm sorry that you feel that way and I can certainly sit back and see where your concerns are. We originally tried to come before you all on August 4th and we were going to try and move forward with that, to the Mayor's comments and rightly so we needed to do a Work Session. Here is where we're at. We're at this Work Session today and we're hoping that we can move it forward. If we can't, we can't, we'll either know where we stand, and the University will continue to try and do things as we have in the past. We just think we have an incredible opportunity here and it's an opportunity that the City has utilized in the past that's been very beneficial. We're trying to utilize that. If you feel, we're not here to rush anybody through we are just showing what the realities are for the time frames and the approval processes.

Councilor Flores said I guess you were trying to get this on a Work Session calendar here in August. What happened before that? It takes several weeks to get things on calendar around here. Why would all of a sudden we want to move? Were you working on something before that stalled or knowing as you say you have to go before

the Legislature.

Scott Eschenbrenner said the reason is if you look at we had the approval process on July 17th from the Board of Regents. Once we had that approval process then we worked with the City and getting that on an approval process, and we did come before in early August to see about getting the non-binding MOU approved and it became apparent that we needed some more information. The next step in this process has been the Work Session.

Mayor Miyagishima said again to your comment and a lot of it was me trying to get it done before so they could go to the not this current Legislature but January 2025 so even another month, month and a half will push it probably to January 2026. I think the 2025 are all financial matters that they discuss. I think the Legislature every other year I forget which one they go one year is two months and the other one is 30 days I think that one is the financial one. That is a lot of the fast tracking here. You would have no idea how many people have come to me on last minute things. That's why we had these special work sessions. I didn't want to do it on a different day. I wanted to be here because I know some of you take certain days off, it makes it easier to have a meeting on Monday.

Councilor Abeyta said I just wanted to express support for doing the MOU, but I would rather it be done at a later date. I asked when we had our meeting for that feasibility study, and I asked for some new information which I really didn't see here today. I would like to see those types of numbers before we really go forward. I think this can be very successful. It could really benefit my district and I'm going to be greedy about wanting to help that. At the same time you know that there is a lot of those un-answered questions. I thought some of those would be answered today, they haven't been. I do want to see this move forward. I know that it might take just a little bit longer. I would rather be thorough about that so it can be successful.

Councilor Graham said I would also agree with pushing the MOU vote to a later meeting date. Mayor I also want to respond to your assertion that to vote no on this would be closing the door on future collaborations with NMSU because I don't think that's true. Councilor Bencomo gave two great examples we have ongoing collaborations with NMSU and in case I wasn't clear enough about the philosophical issue I'm having with this. Let me be very blunt I feel like we're being asked to essentially create another pocket of wealth in the City and then rely on trickle-down economics or supply side economics or whatever ever you want to call it which has failed spectacularly throughout history to raise up folks who need economic development the most. At the same time I'm being asked to grapple with what is the value of open space. We've been talking about a lot of open space and saying oh we're not getting anything from this, it would be new dollars coming in from open space. There is an inherent value in open space that I'm also grappling with. I don't want it to sound like it's such a simple binary at least not from the seat where I'm sitting.

Mayor Miyagishima said I'm going to put it on the 20th of November, and you don't have to vote no, you can vote to table it. I'm telling you; you vote no that means you

are not with the University, that's plain and simple.

Councilor Bencomo said that is absolutely inaccurate Mayor you need to stop saying those kinds of comments.

Mayor Miyagishima said I'm sorry. I'm going to put it on the 20th. If you want to table it fine we'll move it to another time, but I think this is just non-binding to get staff to answer the questions you want answered. Without this they're not going to be answered. It's not like your voting for the actual TIDD, it's just to move forward, it's just to get Ifo staff to be able to engage with the University to start spending some money that's it. That's why is says non-binding. Table it to next year at least it's there so in that remote possibility that the questions are answered between then and now.

Councilor Bencomo said I really hope to our guests you really don't walk away with completely inaccurate and immature assertion that if I am not in support of this for whatever reason that I don't want to collaborate with New Mexico State University the place that ultimately kept me here in this community. I really hope that's not what your walking away with today. My door is absolutely open to collaboration. It's just in the role that I have I have to make a big decision with very little information. I hope that those assertions are not what you walk away with today.

Mayor Miyagishima said as Mayor I get to control the agenda so I will have it on the November 20th and again if it's something there that Council wants to table or vote no that's their choice.

2. ADJOURNMENT

2.1

Councilor Yvonne Flores moved, seconded by Councilor Johana Bencomo, to Adjourn at 12:13 p.m.

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

Mayor

City Clerk

MINUTES
Work Session
Monday, October 23, 2023 @ 1:00 PM
City Council Chambers, City Hall

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

ABSENT:

1. PETS OF THE WEEK

1.1

Kimberly Aceves presented Pets of the Week.

2. JOBS OF THE WEEK

2.1

Sarah Raney presented Jobs of the Week.

3. PROCLAMATION FOR "THE FRIENDS OF THE COMMUNITY CANDY DROP DAY."

4. AGENDA ITEM

4.1 LAS CRUCES FOUNDERS DAY.

Mayor Miyagishima introduced topic.

Carlos Melendrez, Great-Great Grandson of Pablo Melendrez gave an oral presentation.

Mayor Miyagishima asked have you reached out to Mesilla regarding Founders Day?

Carlos Melendrez said yes I have but there is some confusion in how that was stated. We simply wanted to go ahead and inform Mesilla as to how much a significance Pablo Junior had also performed there in Mesilla with that riot and other actions he had taken as a Supervisor because he was a Supervisor three times and as I understand the only reason he wasn't elected on the 4th time was because he raised taxes 3 times. A conundrum I think all of you understand. We did talk to the persons in Mesilla but in fact I'm hoping we can help them establish their own Founder, there are a couple of people that might fit that bill. I don't want to confuse that Founders Day would be the same thing in Mesilla because they're absolutely separate communities.

Mayor Miyagishima asked did you ever meet with Robert, and did you ever bring those documents?

Carlos Melendrez said I had met with him because we thought one of the ideas was the City here has such a good history of making documentaries. They basically offered to go ahead and see if we couldn't put together the good history of the founder. I demurred and for the reason was at that time I was talking to Mark Medoff, he was very excited about this, and we were talking about something that might be even a feature film. The idea is that we cut off discussions because they were very promising at the time until politics interfered. The idea was we were going to go ahead and consider the making a good movie, a documentary about the shootout in Mesilla. That's why we did not follow through. I would like to go ahead and this time if we establish Founders Day I'm willing to work with everyone. At that time we had even the Interim President at NMSU who was supporting this issue because he wanted to get the film group there at NMSU involved and Danny Villanueva and I worked with Danny in Los Angeles when he would come by here. I talked to him about helping us support a movie he was very excited about the idea. Unfortunately politics interfered, people die. I'm back at it again and I'm hoping you have some interest in this area.

Mayor Miyagishima asked did you have a chance to go to Branigan and see how the information they have about Mr. Sacket and how the information you have on Mr. Melendrez how that can incorporate into the information that is at the Branigan?

Carlos Melendrez said yes I have worked with some of the people. I've gathered so much more absolutely fascinating information about who this man was that I want to go ahead and have another meeting with the director and try and establish some of the history that's not been known. Even in this book I wrote about the family other things have come to light that are not reflected and I most definitely want to work with the Cultural Center to go ahead and establish that history, so it's well known.

Councilor Flores said I definitely support. You spoke with Mark Medoff have you spoken with Ross Marks at this point?

Carlos Melendrez said no I have not.

Councilor Flores asked have you reached out to Film Las Cruces?

Carlos Melendrez said the new director of Film Las Cruces just came in about a month ago, I prepared a letter for her. I wanted to give her some space to breathe a little bit. She did say in her acceptance when she became the director of Film Las Cruces that first off she wanted to learn about the history of Las Cruces so she could have some base of operation. I know she's been here maybe a little over a month and my letter is still waiting on my computer.

Councilor Flores said I suggest that you contact Senator Jeff Steinborn.

Carlos Melendrez said I have talked to Senator Steinborn.

Councilor Flores said thank you so much for capturing this part of history which is so important because I agree with you. We are Mestizo, we are a Mestizo Nation, and we don't pay enough homage to the fact that we carry that beautiful indigenous blood.

Mayor Miyagishima said just to be clear. I think what Mr. Melendrez was hoping was we can at least move forward with some type of future Resolution that recognizes a particular day and a committee to come up with one particular day that's, I don't think he's asking that City employees get the day off, but it's just recognized as Founders Day of Las Cruces. I think just as a tangent he brought up the movie.

Councilor Flores said steps are already taken in that direction. I think that would be very helpful, it's not like a one lane highway. I understand why he's here. I support a Founders Day absolutely.

Councilor Abeyta said I was going to say this seems appropriate to go into our Quality of Life PRC so that we can take a look at what Founders Day would mean to New Mexico and that robust history and we know we have a multi-cultural look. I think it would be there. We have representation from different individuals throughout the community. It seems like it would be appropriate if it went over there as our speaker has suggested after January we could place it on the Agenda.

Councilor Gandara said thank you Mr. Melendrez for getting to this point. You and I have met a few times. I've been to a meeting with Dona Ana Arts Council and yourself looking at the opportunities that with a number of celebrations what would be the best one. I think anytime we can celebrate Las Cruces I think it's a worthwhile venture. I wish you luck. I think it's a great idea and I would recommend it go the Quality of Life PRC.

Carlos Melendrez said there was a lot of interest in the idea of High Carnivale, and they thought this would be an attraction obviously and a historic attraction and a recognition of our indigenous heritage. They were also toying with the idea in the Arts Council seeing if we couldn't pair with the Renaissance Faire. The English celebration that we have here and evidently is the largest celebration where people come into the City. I do not feel comfortable with it that, I think it should stand on its own. Therefore the idea of High Carnivale needs more exploration. I would love to work with this committee and I'm hoping I get an invitation, or I will reach out to you to see if we can establish it right at the beginning of the year. I'm getting long in tooth I'm 82 years old.

I have some health issues and I want to absolutely finish this work. It's been 20 years in the making.

Councilor Gandara said thank you for recognizing our indigenous population and just wanting to celebrate that it's an important thing.

Carlos Melendrez said I hope that I don't embarrass the Mayor by this but I'm going to mention that he too has approximately a ¼ indigenous heritage so a lot of us are Mestizos, this is who we are, and this is what we want to celebrate. We are very proud of our indigenous heritage and the very big majority of us who live here have indigenous blood. I was just mentioning that this is part of what is called La Raza Cosmica and the Mayor exhibits that very much.

Councilor Flores said we were very proud of La Raza Cosmica. I thank you so much for bringing that to the forefront again, you know 50 years later. We've lost a lot of who we are, our identity. Other cultures really celebrate who they are. Sadly a lot of us have learned to suppress who we are in order to succeed. When you do that you lose who you are. I want to thank you from the bottom of my heart for doing this. I will do whatever I can as an individual and jointly with my colleagues to promote your endeavor.

Mayor Miyagishima said the PRC is made up of three Councilors and there's other staff there. What will happen now, is it will be moved to this committee, and they'll hear a little bit more detail, probably ask you a few more questions. If it goes as quick as went here today it doesn't look like they're going to ask to many questions. You just kind of talk about what you talked about here and most likely they'll probably say ok move it forward. Then will bring it for a resolution. The resolution will then have a committee like you mentioned which I think is a great idea. Then they'll come forth with which day to use as Founders Day obviously with your input. Then they'll probably want to just verify a lot of the information you said, I'm sure the committee will look at that.

4.2 TELSHOR FUND INVESTMENT STRATEGY.

Erika Jaquez, Treasurer gave overhead presentation.

Councilor Graham asked what does the green mean and what does the red mean?

Mike Anderson, RBC Wealth Management said the green is a moderate growth level and this is how you are currently allocated. The red indicates moderate/aggressive. Under your current investment strategy, if you take a five, five being the riskiest level. The green would be a three and then depending on the advisor and risk level you looked at that would be a four or five. It would actually be a combination of four and five. It doesn't mean you can't stay in that realm it's just technically for the amount of risk that part of the portfolio is taking we're really not getting a lot of yield for it. We're not getting a lot of dividends for it. I want to articulate this properly when the markets up 17% this portfolio returns 16% as you're currently allocated. It's just on the downside if the markets down 17% the portfolio is down 16% that year. What I tried to do throughout this year is solve for a portfolio that would stay at the moderate risk

level but increase income that you could pull from the portfolio on an annual basis. Also in the down years last year when the portfolio was down 20% the portfolios that are run in this dividend and yielding strategy were down 7 to 10 ½ %. By design the portfolio is down less in the bad years and maintaining the same risk level.

Mayor Miyagishima asked did you use past performance to come up with these numbers?

Mike Anderson said correct the slides are based off the June 30th numbers, we don't have the September 30th data yet.

Councilor Flores asked are you saying that red money that should be a smaller piece of the pie?

Mike Anderson said yes that's correct.

Councilor Flores asked isn't there a higher risk when you do that?

Mike Anderson said so basically let's say had we reviewed this 2 ½ - 3 years ago when interest rates were low across the board my conclusion may have been different. Now that we've had 11 interest rate hikes by the Federal Reserve over the past 2 ½ years we now have the opportunity to get higher yielding investments and dividend paying equities into the portfolio that weren't available or would not yield the same dividends as they would now. The timing of this is actually quite favorable now for the City to consider this because of the 11 interest rate hikes over the past 2 ½ years.

Councilor Flores asked then when it becomes unfavorable how long does it take to undo it? Like put it back in a safe zone?

Mike Anderson said that can be accomplished within one month. In the proposal there is nothing in the private equity realm. A private equity investment may only be able to liquidate once a quarter or annually. There is nothing in the proposal that would take away liquidity from the portfolio.

Councilor Flores asked there would be some salvaging in the event that the interest rates go down?

Mike Anderson said certainly and that is something I'd be talking with the Finance Department on. This portfolio works actually better when interest rates start to cut so literally the time to start this is when the interest rates are at the highest or reaching that peak. The timing is very favorable ironically and some of the investments on the equity side are back to where they were in March of 2020 right in the middle of COVID. The business in the stock and bond market there is a fair amount of timing involved.

Councilor Flores said timing and it's also volatile.

Mike Anderson said yes it is. That's correct. I want to emphasize is what I'm proposing here I solved for is how to stay within a moderate risk level and generate more dividends for the portfolio. Not looking at anything that is at a higher risk level.

Councilor Flores asked our Finance Department would keep an eye on it and then if things start to look a little iffy then you can change that?

Mike Anderson said certainly, and it may result in a balance of $500,000 from each part back to the main SIC portfolio. It is fluid in both directions. This is a stage one rebalance and that's what I try to solve for is a stage one rebalance where if the Council moves forward with reviewing the portfolio every 3-5 years we'd look at stage 2. This is a stage 1 rebalance but it's fluid in either direction where money can come back up into the SIC and visa or versa, which technically that should be monitored on an annual basis.

Councilor Flores asked you're saying annual basis is sufficient?

Mike Anderson said semi-annual would be ideal.

Erika Jaquez said just real quick to add to that we get the statements from the SIC monthly and we keep up with the market. If the know the returns going to go down then we can go ahead and submit for that to be withdrawn from the SIC. Usually it takes about a month or so. We can do the same with reallocating within the different pools or we can also go ahead and add to the SIC if need be.

Councilor Corran said I just wanted to say I'm here for the third strategy just right up front I like it. I did make the ask about ESG's. I would ask that we would consider taking a fraction of that and putting it into fossil fuel free funds if possible. You had mentioned 25%. I would ask that to consider that as one of the things we consider in the future is increasing that percent. I just wanted to check on the viability of that and make sure that sort of gets named as part of this separate. The SIC, I don't think is going to be divesting at any time in the near future. We can be, so I would ask that we do as part of that please. If that's part of the consideration or not?

Mike Anderson said yes it can be, I'll give you an example as a portfolio manager I do use some ESG's screening tools. For example any company that, we'll put British Petroleum out there that happened that hasn't been in any portfolio that any company that blatantly mismanaged that's been removed over 10 years ago. I try to solve for let's say 80-90% ESG overlay. I also look at socially responsible companies in each sector of the economy. I'll rank the industrials. Often the ones that are socially responsible will appear in the one, two, number three list. They're in the top three, they may not be in the number one, but they might be two or three those can go in the portfolio if they pay a dividend. It's something that can be accommodated even though it wasn't a focus for time consideration of this presentation.

Councilor Gandara said we had talked about sort of what is being invested and the types of responsible investments. I never knew really what they were. I think it

important we do, and I want us be to definitely investing in social responsible entities. Trying to move away from fossil fuels. That is just sort of what we're doing and having to live into our values, this Council at least is trying to do that. I am also for the third option. I think it's an important one. My questions are for the Treasury you'll be monitoring like you do anyway deciding where the money goes and when it moves. My question to you is I've never knew that to happen. Would this be the first time? What sort of expertise is there? Would you contract out with somebody that has that? I would like to know more about that?

Erika Jaquez said when we brought our investment to review we added an investment advisor as part of that. The reason is that currently we don't actively invest because investments is not the main focus of Treasury. Bringing this investment advisor the Treasurer would have a say on where it's going to be invested when it comes in and out. They would receive that advice from the investment advisor. That is what they do they're professionals at that. They have all the special programs to run all those calculations. We would receive that advise and act upon that. Just so we can be consistent on retaining that level of investment income.

Councilor Gandara asked who is our investment advisor?

Erika Jaquez said we haven't contracted with one yet.

Councilor Gandara asked but you will?

Erika Jaquez said yes.

Councilor Gandara asked that will go through the RFC process I'm assuming?

Erika Jaquez said yes correct.

Councilor Gandara said just to be clear you have that SAC committee, the SAC committee will consist of Finance, you, and others. I think it important that you understand what our values are. That you invest in somebody that is going to obviously be responsible and listen that have the values that we carry forth.

Erika Jaquez said yes, and we can include that as a portion of what we want to accomplish through this RFC. What we're looking for, what our priorities are so we can mold it in way that we keep all these considerations as part of it.

Councilor Gandara asked where do these values get discussed, the Finance Select Committee or who decides?

Erika Jaquez said we have already gone over these so. The ones we've discussed so far we can go ahead and include them and of course other things that come up. We have the Finance Select Committee meeting on Friday. If there's any more interest in different ones we haven't discussed I'll keep note of everything for when we're preparing the RFP we make sure we express what our priorities are, what our focus

is, to be sure to show what we really want as a City, as a Council to portray to the public.

Councilor Gandara said I would recommend that happen at the Finance Select Committee. I think that's Mayor, Bencomo and Councilor Flores. I think that would be fine with me. To understand who the social responsible companies are. Would we get a list and go through them and determine that would be the best way to invest? You said you have a portfolio one, two, three you've named them. I'm just trying to understand this. This is new to me.

Erika Jaquez said it would be following the process that Mike says it's rating them based on what their values are. If they tie to ours and like Mike mentioned he has the one, two, three maybe it's not on the first one but it would be sure to be include not just with the first portfolio but included some of those twos and threes that have those same values that we have as a City.

Mayor Miyagishima said I think it's a good idea, I also think to bring it to the Finance Committee if you can also take a look at obviously what the past performance of some of these companies are. It would be nice if it brought it up but it's possible it may have brought it down a little bit of a return so that Council is aware of that and not expecting the same return that was in exhibit 3. If you have some that can perform as the ones that you showed be sure to let us know who they are. A lot of times there's a tradeoff for doing what you're doing which it's for the environment so that full disclosure it may not be quite the same rate of return that was projected in exhibit 3.

Mike Anderson said that is correct we don't have that it in these slides, but the upside is not as high in the proposal, it's more of a consistent return where the rate of volatility on that part of the portfolio is lower. It is a tradeoff but it's a timing once again because of the Federal Reserve has raised rates 11 times and now it makes sense to consider that.

Councilor Bencomo asked today you're looking for guidance on these strategies correct?

Erika Jaquez said correct.

Councilor Bencomo asked do you have a slide sort of comparing the three in one?

Erika Jaquez said the first one is leaving it with no changes. The second one is just a reallocation of the $5 million within the State Investment Council. The third one would be the rebalancing we leave $2.5 million and reallocate within the State Investment Council. We withdraw $10 million and that's where the City manages those with the assistance of an investment advisor, which is where we can incorporate these bonds that we were talking about the environmental look for companies that have the values that we're looking for.

Councilor Bencomo said I'm honestly so grateful that we have someone like you in the City because you speak to us, and I often feel that you're speaking a third

language. I'm just so glad that you just live numbers. I'm just really grateful. Not all of us are quite as quick as you on this. I would agree on the third strategy. I will say that the Finance Committee we have talked at length about just like socially responsible investments and commitments. I think that's and important piece of the conversation that we're consistently having.

Mayor Miyagishima said just to clarify the dividend you're showing is there any money going into the corpus. Let's say $892,000 and that really was $1 million and $100,000 is going to build the fund up a little bit or is it just strictly whatever the $32 million or so produces this is how much the dividend is. Basically the fund in a perfect world would stay at the same amount.

Erika Jaquez said correct that's when I pulled this slide the next steps. We do want to develop a strategy for when we outperform. Like when it's $800,000 a year and then the next year we make $200,000. Then a strategy would be do we leave it there and just let it accumulate or do we go for those projects. What we've been doing with the SIC whatever investment income it's earning it's just staying there and getting re-invested, we don't pull that annually like we do we've been using what the City was left to invest that's what we've been using for the projects currently.

Mayor Miyagishima said to the future Council. Hopefully when that land gets developed across Mountain View, hopefully the City does not sell that strip of commercial then the revenues can go into here so that it help builds that fund up and that just gives more money to give out as time goes on. Hopefully that's the case. You want to grow that fund because the more that grows the more money your able to give out to the community.
Councilor Gandara said are you going to bring an investment strategy once it's discussed at the PRC as well?

Erika Jaquez said correct. The investment strategy, the resolution is going to be the strategy and we can make sure and incorporate all those points that were brought up earlier, so we just make sure we keep that in mind what we want to invest in.

Councilor Gandara said but the overperforming and what we do with it.

Erika Jaquez said correct that would be I'm hoping part of the resolution. Also with re-evaluating this every three to five years just so we can stay on top of the market.

Mayor Miyagishima said also when you bring it to either the Finance Committee or the Council when the resolution comes please include those companies the ESG's and what they're performing so Council can get a look at it and get an idea of how they work.

5. ADJOURNMENT

5.1

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Adjourn at 2:16 p.m.

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

Mayor

City Clerk

MINUTES
City Council
Monday, November 6, 2023 @ 1:00 PM
City Council Chambers, City Hall

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

ABSENT:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR GRAHAM.

1.2 PETS OF THE WEEK.

Amy Defelix, Animal Services Center of the Mesilla Valley presented Pets of the Week.

1.3 JOBS OF THE WEEK.

Giselle Palomares, New Mexico Workforce Connections presented Jobs of the Week.

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

Mayor Miyagishima presented Officer Jennifer Roman with the Mayor's Citation for Public Service.

Councilor Graham presented Robert Palacios with a proclamation for Las Cruces International Mariachi Conference Wek.

Councilor Graham presented Barbara Toth with a proclamation for Las Cruces Day of Remembrance for Road Traffic Victims.

1.5 VULNERABLE ROAD USERS NM PRESENTATION.

Barabara Toth gave a presentation on Vulnerable Road Users NM.

Councilor Corran said tomorrow morning at 8:30 the Transportation Sustainability and Infrastructure PRC will be having special guest Representative Angelica Rubio to talk about mobility justice in particular protecting cyclists and other vulnerable road users and how the city can be a sort of engine for that so I would like to invite everyone to come tomorrow morning at 8:30 in the second floor if this is something that is really of interest to you.

1.6 THE LIVING LUMBRE PRESENTATION.

Santa Teresa High School students gave a presentation on The Living Lumbre.

1.7 IMPLEMENTATION OF ADVANCED METERING SYSTEM BY EL PASO ELECTRIC.

Jennifer Ortiz with El Paso Electric gave a presentation on Implementation of Advanced Metering System.

Liz Aragon, El Paso Electric continued the overhead presentation.

Councilor Bencomo asked will you be having scam information in Spanish as well?

Liz Aragon said yes. Any information we have for customers is in English and Spanish.

Councilor Bencomo asked what is your process for commercial users especially on the potential outages?

Liz Aragon said commercial users we always make sure that we notify them. We call them first and let them know we are going to be in the area or we are going to be there that day and we coordinate with them. Outages is something that if they can afford that day we will accommodate to when they are ready.

Councilor Bencomo asked then you are coordinating with them within a good amount of time?
Liz Aragon said yes.

Councilor Bencomo asked for customers who now have solar, does this still apply to them?

Liz Aragon said yes, solar customers will be converted to the smart meter as well and pretty much it won't be any different to their meter as it was before. Their meters will still be exchanged and they will be able to see more data also on their solar system if possible.

Councilor Bencomo asked the charge?

Liz Aragon said the charge is still the same for all of our customers, the 53 cents a month.

Councilor Bencomo asked let's say solar clients are sort of self-sustaining at that point

you will be sending a bill for 58 cents a month?

Liz Aragon said well for the solar customers the self-sustaining ones have battery storage, right? For those that solar customers without the battery then they still get a bill but yes, we will be providing them with a bill for that cost.

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

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Charles Tucker, Inspector General said I have talked to you all before but when I did talk to you the first time, I was an employee of White Sands Missile Range. Now I am an employee of the City of Las Cruces. I just wanted to introduce myself and I am on the job now.

Ifo Pili, City Manager said we are really excited to have Mr. Tucker here. He come with 20 years of experience as an Inspector General and we could not just find that type of experience anywhere else so we are lucky to have him. One of the reasons that we wanted him to introduce himself to the council formally is I know he has had the opportunity to talk to most of you but also to the public to let the public know who our new Inspector General is and he is not only my Inspector General, or the council's Inspector General but the Inspector General for the City of Las Cruces. So, he is available. We just want to make him more and more available to the public and more visible to the public and that was one of the reasons we wanted to have him introduce himself.

Dora Luchini-Lucero, Member of the Public said I want to thank Mr. Story and Robert Parra, I came them after my dad passed away and I told them the story of how the officers were awesome that day. I am speaking on behalf of Jim Luchini's family and recognizing Sgt. Christopher Baker, Officer Christopher Vitale, Gabriel Aguirre, and David Vega. My dad was a Korean Vet and he fought for us to be able to be here to be able to speak to you all. So, I hope that you truly all listen to what me and family have to say. On July 7th around 7:30 in the morning my dad passed away. I had been spending a lot of time with my parents to help them out. My dad was doing pretty good after getting a new pacemaker. That morning he fell, and we didn't realize what was going on. We called 911 and the paramedics, and I want to also thank the Fire Chief the paramedics and the firemen were awesome. I didn't get their names because they left. We were informed that my dad did not make it. To my dismay I sat there and saw these officers pull up. We didn't understand what was going on. We were told that it was protocol if there is a death in the home that officers had to come. They were there for three hours. So, when I went back my brother told me that two of the officers and I am not sure which two asked Father Martin Cordero to bless them. Why would they do that? Unlike you guys here you can go home. Your lives aren't

threatened. They don't know when they walked out that door from my parents' home, they don't know what situation they are going to be in. They asked the Father for their blessing to protect them. We were so touched by that. My dad, his faith was everything. I just want you guys to realize that some of your rhetoric like dismantle, defund, reimagine, relocate your funds to these officers that go out into the streets every day to protect us, to be at my dad's side from a death of natural causes but that is their job. They were there and were so touching, compassionate and they kept saying they are so sorry for both your losses. If you could have seen their faces of disbelief that we had just lost my brother and now my father and I want you guys to truly understand what I am saying because your rhetoric is really getting to a lot of us. I also wish that all of you who do this rhetoric would walk in the shoes of the officers and see what they go through on a daily basis because it is not fun getting shot at and stabbed and whatever else they get spit on and called pigs and whatever else they are called. I have the highest respect for these four officers that were at my parents, and I was asking Mr. Story if they could come and he said he didn't know but if anybody deserves an award these four in my opinion deserve an award for being there that day and just the love. I just hope that you tone down your rhetoric and that you honor some of these officers. They are doing the best they can with what they have, and they are short and for them to be there for three hours and I said to the three officers, don't you have something else to do? They said no it is protocol, we have to be here. That is taking their time from doing real crime in the city and I wish you would show them respect and dignity the way you show illegals and the homeless. You should really start respecting what they do because they don't know if they are going to go home to their families either. So, I am speaking on behalf of my family, I am speaking on behalf of law enforcement, Border Patrol, ICE, and Vets, the military for what they do. My dad was a Vet, and I am speaking on behalf for them, so I hope that my message today is that when you go home you think about what I just said and we pray that they get to go home to their families the way you guys get to home to your families.

Juan Garcia, Member of the Public said a recent incumbent indicated crime is going down and another stated that candidates concerned with public safety were fearmongering. The following is an anonymous letter that I received from a terrorized citizen in District 1. "Gunshots tonight at midnight right in front of my door. I called 911. They said there are many calls coming in. It took 10 minutes for a cop to arrive. Just one cop car drove in slowly, I guess they don't want to be shot at. Gang was arguing then shot and left in car. Took place at Klein Park on San Pedro near Griggs. Now it has become a shooting gallery." It is refreshing to see municipal candidates, democrats, GOP, and independents prioritize public safety and crime. Yes, I did say democrats except one focused on moving "Las Cruces away from fossil fuels as fast as possible". If elected, we know her priorities. Weak on crime politicians live in a different reality. I am speaking for the progressive factions that champions the criminal and wealth redistribution as a solution to crime and has no issue with pedophilia in educational learning material in our schools. City Council Meeting on 15 June 2020, one of the incumbents appeared shocked that LCPD was asking for more resources. This is the type of vision our council had and here we are. Recent ABC-7 report 110 plus violent crimes in the county using guns with 10 of them being minors. Recent 16-year-old went to a residence and shot 10 times in drive by shooting at a party. Irresponsible ownership effects innocent victims and gives weak on crime politicians

like the Governor in Dona Ana State Delegation reasons to disarm legal gun owners. KSFR on 10/27, “after the Main shooting Dona Ana Committee Chair Senator Cervantes says an assault weapons ban including the legal definition of such a weapon, age restrictions, magazine capacity regulations, and waiting periods are expected to see possible legislation”. We recall Senator Soules, Steinborn and Hamblen try to disarm lawful citizens in January 2023 legislation and they will try again, they were publicly stating this. What is left? Citizens who can lawfully own a weapon should obtain a conceal carry license while they still can to defend themselves and their families and finally a very tragic and unfortunate incident occurred involving LCPD. Tragic because a death occurred and based on the circumstances those wanting to weaken LCPD will once again attempt or those who take pride throwing bricks at the police will rise again. Our faith in LCPD will not waiver as we stand firmly behind the men in blue.

Andrew Bencomo, Member of the Public said there was a Work Session early September on speed cameras. As we know speed kills. Some statistics, 90% of people survive out of vulnerable road users at 20 miles an hour. At 30 miles an hour 50% survive, at 40 miles an hour 10% survive. So, 90% of people die if they are hit at 40 miles an hour and progresses. So, what I would like to do is when that presentation occurred at the Work Session there seemed to be some hesitancy from the council members. There were some good questions and there were some details to be worked out as far as how it would be implemented if it were to be implemented. Every one of you said that you had been contacted by your constituents, multiple constituents, multiple times about speeding so it seems like a no brainer to me but maybe I am wrong. Also, pieces that were brought up was the engineering and the education piece along with the enforcement. It is a combined system that needs to be taken care of not just the enforcement piece but the engineering and education. There seems to be a disconnect between the engineering piece when at the policy level, you all talking about safer roads and systems like that and designing roadways more safely, Complete Streets and then at the implementation level where it doesn’t happen. There just seems to be a disconnect still. I know a while back I had brought that up and there was discussion about a Complete Streets was not an ordinance at the time, but I believe it has been adopted now but I just don’t see anything happening with that. I am on the Bicycle and Pedestrian Committee so I hear a few things I am not completely ignorant to it, but I won’t say that I know everything about it. I would just like to encourage you to take that on as LCPD is the one that is going to have to put that into place probably. There was a question asked during that Work Session, is this the best use of our officers? I don’t know how keeping our streets safe is there any better use for that. Also, I think it will reduce the amount of officers needed because there will systems.

Derrick Pacheco, Member of the Public said you can learn a lot about what is being said by what not is being said. You can learn a lot by who has the respect to show up on time, Councilor. Twenty-one minutes late today. You can learn a lot about who respects parliamentary rule and procedure by getting up right before a disclosure statement and answering this. You can learn a lot by listening to Mrs. Luchini describe the lack of respect. You can learn a lot from what these young kids from the county not even from the Las Cruces Public School District are inventing. They are inventing solutions for their future which is filled with homelessness, battle, and being

suggested that this isn't about money. Everything is about money. I would like to propose that we change our name from Las Cruces to Milton Bradley because we love playing games. The most dangerous people in this room belong to boards and commissions that are no longer televised. They tell lies about constituents. They tell lies to representatives. Representatives keep things from us. Like the secret Public Select Committee that no one knows anything about. That now we have a pending IPRA lawsuit as the city. What happened to our City Attorney, Ms. Vega-Brown? Was she fired? Did she quit? Why does our City Manager get paid more in salary than the Governor?

Mayor Miyagishima said in all fairness to Mayor Pro Tem Gandara she did text me well before the meeting started that she had something come up and she was going to a little bit late, so I just wanted to say that.

Longino Bustillos, Member of the Public said I am a bicyclist here in Las Cruces. I have cycled thousands of miles. I know all the streets very well. I am the type of person that follows all the rules of the road but two years ago I was riding with a group of cyclists and I was hit head on at 50 miles an hour. You heard the statistics just a little bit ago. The chances and fatality rate is over 90% being hit at that speed. Barbara gave you all the statistics about vulnerable road users. I have a couple more. Here in New Mexico 2,130 people have been fatalities and seriously injured here in New Mexico. All but a few of them are VRUs. Here in Las Cruces if you look at the statistics, if you are crossing the street your chances of being hit are 10 times greater by a distracted driver than it is a drunk driver. I biked all over the city and I can honestly tell you I don't feel there are very few places in this city that I feel safe. Sometimes there is not shoulders, no room for even two cars to pass and there is a sign on the bike that says share the road. That does not make me feel safer after what I have been through. The New Mexico Department of Transportation has set up a Vulnerable Road User Team. They have interactive mapping online where they know where a lot of the crashes in New Mexico are occurring. They have designated 1.1% of the roads for work, for redesigning. You here as I look around the room you have a unique position in making a difference in people's lives. Putting public safety first. I can't think of a higher priority than putting the people's safety. We have had several organizations and I think last month we had an organization speak. We had Barbara speak VRUNM. We have a lot of community backing. Thank you, Councilor Corran, for the meeting tomorrow. I didn't know about it so that is a start, but I think that what they propose about this Vision Zero, we need to go big. We need to look not just for today but for the future of this city.

4. READ CLOSED MEETING STATEMENT

4.1 READ OCTOBER 30, 2023 CLOSED MEETING STATEMENT INTO THE RECORD.

The Las Cruces City Council met in Closed Session and only discussed those limited items as stated in the posted notice to discuss pending litigation regarding: 1. To discuss pending litigation regarding Aqueous Film Forming Foam Multi-district litigation (MDL), which is closed pursuant to NMSA 1978, Section 10-15-1H(7). 2. To discuss pending litigation regarding Aaron Spaulding v. Johnny Estrada, et al., Case

No. 2:23-CV-00391, which is closed pursuant to NMSA 1978, Section 10-15-1H(7). 3.To discuss pending litigation regarding Mark Price v. Francis Whitten, Thaddeus Allen, the City of Las Cruces d/b/a Las Cruces Police Department, No.: 20-CV-1099, which is closed pursuant to NMSA 1978, Section 10-15-1H(7). 4. To discuss pending litigation regarding Perla Baca, as the PR of Amelia Baca v. Jared Cosper, et al, CIV-22-00552, which is closed pursuant to NMSA 1978, Section 10-15-1H(7). 5.To discuss the purchase, acquisition or disposal of real property, which is closed pursuant to NMSA 1978, Section 10-15-1H(8). 6. To discuss bargaining strategy preliminary to collective bargaining negotiations, which is closed pursuant to NMSA 1978, Section 10-15-1H(5).

5. ACCEPTANCE OF AGENDA

Councilor Becky Corran moved, seconded by Councilor Becki Graham, to accept the agenda as presented with the removal of item 7.2 for discussion.

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

6. CITY COUNCIL MINUTES

6.1 WORK SESSION OF SEPTEMBER 25, 2023.

6.2 SPECIAL WORK SESSION OF OCTOBER 2, 2023.

6.3 REGULAR CITY COUNCIL MEETING OF OCTOBER 2, 2023.

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

7.1 RESOLUTION NO. 24-045: A RESOLUTION ESTABLISHING DATES FOR HOLIDAY OBSERVANCE FOR CITY EMPLOYEES IN 2024.

7.2 RESOLUTION NO. 24-046: A RESOLUTION TO ACCEPT 2023 LAW ENFORCEMENT RETENTION FUND AGREEMENT 23-ZH5048-40 FROM THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION.

Councilor Bencomo said in reading the packet it says the purpose of funds is to hire law enforcement and support positions over three-year period. I wondered if some of these funds could be used to support Project LIGHT as it is to me technically support positions for law enforcement?

Jeremy Story, Interim Police Chief said technically it is specific to Police Department so that would be hard. The initial application had to outline what the positions were for already. It would be impossible at this point to apply it to that.

Councilor Bencomo said I didn't realize there was an initial application process.

Chief Jeremy Story said it was initially to hire commission officers but also support positions would free up commission times so in theory that makes sense, but they

made it specific to Police Departments and Sheriff Departments.

Mayor Miyagishima asked would you be allowed to incentivize those who have maybe a background in whether it is psychology, sociology, one of the social degrees?

Chief Jeremy Story said right now we already incentivize those with a bachelor's degree in those areas more than a general bachelor's degree. So, we already use existing grant funds to do that.

Councilor Johana Bencomo moved, seconded by Councilor Becky Corran, to Approve Resolution No. 24-046.

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

7.3 RESOLUTION NO. 24-047: A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF $750,000.00 FOR ROAD CONSTRUCTION MATERIALS WITH GCC SUN CITY MATERIALS OF LAS CRUCES, NM, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT 23-24-032).

7.4 RESOLUTION NO. 24-048: A RESOLUTION TO ADOPT A NEW JOINT POWERS AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND COUNTY OF DONA ANA, AS WELL AS A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LAS CRUCES AND THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY.

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

8.1 RESOLUTION NO. 24-049: A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 375 KAREN AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, FIRE DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED.

Larry Nichols, Director Community Development gave the overhead presentation.

Councilor Gandara asked is there a dollar amount attached with the number of resources that the city has used thus far to reduce the nuisance of this property?

Larry Nichols asked of this particular property?

Councilor Gandara said yes.

Larry Nichols said we had several complaints from neighbors, and it was inspected by our code enforcement among those and then the fire call service on a number of

occasions and that is what brought this one to its present condition.

Councilor Gandara asked do you have the numbers, the number of times that codes has come out? The number of times that fire has had to be out there?

Larry Nichols said we have the three fire calls that I am aware of not including the one last week. Code enforcement went out about seven times.

Jeremy Story, Interim Police Chief said there has been 28 calls for service since January 1, 2021, and that is not including the latest fire, 26 of the 28 are codes calls and the other 2 were the fires that don't include the most recent one.

Councilor Gandara asked what does it take to red flag a building? I understand because we have been talking about this for some time but I think it is important that the public be aware of how much resource, how many resources are put into these buildings to abate the issue and work with the property owner and I know it is numerous times. Sometimes upward of 100 calls many times before this. I think that people need to be aware that there is a process and this takes long time before it gets to this place meanwhile council gets numerous calls about these things. It is such a nuisance, it's a safety hazard, sometimes it is in front of schools and just creates a real problem for community and particularly fire. They were just out there I think over the weekend. What is that process when you red tag it?

Larry Nichols said when a complaint comes to us and tells us that thus property has more than a nuisance it is an unsafe structure we begin to do our investigations. We visit the site. We take our investigation notes and we determine what sense of urgency it is to remove those blighted conditions because what happens many times that those properties are vacant, are unoccupied and there is unauthorized or unwanted entrance and so we declare the building an unsafe structure. We contact the owner. We list the investigation findings and ask the owner to abate the property, bring it into compliance. Bring it into where it can be habitable. If that does not occur, then we post a notice of condemnation. We give a period of 30 days for the owner to reply. When the owner replies and they say if they will not be taking on abatement process and we inform them that we have due process rights, which is the right to appeal the condemnation order. After 15 days if the notice of appeal expires then we begin to get bids for abatement.

Councilor Gandara asked does this have to go to Judge when you have to red tag it?

Larry Nichols said what happens many times is you heard of all the service calls that the Chief Story mentioned to you, that would mean that the code compliance officers have been there and they have given a citation. If the owner does not reply to a citation, then a court date is established, a Municipal Court date and they go before Municipal Court.

Councilor Gandara asked is all this information somewhere where one can find it, a constituent specifically to each address that you are working on?

Larry Nichols said they are all listed in our Municipal Code, they are all also listed on our Building Code. Those are available online or they can come to the Community Development Department, and we will review with them but also the codes enforcement officer engages with the owner when they issue a citation to explain what the violations are.

Councilor Gandara said I am interested in knowing the leg work that has to happen thus far. Is it available to the public? Like here is this property, this is the stuff we have done, this is where it is at, so this should not come to a surprise to anybody that this is happening.

Larry Nichols said there are several points of information provided on our website and as I mentioned they get the citation we are available to answer their questions. The public can come. The owners can come. We do have several people come to our department to ask about code enforcement issues.

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Approve Resolution No. 24-049.

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

8.2 RESOLUTION NO. 24-050: A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 643 EAST PICHACO AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED AND AMEND THE CITY'S ADOPTED FY2023-24 BUDGET THROUGH A BUDGET ADJUSTMENT OF $28,000.

Larry Nichols, Director Community Development gave the overhead presentation.

Councilor Corran said we have heard from a lot of the Historic Preservation folks and actually what you presented today is different from the partial sentence that is attributed to Historic Preservation in the packet on page 153 which says, this is a contributing, and the sentence ends there. So, I am not sure what those staff comments are exactly related to Historic Preservation but that seems in contrast with what you are suggesting today and then also there have been assertions from folks in the community that this didn't go through any Historic Preservation process. So, I am hoping you can reconcile those conversations. What has happened? What input has been gathered and if we have checked all the boxes? I would also say that I do have questions about how this happened because we are the owners in this case so that also seems worrying to me because this is often about noncompliant ownership and in this case, we are the noncompliant party.

Larry Nichols said when it was brought to our attention that the structure was deemed by the users of being unsafe, we went through the condemnation process and then

through the demolition at the request of the city. Any demolition permit it goes through a review process with the Building Department, Utility Department, and the Historical Preservation Specialist. When those were reviewed and they all came back to issue a demolition permit that there were no provisions that would cause it not to be issued.

Councilor Corran asked this was reviewed by the City's Historic Preservation Specialist and they agreed that this was nonconforming, and therefore subject to demolition?

Larry Nichols said the term that they use is nonconforming.

Councilor Corran asked when did the communication happen with the folks who were occupying the space talk about it being not useable from then to now? How much time has passed?

Larry Nichols said I believe that it was about six or seven months ago that it was brought to my attention to have the code enforcement officers go inspect the building. I inspected the building myself with them to determine the structural safety and any kind of deficiencies that were there in addition to the plumbing and mechanical system which I found to be substandard and collapsing, the roof collapsing and the other plumbing and the other items electrical items that will be deficient for functioning.

Councilor Gandara asked how long has this structure been owned by the city?

Robert Nunez, Deputy Director Parks and Rec said the structure itself was provided to the city approximately 21 years ago through an agreement with Salopeks. They own that facility. They gave it to the City of Las Cruces in agreement for it to be utilized for youth programs.

Councilor Gandara asked what have you used it for?

Robert Nunez said up to about 2013/2014 it was being utilized through the Weed and Seed Program. They were attempting to try and make it into a Teen Facility but when they went in to try to take down some walls the structure was done incorrectly and there we have not been in that facility since approximately 2013/2014.

Councilor Gandara asked what is it used for now?

Robert Nunez said currently we are unable to use any of that facility due to the risk.

Councilor Gandara asked has someone come in and done an assessment on what the cost would be to rehab the facility?

Robert Nunez said approximately five years ago previous city management and Public Works went in and it was identified that it would be the cost and requirements to fix and/or be able to occupy that again was a substantial amount. That amount I am not aware of.

Councilor Gandara asked does anybody know? I think it important that when we have these things come to us Ifo, that you have all the information in front of us. I am asking for an assessment, the price, what have we done? It is a building that the city has owned for many years, right? I have been talking a lot about having a specific space where we, kind of like service project where we work with the University, DACC, the kids. It would be a great service project for the Weed and Seed Program, right to rehabilitate in a way. To take pride in their neighborhood and understand the history and we have talked a lot about that over the years. I see it and I hear you loud and clear, I remember this coming to my attention at different moments. Ifo, you and I have talked about these things when they come to council and when staff have problems and concerns, you know the person that oversees the councilor should know when it is going to happen and why it is happening. I am really concerned about this. I know it is a structure that is unsafe, and a nuisance probably and we should do something about it but when we ask questions I want to know and be sure that the city has done their due diligence which also means that they went before the Historic Preservation Committee and have had this discussion, what the Historic Preservation's report and recommendations would be. To me that is really important and I feel like some of the information is lacking thus far. I am concerned about a building like this in that area that is not used and what happens especially in this area and I know given some of the people out in the audience are concerned about this as well but I in good faith can't, I would ask that we table this until this information be brought back to us because I am not sure that we have all the current information.

Councilor Graham asked I understand that an internal assessment was done but is this required to also go to the State Historic Preservation Office for their comment and if so, has that step been completed?

Larry Nichols said it does have a special designation that may not require what you are addressing there.

Troy Ainsworth, Historic Preservation Specialist asked your question is regarding state review?

Councilor Graham said correct. So, given its placement in a designated historic district does it need to go to SHPO? Obviously, it has been handled internally and I get that. Does it need to go to the state?

Troy Ainsworth said we have a complete discrepancy of recordation is how I am going to describe it. When the building inventory was done in 1979 and in 1980 for a potential Historic District, that is the district that becomes on the state level the South Mesquite Historic District. This building at 643 East Picacho appears in that building inventory, however on our zoning layers it in the North Mesquite overlay zone district. As the statutes are written the Historic Preservation Commission has purview over the South Mesquite overlay district but not the North Mesquite overlay zone. That is where we have a conflict and so the review process was internal and right or wrong the language in Chapter 40 in the City's ordinance specifies a review by a Chief Building Official, by the Fire Marshall to determine if a building presents a hazard to

public safety and health. The language in there specifies that the decision, the review process need not go towards the Historic Preservation Commission. That is the language in the statute and so in our review we certainly followed the letter of the law. At the present as you are aware Community Department is working with an outside consultant with the rewrite of ordinances for our zoning ordinances. There are discrepancies and so those discrepancies are being corrected and this is a very important step. As is the language that appears in a chapter of a city ordinance is what we have to work with. Not what I think it should say or what others think it should say but what are the words and that is what we have to work with.

Councilor Graham said to me I would be happy to consider tabling this until we can get and again I am not talking about simply 643 East Picacho. We have a lot of buildings in or potentially in this and I personally would like a deeper and clearer understanding of overlays and state and city.

Mayor Miyagishima said every so often someone will email me or report something to me. Maybe a sidewalk is broken or something of some nature. So, when I get that I immediately have to send it to the City Manager and Risk Manager because when they email me, I am put on notice and if we don't do anything to it and somebody gets hurt it really shows that we didn't act quickly. In the previous one we didn't own it and most likely we are going to put a lien on that property for the cost of what it cost the city but this has been ramped up. There are times when organizations or individuals will give a property like that to us. If the council should choose to table this, I am going to have to vote no because I have to. If somebody gets hurt on this tomorrow, the next week, the next day it shows that we are not taking it seriously.

Councilor Flores asked have we looked at what the state says about preservation? Have we reconciled what we have here in the city with that and how diligent have we been? I am really concerned about the fact that we are slum lords. There is no other word for it and the fact that is beyond repair at this point is regrettable. How can the city and we as city councilors are the ones with egg on our face but in terms of the administrative part of the city I now wonder how many other buildings the city owns are in this condition and you did mention that this particular property falls outside of the purview of whatever, all that being said it is still within the city. It is still city owned and it seems to me that there has to be with all our properties that are in our historic district and all of the properties that are owned by the city independent of the historic aspect have to be looked at. It is just appalling to me. I definitely believe that we have to table this, and I agree with the Mayor in part that there is a lot of liability there. I think that then if it is going to be a condemned property that steps should be taken immediately to fence it in and put-up signs. Also, in the future it would be great to have identification of anything that needs attention should be identified and presented to that committee.

Councilor Abeyta asked how many calls of service have we had on this property for fire, police, how many times has it been reported?

Jason Smith, Fire Chief said we have not had any responses to this location in the past 12 months.

Councilor Abeyta the second item and it is more of a comment, but it is that of the properties that we own and what I have seen during my time here is and especially when it goes to historic properties they are very costly to maintenance and take care of and there is a responsibility when we do acquire them. It does give me a better concern that have had this building for so long and maybe because it is in this shape that we haven't seen in on a CIP or any other list making sure that we are getting it up to codes and standard or having a second plan for it to because for me that really is a public safety issue. That causes me high concern as to see what else do we have on that in this type of condition that needs to be addressed because that to me is more of an emergent issue really and so I really like to see that sort of thing. A listing of any types of properties that we do own. I don't want to be slumlord and I don't want to have buildings that are in this type of condition especially if they are a public hazard.

Councilor Bencomo asked is this a current picture, recent?

Larry Nichols said yes. The photos were taken about a month, a month and half ago.

Councilor Bencomo said I think just on the issue of being good neighbors and the property just sort of upkeep and maintaining area while it is in this process I think is really important. So, making sure that the weeds are clean, that there is not debris or trash. Like those types of things I think are really important and then is it boarded up?

Larry Nichols said the building is secured but people are very inventive on how to get into a building and that is what the Mayor is trying to say.

Councilor Bencomo said we cannot control what other people do but we can control what we do to secure the facility and I think that is really important. That would be my request if this does get table that immediately this week there are steps taken to secure the facility. Put signs up, all of those kinds of things and working with our legal on how to avoid liability now that we have been talking about that quite a bit here but I do on that matter I think it is really important that we move to secure the facility as best we can. Similar to Councilor Abeyta I would like to know how many properties the city owns that would be considered historic and if there are plans for rehabilitation and I think this probably should have come to City Council in 2013, right with some of those big concerns. So, we have had a couple of emails from folks and please know that if we don't answer it is because we are talking about it here today and we could have to recuse ourselves if we emailed back to you in any way shape or form. I hope folks understand that. We do receive them and read them. Has the Historic Preservation Commission heard this case for this property to be demolished?

Troy Ainsworth said the answer is no it has not. Again, it gets back to the language as written in the ordinance where decision making authority lies and that is the crux of the argument.

Councilor Bencomo asked can the commission request to hear something?

Troy Ainsworth said yes, they could.

Councilor Bencomo said I also want advocates and members of the public to understand the very delicate position that we are now in because 10 years ago this was not addressed. In District 4 there are many houses that have been blighted and abandoned and not been taken care of and so this is huge for me that we address properties that cause a serious public hazard to people, 1212 Brownlee we over and over again we let the property owner know, please take care of this property. It is literally right next to the playground at MacArthur Elementary School and so it is a huge hazard. It has caught on fire. People were living in it. When we were talking about Skeletor on Main Street we heard a lot from Fire Department how dangerous these facilities can be. I think there is a fine balance when we are talking about potential historic preservation and those facilities and the safety of the wider community. That is a fine balance. So, in the meantime I am okay if we table it and the Historic Preservation Commission wants to hear this and if we want to ask the state about it with hopefully a commitment from advocates for that for whatever reason they come with the same consensus that then that is sort of what we are working with. I understand the importance of protecting historic properties like this and I also very much am aware of the public safety issue that comes along with such properties.

Mayor Miyagishima said there is what they refer to as strict liability and that is regarding nuisances like swimming pools, a refrigerator. When you have these nuisances no matter what you do, you can put all the signs in the world, you can lock it up if somebody still gets hurt, we are liable. We are going to lose. We are going to get sued. The question to our City Attorney is, is this considered a public nuisance, and would strict liability apply to this?

Linda Samples, City Attorney said being new to the practice in the State of New Mexico in lieu of answering you off the fly I would like to research that question for you.

Nancy Akbari Shahmirzadi Member of the Public said I am a resident of the Historic District and I am also a retired attorney, Pennsylvania Attorney. I am not giving obviously legal advice, but I think as an attorney I can be considered somewhat of an expert in the reading of a statute and the identification of legal issues. The most important legal issue is jurisdiction. It is only at the very end of your questions that you learned that the Historic Preservation Commission was in fact not utilized. The reason that was given for that whatever was cited by, that needs to be reviewed by a City Attorney and I would put in an amicus curiae brief or whatever. That is the leading question because that may make the difference of the process that it has to go through. That is number one. Number two, I do think that the issue of public safety, excuse me Mr. Mayor is disingenuous, the property belongs to the city. The ordinance makes clear that any owner has the obligation to maintain the property period. Third of all, when I first came here, I came here twenty years ago. There were so many properties that were disheveled in the Historic District which was still being debated at the time that we had community meetings about what was the city going to do to start to improve them. My point is that this was twenty years ago. This property has been owned by the city for approximately 10 years and as somebody said 5 years ago was the first time something came up and bringing attention to it. So, I do believe that

issue is disingenuous. When I came here we were on block that not a single property was good. My friend said that we had moved into a slum, now for blocks on each direction every property has been rebuilt. One of them was in shambles. You would not know which one it is now. Way up on Mesquite my husband redid a property which could not get insurance, it was such a mess. The point about repair is also disingenuous. The statute itself says if you can't put it back to its original condition you can put in a new one.

Lori Meeks, Member of the Public said as some of you know I own a house in the Mesquite Street Historic District. We bought that house 19 years ago. No one had lived there for 3-4 years before we bought it. We put a lot of money into it and restored 3-4 buildings in that area. I also served on the board of Las Esperanzas for a number of years, published a newsletter for four years on the neighborhood and I know that the Mesquite Street Historic District is a very special place with structures and history that should be celebrated and preserved for future generations. I am beginning to feel that there is a campaign against the preservation of the Mesquite Street Historic area by the city. The Mesquite Street overlay and Review Board was created to preserve this historic part of the city and was a prelude to the city's Historic Preservation Commission. The city approved funds, appointed commissioners, and hired a preservation officer only a few years ago and now it seems the city is intent on ignoring the commission, ignoring that it exists and running rushad over the ordinance and guidance provided by law. Changes of demolition permits and structures for the Mesquite Street Historic District are supposed to be reviewed by the Historic Preservation Commission. I think the controversy about whether this is in the South Mesquite or not, it's about Picacho. The line goes up Picacho. This house that we are talking about is on the north side of Picacho, the line is at Picacho. It does not specify if it is the whole street or both sides of the street or not. That is part of the problem. The process has been bypassed for two houses already and a third one is on the agenda today. I don't understand how the city has the right to ignore legal protocols. There is no posting of signs, no 60-day waiting period, no efforts to advertise or save the property or discussion with the Historic Preservation Commission on solutions beside demolition. Does this reflect a city dedicated to preservation? Is someone making decisions about our Historic District that is destroying our district as opposed to saving it? There are other events that have caused me to feel the neighborhood is being discriminated against, there is no more Music in the Park at Klein Park, the Pachanga was forced to move to Young Park. We have to get funds from the state for lighting and improvements in our parks. Money for historic survey for the neighborhood was attained and then cut in half. It is still not been done. The Arts and Cultural District programs and projects disappeared from the neighborhood. The Neighborhood Action Team which was designed to help property owners with abandoned properties now has been renamed Nuisance Abatement Team. The definition of nuisance abatement is defined as a removal or termination or destruction of something. A house in the 600 block of North Mesquite owned for years by the city continues to deteriorate. Is there a plan or just extreme neglect?

Greg Smith, Member of the Public said this is a very modest building and it is in bad shape, but I would like to put before you the question of symbolism and messaging. This was a home that was in the Fielder family. This is part of the history and part of the fabric of our community, the Fielders were important in this community. In 2012,

Mayor Pro Tem Emeritus Archuleta was in charge of putting together a parade commemorating 100 years of statehood for New Mexico and we went by decades talking about the different things that happened in Las Cruces those 100 years. My wife was part of the parade, she was driving a car and in that car she was very honored to have Clarence Fielder as her rider. That meant a lot to her, she understood that Clarence Fielder had played in this community and that his family played in this community and that was one of those features of the parade that was well remembered. So I will put it to you, it is not so much a question as to some of the other things you have got going on but what is the message that you are sending to your community about this and perhaps the front part of the building can be saved if the rest of it cannot and can be included in something for Weed and Seed that is productive but somehow it needs to be thought about.

Judy Berryman, Member or the Public said I am the current Chairperson for the HPC and I would like to directly address a couple of questions that have been brought up. One, the city is currently in noncompliance with the State of New Mexico. SHPO has not been consulted in terms of this action. It is a requirement under New Mexico law whether we are in the South or North Mesquite it has not bearing. I am requesting the city council vote no against this resolution until additional data is acquired. Currently the city is also in violation of Chapter 40. I would like to invite everyone to attend a meeting with us so that we can go over what the nuances and what exactly Chapter 40 says. However, approval of demolition does not align with any of the ordinances including Elevate Las Cruces, including Chapter 40, including state mandates. It does not align with any of that. As people have talked before this is a historically significant building. It has not been brought up to the council, to the commission. We do want to have a hearing on this. The building was evaluated in the 1970/1980 contrary to what has been told there has not been an update so building currently is contributing to the historic significance of the property. We are in an awkward situation. A lot of the information that we are now getting regarding this property I am getting right here today rather than we should be getting it in a normal commission meeting.

Jackie Meinecke, Member of the Public said I served on the Historic Preservation Task Committee that created Section 40 or at least worked on Section 40. That was the whole reason I joined the committee was because I was around when we tore down the pink house on University. I am here to say table or say no because the whole idea of what we spent 3 years trying to create was to prevent this very argument occurring over and over at great expense and great aggravation of both the community and the council.

Debra Dennis, Member of the Public said I am the Executive Director of Human Systems Research. We are the oldest private nonprofit research in the state of New Mexico conducting historical preservation and archeological research. I also serve as the Vice President of the Amador Hotel Foundation and was one of the original founders of that nonprofit. I am not here today to tell you about the importance of this particular building but to add to Greg Smith's comments, it was Clarence Fielder's father and grandfather's home. What I want to talk to you about is a very interesting conversation I had only today with the next-door neighbors, Mr. and Mrs. Holloway who shared a great deal of information. One of the things that they told me that was in fact the house has been secured. It has a security system and the city has the keys

and it was only yesterday that they found out that the house was slated for demolition. What I can tell you in visiting the property today there is absolutely no signs, no evidence and there is not any garbage and if you were to see an aerial overview of how the property actually sits what you would see is that the entire backyard is green astroturf and part of the basketball court for the Park and Recs Weed and Seed Facility. What they told me was a very interesting picture and it was only very briefly mentioned by Mr. Nichols as to what they want to do with the property, but I think it is important to know that. They told me a story about having lived there. They lived next door in the house. They rent since 2005, they came in on Section 8, it was affordable housing.

The city has been pressuring their landlord to sell property along with the owner of the property on the other side of 643. The reason being is that the city wants to own all the property, demolish all three houses and have a parking lot is what they have been told so that Parks and Rec has a parking lot for the daycare center that is in the Weed and Seed Facility. When their landlord would not sell, they suddenly lost Section 8 status and no longer had that support and their landlord came to them telling them that they were being pressured, he was being pressured by the city to raise the rent to help them get out of the property. He refused and they have worked with the landlord and have continued to live there. Likewise, the woman and owners of the property on the other side have adamantly refused to city's offers to purchase the land. Here we had affordable housing. We had a Hispanic neighborhood and I think we have to look at what does the city want to be doing with this property that they are pressuring and doing demolition by neglect.

Derrick Pacheco, Member of the Public said my family has lived in the Mesquite Historic Neighborhood before it was called that. My grandma is 97 years old and picks cotton for the Salopek family to pay for the adobe house that she still lives in. This neighborhood is absolutely going to be like Durangito in El Paso. Do you know why? Because you hired people from El Paso to run this program. You have the Wizard of Oz here and you have another gentleman from Texas who has no purview of what is going on in this town which is absolutely apparent here.

Mayor Miyagishima said Mr. Pacheco we are elected officials here, we are used to being called names, we are used to being ridiculed but to do that to our staff is not right.

Derrick Pacheco said I used the wrong descriptor, but I wanted to use an example of what is going on. There is a person behind a shield, you have put up a big shield at Community Development. You cannot get a hold of Dr. Ainsworth. He will not return emails or phone calls. What you get instead is a really nice Dr. Pitts who is an amazing gentleman who will always give me time, but he is blocking access to Dr. Nichols and Dr. Ainsworth. This is dangerous. You have now locked out the youth out of the community who grew up here who want to come back here and want to invest here. You all used HPC and Dr. Ainsworth here and Dr. Nichols here to shut down a community garden project that I was behind in and part of out of my own pocket and you even used the HPC and Section 40 and 38 and Mesquite and all this overlay to cut me out and you won't even come to a site meeting.

Jo Ruprecht, Member of the Public said the comments that you made about the security and risk involved in this building, I was there this morning. I took photos. I thoroughly looked at the front of the property and at the back. This bounded on either side by residences that are fully occupied that show evidence of occupation and where the residents are actively looking after this property. Also, the property itself does have the windows boarded up. It does have bars of security on the front windows. There is no evidence of breakage as far as the front door and on the back side it is bounded entirely by a trailer park by fencing. The fencing on either side of the front of the building is intact. It is not broken down. There is no evidence of fire damage or encouraged, so the risk is minimal.

Mayor Miyagishima asked did you imply that there is someone there?

Jo Ruprecht said no, I'm saying that the property on either side is single family residents and that those residents are actively monitoring this city building and they say that the city is actively monitoring too by a security system.

Daniel Buck, Member of the Public said I am a resident of the Mesquite Historic District. Like many others three years ago before I moved into my home which will be celebrating its 100 birthday it was considered dilapidated and unlivable. Lori, and Nancy and Robert and countless others have spoken and invested in the Mesquite Historic District heavily and played a part in the renewal of cultural heritage in the preservation in Las Cruces. Most unique and historical facet is that of the remaining of the El Camino Real which is intact and preserved. My home is celebrated west of me by residents more than eight who once called my home their home as a child, a family of 12. When I bought my home three years ago there was no roof in the casita, there was not internal infrastructure for heating and cooling. There was not even operational plumbing and there was somebody living there and to think that the property before you that is up for possible demolition or resolution I might state has gone before fully without being examined and rectified for the Historic Preservation Commission is a shame while countless others in our neighborhood have burned over the last year because of drug use and squatting. Those homes have not had any action taken by the city to mediate the crime that has been a growing concern for the residents of District 1. I am a proud sponsor of the horse trolly. I have never seen a single councilor join us in the past 14 months on the horse trolly that runs up and down Mesquite every first Friday that sponsors the unique economic tapestry of the historic district sponsoring local art galleries, restaurants and coffee shops which make it our home. Las Cruces one of the only communities that I have seen that does not have economic tourism from its historic value in the Mesquite Historic District. It's the one and only truly recognized area of District 1 for history.

John Teaver Clue, Member of the Public said I am here largely speaking on behalf of my wife Faith Hudson but I know you are in receipt of a two page letter that I hold right here in my hand that she crafted and took another day to talk about another house that is owned by the city that has been demolished without undertaking the proper reviews. I want to take a chance to bring up a couple of these points in here and the first being that you know that this is a city owned property. You know in this instance

to cite the NMSA Code 3-18-5, for failure to comply or have an unsafe residence just is an absurdity to me. I can't believe that we are quoting state statute which is for disregard of the residents recalcitrant owners who you can't make comply with your own ordinances or just scrofulous from the law. Well, it turns out it is us. That is just a shame, I think. What we find here, the electrical is off, the gas is off, the suspending ceiling is falling, but that is largely due to the fact that the low baring walls were taken out apparently by city people. There can be no other reason why the structure is failing at this point. I would have to say that the city is guilty of demolition by neglect on this property. They had it since 2011, given by the Fielders. You honored a Fielder just down the block where he contributed his own house to be Weed and Seed and yet we turn around and just throw away what was given through the Salopek Foundation for a year and then went to the city for these years that it has been completely unsuseable or been deemed being hazardous can only be our fault. I am part of this city as well, I live in the old townsite. Secondly the word is not conforming but contributing. That is the question that you have to ask yourself. So, this is in fact a contributing structure. It was found to be in 2004 and it has to follow the regulations of being reviewed by the Historic Preservation Commission.

Mike Tellez, Member of the Public said my family dates back to the 1700's in this area right here. If you were to go to the new Las Cruces up in the Sonoma area, you would never know that there was a culture in this city that there is. Right now, in the old Las Cruces we are at risk of losing our back art history, our culture, art, and the preservation of this property. I would like to just plead to put a stop to any demolition and give time to come up with a plan. I believe that Mesquite Historical District is as important as the Downtown Plaza is. We need to get on that Mesquite District, finish Phase II and get something that tourists can go through. That is who we are right there. That is Las Cruces. That is our heritage. The art represents who we are, where we came from, family, and our roots.

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to table Resolution No. 24-050 to the February 5, 2024, Council Meeting.

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

8.3 RESOLUTION NO. 24-051: A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAS CRUCES (CITY) FY2024 BUDGET AND THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP) FOR VARIOUS CITY DEPARTMENTS.

Leeann DeMouche, Finance Director gave the overhead presentation.

Councilor Flores asked about the money for Human Resources to hire someone, did you say was that the line item did you say to hire someone as a translator.

Leeann DeMouche said yes, it is a $100,000. They want to do a self-evaluation survey of their ADA for their facility services and programs and then they want to use

$50,000 to buy headsets and also provide translation services for Spanish for council.

Councilor Flores asked you are talking about printed material for the public or inhouse?

Leeann DeMouche said I think it is only during the council time. You know how we have had public come up to the podium and they need translation services and I think it is for them to have a headset that way they can be translated from Spanish to English or English to Spanish.

Councilor Flores asked that doesn't include printed materials? Why is it under ADA? It isn't a disability not to speak English.

Leeann DeMouche said under the program called Workforce Compliance Program and they are in charge of that.

Councilor Flores said the reason I ask whether there is going to be printed materials is that I have said this before and it is very important because translation services are for the written word and interpreters are a totally different breed of people and there are simultaneous interpreters who are amazing. So, if you are going to send out a call for them to submit their resumes you may get the wrong person for either one of those jobs so that has to really be specific. Interpreting at council meetings and writing out the printed material are two different animals all together.

Gail Estell, Compliance Administrator said this is a fairly new section of Human Resources. I have been at the city since 2018 and I was hired as the EO/ADA Coordinator and so as part of the ADA Compliance is part of my job. It became more then what one person could do and so we came back to the council with this new budget year, the one we are in now and we were able to hire an ADA Compliance Coordinator which is Saron McKee and so with that being said with our transition plan you will notice that we have not brought a transition plan to council for final approval. We were able to do the public right-of-ways, Public Works had the funding for a consultant to come in with that but we haven't been able to do our facility services and programs and so we would like to use $100,000 of that money. We are in the process of an RFP if this is approved in order to hire a consultant to come in and do the same ADA assessment compliance. So that we would then identify any barriers that exist. The consultant would then prioritize those barriers into low, medium, and high risk for noncompliance with kind of an estimated budget of what those would cost to complete and then we would prioritize those and then each year we would be able to budget for whatever we thought we could get for that budget year to start removing some of those barriers that have existed within the city. Then with the rest of the funds we would like to and I know the city council has been asking for a Spanish interpreter at the city council meetings and also for ASL interpreter at the meeting. We would also use these funds to hire those two, ASL and Spanish language interpreters to be at each city council meeting. We would have both of those here all the time so nobody would have to recommend or ask for an accommodation they would just be here. If we were to get this from December till the end of the fiscal year it would cost about $15,000. We do currently have vendors that already do ASL interpreting for the city

and has worked with other agencies and other municipalities. There are already vendors and we have already got estimates and they are all willing to start. In fact, the Spanish speaking one if everything is approved, we can get everything in process is willing to come to the December, you know the next meeting. That would take about from now to the end of the fiscal year it would take about $15,000 to $16,000 of that then also for the Spanish interpreter are the headsets for the interpreters and so we don't have an estimate on what that would cost yet but then also you are talking about the written language. We have a vendor that we haven't started using yet Certified Language International that has the capacity to do not only interpretation in 256 different languages and we can do it virtually, but we will also has the ability to do translations. One of the issues or concerns that some of the folks had was that the Spanish was a certain dialect in this community and so we would work with Certified Language International and let them know what the dialect is and what we would expect with Spanish interpreting and translation and we would use that entity program to be the city's translator so that everything would come from the same place and they would be familiar with the city and our culture.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 24-051.

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

8.4 COUNCIL BILL NO. 24-006; ORDINANCE NO. 3048: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,600,000 FOR EQUIPPING FIRE STATIONS AND ACQUIRING FIRE TRUCKS AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

Erika Jaquez, Treasurer gave the overhead presentation.

George Pearson, Member of the Public said as a member of the Technical Advisory Committee of Realize Las Cruces we were talking about street design and part of the street design discussion is lane width and the consultants say we need to have 12 foot wide lane widths and one of the reasons was to be able to have room for fire trucks to go down the streets. Well with wider lanes we have higher speeds and instead of fighting fires the fire response ends up being crash response caused by wider lanes. What I am asking is as we look at this equipment that we are about to purchase that we purchase equipment that is appropriate for the area that they are going to serve. If they are mostly serving residential areas. If a fire station is serving residential areas in that part of town get a fire equipment that fits that need. The aerial

truck I am not familiar with firefighting of course but the aerial truck might be something that really isn't needed in a residential area. Aerial truck sounds like downtown area piece of equipment. Just look at purchasing equipment that is appropriate to the needs that will serve the community.

Jason Smith, Fire Chief said we are purchasing equipment that is necessary to provide adequate fire protection and maintain our ISO rating for those areas of development. We have looked extensively at our street designs of how we can minimize our footprint and move in ways that will actually enhance our population density and decrease our street widths. Yes, in some areas yes, a 12 foot lane is necessary for a fire truck and some residential homes do need an aerial ladder to provide fire protection to them.

Mayor Miyagishima said one of the things that we get to brag about with the LCFD is that they are one of only maybe 100 fire departments in the nation that have an ISO of 1 which for an insurance standpoint makes the rates the cheapest as possible. When they went to a 1 if they were to say a 5 or a 6 and they dropped to a 1 that saves the residents $30 to $40 a month in their insurance costs so if Chief is confident that need so it then it's good.

George Pearson said I am just going to go back to some previous comments made at a 20 mile an hour rate of speed a collision with pedestrian or bicyclist has a 90% chance of survival at 40 miles an hour they have a 10% chance of survival and street design width play directly into that.

Mayor Miyagishima said I am pretty certain that today's streets that the city's requirements allow for the fire trucks. The only ones came into question were the Las Colinas area. Those streets were narrow so those took place before I even came onto city council, but they were really narrow. That is where the biggest problem was. So, what you are addressing certainly applied to that area. I'm pretty sure that Public Works and Community Development require and make sure that streets are wide enough that they can handle almost anything.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Ordinance No. 3048.

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

9. BOARD APPOINTMENTS

9.1

None.

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. 24-007; ORDINANCE NO. 3049: AN ORDINANCE APPROVING A ZONE CHANGE FROM UR (URBAN RANCH) TO EE (EQUESTRIAN ESTATE AND AGRICULTURE) FOR PROPERTY LOCATED AT 7332 SHANNON ROAD. SUBMITTED BY JOHN MAJOR, PROPERTY OWNER.

Council agreed to bring it forward.

10.2 COUNCIL BILL NO. 24-008; ORDINANCE NO. 3050: AN ORDINANCE REPEALING AND REPLACING DIVISION 17- BUILDING STANDARDS OF CHAPTER 30, BUILDINGS AND BUILDING REGULATIONS OF THE LAS CRUCES MUNICIPAL CODE TO ADOPT THE 2021 BUILDING CODES, AS AMENDED, AND AS ADOPTED BY THE STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION.

Council agreed to bring it forward.

10.3 COUNCIL BILL NO. 24-009; ORDINANCE NO. 3051: AN ORDINANCE REPEALING AND REPLACING ARTICLE II OF CHAPTER 34, DRAINAGE AND FLOOD CONTROL OF THE LAS CRUCES MUNICIPAL CODE TO AMEND THE FLOOD REGULATIONS TO REFLECT HIGHER STANDARDS ON FLOOD MITIGATION.

Council agreed to bring it forward.

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 MAYOR MIYAGISHIMA

About two weeks ago Mr. Wilson emailed me and I think we discussed a little bit in council about that he was able to receive some vests from the Highway Department and he had asked if the city could match that so I think it was about 150 vests so if we could do 150 and give those out to the bicyclists and I had emailed and told him I don't know I would have to check and see with the City Attorney and see if that violates the anti-donation clause. So, I was wondering if you had a chance to look into that?

Linda Samples, City Attorney said no Mayor, you know when I first started here one of the first things I said I thanked Jocelyn Garrison and Brad Douglas for all the work they did with a mighty team of two. We are still a mighty team of two, it's Brad Douglas and I and we are working our best. To directly answer your question, I have submitted your question to outside counsel, and I have not yet received a response.

Mayor Miyagishima said I received this email from the university. "I would like to express my gratitude to you and Las Cruces City Council for allowing New Mexico

State University the opportunity the discussed proposed Tax Increment Development District or TIDD in the Las Cruces City Council Work Session on October 24, 2023. Given the complexities of the proposed TIDD New Mexico State University believes that additional discussions between NMSU and the City of Las Cruces are warranted before formal consideration by the Las Cruces City Council. Therefore New Mexico State University respectfully requests that the resolution approving a Memorandum of Understanding between NMSU and the City of Las Cruces to establish a TIDD be pulled from the November 20th City Council Meeting Agenda. New Mexico State appreciates your close connection to the university and values the productive relationship the two institutions have had under your leadership. Sincerely Scott Eschenbrenner, Special Assistant to the President." This was of course addressed to me, but I just want to let you know they will not be on the agenda on the 20th.

11.2 COUNCILOR GANDARA

As far as the Vision Zero we have been talking about this for some time and I am very supportive of the Vision Zero Action Plan. I am wanting to see how it coalesces with the plan that we put together, Councilor Abeyta a few years back and it passed with the Complete Streets. I know Ifo we have had some discussions more specifically about an area near the baseball fields, the parks and I thought I saw some flashing lights. Did they put those on or was that always something that they were going to do? That was one of the recommendations. The other was using the green paint to identify the bike paths especially in that area, particularly around the schools, Sierra Middle for kids it gets really congested and kids are walking and biking along when there is activities. I have also asked about doing a study around the Hawk systems and we would like to see more of them. I think that is a piece of the puzzle and I am convinced that we need speed cameras. I think it is something that is a part of also the long vision for addressing speeding and crashes that result in fatalities and so I would really like for and I am thinking the Health Policy Review Committee we can start thinking about looking at talking and really moving. I think there is just a number of plans and a number of groups that we need to probably condense into one to look at this and really move it forward. I would like to see where our active Transportation Coordinator position is and if they are any closer to hiring this individual.

I was so impressed with the Living Lumbre presentation and the kids. Those really are our future and it was amazing to see them stand up here. Well first and foremost to actually think this through and develop. If there is anything that the City of Las Cruces can do as they were presenting it I thought a lot about Our Kids Can programming here in Las Cruces through Community Action Agency. We have something similar. They develop their business plan and their projects and they sell their inventory if you will at our Farmers Market and in a number of places and at the mall. I wonder if there is something Ifo that we can do? I am not sure Mayor if having them here to present or how we might through the city afford them opportunity to sort of ensure that they are a part of the solution particularly around homelessness right? I am interested in looking at how we can help facilitate the mass producing and/or how we get these into the hands of our homeless folks.

I was appreciative having Jennifer and company from El Paso Electric do the presentation on advanced metering. They have come a couple or three times to our Dona Ana County Resilience Leaders and we have actually done a couple of focus

groups specific to this and because of the equity sort of issues of ensuring that low-income folks have a say in this. How are they going to be educated. We had a number of great meetings specific to providing information to El Paso Electric in terms of how they are educating the public related to advancement. I was glad that they were here. I think our PIO and the City of Las Cruces can be real partners as they move through this and I would recommend that we have a section on our website specific to this and do what we can to inform the public that this is happening.

I continue to be astonished about this whole defunding police accusation. We have not done it and it would be nice to know, I have been here for eight years and I have a record. People can look and see that not only me but this council has never defunded police. In fact, we gave them 18 more positions to help and so I don't know but I am hearing that Conservatives in Action is putting out misinformation and I will call that out. We will continue to be open to Ms. Luchini and others that want to speak regarding this idea that this council has defunded police because we just have not. It is far from the truth.

Mayor Miyagishima said regarding the students that came. I was with Representative Ray Lara and we were talking and we were talking about the engineers at the university and one thing leads to another and he said have you seen the invention that the kids at Santa Teresa High did? When he told me about it, it sounded really interesting and I said let's bring them here to City Council so we can see it and that is how it came up.

11.3 COUNCILOR FLORES

None.

11.4 COUNCILOR CORRAN

I will reassert the reminder to come to the PRC meeting tomorrow at 8:30 on the second floor. I think Representative Rubio is really going to be talking about mobility justice and that includes making sure that all people are safe in our streets and I do think that is a really fundamentally important conversation and I think that this committee has a lot of city staff who represent a lot of things that we have talked about engineering and sustainability and design and all of those conversations.

Thank you again to Catrina who has really been organizing and Grace for organizing a lot of community outreach events and last week with the New America students and they did a mock city council meeting here and Councilor Bencomo and Councilor Flores were with me and to be perfectly honest its hopeful to see people who are thinking so critically about our future and hopefully about everything in our world. I hope that they do actually run for city council some day and replace us. Thank you for bringing back the Leadership Academy which had gone away and I think is going to be really exciting for people to learn what the city does and those applications are open now, right? People can apply now for the Neighborhood Leadership Academy and if you ever wonder what does the city do or if you want to think about how you can become engaged with the city and city services and better understand all of those things. I highly recommend that you consider applying for the Neighborhood Leadership Academy through our Community Engagement Office.

I also want to give a shout out to Connie in Transit and all of the folks in Transportation, Mike and Richard and everyone who was there yesterday for the Transit Rodeo where the best of our drivers or ones who had the most confidence I understand that there are more drivers who will hopefully have more confidence next year came and did a lot of really extraordinarily challenging feats while driving buses, city buses and our paratransit service. Let me just give a shoutout to the transit drivers who are out there just doing things and many of them are really extraordinary at their jobs. The winners qualify to go to state and potentially nationals, so I am really excited about that. I was really proud both with their abilities of the job and their sort of commitment to each other and creating a great climate for people who use transit in the city of Las Cruces and it was a really fun day all around.

I will be having my community meeting/celebration on November 18th at the ASCMV. It is a little bit different than a traditional community meeting. There will be discounted animal adoptions but also folks and representatives from city services that I get a lot of questions about in my district including Public Works, Parks and Rec., 11-1 in the parking lot. You can take a tour of the new Animal Services Center. There will be animals in there and they will be cheap or free probably if you ask me, I might sponsor your fall from grace if that happens.

11.5 COUNCILOR BENCOMO

The New America students, that day was really fun. Thanks a lot to Catrina and her team and our amazing City Clerk and everyone else that was involved. They took part in a mock city council which Councilor Corran helped them run and then they participated in a Q&A session with me and with Councilor Flores and honestly they had incredible questions. We talk about young people being the leaders of tomorrow but they are the leaders of right now and they just ask such thoughtful questions. They had such thoughtful questions about the unhoused community, about drug use, about policing, about immigration, economic development, they just had incredible questions. It was really fun to be part of that. I know that Catrina is working on doing more things like that with young people and having that opportunity to come here and really experience local government. Thank you everyone that was involved in all of that including the teachers that brought them over.

I also met with La Clinica de Familia last week, I unfortunately missed the ribbon cutting a couple of weeks ago due to some unfortunate car troubles that were completely my fault. So, I got to visit with them on their new behavioral health wing on Motel this last week and just learned about honestly there is a ton of services that they have that I just did not know about. I did talk to them about sitting down with you Ifo and Chief Story just about treating folks and connecting folks to resources who might really need them. One of the things though that did come out of that meeting is that they have a lot of folks using that facility now. A lot of families, kids, adults and there is a bus stop right in front on Motel and that is a very busy street and they are requesting that if we can work on a way, I know the HAWK Systems are incredibly hard to come by. If there is a way to work with the county on how to provide some sort of walking pathway from the bus stop to across the street to their new facility because it is quite a significant set of folks who do not have transportation who are using public

transportation or walking there who would really need that safety to cross.

I met with Lorenzo Alba recently at Casa de Peregrinos who is really concerned about the cost of food currently impacting their budget and they really would like us to consider an amendment for their budget currently because they are being very much affected by the rising cost of food and then as part of that conversation I think if we are able to do that to think about the additional utilities assistance that we provide through them and I haven't asked Adrienne what the budget looks like right now but it is obviously getting colder. It is getting colder and people's gas bills will start to rise and so I just want to check in with them that we have those funds, but I figured that if we considered an amendment for Casa de Peregrinos to support their food costs that we might as well include the utilities budget as well.

Mayor Miyagishima said if they have a chance to put it down how much they need and why that would be good.

11.6 COUNCILOR GRAHAM

Thank you, Chief Story and others, in LCPD for welcoming Councilor Corran and myself to training last Friday. It was incredible to see what your instructors are engaging in and engaging with, and I would be remiss if I didn't mention that we got to meet the Ranger. I was extremely distracted when I realized that Ranger was on premises. It's enlightening to see the training and also great to see the department opening up to new pads of thought, new methodology and go Ranger.

11.7 COUNCILOR ABEYTA

On October 25th we did have a Quality of Life meeting. We looked at the Library Master Plan. The initial portion, it's still being crafted at the moment and kind of talked about different items. There is a look at the Branigan Sustainability Fund where they used to buy books and how and it's being used is in the past and that means that the endowment fund is going down quite a bit so I think that is something for us to look at in the future. There was a thought about looking into how we utilize the website and market ourselves as well through the library so those were interesting items. We took a look at the America 250 Celebration and what that could mean for us here in Las Cruces and we do have on deck in January we will look at the Founders Day and so we will have a conversation on that in January.

Last week I was in Santa Fe where I helped chair the meeting between the Association of Counties and Municipalities as we did our pre-legislative meeting and prioritization, and I am happy to share Ifo later on with you a few of those items we will be working with. A lot of it does look at public safety, funding for water infrastructure projects and taxation and of how that might impact municipalities.

12. CITY MANAGER REPORT

12.1 IFO PILI

From VLC, just an announcement that Las Cruces has won the bid to host the 2024 the New Mexico Outdoor Economics Conference. It is to be held October 2nd through the 4th. That will be the 10th year anniversary of the designation of the Organ Mountains Desert Peak National Monument. I appreciate the support from the County. I know they asked the County to support as well. This is something that the County is

committed to support and help get. Thank the County and Visit Las Cruces for that.

Parks and Rec Out of School Time Camp registration begins Wednesday, November 8th and camp takes place Monday, November 20th, Wednesday, November 22nd 7:30 a.m.-5:30 p.m. at two city locations.

I just got a text about the Active Transportation Coordinator, they are in their final interviews right now so we should have some update here soon.

I would like to turn some time over to Chief Story. Chief and his team have been really innovative in a lot of different projects and working really hard. This is one that I want him to give an update on. I know Councilor Bencomo and I think Mayor Pro Tem have been vocal about this Homeless Court and I know the Judges as well and so Chief Story has taken that and run with it and he has been meeting with the Judges.

Jeremy Story, Interim Police Chief said both Judge Goldbaum and Judge Filosa also approached me as we were discussing some other things. We have had several meetings including Natalie from the City's Managers Office as well as Nicole with the Community of Hope and Amador Health Clinic. So, I am confident to say that we are about 75% there to establishing a program where we can start at the beginning of the year. The name has been agreed upon as SOS, which is for Solutions, Opportunities, and Support. The ultimate goal is to reduce the total amount of involvement in the criminal justice system. If there is less citations that means there is less crime being committed by those that are homeless. Hopefully that means because they are getting services and they are being successful. Success is going to look different for each individual. Realistically if we are 10% or 20% successful that is going to make an impact overall in the community. It's a win win for everyone if the businesses, if the residents, those that are homeless and suffering from substance use disorder or mental illness which is kind of the focus of this but will apply to anyone who is currently homeless.

Councilor Bencomo said thank you Chief for just being so open to these kinds of solutions. I really appreciate it. I got a chance to meet folks at Veteran's Court recently. Veteran's Court here is one of the most successful across the state. I really appreciate our willingness to jump in and try something new that goes beyond criminalization of folks. I really just want to appreciate the staff and the community, and I think La Clinica would actually be a great partner as well.

Ifo Pili said I just had a couple of comments earlier while discussing our nuisance abatement. I just want to clarify, on behalf of staff. We do feel we follow protocol. We do feel that we followed everything that we had to follow but I do think it is good for us to come back and talk and discuss. One of the things I really I observed when it comes to historic preservation here it really isn't a matter of whether or not we follow protocol or whether or not we have gone to the Historic Preservation Committee or not but at the end of the day it is what resources are we going to put towards that. If we are willing to do something about it because we can go to the Historic Preservation Committee and talk and of course they are going to disagree but really it comes down to funding. It comes down to, is this a priority? I know there has been

accusations, emails sent back and forth toward my staff. I can assure that there is nothing nefarious, even the previous house that was demolished. The city purchased that for affordable housing and there is no way we can spend the millions of dollars that it is going to take to preserve that building and do affordable housing at the same time. There is certain priorities that the city has that aren't aligned so we need to figure that one out. If anything, I am glad it was tabled and so we can have that opportunity to discuss the real issue. The real issue isn't whether or not staff has done the right steps, it's what is our priority going to be? How much resources do we want to allocate towards this? If we don't it is going to sit just like it did since 2013. Most of the people in the district knew that house was sitting since 2013 but there was nothing done. There is no solutions, there is nothing until we bring it forward and then the outcry. So, if there is a silver lining from this outcry is that there is attention now. There is attention to this issue of whether or not we want to make this a priority if not then I think we move forward how we move forward but if we want to make this a priority there is millions of dollars that needs to be put toward this. I think that is just what I want to state because as staff will go back. We will prepare to come back and not much is going to change. We could probably to the Historic Preservation Committee, and I don't think it's anybody's fault, they are wanting something. They just don't have funds. Troy is kind of stuck in the middle. He basically has an unfunded mandate, and the truth is, do we really want to? I don't know. That is the council to decide at some point. We can't use these properties for affordable housing if we are going to invest money in historic preservation because they don't go together. I have given our Community Development team a strong directive to go after these dilapidated homes. We started with the Kilby, we are going, and we are just going to keep ramping up and so we need to make sure that the properties we own first are in order if we are going to hold everybody else to this standard. That is the other issue that we need to consider. I have given them that direction from the very beginning. So, I will take that. We need to clean up. We need to make a list and do something about it and not let it sit as it has been for decades. It's timely because it's coming up into our budget year where we talk about priorities. I am not giving you one priority over another of what I prefer but I am hoping that we can get something so that we are all on the same page. They are not pointing fingers at staff and we are able to do our jobs and follow the directive that I have given to staff.

Mayor Miyagishima said I am going to share something that happened to me in 1993, I had just gotten elected. I got on the county commission and one of the first votes was to the Judicial Court House, the old Las Cruces High School and I remember saying why do you want to use this? Its old. But it is historic and when I found out you can't replace the windows, everything has to stay the same. I had asked back then what the cost of the electricity was going to be, and they said $20,000 a month, $250,000 a year just to operate this electricity. Forget about the maintenance on it. They could have bonded a brand new facility like our City Hall is cost neutral. So, when we took the old City Hall, the constant things we had to do to renovate it and the different places we had placed staff, put all the savings together this thing didn't cost us a whole lot more then what we were used to spending and its certified and it holds and it is here for another 75 years or until they build another. What I am trying to say as I leave, what Ifo is saying is absolutely right. I don't know if you have noticed that in the past, I would say okay your organization pays for half and we will renovate it and give it to you. I think just give it to them. It is one thing to want to keep something and

I think it is important to have that history but there is other ways to keep that history instead of having the whole building. I am talking about the courthouse. That was huge and I still asked someone the other day what the electricity cost are and it is just a little bit more than a quarter of million a year, just the electricity. That's a lot. And you said unfunded mandates, the County has unfunded mandates to take care of District Court and the DA Office. They don't get any money from the state they just say you take care of it. Those are just some things as the city council moves forward that the new city council and the subsequent ones you always have to keep in mind a balance of money that we have so that we have the services that we have for all of our staff and the services that many of you rightfully educated me on to have.

13. ADJOURNMENT

13.1

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Adjourn at 5:09 p.m.

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

Mayor

City Clerk

24-056

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 4, 2023
Drafter:	Christine Rivera	**Department:**	City Clerk
Program:	Compliance	**Line of Business:**	Office of City Clerk

Title: **A RESOLUTION PROVIDING FOR THE DETERMINATION OF REASONABLE NOTICE OF MEETINGS OF THE CITY COUNCIL AND ITS BOARDS, COMMITTEES, AND COMMISSIONS FOR CALENDAR YEAR 2024.**

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

PURPOSE(S) OF ACTION:
To approve reasonable notice requirements for City Council and commissions, committees, and boards.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
On an annual basis, the City Council is required to pass a resolution to determine reasonable notice of meetings of the City Council and the City Council appointed commissions, committees, and boards pursuant to NMSA 1978, Section 10-15-1(D).

This resolution provides the same requirements as previously adopted and includes an amendment passed by House Bill 21 that requires final agendas be available 72 hours prior to a meeting, except in the case of an emergency. Procedures for posting notices of regularly scheduled open meetings, closed meetings, public hearings, work sessions, special meetings, emergency meetings and City Council appointed commission, committee, and board meetings are covered in this resolution.

SUPPORT INFORMATION:
Exhibit "A" - Regular Meeting Schedule

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and adopt the reasonable notice requirements for 2024.
2. Vote "No"; this is not an option.
3. Vote to "Amend"; this would require direction from Council to staff.
4. Vote to "Table"; this could delay the implementation of the City's required reasonable notice for 2024 as well as approval of dates for city council meetings in 2024.

RESOLUTION 24-056

A RESOLUTION PROVIDING FOR THE DETERMINATION OF REASONABLE NOTICE OF MEETINGS OF THE CITY COUNCIL AND ITS BOARDS, COMMITTEES, AND COMMISSIONS FOR CALENDAR YEAR 2024.

The City Council is informed that:

WHEREAS, the Las Cruces City Council met in a regular session at 1:00 p.m. on December 4, 2023; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the Las Cruces City Council to determine annually what constitutes reasonable notice of its public meetings; and

WHEREAS, Section 10-15-1(F) of the Open Meetings Act increased the time that public bodies must make the agenda available to 72 hours prior to a meeting, except in the case of an emergency; and

WHEREAS, Section 10-15-1(F) also requires that agendas be posted on the public body's website within the specified time periods if a website is maintained.

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

(I)

THAT pursuant to NMSA 1978, Section 10-15-1(A) and (B), all meetings of a quorum of the City Council of the City of Las Cruces, New Mexico, held for the purpose of formulating public policy, discussing public business, or for the purpose of taking any action within the authority delegated to the City Council, as further described in Sections III and IV of this policy, shall be made open to the public, except as otherwise provided by law. Any member of the public may attend an open meeting and listen to the deliberations and proceedings of the City Council.

(II)

THAT pursuant to NMSA 1978, Sections 10-15-1(H) and (I), the City Council upon its own motion may close a meeting to the public if the subject matter of such discussion or action is included in Subsection H of the Open Meetings Act or if the need to close the meeting is required by other laws which specifically preserve the confidentiality of certain information that is to be considered at the closed meeting. If any meeting is closed pursuant to exclusions contained in Subsection H, such closure: (1) if made in an open meeting shall be approved by a majority vote of the quorum of the City Council and the specific statutory or other authority for such closure, and the subject to be discussed, shall be stated with reasonable specificity in a motion calling for the vote on a closed meeting, and such vote shall be taken in an open meeting with the vote of each Councilor recorded in the minutes; or (2) if called for when the City Council is not in an open meeting, such closed meeting shall not be made until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting, and stating with reasonable specificity the subject to be discussed, is given to members of the general public. Only those subjects announced or voted upon prior to closure by the City Council shall be discussed in a closed meeting.

Following completion of any closed meeting, the minutes of the open meeting that was closed or in the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

Except as provided in Section 10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in the closed meeting shall be made by vote of the City Council in an open public meeting.

(III)

THAT meetings at which a quorum of the City Council discuss or adopt any proposed resolution or ordinance, or take any other formal action, are open to the public. Pursuant to NMSA 1978, Section 10-15-1(C), a councilor may participate in any open meeting called to take formal action by means of a conference telephone or other similar communication equipment. Participation by telephone or other similar communication is permitted when requested by a councilor and approved by Council. Requests shall be considered on a case-by-case basis provided that each councilor participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any councilor who speaks during the meeting.

A. Regularly Scheduled Open Meetings.

Unless the business before the City Council dictates otherwise, the City Council will conduct open meetings to take formal action on the first and third Monday of each month at 1:00 p.m. as referenced in Exhibit "A." When Monday is a city holiday, the meeting shall be held on the next business day. The City Council has the authority to change the meeting time with minute action in compliance with the Open Meetings Act, for subsequent regular meetings.

Staff is hereby authorized and directed to publish this resolution one time as a legal advertisement in a newspaper of general circulation in the City of Las Cruces.

The City Council will conspicuously post an agenda of the meeting at least 72 hours prior to the meeting. In accordance with this resolution, the agenda shall be issued and circulated to the press, radio, and other public information media who have provided a written request for such notice and posted on the bulletin boards of City of Las Cruces City Hall, Thomas Branigan Memorial Library, and on the city's website.

The agenda shall indicate the date, time, and place of the meeting, a list of all action items to be considered at that meeting, and a list of any other specific items of business to be transacted. The City Council shall only take action on items appearing on the agenda.

B. Hearings Before the City Council.

At any hearing at which a quorum of the City Council will be present, the City Council will provide notice of the hearing as an open meeting to take formal action and shall issue an agenda as prescribed in Section III(A) or (C) of this policy. Within a reasonable time, but in no less than 72 hours prior to the hearing, the City Council shall also provide actual notice to all parties in that case or their counsel and to any other person who has requested such notice of the date, time, location, and purpose of the hearing.

If during the course of a public hearing at which a quorum of the City Council presides, the City Council determines that the hearing should be recessed and reconvened to a date subsequent to that date stated in the meeting notice, the City Council will specify the date, time, and place for the reconvened meeting prior to recessing and will conspicuously post notice of the date, time, and place for the reconvened meeting near the door of the place where the original meeting was held and on the bulletin board in the lobby of City Hall.

C. Other Open Meetings In Between Regularly Scheduled Open Meetings.

If the public interest requires other formal action by the City Council in between regularly scheduled open meetings, the City Council may conduct an open meeting to take formal action at such times. Except in the case of an emergency as defined in NMSA 1978, Section 10-15-1(F), the City Council will provide notice of each such meeting by conspicuously posting an agenda and a notice of the date, time, and location of such open meeting on the bulletin board in the lobby of City Hall, the city website, and by emailing a copy of the notice to the press at least 72 hours prior to the special open meeting.

(IV)

Work Sessions

THAT a quorum of the City Council will also meet periodically in "work sessions." A "work session" is any meeting of a quorum of the City Council which does not involve any formal action by the City Council. Such sessions include but are not limited to (1) discussion related to the formulation of public policy prior to the formal discussion or adoption of any resolution or ordinance pending before the City Council; (2) discussions of internal administrative actions concerning the operations of the City Council; and (3) information discussions between staff and the City Council in preparation for formal discussion or action. Work sessions of a quorum of the City Council are open meetings and are open to the public, unless the subject of the work session is included in Subsection H of NMSA 1978, Section 10-15-1 and the City Council decides to close the work session to the public in accordance with NMSA 1978, Section 10-15-1(I) and Section II of this policy. Any person wishing to attend a work session of the City Council, which has not been closed pursuant to NMSA 1978, Section 10-15-1(H) and 10-15-1(I) and this open meeting policy shall be allowed to attend and listen to the instructions.

(V)

Emergency Meetings

THAT emergency meetings will be called only under unforeseen circumstances which demand immediate action to protect the health, safety, and property of citizens or to protect the public body from substantial financial loss. The Las Cruces City Council will avoid emergency meetings whenever possible. Emergency meetings may be called by the Mayor or a majority of the members upon four (4) hours' notice, unless threat of personal injury or personal damage requires less notice. The notice of all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda.

All emergency measures adopted must be submitted to the Attorney General within 10 days of the meeting at which the action was taken, provided that the requirement to report to the Attorney General is waived due to state or national emergency.

(VI)

Council Appointed Commissions, Committees, and Board Meetings

THAT Commissions, Committees, and Advisory Boards of the City of Las Cruces shall similarly issue their agendas by posting one on the City Hall bulletin board, the Thomas Branigan Memorial Library bulletin board, on the city's website, and furnishing copies to the news media who have provided a written request for such notice, and provide such other notice as may be required by ordinance and law. Such issuance and posting are determined to be reasonable notice.

(VII)

Compliance

THAT substantial compliance with any one of the foregoing methods of giving notice shall constitute compliance with this resolution and NMSA 1978, Sections 10-15-1 through 10-15-4. Nothing herein shall prevent the use of additional means or methods of giving notice of regular or special meetings. Nothing herein shall require new notice of any public meeting for which notice has been given and which is recessed or adjourned. However, in recessing the meeting, the presiding officer shall announce the meeting, the time, and the place the meeting shall reconvene.

(VIII)

Accommodation

THAT in addition to the information specified above, all notices shall include the following language: "If you need an accommodation for a disability to enable you to fully participate in this event, please contact us 72 hours before the event at 541-2115/V."

(IX)

Validity

THAT if any section, paragraph, clause or provision of this resolution shall be for any reason held to be invalid or unenforceable, the validity of unenforceability of such section, paragraph or clause or provision shall not affect any of the remaining provisions of this resolution or its application to other situations.

(X)

Repealer

THAT all bylaws, order and resolutions or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repeal shall not be construed to revive any prior bylaw, order or resolution or part thereof, heretofore repealed.

(XI)

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

Exhibit “A”

CITY OF LAS CRUCES

2024 Regular City Council Meeting Schedule

Tuesday, January 2, 2024

Tuesday, January 16, 2024

Monday, February 5, 2024

Tuesday, February 20, 2024

Monday, March 4, 2024

Monday, March 18, 2024

Monday, April 1, 2024

Monday, April 15, 2024

Monday, May 6, 2024

Monday, May 20, 2024

Monday, June 3, 2024

Monday, June 17, 2024

Monday, July 1, 2024

Monday, July 15, 2024

Monday, August 5, 2024

Monday, August 19, 2024

Tuesday, September 3, 2024

Monday, September 16, 2024

Monday, October 7, 2024

Monday, October 21, 2024

Monday, November 4, 2024

Monday, November 18, 2024

Monday, December 2, 2024

Monday, December 16, 2024

24-057

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 4, 2023
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 2023/2024 4% 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 need for affordable housing. The 2021-2025 Consolidated Plan reflects a shortage of nearly 5,600 rental units in the City for low-income households. A request for funding assistance to create affordable housing was submitted to the City Manager's Office by New Mexico Housing and Community Development Corporation (NMHCDC) in Partnership with Thomas Development Group for the Peachtree Canyon Project Phase II.

Peachtree Canyon Phase II is applying for a 4% Low-Income Housing Tax Credit (LIHTC) funding through New Mexico Mortgage Finance Authority (MFA). Successful applications for 4% LIHTC awards are projects that leverage additional resources from local governments and efficiently use tax credits. City funding also provides an opportunity to invest funds in projects that directly address the low-income affordable housing needs in the community.

The proposed Resolution is to provide a preliminary commitment of funding. The Peachtree Canyon Apartments is an affordable multi-family development located at 7081 N. Jornada Road and Peachtree Hills Road. The location is ideal for families located within walking distance of new elementary and middle schools. Peachtree Canyon provides an opportunity to address the critical need for affordable housing by creating an additional 144 new affordable units in Phase II. Phase I was previously awarded funding and the 288-unit apartment community will be the largest affordable housing project in Las Cruces history. The preliminary commitment is approximately $6M not to exceed 15% of the total development costs of Phase II.

Phase II includes a total of 144 LIHTC rent restricted units comprised primarily of two-bedroom units and three-bedroom for 60% AMI and below. Units will give preference to active and retired military and will be smoke-free. Outdoor amenities will include swimming pool, bicycle racks, covered gathering spaces with fire pits,

benches, and tables, BBQ areas, age-appropriate playgrounds, garden areas, walking paths, and onsite parking. Buildings on the site are organized around the green open space. The property will be all electric and include EV parking and solar. The estimated total development costs for Phase II is approximately $40,941,600.

This funding is subject to the project being awarded 4% LIHTC funding. The funding would be provided as a 3% residual receipts loan. If the requested funding is approved a separate resolution will be submitted later for the applicable budget adjustments, execution of City funding agreements, and final loan terms. If the project is not awarded 4% LIHTC funding, the City funding will not be awarded.

Funding is also contingent upon the development team being certified annually 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, 2023, to meet LIHTC application requirements and the deadlines for difficult metropolitan development areas bonus boost. City Council approval is required for any allocation of additional City funding.

SUPPORT INFORMATION:

Attachment "A" Peachtree Canyon- Phase II 144 units- 11-6-23

PLAN(S):

City Council Strategic Plan, Other, Department Strategic Business Plan, 2021-2025 Consolidated Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Affordable Housing Committee, Housing PRC

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes" to approve funding commitment to support an affordable housing development project contingent upon the project receiving a 4% 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 4% 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.

REFERENCE INFORMATION:

1. Resolution No. 17-141
2. Resolution No. 19-101
3. Resolution No. 19-102
4. Resolution No. 19-105
5. Ordinance No. 3011
6. Resolution 23-077

RESOLUTION 24-057

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 2023/2024 4% 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 for funding assistance to create affordable housing for the 2023-2024 4% LIHTC process; and

WHEREAS, the request was from New Mexico Housing and Community Development Corporation (NMHCDC) in partnership with Thomas Development Group; and

WHEREAS, the project is applying for 4% Low-Income Housing Tax Credit (LIHTC) funding through New Mexico Mortgage Finance Authority (MFA); and

WHEREAS, successful applications for 4% 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 $6M not to exceed 15 percent of the total development costs to Phase II (144 units) of the Peachtree Canyon Apartments, an affordable multi-family development located at 7081 N. Jornada Road and Peachtree Hills Road contingent upon the project being awarded 4% LIHTC funding; and

WHEREAS, in order to meet LIHTC application requirements and deadlines for difficult metropolitan development areas the project is requesting a commitment for the allocation of City funds be made prior to December 31, 2023; 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 $6M not to exceed 15 percent of the total development costs for the Peachtree Canyon Apartments is hereby approved and contingent upon the project being awarded 4% 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

Peachtree Canyon- Phase II **11/6/2023**
Las Cruces, NM
Bond 4% HTC

Unit Mix, Rent Levels, Utility Allowance	# of Units	Rent	U/A	Net Rent	Monthly Income	Sq.Ft.	Total Sq. Ft.
Units At or Below 30% AMGI							
1Bedroom		363	33	330	-	617	-
2 Bedroom		436	42	394	-	965	-
3 Bedroom		504	48	456	-	1,150	-
Units At or Below 40% AMGI							
0 Bedroom				-	-		-
1 Bedroom				-	-		-
Units At or Below 50% AMGI							
0 Bedroom				-	-		-
1 Bedroom				-	-		-
Units At or Below 60% AMGI							
1 Bedroom	24	727	33	694	16,656	617	14,808
2 Bedroom	48	873	42	831	39,888	965	42,500
3 Bedroom	72	1,008	48	960	69,120	1,150	48,300
Units At or Below 80% AMGI							
1 Bedroom				-	-		
2 Bedroom				-	-	-	-
Market Rate Units							
2 Bedroom		-	-	-	-		-
3 Bedroom		-	-	-	-		-
MANAGER'S UNIT							
		-	-	-			
Apartment Totals	**144**				125,664		105,608

Income Calculations		
Total Monthly Income	$	125,664
Annual Income	$	1,507,968
Income Per Unit	$	10,472

Peachtree Canyon- Phase II **11/6/2023**

			2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039
Potential Gross Rent (0.02 Incr.)	1.02		**1,507,968**	1,538,127	1,568,890	1,600,268	1,632,273	1,664,919	1,698,217	1,732,181	1,766,825	1,802,161	1,838,205	1,874,969	1,912,468	1,950,717	1,989,732
Secondary Income			68,799	70,175	71,578	73,010	74,470	75,960	77,479	79,028	80,609	82,221	83,866	85,543	87,254	88,999	90,779
Potential Gross Income			1,576,767	1,608,302	1,640,468	1,673,278	1,706,743	1,740,878	1,775,696	1,811,210	1,847,434	1,884,383	1,922,070	1,960,512	1,999,722	2,039,716	2,080,511
Less Vacancy @ 0.07	7%		-110,374	-112,581	-114,833	-117,129	-119,472	-121,861	-124,299	-126,785	-129,320	-131,907	-134,545	-137,236	-139,981	-142,780	-145,636
Effective Gross Income			**1,466,393**	**1,495,721**	**1,525,636**	**1,556,148**	**1,587,271**	**1,619,017**	**1,651,397**	**1,684,425**	**1,718,113**	**1,752,476**	**1,787,525**	**1,823,276**	**1,859,741**	**1,896,936**	**1,934,875**
Operating Expenses (3% Incr)	**Per Unit**	**% of EGI**															
Management Fees	597	5.86%	86,000	88,580	91,237	93,975	96,794	99,698	102,688	105,769	108,942	112,210	115,577	119,044	122,615	126,294	130,083
Payroll & Emp. Benefits	878	8.62%	126,438	130,231	134,138	138,162	142,307	146,576	150,974	155,503	160,168	164,973	169,922	175,020	180,270	185,678	191,249
Administrative	324	3.18%	46,600	47,998	49,438	50,921	52,449	54,022	55,643	57,312	59,031	60,802	62,627	64,505	66,440	68,434	70,487
Maintenance & Repairs	472	4.64%	68,000	70,040	72,141	74,305	76,535	78,831	81,196	83,631	86,140	88,725	91,386	94,128	96,952	99,860	102,856
Utilities	595	5.84%	85,620	88,189	90,834	93,559	96,366	99,257	102,235	105,302	108,461	111,715	115,066	118,518	122,074	125,736	129,508
Insurance	455	4.47%	65,500	67,465	69,489	71,574	73,721	75,932	78,210	80,557	82,973	85,463	88,027	90,667	93,387	96,189	99,075
Real Estate Taxes	0	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Compliance Fees	50	0.49%	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200
Replacement Reserve	300	2.95%	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200	43,200
Total Operating Expenses	3671	36.04%	528,558	542,903	557,678	572,896	588,571	604,716	621,346	638,474	656,116	674,288	693,004	712,282	732,139	752,591	773,657
Net Operating Income			**937,835**	**952,818**	**967,958**	**983,252**	**998,700**	**1,014,301**	**1,030,051**	**1,045,951**	**1,061,997**	**1,078,188**	**1,094,521**	**1,110,993**	**1,127,602**	**1,144,345**	**1,161,218**
Debt Service																	
1st Mortgage			750,268	750,268	750,268	750,268	750,268	750,268	750,268	750,268	750,268	750,268	750,268	750,268	750,268	750,268	750,268
MFA HTF			72,678	72,678	72,678	72,678	72,678	72,678	72,678	72,678	72,678	72,678	72,678	72,678	72,678	72,678	72,678
NHTF			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NM HOME			10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
City of Las Cruces- Telshor			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Cash Flow			**104,889**	**119,872**	**135,012**	**150,306**	**165,754**	**181,355**	**197,105**	**213,005**	**229,051**	**245,242**	**261,575**	**278,047**	**294,656**	**311,399**	**328,272**

Peachtree Canyon- Phase II	11/6/2023	30% Basis		
Land Acquisition	779,750			
Building Acquisition	0	0		
On-Site Improvement		0		
Hard Cost- general contractor	23,036,160	23,036,160	23,036,160	
Overhead	460,723	460,723		
Profit	1,382,170	1,382,170		
General Requirements	1,382,170	1,382,170	26,261,222	
GRT-CLC	2,117,311	2,117,311	28,378,533	
Covered Parking				
Contingency- 5% Site/Hard Cost	1,151,808	1,151,808		
Other				
Furniture and Equipment	150,000	150,000		
Professional Fees				
Architect	677,530	677,530	760,193	3.30%
Geotech, Topo	5,500	5,500		
Attorney	45,000	45,000		
Survey	25,000	25,000		
Other- Developer Bond Counsel	45,000	45,000	798,030	
Construction Interim Costs				
Inspection Fees	35,000	35,000		
Liability Insurance	45,500	45,500		
Interest- Construction Perm Loan	750,189	750,189		
Interest- Equity Bridge Loan	1,364,709	1,364,709		2,114,898
Origination Points- Bridge Loan	200,000	200,000		
P&P Bond	303,000	303,000		
Permit Fees	0	0		
Title & Recording	135,000	135,000		
Legal	85,000	85,000		
Taxes		0		
Other: Impact Fees		0		
Other			2,918,398	
Permanent Loan Costs				
Placement Fee- Bellwether	100,000			
Application Fee- Bellwether	5,000			
3rd Party Reports, Legal	35,000			
Legal-Lender	90,000			
Construction Monitoring	32,400			
Feddie Mac Application Fee	3,000			
Forward Commitment Fee- refunded	160,000			
			425,400	
Credits, Bond Fees- MFA				
SBOF App Fee	1,500			
Bond Counsel- MFA	75,000			
Commitment Fee	100,000			
Issuer Financial Advisor	20,000			
MFA Counsel Fee	3,750			
Trustee Fee	2,000			
Issuer Application Fee	1,440			
Misc. Issuer	1,000			
Annual Admininistration Fee	30,000		234,690	
Rating Agency				
Cash Flow Verfication				
Other			233,190	
Soft Costs				
Market Study	8,500	8,500		
Environmental Study	3,500	3,500		
Tax Credit Processing Fees	140,242			
Appraisal	8,500	8,500		
Cost Certification	25,000			
Miscellaneous Costs		0	185,742	
Syndication				
Organization	50,000			
Reserves				
Rent Up	319,707			
Operating Reserve	639,413		959,120	
SUBTOTAL	36,031,471	33,417,269		
Developer Fees				
Profit/Overhead	4,910,129	4,910,129		
Total Development Cost	40,941,600	38,327,398		

SOURCES	
1st Mortgage	10,002,514
CLC Telshor Fund	6,000,000
Dona Ana County	1,500,000
MFA SLRF	1,250,000
MFA Housing Trust Fund	2,000,000
Deferred Fee	2,488,635
NM HOME	800,000
45L- Energy Star Credit	360,000
Solar Tax Credit	
TOTAL	**24,401,149**

Basis	38,327,398
130.00%	49,825,618
Eligible Basis	49,825,618
100%	49,825,618
4.00%	**1,993,025**

TDC	40,941,600
Less Sources	24,401,149
GAP	16,540,450
TC Proceeds	16,540,451
Over/(Short)	**0**

GAP Analysis	
GAP	16,540,450
TCs Needed	**1,858,663**

$ Credit	**$0.830**
MFA Award	**$1,993,025**

TC Proceeds	**$16,540,451**

Peachtree
Las Cruces

24-058

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 4, 2023
Drafter:	Virginia Barela	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF $150,000 FOR BOOKS AND PERIODICALS WITH BAKER TAYLOR BOOKS, INC. OF ATLANTA, GEORGIA, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.**

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

PURPOSE(S) OF ACTION:

Authorize purchase of books and periodicals.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces Public Library (Library) is responsible for providing books and periodicals for learning and literacy services for a diverse community which includes the City of Las Cruces, Doña Ana County, and rural areas immediately surrounding the county. The Library has a collection of more than 100,000 books, CDs, videos, and periodicals that need to be maintained. This maintenance includes the replacement of materials not returned, replacement of damaged materials, and purchase of new materials to keep the collection relevant and up to date.

Las Cruces Municipal Code, Chapter 24, Section 24-4 (3) - Authorized exemptions, allows the City of Las Cruces (City) to purchase books and periodicals from publishers or copyright holders thereof to include publications offered on CDs, videos, or the internet.

Due to the growth of the community and the resources needed to provide lifelong learning and literacy services, the Library anticipates future purchasing beyond the $100,000 threshold which requires City Council approval.

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
$240,000.00	13,424.86	$150,000

Funding Source(s):
70344003-780140

Overall Budget Impact:
$125,000.00 is currently budgeted and encumbered for Baker Taylor Books, Inc. for the current fiscal year. The additional $25,000.00 is to allow for future purchasing growth. A budget adjustment will not be required for this fiscal year.

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 authorize the purchase of books and periodicals with Baker Taylor Books, Inc. of Atlanta, Georgia in an annual not-to-exceed amount of $150,000, subject to approved budget appropriations.
2. Vote "No"; this will deny the purchase of books and periodicals with Baker Taylor Books, Inc. of Atlanta, Georgia in an annual not-to-exceed amount of $150,000, subject to approved budget appropriations.
3. Vote to "Amend"; this could modify the resolution and advise staff of necessary adjustments as deemed appropriate.
4. Vote to "Table"; this could delay the authorization to procure books and periodicals in an annual not-to-exceed amount of $150,000 and may negatively impact Library services to the community.

RESOLUTION 24-058

A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF $150,000 FOR BOOKS AND PERIODICALS WITH BAKER TAYLOR BOOKS, INC. OF ATLANTA, GEORGIA, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

The City Council is informed that:

WHEREAS, the Las Cruces Public Library (Library) is responsible for providing books and periodicals (materials) for learning and literacy services for a diverse community which includes the City of Las Cruces, Doña Ana County, and rural areas immediately surrounding the county; and

WHEREAS, Las Cruces Municipal Code, Chapter 24, Section 24-4 (3) - Authorized exemptions, allows the City of Las Cruces (City) to purchase books and periodicals from publishers or copyright holders thereof to include publications offered on CDs, videos, or the internet; and

WHEREAS, the Library anticipates future purchasing beyond the $100,000 threshold which requires City Council approval.

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

(I)

THAT the Resolution authorizes the City to purchase books and periodicals with Baker Taylor Books, Inc. of Atlanta, Georgia in an annual not-to-exceed amount of $150,000, subject to approved budget appropriations.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

24-059

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 4, 2023
Drafter:	Virginia Barela	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 18-19-008 WITH CENTER FOR TRANSPORTATION & THE ENVIRONMENT OF ATLANTA, GEORGIA, TO INCREASE THE CONTRACT AMOUNT BY $70,500.00 TO $458,247.02 PLUS APPLICABLE GROSS RECEIPTS TAX FOR ADDITIONAL SERVICES.**

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

PURPOSE(S) OF ACTION:
To approve a contract amendment.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
On November 4, 2019, the City Council approved Resolution 20-056, authorizing Professional Services Agreement (PSA) No. 18-19-008 with the Center for Transportation & The Environment (CTE) of Atlanta, Georgia for the project management to procure battery electric buses and charging stations.

City Council later approved an amendment to this contract on December 20, 2020, to add additional services to the contract for auditing and quality inspection and increasing the contract total to $387,747.02, plus applicable gross receipts tax.

Increased production time of the electric buses has resulted in increased additional time and services for the project. During the production delays, CTE continued management, oversight, and data collection and analysis of the project. The compensation for this continued management and data collection during the production delays has utilized funds for the remaining contracted tasks. Additional project management fees with CTE are needed to complete the remainder of the outstanding contracted tasks. RoadRUNNER Transit is seeking to amend PSA No. 18-19-008 to increase the contract by $70,500.00 to $458,247.02 for additional services.

SUPPORT INFORMATION:
Exhibit "A" 18-19-008 Amendment 2

PLAN(S):
Elevate Las Cruces

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
$870,618.00	$870,618.00	458,247.02

Funding Source(s):

5923-50740021-807000

Overall Budget Impact:

This funding source is available for the procurement and items related to the procurement of electric buses.

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will authorize the amendment to PSA 18-19-008, allowing the increase of $70,500.00 to the contract for a total contract amount of $458,247.02 with Center for Transportation & The Environment of Atlanta, Georgia.
2. Vote "No"; this action will deny the amendment to PSA 18-19-008, allowing the increase of $70,500.00 to the contract for a total contract amount of $458,247.02 with Center for Transportation & The Environment of Atlanta, Georgia.
3. Vote to "Amend"; this could modify the Resolution and advise staff of necessary adjustments as deemed appropriate.
4. Vote to "Table"; this could delay the authorization to the amendment to PSA 18-19-008.

REFERENCE INFORMATION:

CE-8.2.6

RESOLUTION 24-059

A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 18-19-008 WITH CENTER FOR TRANSPORTATION & THE ENVIRONMENT OF ATLANTA, GEORGIA, TO INCREASE THE CONTRACT AMOUNT BY $70,500.00 TO $458,247.02 PLUS APPLICABLE GROSS RECEIPTS TAX FOR ADDITIONAL SERVICES.

The City Council is informed that:

WHEREAS, on November 4, 2019, the City Council approved Resolution 20-056, authorizing Professional Services Agreement (PSA) No. 18-19-008 with Center for Transportation & The Environment (CTE) of Atlanta, Georgia for the project management to procure battery electric buses and charging stations; and

WHEREAS, on December 20, 2020, the City Council approved an amendment to add additional services to the contract for auditing and quality inspection and increasing the contract total to $387,747.02, plus applicable gross receipts tax; and

WHEREAS, an increase to the production time of the electric buses resulted in additional management and oversight, data collection and analysis; and

WHEREAS, this additional production time and management will result in an increase of $70,500.00 to PSA No. 18-19-008 for a total contract amount of $458,247.02 with the Center for Transportation & The Environment of Atlanta, Georgia.

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

(I)

THAT the Resolution authorizing the amendment to increase PSA 19-19-008 as shown in Exhibit "A" attached hereto and made part of this resolution is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

City of Las Cruces®

AMENDMENT NO. 2

RFP 18-19-008 - ELECTRIC BUS AND CHARGING STATION PROJECT MANAGEMENT

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated November 30, 2019, the parties hereby agree as set forth below:

The following provisions on are modified:

1. Section 4. COMPENSATION is amended to add $70,500.00 for a total amount of $458,247.02 to include the additional services, plus applicable taxes.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated November 30, 2019 between the parties is hereby ratified and confirmed.

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

CENTER FOR TRANSPORTATION AND THE ENVIRONMENT

BY: _____
Daniel J. Raudebaugh
Executive Director

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

_____ 10/27/23
City Attorney

Revised: June 2019

Exhibit A

SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 4 OF 5
No. 18-19-008 Electric Bus Project Management

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Electric Bus Project Management Service Agreement (Agreement) dated November 30, 2019 between the City of Las Cruces (City) and Center for Transportation and the Environment (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin November 30, 2022 and terminate November 29, 2023. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

CENTER FOR TRANSPORTATION AND THE ENVIRONMENT

Signature — Date: 4/30/2023

Dan Raudebaugh
Executive Director
Printed Name/Title

CITY OF LAS CRUCES

Alicia Hernandez — Date: 5/1/2023
Purchasing Manager

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 8/23/2023

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

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

PRODUCER
Jowers-Sklar Insurance
P.O. Box 511
Rome GA 30162-0511

License#: 71004

CONTACT NAME: Certificate Department
PHONE (A/C, No, Ext): **FAX (A/C, No):** 706-232-1220
E-MAIL ADDRESS: certificates@jowerssklar.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Penn-America Insurance Company	
INSURER B : Philadelphia Insurance Company	18058
INSURER C : Amtrust Insurance Company	15954
INSURER D : Travelers Insurance	25658
INSURER E : Houston Specialty Insurance Co	
INSURER F :	

INSURED CENTOFT-01
Center for Transportation and the Environment, Inc.
730 Peachtree St. Suite 450
Atlanta GA 30308

COVERAGES **CERTIFICATE NUMBER:** 1663408610 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			7034106	8/20/2023	8/20/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 5,000,000 $ 100,000 $ 5,000 $ $ 5,000,000 $ $
B	**AUTOMOBILE LIABILITY** ANY AUTO OWNED AUTOS ONLY X SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			PHPK2593600	8/20/2023	8/20/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
	UMBRELLA LIAB OCCUR **EXCESS LIAB** CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE 	$ $ $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		QWC1309986	8/20/2023	8/20/2024	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
D E	Directors & Officers Liability Professional Liability			105635749 MEO-HS-0005333-00	8/20/2023 8/20/2023	8/20/2024 8/20/2024	Each Claim Each Claim Aggregate	$1,000,000 $5,000,000 $5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Las Cruces is included as an Additional Insured in regards to General Liability per forms CG 2033 and CG 2037. A Waiver of Subrogation applies in regards to General Liability. City of Las Cruces is included as Additional Insured regarding Auto Liability and a Waiver of Subrogation applies per form PI-CA-001 0915 when required by a written and signed contract. A Waiver of Subrogation applies in regards to Workers Compensation per form WC000313 when required by written and signed contract.

CERTIFICATE HOLDER

City of Las Cruces
PO Box 20000
Las Cruces NM 88004

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
CITY OF LAS CRUCES **PO BOX 20000** **LAS CRUCES, NM 880049002**
Location(s) Of Covered Operations
ALL LOCATIONS AT WHICH COMPLETED OPERATIONS HAVE BEEN PERFORMED FOR THE ADDITIONAL PERSON(S) OR ORGANIZATION(S)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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

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

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

However:

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

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

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

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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

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

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

whichever is less.

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

All terms and conditions apply unless modified by this endorsement.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
CITY OF LAS CRUCES **PO BOX 20000** **LAS CRUCES, NM 880049002**
Location and Description Of Completed Operations
ALL LOCATIONS AT WHICH COMPLETED OPERATIONS HAVE BEEN PERFORMED FOR THE ADDITIONAL PERSON(S) OR ORGANIZATION(S)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

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

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

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

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

whichever is less.

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

All terms and conditions apply unless modified by this endorsement.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIO NS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
CITY OF LAS CRUCES
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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

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

All terms and conditions of this policy apply unless modified by this endorsement.

© Insurance Services Office, Inc., 2008

COMMERCIAL AUTO
CA 20 48 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name Of Person(s) Or Organization(s): **CITY OF LAS CRUCES**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

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IL 70 02 09 11

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADVANCE NOTICE OF CANCELLATION, NONRENEWAL OR COVERAGE REDUCTION OR RESTRICTION PROVIDED BY US

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL CRIME COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
COMMERCIAL UMBRELLA LIABILITY POLICY
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
MERCANTILE UMBRELLA LIABILITY POLICY

SCHEDULE

Person(s) or Organization(s)	Address
CITY OF LAS CRUCES	PO BOX 20000, LAS CRUCES, NM 88004

Number of Days Notice _____

If this policy is cancelled (other than nonpayment of premium) or nonrenewed or if the coverage provided by this policy is reduced or restricted (except for any reduction in the Limits of Insurance due to claims payments), we will provide written notice to the person(s) or organization(s) listed in the Schedule.

We will provide this notice by mail 30 days in advance of any policy cancellation, nonrenewal or coverage reduction or restriction or as indicated in the Number of Days Notice in the Schedule.

All terms and conditions of this policy apply unless modified by this endorsement.

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COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

SCHEDULE

Name(s) Of Person(s) Or Organization(s):
LINDE LLC **COBB COUNTY DEPT OF TRANSPORTATION** **CITY OF LAS CRUCES**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

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WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY **WC 00 03 13 (Ed. 04-84)**

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.
Any person or organization as required by written contract

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective	8/20/2020	Policy No.	TWC3902977	Endorsement No.	0
Insured	The Center Of Transportation & The Environment, Inc.			Premium $	5,888
Insurance Company	Technology Insurance Company, Inc.				

Countersigned by _____

WC 00 03 13
(Ed. 04-84)

City of Las Cruces

AMENDMENT NO. 1

RFP 18-19-008 - ELECTRIC BUS AND CHARGING STATION PROJECT MANAGEMENT

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated November 30, 2019, the parties hereby agree as set forth below:

The following provisions on are modified:

1. Section 4. COMPENSATION is amended to add $62,000.00 for a total amount of $387,747.02 to include the additional services, plus applicable taxes.
2. Attachment "A" Section 3.b.3 SCOPE OF SERVICES is modified to read "CTE shall sub-contract RoadRunner Transit's selected auditor, Fulton & Kozak, to evaluate the Buy America compliance of the selected bus manufacturer during the pre-award phase and the delivery phase."
3. Attachment "A" Section 3.b.5 SCOPE OF SERVICES is modified to read "CTE shall sub-contract RoadRunner Transit's selected quality inspector, TransWorld Associates, who shall conduct quality inspections during production, conduct pre-delivery inspections, approve buses for delivery, and then conduct post-delivery inspections."

Subject to the modifications set forth in this amendment, the above referenced original agreement dated November 30, 2019 between the parties is hereby ratified and confirmed.

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

CENTER FOR TRANSPORTATION AND THE ENVIRONMENT

BY: _____
Daniel J. Raudebaugh
Executive Director

1/7/2021
Date

CITY OF LAS CRUCES

BY: _____
Chenyu "Alex" Liu
Purchasing Manager

1/11/2021
Date

APPROVED AS TO FORM

for JVB 11/24/20
City Attorney

CLC No. 18-19-008

City of Las Cruces

SERVICE AGREEMENT

THIS AGREEMENT made and entered into on this 20th of November, 2019 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and CENTER FOR TRANSPORTATION AND THE ENVIRONMENT (CTE), of 730 PEACHTREE STREET, SUITE 760, ATLANTA, GA, 30308, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Project Management services for the procurement of battery electric buses and charging stations. Services shall include but not limited to evaluation of RoadRUNNER Transit's performance needs, develop specifications for the bus and charger procurements, provide assistance during the procurement process, oversee implementation, and finally provide analysis and reporting after implementation.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP No.18-19-008 as set forth in Attachment A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final. Prior to initiating any work relating to this contract, the CITY shall provide CONTRACTOR with City Council's authorization of sufficient appropriations with a written Notice to Proceed and/or Purchase Order.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement a total amount not to exceed $325,747.02, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

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

INVOICING AND PAYMENT

CTE will submit invoices to the City upon completion of each deliverable specified in the Statement of Work and in accordance with the milestone payment schedule provided in

Attachment B. Invoices shall include reasonably sufficient detail and supporting documentation to allow the City to evaluate and approve CTE's payment request. The City will review deliverables within 15 days of submission and either request additional supporting documentation or revisions or indicate acceptance. Any requested documentation or revisions will be expeditiously made by CTE. The City's acceptance of the revised deliverable shall not to be unreasonably withheld or delayed. Upon acceptance of each deliverable, the City shall pay CTE the amount specified in the Statement of Work. The final invoice will be submitted by CTE within 30 days of the acceptance of the final deliverable or Termination of this Agreement. Invoices will be submitted to the City by mail, courier, or e-mail to Disbursements@las-cruces.org

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

6.TERM AND SCHEDULE
This Agreement shall become effective on date of award for a term of three (3) years and has two (2) one-year renewable options to be exercised at the discretion of the CITY, upon mutual written consent. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

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

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within ten (10) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within ten (10) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR
In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within ten (10) business work days of such identification. The CITY shall respond in writing to such notification within ten (10) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

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

11. TERMINATION

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

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

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

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered for a period of four (4) years after expiration or termination of this AGREEMENT. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

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

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

14. INDEPENDENT CONTRACTOR

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP

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

16. ASSIGNMENT

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

17, INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during

the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

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

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

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

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

18. INDEMNITY AND LIMITATION

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

19. APPLICABLE LAW

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

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

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within ten (10) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY:	City of Las Cruces, PO Box 20000 Las Cruces, NM 88004 ATTENTION: Mike Bartholomew
With Copies to:	Purchasing Manager
TO CONTRACTOR:	CENTER FOR TRANSPORTATION AND THE ENVIRONMENT 730 PEACHTREE STREET SUITE 760 ATLANTA, GA 30308 ATTENTION: Daniel J. Raudebaugh

23. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written

agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

CENTER FOR TRANSPORTATION AND THE ENVIRONMENT

BY: _____

Daniel J. Raudebaugh
Executive Director

11/14/2019
Date

CITY OF LAS CRUCES

BY: _____

Alex Liu
Purchasing Manager

11/30/19
Date

APPROVED AS TO FORM

_____

City Attorney

ATTACHMENT A

SCOPE OF SERVICES

OBJECTIVE. To transition the City of Las Cruces' (City) RoadRUNNER fleet of fossil fuel busses to zero emission transit vehicles and enhance RoadRUNNER's ability to efficiently execute its mission to provide safe, dependable, and convenient transportation services while maximizing potential funding opportunities during the term of the Agreement.

1. DELIVERABLE/ OUTPUT: Develop, execute and implement a Project Management Schedule.
   a. The Project Management Schedule will establish an overall project schedule to: identify key timelines for the procurement, deployment, validation, and performance tracking of zero emission transit vehicles and corresponding infrastructure, such as facilities for charging and maintenance; schedule status reports to the City of Las Cruces and the Federal Transit Administration (FTA). [CTE Tasks 1.1-2.2 & 8*]
   b. Performance Measures:
      1. Host a one-day workshop on site at RoadRUNNER to: update and confirm the scope and objectives of the project; establish roles and responsibilities between RoadRUNNER and CTE for project tasks and deliverables; and then schedule durations and/or deadlines for specific tasks and deliverables; and discuss potential problems, known risks, and plans for mitigation. [CTE Task 2.1]
      2. Coordinate with RoadRUNNER a meeting with stakeholders, after the workshop, to review the confirmed scope and objectives to create a Project Workplan, the final version of Project Management schedule, which will be updated on a quarterly basis as indicated in Deliverable 1(b)(5). [CTE Task 2.2]
      3. Create a Project Workbook, which will contain the key milestones, roles and responsibilities as well as operational policies and procedures for the project. [CTE Task 2.2]
      4. Schedule and lead weekly status calls with RoadRUNNER. Weekly meetings will include relevant stakeholders needed for the week's discussion such as the bus manufacturer, charging infrastructure team of consultants, contractors and charger vendors in order to discuss project status and developing issues to maintain scheduled timelines. [CTE Task 1.2]
      5. Provide RoadRUNNER with Quarterly Management Reports (QMRs), which will summarize the progress and accomplishments of the previous quarter and projections, discuss problems and solutions, and update the Project Workplan for the remainder of the project. [CTE Task 1.3]
      6. Provide a final report detailing the deployment results and findings and present these results to key stakeholders at a project close workshop. [CTE Task 8]

2. DELIVERABLE/ OUTPUT: Analyze the bus and charging infrastructure requirements RoadRUNNER.
   a. Collect data of proposed routes and analyze data with computer models and simulations. [CTE Task 3.1]

b. Performance Measures:
   1. Place GPS data loggers on existing RoadRUNNER busses running proposed routes during peak and non-peak hours to collect second-by-second route data including time and GPS location, which will be used to evaluate, speed acceleration, grades, distance, travel time, and stop durations. [CTE Task 3.1]
   2. Use computer modeling of various battery electric buss designs to determine the most efficient Zero Emission Bus (ZEB) technology for RoadRUNNER's needs. [CTE Task 3.1]

      a. Create a generic Battery Electric Bus (BEB) model based on existing industry configurations to run computer simulations based on proposed routes and data collected from the GPS loggers.

      b. The modeling and simulation will be used to identify bus configurations that are best suited to the meet the power and energy needs of RoadRUNNER's proposed routes by accounting for the following metrics during various states of operation: energy consumption profile based on nominal and strenuous loads; route profiles and vehicle efficiency; range profile of batteries for their beginning-of-life and the end-of-life cycle; acceleration and gradeability; average and maximum speeds; and vehicle Curb Weight (CW), Gross Vehicle Weight (GVW), and Gross Vehicle Weight Rating (GVWR).

      c. Create metrics for multiple bus configurations based on energy storage, charge type, charge rate, fuel capacity, and other metrics regarding energy efficiency. These metrics will be analyzed in terms of variations of energy consumption, such as passenger loads, HVAC loads, and battery life.

      d. Next, CTE will analyze the metrics for energy consumption requirements over an entire day or block. The analysis will be used to select the most efficient ZEB technologies for RoadRUNNER's needs in terms of proposed routes, charging requirements, service modification, or bus swaps.

3. DELIVERABLE/ OUTPUT: Bus Procurement & Build.

   a. CTE will consult RoadRUNNER to prepare technical specifications to procure and select a battery electric bus. [CTE Task 4.1-4.7]

   b. Performance Measures:

      1. Consult with RoadRUNNER as it prepares the technical specifications and other documents required for bus procurement and charge equipment. The specifications will be based in part on the analysis conduct during the previous data collection and analysis phase, in part on RoadRUNNER's intent to purchase battery electric busses, as indicated in RFP 18-19-008, and in part on the American Public Transportation Association's (APTA) Bus Procurement Guidelines. [CTE Task 4.1]

      2. Consult with RoadRUNNER to select a battery electric bus design. [CTE Task 4.2 & 2.3]

         a. Compare the vendors' proposed bus and charge equipment specifications against the model created during the previous data collection and analysis phase.

b. Develop a life-cycle cost analysis to compare the capital and operation cost assessment of each proposal. The information will be presented to RoadRUNNER as part of their evaluation and selection process.

3. Consult with RoadRUNNER regarding Buy America Requirements, which requires that the procured busses be intended for public use within the United States; and the busses or the materials from which they are manufactured be present in the United States in sufficient and reasonably available commercial quantities. CTE will assist RoadRUNNER hire a third-party auditor to evaluate the Buy America Requirements during the pre-award phase and pre-delivery phase. [CTE Tasks 4.5 & 4.6]

4. Review and consult with RoadRUNNER regarding the Altoona Test Reports which will be provided by the bus manufacturer. The Altoona Test is an evaluation required by the FTA and tests bus models for safety, structural integrity and durability, reliability, performance including brakes, maintainability, noise, fuel economy, and emissions.

5. Consult with RoadRUNNER regarding the review of reports of final inspections and hiring third-party inspectors. Third-party inspectors will be hired to conduct a pre-delivery inspection, approve busses for delivery, and then conduct post-delivery acceptance inspections. [CTE Task 4.7]

4. DELIVERABLE/ OUTPUT: Infrastructure Procurement, Design & Build.
   a. CTE will assist RoadRUNNER select and procure charging infrastructure for the battery electric buses. [CTE Tasks 5.1 & 5.2]
   b. Performance Measures:
      1. Review the RFP and associated responses for charging facilities. The City may issue an RFP for architectural and engineering services for the site engineering and design of charging stations, or the City may separately procure services for design and site construction and installation of the charging stations. In either instance, CTE will review the RFPs and associated responses. [CTE Task 5.1]
      2. Lead a meeting between RoadRUNNER and the selected contractors for the charging facilities. After the City selects an architectural and engineering services contractor for design of the charging stations, CTE shall assist RoadRUNNER in a pre-design meeting at the site with the City and the architectural and engineering services contractor to ensure that appropriate charging equipment is designed. [CTE Task 5.2]

5. DELIVERABLE/ OUTPUT: Bus & Infrastructure Deployment.
   a. CTE will develop plans for deployment of battery electric busses and related infrastructure charging. [CTE Tasks 6.1 & 6.2]
   b. Performance Measures:
      1. Develop a plan for deployment of battery electric busses, which will be based on best-practices. This deployment plan will include bus and charge acceptance plans, deployment strategies bus and route validation, shadow service, and service transition.

The plan shall also incorporate the infrastructure implementation plans and training plans for bus operators, bus maintenance, facility maintenance, and first responders.
2. Assist RoadRUNNER in the testing and acceptance of both the buses and chargers. [CTE Task 6.2].

6. DELIVERABLE/ OUTPUT: Deployment Validation.
   a. Based on the implementation plan, CTE will assist RoadRUNNER in the testing and acceptance of both busses and chargers. [CTE Tasks 7.1, 7.2 & 8]
   b. Performance Measures:
      1. Develop a plan to validate procured battery electric buses.
         a. Develop metrics, key performance indicators, and procedures to measure the deployed battery electric buses and the related charging infrastructure. The metrics will be based on the data process and technological requirements for collection, such as data loggers, meters, etc., and the process to generate and submit reports. [CTE Task 7.1]
         b. After consultation with the RoadRUNNER, CTE will submit a final draft of the of the data collection and reporting process and procedures to RoadRUNNER. [CTE Tasks 7.2 & 8]
      2. Collect and analyze data for validation. After ensuring that required technology for data collection is installed, CTE shall collect data from RoadRUNNER as defined in the data collection procedures. CTE will analyze the data and generate periodic key performance indicator reports as agreed to with RoadRUNNER.

7. PERFORMANCE MILESTONES
   a. Year One:
      1. Completion of Deliverable 1 (b)(1). [First 30 days]
      2. Completion of Deliverable 1 (b)(2). [First 30 days]
      3. Completion of Deliverable 1 (b)(3). [First 30 days]
      4. Completion of Deliverable 2 (b)(1). [6 months later]
      5. Completion of Deliverable 2 (b)(2)(a-d). [6 months later]

   b. Year Two:
      1. Complete plan for RFP Deliverable 3(b)(1). [14 months after year one deliverables]
      2. Complete design selection 3(b)(2)(a & b). [14 months after year one deliverables]
      3. Complete Buy America consultation Deliverable 3(b)(3). [14 months after year one deliverables]
      4. Complete Altoona Test consultation Deliverable 3(b)(4). [14 months after year one deliverables]
      5. Complete inspection Deliverable 3(b)(5). [14 months after year one deliverables]
      6. Complete review of RFP for charging facilities Deliverable 4(b)(1) [14 months after year one deliverables]
      7. Complete meeting with charging facility contractors Deliverable 4(b)(2). [14 months after year one deliverables]

8. Complete plans for bus deployment Deliverable 5(b)(1). [1 month after Deliverable 3(b)(4) completed]

c. Year Three:

1. Completion of plans for Deliverable 6(b)(1)(a & b). [15 months after year two deliverables]
2. Completion of validation plan Deliverable 6(b)(2). [15 months after year two deliverables]
3. Complete final project report Deliverable 1(b)(6). [Last 3 month of project]

d. Continuous for the Term of the Agreement:
1. Weekly update and consulting meetings with RoadRUNNER Deliverable 1(b)(4). [Every week]
2. Quarterly reports of project progress Deliverable 1(b)(4). [Every 3 months]

*The CTE Task numbers refer to the tasks enumerated in CTE's Technical proposal, which was submitted in response to RFP 18-19-008 on February 18, 2019.

ATTACHMENT B

Milestone Payment Plan

Task ID	*Task*	*Milestone ID*	*Milestone Deliverable*	*Total Fees*
1	Project Management, Administration, Reporting, and Control	1	Pre-Deployment Quarterly Reports	$120,000
1	Project Management, Administration, Reporting, and Control	2	Post Deployment Quarterly Reports	$12,000
2	Project Planning & Initiation	3	Project Kickoff Meeting & Project Workplan	$20,000
3	Requirements Analysis	4	Modeling Results and Recommendations	$30,000
4 & 5	Bus and Charger Specifications and Procurement Support	5	Bus and Charger Specifications, RFP Support	$20,000
4 & 5	Bus and Charger Specifications and Procurement Support	6	Technical Evaluations	$28,000
6	Bus & Infrastructure Deployment	7	Validation Testing Report	$30,000
7	Deployment Validation and KPIs	8	Monthly KPI Reports	$60,000
8	Project Close-out	9	Final Report	$5,747
Total CTE Fees				***$325,747***

CTE shall submit invoices in accordance with the tasks and deliverables above. Some tasks have multiple milestones and will result in multiple invoices. Each invoice will include a description of task work completed toward the completion of the related milestone(s).

24-060

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 4, 2023
Drafter:	Sara Gonzales	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **A RESOLUTION APPEALING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 26, 2023, FOR A 24-FOOT VARIANCE TO THE FRONT YARD SETBACK IN ORDER TO RETAIN A CONSTRUCTED CARPORT ADDITION ON A PROPERTY LOCATED AT 4093 WINTERS STREET. THE SUBJECT PROPERTY ENCOMPASSES 0.12 + ACRES AND IS ZONED R-1BC (SINGLE-FAMILY HIGH DENSITY- CONDITIONAL). SUBMITTED BY CATHERINE SILVA, PROPERTY OWNER (23VO0500101).**

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

PURPOSE(S) OF ACTION:

Appeal and Reversal of a Planning and Zoning Commission decision.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

City Council is required to review and take final action on variance appeals per Section 38-10(M) and 38-13(A) of the 2001 Zoning Code. A variance is defined as a variation in the numerical requirements of this Zoning Code, Sign Code, or the Design Standards (landscaping).

The proposed variance is for a carport located at 4093 Winters Street. The property is located approximately 649 feet north of the intersection of Holly Drive and Winters Street. The subject property is currently being utilized as a single-family residence and is zoned R-1bC (Single-Family High Density - Conditional). The applicant is seeking the proposed variance to retain a constructed carport to the front portion of the existing dwelling unit. The unpermitted carport encroaches twenty-four (24) feet into the required twenty-five (25) foot front yard carport/garage setback. If approved, the new carport will be one (1) foot from the front property line.

On September 26, 2023, the Planning & Zoning Commission (P&Z) denied the proposed variance request by a vote of 2-4-0 (one Commissioner absent) referencing the staff recommendation. Staff recommended denial because the proposed variance request did not meet the three (3) criteria in which a variance may be approved; physical hardship, spurs economic development, or considerable monetary hardship. Prior to the P&Z meeting, staff received one (1) phone call from a neighboring property owner requesting clarification regarding the variance. The question was, if the carport variance was approved does that mean everyone else would be allowed one. Staff explained that variances are approved on a case-by-case basis and only apply to the address requesting the variance. During the meeting, P&Z listened to the applicant's testimony as to why the structure was constructed without a permit. The structure was built to protect her daughter who is currently on medication. She is unable to be in the sun and the cover provides shade and protection from weather elements. The structure was built by a family friend as opposed to a contractor. One member of the public

spoke that evening on Ms. Silva's behalf. Bertha Chavez, the daughter's caregiver, expressed the need for the structure as she enjoys coloring outside but can only be outside for small periods of time due to her disability.

Staff did indicate that if the carport was to be approved the structure should be reduced in size and located outside of the 12-foot utility easement. Structures are not permitted within the easement due to line utilities are laid within that easement and should be accessible for maintenance. A detailed summary of the discussion that took place at the P&Z meeting is reflected in Attachment "B".

On October 11, 2023, the applicant officially submitted an appeal of the P&Z decision for the proposed variance to City Council. The applicant is appealing the decision by P&Z stating the following: documentation is provided regarding her daughter's disability, there were no complaints from the public prior or during the public hearing, there are no traffic visibility concerns, the structure is not impeding on utility infrastructure, and P&Z did not provide feedback per their decision at the public hearing. The reasons for retaining the carport structure are personal and monetary. The applicant is willing to obtain a permit, pay all fees, and modify the structure if deemed necessary for the request to be approved. Please see Attachment "C" for the applicant's appeal and supporting documents.

City Council has broad statutory authority to grant a variance under Article 2, Section 38-10J. P&Z did not feel that the variance request met the criteria for approving the variance under Article 2, Section 38-10J and the proposed carport did not meet the minimum required setback in all zoning districts per Article 4, Section 38-31D.

A City Council majority vote may reverse, affirm, or make any change to the matter being appealed based on the denial of P&Z and shall decide whether the requested variance is appropriate at this location. If deemed suitable based upon the evidence presented, the City Council shall overturn the final determination on the request. It is possible for the City Council to modify the denial by removing or adding conditions. Furthermore, the City Council can approve the appeal; however, new evidence and facts (a.k.a. findings) must be articulated if the City Council reverses the P&Z decision.

SUPPORT INFORMATION:

Exhibit "A" - Site Plan
Attachment "A" - P&Z Staff Report
Attachment "B" - P&Z Minutes
Attachment "C" - Appeal Documents

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will reverse the P&Z decision of denial of case 23VO0500101 and would allow the carport addition to remain on the subject property located at 4093 Winters Street.
2. Vote "No"; this will uphold the P&Z decision of denial of case 23VO0500101 and the carport would need to be removed from 4093 Winters Street.
3. Vote to "Amend"; this would reverse the P&Z decision of denial of case 23VO0500101 and would place conditions of approval on the permit.
4. Vote to "Table"; this could allow City Council to table/postpone the Resolution and direct staff accordingly.

RESOLUTION 24-060

A RESOLUTION APPEALING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 26, 2023, FOR A 24-FOOT VARIANCE TO THE FRONT YARD SETBACK IN ORDER TO RETAIN A CONSTRUCTED CARPORT ADDITION ON A PROPERTY LOCATED AT 4093 WINTERS STREET. THE SUBJECT PROPERTY ENCOMPASSES 0.12 + ACRES AND IS ZONED R-1BC (SINGLE-FAMILY HIGH DENSITY- CONDITIONAL). SUBMITTED BY CATHERINE SILVA, PROPERTY OWNER (23VO0500101).

The City Council is informed that:

WHEREAS, the Planning and Zoning Commission (P&Z), after conducting a public hearing on September 26, 2023, denied the Variance by a vote of 2-4-0 (one Commissioner absent), for a property located at 4093 Winters Street; and

WHEREAS, Catherine Silva, property owner, submitted an appeal of the decision of the P&Z on October 11, 2023, based on the supporting documents outlined in Attachment “C”.

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

(I)

THAT the decision of the P&Z on September 26, 2023, is hereby overturned and made part of this Resolution.

(II)

THAT the variance of 24 feet to the front yard setback is hereby approved for the subject property located at 4093 Winters Street reflected in Exhibit “A”.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

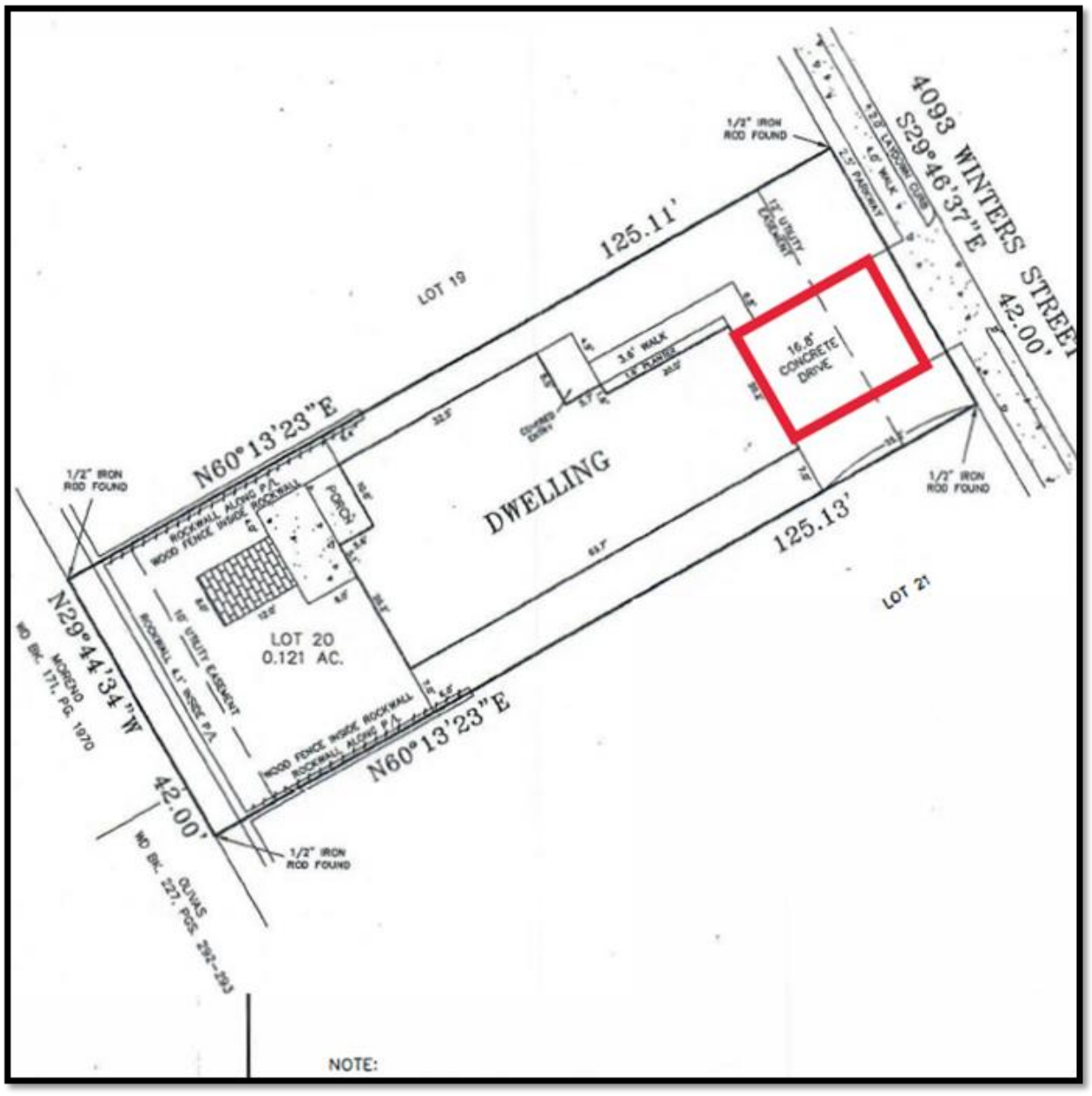
Seconded by:

AYES

NAYS

EXHIBIT "A"

SITE PLAN



City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

VARIANCE

Planning & Zoning Commission 9/26/2023

CASE 23VO0500101: VARIANCE

STAFF CONTACT:	Sara Gonzales, (575) 528-3049, sgonzales@lascruces.gov
OWNER:	Catherine Silva
REPRESENTATIVE:	Catherine Silva
DISTRICT:	District #1
SITE ADDRESS:	4093 Winters Street
EXISTING ZONING:	R-1bC (Single-Family High Density- Conditional)
REQUEST:	A variance of 24-feet to the minimum required 25-foot garage/carport front yard setback
CONCURRENT APPLICATIONS:	N/A
RECOMMENDATION:	Denial

SUMMARY OF REQUEST CASE 23VO0500101:
A request to deviate twenty-four (24) feet from the required twenty-five (25) foot front yard setback for a carport addition to a home located at 4093 Winters Street. The property is approximately 0.12 + acres in size and zoned R-1bC (Single-Family High Density- Conditional).

SUMMARY OF RECOMMENDATION:
Staff is recommending **Denial** based on the findings listed below:

1. A garage/carport is required to meet a minimum 25-foot front yard setback in all zoning districts. (2001 Zoning Code Article 4, Section 38-31D)
2. The request for a 24-foot variance to the minimum required garage/carport front yard setback does not meet the criteria for decisions as outlined in Article 2, Section 38-10J of the 2001 Zoning Code, as amended.
3. The garage/carport was constructed without a building permit.

PROPOSAL AND LAND USE HISTORY

PROJECT DESCRIPTION:
A variance request to retain an already constructed metal carport that encroaches 24 feet into the required garage/carport front yard setback of 25 feet. The applicant has stated that she was not aware of the codes and regulations at the time it was constructed and had the carport installed due to medical reasons and to protect vehicles from weather damage.

HISTORY:
The subject property is located within an area that went through a zone change in 2003 from R-1aM to R-1bC. The developer requested the change to reduce the lot size from 5,000 square feet to 3,500 square feet. This allowed for more lots within the 6-acre subdivision.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Mesilla Valley Metropolitan Planning Organization (MPO) Thoroughfare Plan and Elevate Las Comprehensive Plan	Yes
Criteria for Decisions: Article 2, Section 38-10 (K) of the 2001 Zoning Code	No

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:
The subject property is surrounded by single-family residential development. Based on the site visit and aerials of the neighborhood there are only two carports that have been constructed in the area that are not in compliance, both of which did not receive building permits or variances prior to construction.

COMPLIANCE WITH MPO THOROUGHFARE PLAN:
Winters Street is classified as a local roadway, by the Mesilla Valley Metropolitan Planning Organization (MPO) and the Elevate Las Cruces Comprehensive Plan where single-family residences and their ancillary uses are encouraged.

CRITERIA FOR DECISIONS:
The Planning and Zoning Commission (P&Z) has the authority to grant variances to the numeric standards of the 2001 Zoning Code, as amended. Granting any variance shall not merely serve as a convenience to the applicant, but the variance shall be the minimum necessary for relief to accomplish the stated objective(s) of the applicant's request or demonstrable hardship. Hardships are not considered personal or monetary except as stated below. The P&Z shall review each request in relation to the goals, objectives and policies of the comprehensive plan, plan elements, other applicable plans, and the purpose and intent of this Code, section 38-2 and 36-1 of the Sign Code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria. Additionally, decisions for granting a variance shall be based on:

1. A physical hardship relative to the property (i.e., topographic constraints or right-of-way takes resulting reduced development flexibility, etc.) in question;
    - The property is not constrained by a physical hardship such as topographic constraints, right-of-way takes resulting reduced development flexibility, or other physical constraints outside of the property owner's control such as excessive easements; and

2. The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted; and
    - Approval of the variance would not spur any economic development at a neighborhood or city-wide level; and

3. Monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.

Staff and most other reviewing departments of the City of Las Cruces did not identify any significant health, safety, or welfare concerns associated with this variance request. However, if the Planning and Zoning Commission decides to approve the variance Staff is requesting that the following conditions be placed on the property:

a. Both sides of the structure must be open.
b. The structure needs to be attached to the home.
c. Must obtain building permit and all required inspections.
d. Must be cut back out of the Utility Easement.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR CURRENT USE:

The subject property currently consists of a single-family residence, is zoned R-1bC, encompasses ± 0.12 acres and is accessed through Winters Street. As it currently exists, the single-family residence is an allowed land use on the property.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas, and sewer already serve the site and are adequate for the development. Winters Street provides adequate paved access to the property and is appropriate for the existing use.

FLOOD PLAIN:

The subject property is not located within the flood zone.

PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notice of a Public Hearing was mailed to all property owners within 500 feet of the subject property on September 11, 2023.

ATTACHMENTS:

1. Aerial Map
2. Statement of Hardship for Variance Requests
3. Site Plan
4. Department Comments

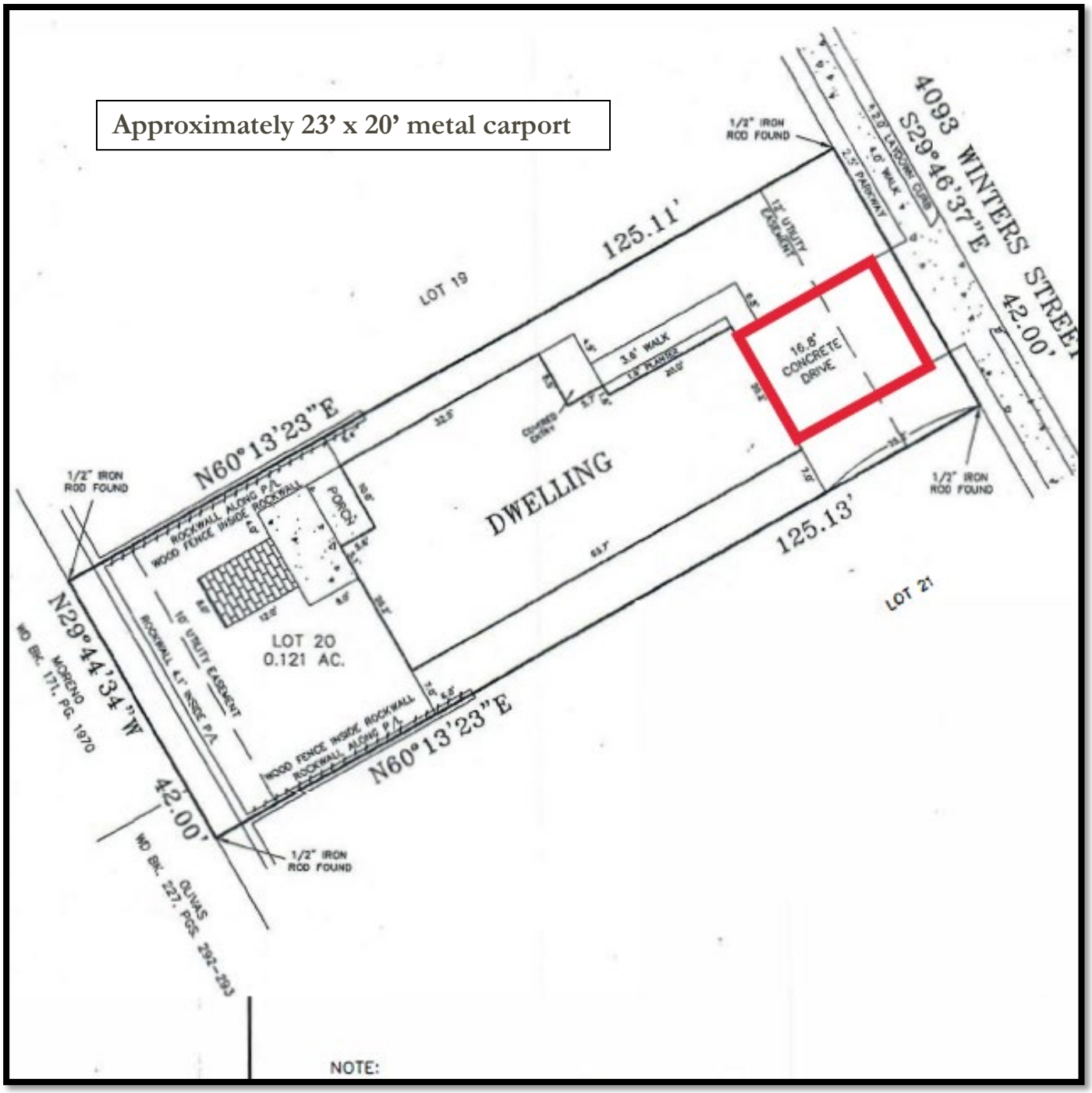
ATTACHMENT 1
Aerial Map

ATTACHMENT 2
Statement of Hardship

To whom IT May Concern: 7/17/23

I Catherine G. Silva as a single parent with a disable child and myself fall under the American Disable Act. I had a stand alone Carport built on my Property 4093 winter's St. made out of metal and it was expensive. was not aware of all regulations and codes. Had to save money from my rebates, and if I need to take it down it would cost me alot to do it. I don't have the money to pay for it. Then what I am going to do with all the metal. won't be able to sell it for what I paid. The reason I had it made cause my daughter can't be out on the sun to much cause of her medication she's taking. and if it rain, hails or snow we can't ran to get into our truck. we can fall down and get hurt thats why I had it built. Also to protect my truck from hail damage. I also wouldn't want any vandalism. when I bought my truck it got damaged Parked in front of my Garage and nobody knew who vandalised my truck. The damages were $1,500.00 Plus insurance cost. Again as a single Parent, Cannot afford all unnecessary cost out of pocket. on your decision I would truly appreciate, your consideration on my request for my permit on my stand alone Car Port. Thank YOU

ATTACHMENT 3
Site Plan



ATTACHMENT 4
Department Comments

Department: Planning
Status: Approved with Contingencies

a. Both sides of the structure must be open.
b. The structure needs to be attached to the home.
c. Must obtain building permit and all required inspections.
d. Must be cut back out of the Utility Easement.

Department: Engineering
Status: Review Not Required

Department: Utility Engineering
Status: Approved with conditions, structures require an enroachment agreement within the designtated Utility Easements.

Department: MPO
Status: Approved

Department: FIRE
Status: Approved

Department: TRANSPORTATION
Status: Not Required

CITY OF LAS CRUCES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
September 26, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Enrico Smith, Vice-Chair
James Bennett, Secretary
Vanessa Vega, Member
Joaquin Acosta, Member
Connor Murray, Member

BOARD MEMBERS ABSENT:

Vanessa Porter, Member

STAFF PRESENT:

Tim Pitts, Deputy Director Building Development
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Vincent Banegas, Interim Planner
Brad Douglas, Deputy City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening. It is 6:00 p.m. on September 26th and we will go ahead and call this meeting to order. It is the City of Las Cruces Planning and Zoning Commission meeting. Before we get started, we've got a couple of housekeeping items tonight. The first is I've been informed that I believe that big screen up there is out of order but we do have this smaller screen on either side of me so if you do want to move up or feel like you need to move up to be able to see the presentations tonight, I encourage you to do so.

The second item is I want to extend my thanks and gratitude to Commissioner Smith for covering last month while I was out. First month as Vice Chair and threw you into the deep end, and so I appreciate you covering for me and really did a great job. So thank you.

And then finally, if the rumors are true this is Commissioner Vega's final meeting with us here on the Commission. I speak for myself but certainly colleagues of up here, it's been a pleasure working with you the last year-

Bennett: I vote to approve based on staff recommendation. This meets the neighborhood character and compatibility Elevate Las Cruces and purpose and intent of the code.

Baum: Board Member Murray.

Murray: I vote yes based on staff recommendation.

Baum: Chair Kaiser.

Kaiser: Yes. Based on staff recommendation and consistency with Elevate Las Cruces.

Baum: Motion passes.

9.3 Case No. 23VO0500101: A variance request to deviate twenty-four (24) feet from the required twenty-five (25) foot front yard setback for a carport addition to a home located at 4093 Winters Street. The property is approximately 0.12 + acres in size and zoned R-1bC (Single-Family High Density- Conditional). Submitted by Catherine Silva, property owner. Council District 1.

Kaiser: Okay, moving onto item 9.3. This is a variance request to deviate from the front yard setback at 4093 Winters Street. Staff, all yours.

Gonzales: Good evening, Commission. Sara Gonzales, Senior Planner, City of Las Cruces. This is for a variance request for 4093 Winters Street. Currently, the property is about 649 feet north of its intersection with Holly Drive and Winters Street. It is approximately 0.12 acres in size. The property was rezoned to R-1bC back in 2006, which is single-family high density conditional. At that time, there was six acres left and the developer wanted to reduce the lot sizes in order to fit in 35 more single-family homes.

As stated, this does have a single-family residence on the property. Here's an aerial map of the subject property. These are the properties that went into essentially a higher density as opposed to the surrounding neighbors. They are probably about a third to half an acre in size and then we move into a mobile home park that's located on the west side.

Here's a zoning map of the surrounding area. As you can see, it is primarily single-family residential. We do have a few nodes of multifamily on the south side. However, those are also developed with single-family residences.

Per chapter 38 of the 2001 Zoning Code, setbacks for an R-1b zoning designation for a garage or carport is to be at 25 feet. The applicant is seeking to retain the carport addition to the existing dwelling that was placed in the front yard of the property. The variance would allow the applicant to maintain a one-foot setback from the property line. Here's a site plan of the property. As you can see within this area, this designation here shows that this is 25 feet back already originally for the original garage. So with that, with the 25 foot setback, you essentially take up that entire space covered with a carport structure leaving one foot. One of the concerns, and I'm only bringing it up now and I'll reiterate it later is that there is a 12-foot utility easement that runs along the front of the property. Structures, buildings are not permitted to be within those utility easements as you have line connections, El Paso Electric. Anything that has to be done there would have to be modified. So as part of our recommendation, I will provide those findings and to elaborate later.

Here are the site photos of the property. As you can see it is extended out. This would be where we measure from whenever we actually measure carports. It's never to the edge of it, it is to the actual overhang because that is the part that is actually extending up to the furthest point of the property line. The posts are pushed back. However, we do only have about one foot to that property line.

The applicant did provide a letter that was provided within your staff packets that she was unaware that the codes and regulations were going to require the building permit or the status of that application or to them to be permitted to be put into place. There are medical reasons in which she has requested that carport to be maintained and it also protects vehicles from weather damage.

As identified, staff did not see any health, safety, or welfare issues. Our only identification was that the utility easement is in place and that structures are not to be within a utility easement. However, we also analyzed that the 24-foot variance to the minimum required 25-foot setback does not meet the criteria for a variance. Whenever you look at variances, we are looking at topographic constraints on a property. We are looking at does it spur economic development? Is there a monetary hardship on a property in which you would be forced to do something that's going to cost you more than what you would need as far as putting it in a different location?

So with that staff is recommending denial as it does not meet the criteria outlined in the 2001 Zoning Code to meet 25-foot setback. We are also saying that it does not follow the standards for criteria to approve the variance based on the three criteria listed: topographic constraints, spur

economic development, and then monetary hardship. And the carport was constructed unfortunately without a building permit.

Notice was sent to the surrounding properties. The only phone call that I ever received as far as the carports being in placed is if this one were to be approved does everybody in the neighborhood now get one? The response I did provide to the person who contacted me via phone was that every variance case is a case-by-case basis. We are looking at every request that comes in here as a single case. The adjacent property owners do not set precedence. We are not looking for those to move forward. Variances stay with the land and it's based on the justification provided by the applicant.

If the P&Z Commission decides to approve the case, staff is recommending that these conditions be placed upon it. Both of the sides of the structure remain open just for visibility whenever you back up into the oncoming traffic. The structure does need to be attached to the residence as you are not permitted to have accessory structures located within your front yard. Making it attached makes it now an addition to your structure. They must obtain a building permit and require all inspections, and we are requesting that it be built or cut down to meet the 12-foot setback out of that utility easement.

With that your options are to vote "yes" and approve, if you choose to vote and approve, please provide new findings of fact as everything presented to you this evening has been in denial. You can vote "no" and deny, you can vote "yes" with conditions, or you can vote to table. The applicant is here as well. And then I do believe there is public to speak on behalf. And if you have any questions, I stand for those as well.

Kaiser: Thank you very much. Any questions or comments from the Commission?

Bennett: How much of that needs to be cut off for the utility easement? Just a ballpark.

Gonzales: Mr. Chair, Commissioner Bennett. That would be 11 feet just because we only have …

Bennett: Thank you.

Gonzales: That one foot. So to get out of that 12 feet, we have that 11 foot deviation.

Murray: And then are these underground utilities or above ground?

Gonzales: Mr. Chair, Commissioner Murray. These are going to be underground utilities. A lot of times in the 12-foot utilities what we find are El Paso Electric, Comcast, Quest, Lumen, your phone, your electrics.

Kaiser: All right. Thank you. Any other questions or comments? Commissioner Smith.

Smith: Could you go back to the photo of the vehicles underneath the carport? Thank you.

Kaiser: All right. If the applicant wishes to speak, you're welcome to come forward before we get a public comment. You're not obligated to. And before you begin can you please state your name?

Silva: Catherine G. Silva.

Kaiser: And do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Silva: I do.

Kaiser: Please go ahead.

Silva: Well, the reason I did it it's because for my daughter's protection. She's on medication. She can't be under the sun because of her medication. It's medical reasons. And when it's raining, we can't be running into our vehicle and slip and fall besides myself too. I'm injured too. So that's why I got it done and it's expensive. And to remove it, it's another expense for myself and I'm a single parent. So hopefully, I get it approved and it's for her protection.

And I don't have no shade for her and I can't keep her inside the house all the time. And that's the only place I take her outside. She loves to color so I take her outside on a chair and she colors out there. And that's all I have to say.

Kaiser: Okay. Thank you very much.

Silva: Okay.

Kaiser: All right. Is there anybody in the audience who wishes to speak? Please raise your hand. Okay. Yes, ma'am. Please come forward. I'll give you three minutes. We have a timer here. It will count down but I've been told the beeper sound doesn't work so if you hear this gentleman here beep that's your time. Before you begin can you please state your name for the record?

Chavez: My name is Bertha Chavez.

Kaiser: And do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Chavez: I do.

Kaiser: Go ahead.

Chavez: What I wanted to add as they need just a caregiver for Ms. Silva's daughter. And I do take her outside. She loves to color. She loves to be outside for a while but due to her medical condition I can only keep her out for a while. So this was serving a purpose and a need for her daughter and also Ms. Silva. That's all I have to say. Thank you.

Kaiser: Thank you very much. All right. Anybody else in the audience who wishes to speak on this item? Okay. Seeing none. We'll come back to the Commission. Any final comments? Commissioner Smith.

Smith: I just have a question for the applicant. Did you hire a commercial contractor to build this? Was this something that was done by a family member who is capable of building it?

Silva: It was done from a family member's friend. That was it. It wasn't a contractor or nobody.

Smith: So this person is not a contractor themselves?

Silva: No.

Smith: Okay. Thank you.

Silva: But he did a good job. It's welded.

Smith: The reason I ask that question is that I mean any type of structure that's being built like this requires a permit and is something that any contractor would definitely know and should inform you of. And even if it's a family member if they're capable of building something like this, they should know that a permit is …

Silva: Well, we didn't know. I didn't know I had to get …

Smith: Required. All right. Thank you, ma'am.

Silva: I didn't know I had to get a permit.

Kaiser: All right. Any other comments or questions from the Commission? We're looking for a motion to approve.

Bennett: I make a motion to approve 9.3.

Vega: I second.

Baum: Board Member Acosta.

Acosta: I vote no to deny based on staff recommendation.

Baum: Board Member Smith.

Smith: Sorry. I vote no to deny based on staff recommendation.

Baum: Board Member Vega.

Vega: I vote no based on staff recommendation.

Baum: Board Member Bennett.

Bennett: I vote to approve based on monetary hardship and medical reasons.

Baum: Board Member Murray.

Murray: I vote is to approve based on medical reasons and monetary hardship.

Baum: Board Member Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion denied.

9.4 **Case No. 23VO0500106:** A variance request to deviate twenty (20) feet from the required twenty-five (25) foot front yard setback for a carport addition to a home located at 4053 Winters Street. The property is approximately 0.108 + acres in size and zoned R-1bC (Single-Family High Density- Conditional). Submitted by Tracie Stevenson, property owner. Council District 1.

Kaiser: Okay. Moving onto item 9.4. This is another variance request from the front yard setback. This time 4053 Winters Street. Back to you staff.

Gonzales: Sara Gonzales, Senior Planner once again for the record. This is a variance request for 4053 Winters Street. The property is approximately 200 feet

Appeal to the City of Las Cruces for shading awning structure, regarding the property of Katherine Silva

Exhibit A

Constinuent is providing medication as proof for her handicapped daughter showing the benefit for the shade, per her disability needs.
Hardship and justification letter is being provided.
There have been no complaints from the public, regarding the structure in place.
Zoning commission did not provide feedback for their denial at the public meeting.
There are no visibility concerns

Exhibit B

Pictures provided will show utility line isn't being impeded on.
Constituent has agreed to pay all fines and/or fees associated with the structure.
Upon approval, constituent will care for and maintain the structure on the property.
Constituent has agreed to modify the structure if intruding on the utility easement.

Exhibit A

Hello, my name Katherine Silva.
I'm not public speaker so please bear with me as I 'am here to appeal the decision on my awning, that I had built in the previous months.

At the last meeting regarding my structure, there was conversation about the utilities. I went ahead and had the utilities marked to show that I'm in compliance. The awning is not impeding over any utility lines. I had a City of Las Cruces notice placed in my yard for 14 days announcing there would be a public meeting. I complied in everything the city asked me to do. The results were, no public complaints were called in on my behalf and nobody showed up to appeal my structure.

The reason for my covered awning is due to the fact that I'm a single parent raising a handicapped daughter, with disabilities who benefits greatly with having a shaded structure. She would be protected from the weather elements and be able to enjoy the outdoors immensely, which would also keep her safe.

The medication my daughter is currently taking does not allow her to be exposed to the sun. my decision in building the awning was based solely on this fact. It will allow her to play and enjoy the outdoor fresh air and not be subjected to sun rays.

Also, due to my age and my own health concerns the awning would benefit me from having any slips and/or falls for there would be a direct entrance into my house from the awning.

As far as permits, I'm willing to do anything I possibly can to keep my awning structure. I 'am sorry for the inconvenience in bringing this matter to your attention. I simply did not know I needed one and for that, I'm truly apologetic.

I would simply like to take care of this today and move on. I am being compliant as much as I can. There are similar structures on and around my neighborhood. But for my situation, I just want to make this right on my behalf.

My monetary hardship is that I'm a single mother, raising a child. I live on a limited income every month. I simply cannot afford to have the structure and would not be able to recover from it financially. I hope in being here today I can appeal to your wisdom, understanding and compassion in my situation. I would be forever grateful.

Thank you very much!
Katherine Silva
575-650-4668

Medications

Dutasteride 0.5mg capsule

Doxycycline mono 50mg capsules

Clindamycin ph 1% solution

Exhibit B

telephone
and
cable

gas ↑

2500 HD
PRO-4X
water

Sewer

24-061

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 4, 2023
Drafter:	Irene Parra	**Department:**	Economic Development
Program:	Business Development	**Line of Business:**	Economic Development

Title: **A RESOLUTION AMENDING RESOLUTION 23-027 FUNDING PRIORITIES AND ALLOCATIONS TO VARIOUS LAS CRUCES NON-PROFIT ORGANIZATIONS FOR THE CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ESTABLISHED BY THE AMERICAN RESCUE PLAN ACT (ARPA) AND REPURPOSING PREVIOUSLY AWARDED FUNDS TO CITY LED PROJECTS.**

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

PURPOSE(S) OF ACTION:

To reauthorize funds

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City), as a recipient of American Rescue Plan Act (ARPA)/Coronavirus (COVID-19) State and Local Fiscal Recovery Funds (SLFRF) from the U.S. Department of Treasury (Treasury), implemented a Request for Proposals (RFP) process from the distribution of funds for Community and Economic Development Initiatives. These resources are made available to the City to respond to the COVID-19 public health emergency and/or its negative economic impacts.

Treasury has charged the City with ensuring projects respond to the COVID-19 public health emergency and meet urgent community needs. Treasury recommends a swift and effective implementation process that balances facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime. The City must ensure proper documentation supporting determinations of costs and applicable compliance requirements, satisfactory award management, internal control, and subrecipient oversight and management.

On February 22, 2022, the ARPA RFP process was tabled indefinitely by the Las Cruces City Council. In an effort to abide by the guidelines set forth by the Treasury, a new ARPA Eligibility and Evaluation Guide has been created to move the 21 applicants forward through the process, and fund them based on the criteria established in that process.

The proposed eligibility process was presented at the April 11, 2022, City Council Work Session, and on May 2, 2022, City Council approved Resolution No. 22-035 thereby adopting the ARPA Eligibility Process and Guide.

The City received 21 proposals requesting approximately $26.3 million dollars in funding for various projects. All applications were reviewed for submittal requirements as outlined in the Final Rule, and the Compliance

and Reporting Guidance. After the eligibility review, 11 eligible applications were presented to the ARPA Scoring Committee on May 31, 2022 and of the 11, 10 were recommended for funding.

The ARPA Scoring Committee met on July 21, 2022, and recommended funding for ten projects, totaling $9,594,653. Of those ten projects, Community Foundation of Southern NM/Bitwise Industries were awarded $1,000,000 to support a workforce training project. However, it was announced on June 1, 2023 that Bitwise Industries would cease plans to expand operations in Las Cruces.

In response, the recommendation from City Manager's Office was to remove from the original process, the funds designated for the Community Foundation, and create new workforce development programming that would be directly overseen by the City of Las Cruces. Instead of using the evaluation and scoring process that was set forth for the previous ARPA funds directed at community non-profits, five new projects were proposed by City staff, and presented before the Economic Development Policy Review Committee on August 23, 2023. The programs ranged from assistance to those experiencing homelessness, to support for childcare providers. The total recommended allocation for all five programs is $940,000.00 with an additional $60,000.00 reserved for additional programming or administrative costs. Exhibit "A".

SUPPORT INFORMATION:

Exhibit "A" ARPA Project Budget 2023

PLAN(S):

City Council Strategic Plan, 2021-2025 Consolidated Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Economic Development PRC

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
$1,000,000	$1,000,000	

Funding Source(s):

Fund 2100
Org 20430011
Obj 721080
Project ARPAM

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and reauthorize funds.

2. Vote "No"; this will not approve the Resolution and will not reauthorize funds.
3. Vote "Amend"; this could modify the Resolution and would need further direction from Council to staff.
4. Vote "Table"; this will postpone consideration of the Resolution and would need further direction from Council to staff.

REFERENCE INFORMATION:

Resolution No. 23-027

RESOLUTION 24-061

A RESOLUTION AMENDING RESOLUTION 23-027 FUNDING PRIORITIES AND ALLOCATIONS TO VARIOUS LAS CRUCES NON-PROFIT ORGANIZATIONS FOR THE CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ESTABLISHED BY THE AMERICAN RESCUE PLAN ACT (ARPA) AND REPURPOSING PREVIOUSLY AWARDED FUNDS TO CITY LED PROJECTS.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City), as a recipient of American Rescue Plan Act (ARPA)/Coronavirus (COVID-19) State and Local Fiscal Recovery Funds (SLFRF) from the U.S. Department of Treasury (Treasury), implemented a Request for Proposals (RFP) process for the distribution of funds for Community and Economic Development Initiatives; and

WHEREAS, these resources were made available to the City to respond to the COVID-19 public health emergency and/or its negative economic impacts; and

WHEREAS, on February 22, 2022, the ARPA RFP process was tabled indefinitely by the Las Cruces City Council; and

WHEREAS, in an effort to abide by the guidelines set forth by the Treasury, a new ARPA Eligibility and Evaluation Guide was created to move the twenty-one (21) applicants forward through the process, and fund them based on the criteria established in that process; and

WHEREAS, on May 2, 2022, City Council approved Resolution No. 22-035 thereby adopting the ARPA Eligibility Process and Guide; and

WHEREAS, on July 21, 2022, ARPA Scoring Committee met to recommend responsive applications to City Council; and

WHEREAS, on June 1, 2023, Bitwise Industries announced the closure of their Las Cruces operations; and

WHEREAS, City Manager's Office recommended the creation of new workforce programming; and

WHEREAS, on October 10, 2023 five new projects were proposed to City Council by the Economic Development Department.

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

(I)

THAT the Economic Development Department will work with the Finance Department to administer $940,000.00 for programming identified in Exhibit "A", attached hereto and made part of this Resolution, with an additional $60,000.00 reserved for additional programming or administrative costs, is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

Exhibit A

PROJECT: Transitional Job Training Program
BUDGET: $240,000.00
PARTNERS: Doña Ana Community College (DACC)

SCOPE OF WORK: Funding for this project will support a four-to-six-week Job Training Program, for those at or below the poverty level, including those experiencing housing insecurity. The program will train up to 150 participants over a three-year period, with the goal of reentering the workforce. Clients will receive individual case management to assist with job search and job placement and a stipend at the completion of training.

ELIGIBILITY: Those at or below the poverty line and/or experiencing housing insecurity.

JUSTIFICATION: Las Cruces residents continue to face economic hardships exacerbated by the COVID-19 pandemic, specifically those at or below the poverty level and those experiencing housing insecurity. Since 2020, labor force participation rates have dropped, while numbers of those at or below the poverty level and those experiencing housing insecurity have risen. According to a May 2023 report by the New Mexico Legislative Finance Committee, New Mexico has seen a 48% uptick in those experiencing housing insecurity. The report points to several causes of housing insecurity including disconnection from formal employment and lower educational achievement.

Population growths have been slowing for several decades. According to a recent report by the Bureau of Labor Statistics, labor force participation rates are expected to continue to drop from 62.2% to 60.4% by 2032. This is due in large part to baby boomers retiring and the number of Gen Z workers entering the work force is smaller than previous generations.

As the labor force participation rates continue to decline, it is essential that we work to provide opportunities for our most vulnerable and underserved populations to gain the skills and education needed to reenter the workforce. The Transitional Job Training Program seeks to provide the training, education and support participants need to reenter the workforce.

Similar initiatives funded by the U.S. Department of Labor and the U.S. Department of Housing and Urban Development over a 5-year period, within 5 US cities including Boston, Indianapolis, San Francisco, Los Angles and Portland saw 59% of participants within one year of completing training begin earning an income, 24% entered competitive employment and 4% became self-employed. A total of 87% obtained employment. The remaining 13% continued to receive follow-up services. After completion of training, a thorough evaluation of programming was conducted including reviews of project staff and participants, program policies and best practices and lessons learned. The following were identified as key components, Comprehensive assessments, flexible scheduling, job training and placement and follow-up services.

Doña Ana Community College Career and Life's Skills Academy will build upon the foundations of successful programs like these, incorporate best practices and key components to create a program that emphasizes personal discovery, career exploration, job skills, computer literacy, independent living, self-advocacy, and community engagement.

Paid employment alongside healthcare and housing plays a crucial role in the efforts to eradicate poverty. Research has found that economically secure families with as little as $400 in savings are better able to weather the ebbs and flows of income drops and unexpected expenses. They are also less likely to rely on local services for housing support and cash assistance.

This initiative seeks to capitalize on individuals' unique abilities, build upon their experience and education, and equip them with the knowledge and skills necessary to establish a sustainable path towards long-term employment. By addressing both the labor force shortage and the increasing number of individuals at or below the poverty line, we are working to advance the economic mobility of our residents and making a positive impact on the financial health and long-term viability of our community.

PROGRAM LENGTH: Three Years (Four-to-six-week program)
NUMBER OF CLIENTS TO BE SERVED: 100-150
TIMELINE/BUDGET
COHORT 1 - SPRING 2024

COHORT 2 - FALL 2024

COHORT 3 – Spring 2025

COHORT 4 – FALL 2025

COHORT 5 – SPRING 2026

COHORT 6 – FALL 2026

Stipend Cost: $150,000.00
Curriculum/materials cost: $90,000.00

Total Budget: $240,000.000

ALIGNMENT WITH CITY PLANS: The City of Las Cruces has set forth several strategic goals that focus on supporting underserved populations in our community, expanding economic opportunities, and growing a trained workforce, in an effort to alleviate poverty. Those goals include *ELC Goal CP-2: Economic Equity*, generating employment opportunities that create economic security for all residents. *ELC Goal CP – 11: Underserved Populations*, providing support through the development of supportive programming. *ELC Goal CP – 1: Ready Workforce*, created through the development of a strong and educated workforce that supports an expanding local and regional economy.

MEASURABLES:

- Employment attainment
- Additional educational training
- Housing attainment
- Increased housing longevity
- Increased proficiency of soft skills

PROJECT: Childcare Provider Program
BUDGET: $300,000.00
PARTNERS: Ngage

SCOPE OF WORK: Funding for this project will support a two-year accelerator program for Registered Home Providers. Through this program Registered Home Providers will gain valuable support and training to increase their credentials and expand their business, with the goal of transitioning to a Licensed Three Star Plus Home Provider. Registered Home Providers who participant in and successfully complete the program, will be eligible for a $10,000.00 grant.

Funding will assist Registered Home Providers to obtain the necessary equipment and materials required by the State of New Mexico Early Childhood Education & Care Department, to operate as a Licensed Three Star Plus Home Provider.

ELIGIBILITY: Registered Home Providers located within the City of Las Cruces.

JUSTIFICATION: Prior to the pandemic, Las Cruces residents struggled to find childcare providers. The pandemic only exacerbated the shortage. The State of New Mexico recently extended the free childcare program for those families at or below 400% of the federal poverty level. Although this will help to address the cost of childcare, the lack of providers, long waitlists and quality care remains an issue.

The New Mexico Early Childhood Education and Care Department estimates as many as 72,388 children under the age of 6 – or 42,581 families – around the state are eligible for free childcare, based on income. But only about 26% – 19,324 children under the age of 6 or 11,367 families – are receiving those services. Of those families not receiving services, lack of providers was an issue.

Trends in the number of Licensed and Registered Childcare Centers and Homes in Doña Ana County saw a 37% decrease between 2020 and 2023. A 2022 needs assessment conducted by NMSU's Center for Community Analysis and the Doña Ana County ECE Coalition, found that 47% of parents surveyed in Doña Ana County were in need of quality childcare services.

New Mexico Early Childhood Services encourages childcare programs to meet higher levels of quality through the FOCUS Tiered Quality Star Rating and Improvement System. By transitioning to a Licensed Three Star Plus Home, Registered Providers will gain the skills and training to increase quality of care, raise their level of education and credentials, and build much needed capacity for our children and families.
Program Length: Two years
NUMBER OF CLIENTS TO BE SERVED: 10-15

TIMELINE/BUDGET:

COHORT 1 – Spring 2024

First Half (6 months): Registered Provider to Licensed Home Provider
Second Half (6 months): Licensed Home Provider to Licensed Three Star Plus Home Provider

COHORT 2 – Spring 2025

First half (6 months): Registered Provider to Licensed Home Provider
Second half (6 months): Licensed Home Provider to Licensed Three Star Plus Home Provider

Curriculum/Materials: $150,000.00
Grants: $150,000.00
Total Budget: $300,000.00

ALIGNMENT WITH CITY PLANS:

The City of Las Cruces has set forth several strategic goals that focus on supporting underserved populations in our community, expanding economic opportunities, and growing a trained workforce, in an effort to alleviate poverty. Those goals include *ELC Goal CP-3: Entrepreneurship*, creating a nurturing regulatory environment that generates entrepreneurship and small business investment. *ELC Goal CP-2: Economic Equity*, generating employment opportunities that create economic security for all residents. *ELC Goal CP-10: Community Health*, promoting and maintaining a balanced system of community and human services for the health, safety and welfare of all residents. *ELC Goal CP – 11: Underserved Populations*, providing support through the development of supportive programming. *ELC Goal CP – 1: Ready Workforce*, created through the development of a strong and educated workforce that supports an expanding local and regional economy.

MEASURABLE OUTCOMES:

- Number of new Licensed Three Star Plus Providers
- Number of families served
- Number of children served
- Increase in revenue
- Increase in credentials

PROJECT: Apprenticeship Program/Pre-Apprenticeship Program
BUDGET: $300,000.00
PARTNERS: Southern New Mexico Independent Electrical Contractors, Inc. (SNMIEC)
New Mexico Department of Workforce Solutions

SCOPE OF WORK: Funding for this program will help to expand the local Independent Electrical Contractors (IEC) Apprenticeship Program. Funding will support SNMIEC's federally recognized electrical apprenticeship program that consists of a minimum of 576 hours of classroom instruction and a minimum of 8,000 (documented) on the job training hours (OJT's) with an electrical contracting company. Funding will also support a Mobile Lab Trailer for outreach events at local schools, Pre-Apprenticeship program resources and upskilling training for Licensed Journeypersons.

Additional funding will go to support the Pre-Apprenticeship program and support for transportation for Las Cruces Public School Pre-Apprenticeship participants.

Pre-Apprenticeship Programs provide career pathways for participants ages 16 – 24 by receiving on-the-job training in marketable occupations. Students will receive hands-on-training with industry professionals, working up to 400 hours, while earning $15.90 an hour. Businesses have an opportunity to produce skilled talent for their industry and prepare pre-apprentices for sustainable employment.

ELIGIBILITY: Apprentices currently enrolled in the Southern New Mexico Independent Electrical Contractors, Inc. Apprenticeship Program & Licensed Journeypersons. Students enrolled in the Pre-Apprenticeship program.

JUSTIFICATION:
Apprenticeship programs are an industry-driven, high-quality career pathway where employers can develop and prepare their future workforce. Since 2012 there has been a 64% increase in new apprenticeship programs across the country, including 2 million new apprentices. There have been 396,000 graduates of apprenticeship programs within the last five years and 14,700 new programs created of which 94% of graduates retained employment, earning an average annual salary of $70,000.00. Apprenticeship programs provide valuable education and training to build a ready workforce.

Of the 67 registered apprenticeship programs in New Mexico, only two are located here in Las Cruces; the first is the Data Scientist program offered through Doña Ana Community College. The second is the Southern New Mexico Independent Electrical Contractors (SNMIEC). SNMIEC is one of 50 chapters nationwide and has been offering training for over 30 years as a 505-c-6 non-profit, 4-year apprenticeship and training program. Over the next three years SNMIEC is hoping to expand their program to support a larger facility to accommodate and train new workers, pre-apprentices, electrical apprentices, and Journeyman electrician continuing education and safety training. Funding will help support the expansion and increase training opportunities for this workforce.

Pre-Apprenticeship programs provide career pathways for participants 16 – 24, earning $15.90 an hour, gaining up to 400 hours of training. Students gain hands-on experience, and mentorship from industry

professionals. Working with New Mexico Department of Workforce Solutions and Las Cruce Public Schools, funding will be allocating to support the Pre-Apprenticeship program in Las Cruces. Additional funding will go to assist with transportation needs for Pre-Apprenticeship students.

On November 15, 2021, President Biden signed the $1.2 Billion bipartisan Infrastructure Investment and Jobs Act (IIJA) into law. New Mexico is slated to get $2.6 billion in federal funding (out of more than $200 billion across the U.S.). for such projects as increasing access to high-speed internet, making improvements to public transit, and protecting systems from cyberattacks. A skilled labor force is essential to the completion of these projects.

The CHIPS Act will also require a highly skilled workforce to support semiconductor manufacturing through the construction of commercial fabrication facilities. Supporting the rising demand for talent to support semiconductor production - not just in advanced manufacturing, but in the wraparound skills important to the sector such as data analytics, software engineering, and project management- will require investments in workforce development and creation of new skills pathways, including apprenticeships. As labor participation rates remain down, states across the country are proposing funding for credentialing programs that move people quickly into high-need jobs, while obtaining value training and earning family sustaining wages.

Apprenticeship
Program Length: Two years
NUMBER OF CLIENTS TO BE SERVED: 50-100
TIMELINE/BUDGET:

SPRING 2024/FALL 2024
Journeyperson Continued Education Training – every 6 weeks
Pre-Apprenticeship & Starter tool kits (Training, purchasing & distribution of materials)
Mobile Lab Trailer, lab parts, virtual reality, and vehicle to pull (purchase & outreach)

SPRING 2025/FALL 2025
Journeyperson Continued Education Training – every six weeks
Pre-Apprenticeship & Starter tool kits (Training, Additional Purchasing & Distribution of materials)
Upgraded lab stations (Construction)

Journeyperson Continued Education - $32,000.00
Pre-Apprenticeship & Starter tool kits - $60,000.00
Upgraded lab stations (5) – $16,000
Mobile Lab Trailer, lab parts, virtual reality and vehicle to pull - $92,000.00

Total Budget: $200,000.00

MEASURABLE OUTCOMES:

- Completion of training hours
- Demonstrate proficiency in knowledge of industry/occupation/skilled trade
- Certifications obtained
- Wage increase
- Purchase and use of Mobile Lab Station
- Construction of Lab Stations

Pre-Apprenticeship

Program Length: Two years
NUMBER OF CLIENTS TO BE SERVED: 20 -25
TIMELINE/BUDGET:

COHORT 1 - FALL 2024/SPRING 2025
(JUN. – JUL. Recruit for first cohort)

COHORT 2 – FALL 2025/SPRING 2026
(JUN. –JUL. Recruit for second cohort)

TOTAL PROGRAM BUDGET: $100,000.00

MEASURABLE OUTCOMES:

- Completion of program hours
- Demonstrate proficiency in skilled trade
- Demonstrate proficiency in knowledge of industry/occupation
- Maintained a GPA of 2.0 or higher

ALIGNMENT WITH CITY PLANS:

The City of Las Cruces has set forth several strategic goals that focus on expanding economic opportunities and growing a trained workforce. Those goals include *ELC Goal CP-3: Entrepreneurship*, creating a nurturing regulatory environment that generates entrepreneurship and small business investment. *ELC Goal CP-2: Economic Equity*, generating employment opportunities that create economic security for all residents*. ELC Goal CP – 1: Ready Workforce*, created through the development of a strong and educated workforce that supports an expanding local and regional economy.

PROJECT: Manufacturing/Advanced Manufacturing Training
BUDGET: $100,000.00
PARTNERS: Mesilla Valley Economic Development Alliance (MVEDA)

SCOPE OF WORK: Working in partnership with Mesilla Valley Economic Development Alliance (MVEDA), this project will focus on assisting employers in upskilling their current workforce with existing industry certifications surrounding automation and advanced manufacturing and/or additive manufacturing.

ELIGIBILITY: Manufacturing businesses within the city of Las Cruces with an active business license.

JUSTIFICATION: The pandemic had a significant impact on a number of industries, including Manufacturing, affecting access to materials and disrupting supply chains. The industry however used this disruption to seek advancements in new technologies in integrated advanced and computized processes. The shift to Advanced Manufacturing processes has created the need to upskill our current workforce.

Advanced Manufacturing is defined as the implementation of cutting-edge technology into manufacturing processes, with the aim of raising performance, efficiency, flexibility, and production quality.

A report commissioned by MVEDA identified four major roles in demand by clients engaged in Advanced Manufacturing: Logistician, Automation Technician, Sustainable Manufacturing Process Technician and Advanced Machine Operators. The report also estimated an existing labor force of roughly 560,000 that currently support production output and another 27,000 with transferrable skills. With access to a workforce pipeline, educational institutions available to provide the necessary training, and a region with one of the largest manufacturing and distribution centers in North America, investing in Advanced Manufacturing training would enhance the region to attract intelligent manufacturing. Working in partnership with MVEDA, this project will focus on assisting employers in upskilling their current workforce to gain the training and certifications to meet the current and future demands of the Manufacturing industry.

Program Length: Two years
NUMBER OF CLIENTS TO BE SERVED: 5-10
TIMELINE/BUDGET: $100,000.00
JAN. 2024 – DEC. 2026

ALIGNMENT WITH CITY PLANS:

The City of Las Cruces has set forth several strategic goals that focus on expanding economic opportunities and growing a trained workforce. Those goals include *ELC Goal CP-3: Entrepreneurship*, creating a nurturing regulatory environment that generates entrepreneurship and small business investment. *ELC Goal CP-2: Economic Equity*, generating employment opportunities that create economic security for all residents*. ELC Goal CP – 1: Ready Workforce*, created through the development of a strong and educated workforce that supports an expanding local and regional economy.

MEASURABLE OUTCOMES:

- Number of employers served
- Number of employees trained
- Increase in skills
- Proficiency in skills
- Increase in wages

PROJECTS	BUDGET
Transitional Job Training	$240,000.00
Childcare Provider Program	$300,000.00
Apprenticeship Program	$200,000.00
Pre-Apprenticeship Program	$100,000.00
Manufacturing Training	$100,000.00
TOTAL	$940,000.00

*Additional $60,000.00 reserved for additional programming or administrative costs.

24-062

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 4, 2023
Drafter:	Charlie Fierro	**Department:**	Financial Services
Program:	Budget	**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 FY2024 BUDGET.**

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

PURPOSE(S) OF ACTION:

To accept awarded grants and adjust the FY24 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 Summary
Attachment "A" Grant Listing Final
Attachment "B" PW 23-H2977 Fully Executed Agreement
Attachment "C" PW 23-H2978 Fully Executed Agreement
Attachment "D" PW 23-H2980 Fully Executed Agreement
Attachment "E" PW 23-H2982 Fully Executed Agreement
Attachment "F" PW 23-H2983 Fully Executed Agreement
Attachment "G" PR 23-H2984 Agreement Fully Executed
Attachment "H" AP 23-H2985 Fully Executed Agreement
Attachment "I" PW 23-H2987 Fully Executed Agreement
Attachment "J" PW 23-H2988 Fully Executed Agreement
Attachment "K" PW 23-H2989 Fully Executed Agreement
Attachment "L" PR 23-H2990 Fully Executed Agreement

Attachment "M" PR 23-H2993 Fully Executed Agreement
Attachment "N" PW 23-H2994 Fully Executed Agreement
Attachment "O" QOL 23-H4096 Fully Executed Agreement
Attachment "P" PW 23-H4097 Fully Executed Agreement
Attachment "Q" CD MPO - FHWA Fully Exectuted Agreement
Attachment "R" CD MPO - FTA Fully Executed Agreement
Attachment "S" SUS FY23 Buildings UP Prize Acceptance Form
Attachment "T" QOL FY23 Creative Industries Fully Executed Agreement
Attachment "U" HNS Casa Connection Grant Agreement
Attachment "V" AP FAA AIP Grant Amedment
Attachment "W" PD FY23 COPS- 1 Fully Executed Agreement
Attachment "X" PD FY23 COPS-2 Fully Executed Agreement
Attachment "Y" PD FY24 VOCA Agreement Fully Executed

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
VARIOUS	VARIOUS	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 budget adjustments as presented and adjust the City’s FY2024 Budget.
2. Vote “No”; this will not approve the Resolution to adjust the budget as presented and return the funds to the granting agency.
3. Vote to “Amend”; this could delay the Resolution and the process of spending the grant funds within the predetermined grant schedule and require direction to staff.

4. Vote to “Table”; this will delay the Resolution and will impact the implementation of the grant agreement, the City departments ability to utilize the funds and return the grant funds to the granting agency.

RESOLUTION 24-062

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 FY2024 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 FY2024 City Budget to accept all grant awards as shown in the Fund Summary, Exhibit "A", attached hereto and made part of this Resolution.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

Exhibit "A"

	1000 GENERAL FUND 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 64,287,294	64,287,294	0	64,287,294
Revenues				
Municipal Gross Receipts Tax	54,285,239	54,285,239	0	54,285,239
Public Safety Gross Receipts Tax	4,880,700	4,880,700	0	4,880,700
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	47,825,436	47,825,436	0	47,825,436
Environmental Gross Receipts Tax	2,259,525	2,259,525	0	2,259,525
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	15,000	15,000	0	15,000
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	825,000	825,000	0	825,000
Lodgers Tax	0	0	0	0
Property Taxes	13,655,649	13,655,649	0	13,655,649
Payment In Lieu of Property Tax	867,573	867,573	0	867,573
Franchise Fees	2,805,951	2,805,951	0	2,805,951
Payment In Lieu of Franchise Fees	1,236,000	1,236,000	0	1,236,000
Licenses, Fees & Permits	3,123,510	3,128,510	0	3,128,510
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	81,100	81,100	0	81,100
Charges For Services	2,367,209	2,372,209	0	2,372,209
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	4,224,128	4,224,128	0	4,224,128
Investment Income	141,000	141,000	0	141,000
Miscellaneous Revenues	140,112	140,112	0	140,112
Federal Grants	0	0		0
State Grants	0	0		0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**138,733,132**	**138,743,132**	**0**	**138,743,132**
TOTAL RESOURCES	**$ 203,020,426**	**203,030,426**	**0**	**203,030,426**
Expenditures				
General Government	4,781,377	4,781,377	0	4,781,377
Legislative	519,035	519,035	0	519,035
Municipal Court	2,106,314	2,106,314	0	2,106,314
Chief Administrative Officer	285,228	285,228	0	285,228
City Manager	6,641,813	6,805,313	0	6,805,313
Legal	2,728,546	2,728,546	0	2,728,546
Las Cruces Police Department	34,427,931	34,495,395	0	34,495,395
Las Cruces Fire Department	21,499,980	21,782,476	0	21,782,476
Utilities	0	0	0	0
Economic Development	4,372,325	4,372,325	0	4,372,325
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	3,438,804	3,588,804	0	3,588,804
Financial Services	7,467,508	7,467,508	0	7,467,508
Information Technology	6,352,622	6,355,158	0	6,355,158
Fleet	0	0	0	0
Assistant City Manger-500	9,471,636	9,488,017	0	9,488,017
Parks & Recreation	18,511,145	19,276,121	0	19,276,121
Community Development	5,126,792	5,276,792		5,276,792
Quality of Life	8,779,933	9,891,796		9,891,796
Public Works	10,479,099	10,778,077	0	10,778,077
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 146,990,088**	**149,998,282**	**0**	**149,998,282**
Other Resources				
Operating Transfers In	0	400,408	0	400,408
Operating Transfers Out	(19,369,208)	(19,504,221)	(68,736)	(19,572,957)
Total Other Resources	**$ (19,369,208)**	**(19,103,813)**	**(68,736)**	**(19,172,549)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 36,661,130**	**33,928,331**	**(68,736)**	**33,859,595**
Required Reserve:				
State Required 1/12th	12,249,174	12,499,857	0	12,499,857
Local CLC 1/12th	12,249,174	12,499,857	0	12,499,857
AVAILABLE BALANCE	**$ 12,162,782**	**8,928,617**	**(68,736)**	**8,859,883**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	2100 SPECIAL REVENUE REIMB GRANTS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 698,496	698,496	0	698,496
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	1,538	0	1,538
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	247,000	247,000	0	247,000
Federal Grants	14,620,646	14,721,028	2,050,000	16,771,028
State Grants	5,898,088	9,749,254	1,622,250	11,371,504
Local Grants	26,065	32,577	0	32,577
Debt Service	0	0	0	0
Total Revenues	**20,791,799**	**24,751,397**	**3,672,250**	**28,423,647**
TOTAL RESOURCES	**$ 21,490,295**	**25,449,893**	**3,672,250**	**29,122,143**
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	10,000,000	10,129,440	1,000,000	11,129,440
Legal	0	0	0	0
Las Cruces Police Department	2,707,818	2,841,077	2,272,250	5,113,327
Las Cruces Fire Department	1,314,070	1,043,795	0	1,043,795
Utilities	875,000	1,253,926	0	1,253,926
Economic Development	2,497,596	5,497,596	0	5,497,596
Internal Audit	0	0	0	0
Assistant City Manager-400	501,795	581,508	0	581,508
Human Resources	0	0	0	0
Financial Services	412,656	375,097	0	375,097
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	300,000	300,000
Parks & Recreation	9,793	384,334	0	384,334
Community Development	338,931	398,550	0	398,550
Quality of Life	1,769,141	1,907,091	100,000	2,007,091
Public Works	365,000	348,895	0	348,895
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 20,791,800**	**24,761,309**	**3,672,250**	**28,433,559**
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	**$ 698,495**	**688,584**	**0**	**688,584**

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

Exhibit "A"

	4100 CAPITAL PROJECTS REIMB GRANTS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ (0)	(0)	0	(0)
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	7,108,138	5,467,825	0	5,467,825
State Grants	12,716,645	12,351,193	4,761,063	17,112,256
Local Grants	851,264	861,264	0	861,264
Debt Service	0	0	0	0
Total Revenues	20,676,047	18,680,282	4,761,063	23,441,345
TOTAL RESOURCES	$ 20,676,047	18,680,282	4,761,063	23,441,345
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	330,000	330,000	0	330,000
Utilities	0	0	0	0
Economic Development	876,147	1,776,147	0	1,776,147
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	370,000	370,000	0	370,000
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	3,323,869	3,820,138	610,000	4,430,138
Community Development	0	0	0	0
Quality of Life	0	0	690,746	690,746
Public Works	15,776,031	12,383,997	3,460,317	15,844,314
Legislative Reserve	0	0	0	0
Total Expenditures	$ 20,676,047	18,680,282	4,761,063	23,441,345
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	$ (0)	(0)	0	(0)

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

Exhibit "A"

	5010 AIRPORT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 909,363	909,363	0	909,363
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	61,500	61,500	0	61,500
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	120,000	120,000	0	120,000
Federal Grants	0	0	28,949	28,949
State Grants	3,148,527	4,351,015	1,050,000	5,401,015
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	3,330,027	4,532,515	1,078,949	5,611,464
TOTAL RESOURCES	$ 4,239,390	5,441,878	1,078,949	6,520,827
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	4,876,992	6,012,822	1,078,949	7,091,771
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	$ 4,876,992	6,012,822	1,078,949	7,091,771
Other Resources				
Operating Transfers In	1,013,000	1,013,000	0	1,013,000
Operating Transfers Out	0	0	0	0
Total Other Resources	$ 1,013,000	1,013,000	0	1,013,000
Accrual Adjustments	0	0	0	0
ENDING BALANCE	$ 375,398	442,056	0	442,056

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

Exhibit "A"

	7490 MPO 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 0	0	0	0
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	489,428	489,428
State Grants	0	0	0	0
Local Grants	0	0	21,707	21,707
Debt Service	0	0	0	0
Total Revenues	0	0	511,135	511,135
TOTAL RESOURCES	$ 0	0	511,135	511,135
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	579,871	579,871
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	$ 0	0	579,871	579,871
Other Resources				
Operating Transfers In	0	0	68,736	68,736
Operating Transfers Out	0	0		0
Total Other Resources	$ 0	0	68,736	68,736
Accrual Adjustments	0	0	0	0
ENDING BALANCE	$ 0	0	(0)	(0)

ATTACHMENT "A"

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/04/2023
Requested Amount: $165,500.00
Amount of Award: $ 165,000.00
Award Notification Date:
Grant Agreement #: 23-H2977
Funding Agency: New Mexico Department of Finance and Administration (DFA)

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2977 Las Cruces Branigan Cultural Center
Type of Funding: State Capital
Type of Grant: Competitive
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, demolish, equip, install and improve the Branigan Cultural Center, including repair of woodwork and stucco, windows, fire suppression systems, heating, ventilation and air conditioning systems, abatement of hazardous materials structural stabilization and exterior painting and repair, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Works
Line of Business: Public Infrastructure
Program: Architectural Management
Project Manager: Sreedevi Bhathala Moharai
Email: sbhathalam@lascruces.gov
Phone: 575.541.2538
MUNIS Dept. Number: 6610

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40255005-599200-23977
Expense account: 4100-40255005-801000-23977

Capital Assets: ☑ YES ☐ NO
Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 23977
Set-Up Date: 10/23/2023
Date to Accounting: 10/23/2023
Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 11/02/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date:
Requested Amount: $850,000.00
Amount of Award: $ 850,000.00
Award Notification Date:
Grant Agreement #: 23-H2978
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2978 Las Cruces Community Kitchen
Type of Funding: State Capital
Type of Grant: Competitive
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, renovate and equip an economic and workforce development facility, including a commercially licensed and certified shared-use community kitchen, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Works
Line of Business: Public Infrastructure
Program: Architectural Management
Project Manager: Sreedevi Bhathala Mohanraj
Email: sbhathalam@lascruces.gov
Phone: 575.541.2538
MUNIS Dept. Number:

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40255005-599200
Expense account: 4100-40255005-801000

Capital Assets: ☑ YES ☐ NO
Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 23978
Set-Up Date: 11/02/2023
Date to Accounting: 11/02/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/04/2023
Requested Amount: $100,000.00
Amount of Award: $ 100,000.00
Award Notification Date:
Grant Agreement #: 23-H2980
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2980 Las Cruces Fire Station 2 Improvement
Type of Funding: State Capital
Type of Grant: Competitive
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, equip and improve fire station 2, including demolition and construction of walls, cement flooring, bay doors, drains and electrical system improvements, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Works
Line of Business: Public Infrastructure
Program: Architectural Management
Project Manager: Sreedevi Bhathala Mohanraj
Email: sbhathalam@lascruces.gov
Phone: 575.541.2538
MUNIS Dept. Number: 6610

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40255005-599200-23980

Expense account: 4100-40255005-801000-23980

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Project Code # 23980
Set-Up Date: 10/23/2023
Date to Accounting: 10/23/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date:
Requested Amount: $100,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 100,000.00
Grant Agreement #: 23-H2982

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2982 Las Crucess Fire Station 6 Improvement
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, equip and improve fire station 6, including building repairs and remodeling of restroom facilities, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Works
Program: Architectural Management
Email: sbhathalam@lascruces.gov
MUNIS Dept. Number: 6610

Line of Business: Public Intrastructure
Project Manager: Sreedevi Bhathala Mohanrai
Phone: 575.541.2538

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40255005-599200-23982
Expense account: 4100-40255005-801000-23982

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 10/23/2023
Project Code # 23982
Date to Accounting: 10/23/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date:
Requested Amount: $250,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 250,000.00
Grant Agreement #: 23-H2983

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2983 Las Cruces Building Roof
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 10/30/2027

Grant Scope of Work:

To plan design and construct, repair and replace a roof on the building on the Mesilla Valley Community of Hope Campus in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Work
Program: Architectural Management
Email: sbhathalam@lascruces.gov
MUNIS Dept. Number: 6610

Line of Business: Public Infrastructure
Project Manager: Sreedevi Bhathala Mohanraj
Phone: 575.541.2538

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40255005-599200- 23983

Expense account: 4100-40255005-801000- 23983

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 10/23/2023
Project Code # 23983
Date to Accounting: 10/23/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date: 9/22/23
Requested Amount: $210,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 210,000.00
Grant Agreement #: 23-H2984

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2984 Las Cruces Klein Park
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, improve, install, furnish and equip Klein park, including paths, walkways, sidewalks, play and shade structures, stages, lighting, landscaping, irrigation, picnic areas, bus stops and infrastructure, in Las Cruces In Dona Ana county.

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

DEPARTMENT INFORMATION

Department: Parks and Recreation
Program: Parks, Sports Fields & Commy Forest
Email: cmathews@lascruces.gov
MUNIS Dept. Number: 3850

Line of Business: Constr, Maint. & Beautification
Project Manager: Catherine Mathews
Phone: 575.541.2592

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40245004-599200-23984
Expense account: 4100-40245004-805000-23984

Capital Assets: ☑ YES ☐ NO
Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Set-Up Date: 10/23/2023
Project Code # 23984
Date to Accounting: 10/23/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date:
Requested Amount: $1,050,000.00
Award Notification Date: 07/01/2023
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 1,050,000.00
Grant Agreement #: 23-H2985

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2985 Las Cruces International Airport Improvement
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, renovate, purchase, furnish and equip infrastructure improvements, including utilities, for the Las Cruces International Airport in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: City Manager's Office
Program: Airport
Email: anume@lascruces.gov
MUNIS Dept. Number: 400

Line of Business: Office of the ACM
Project Manager: Andy Hume
Phone: 575-541-2473

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 5010-50140022-599200
Expense account: 5010-50140022-804000

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 10/23/2023

Project Code # 23985
Date to Accounting: 10/23/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 01/02/2023
Application Submission Date:
Requested Amount: $1,025,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 1,025,000.00
Grant Agreement #: 23-H2987

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2987 Las Cruces Mesquite Historical District
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To acquire rights of way and to plan, design, construct, improve and equip the Mesquite historic district, including lighting, signage, entryways, landscaping and infrastructure, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Works
Program: Architectural Management
Email: karend@lascruces.gov
MUNIS Dept. Number: 6610

Line of Business: Public Infrastructure
Project Manager: Kyle Arend
Phone: 575-528-3451

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40247002-599200
Expense account: 4100-40247002-804000

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 01/02/2023

Project Code # 23987
Date to Accounting: 01/02/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 11/03/2023
Application Submission Date:
Requested Amount: $50,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 50,000.00
Grant Agreement #: 23-H2988

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2988 Las Cruces Museum of Nature and Science Improvement
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: NA
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, furnish, equip, install and improve the Museum of Nature and Science, including electrical and data cabling, ports and related infrastructure, sales area, adjacent structures, and atrium entrance, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Works
Program: Architectural Management
Email: sbhathalam@lascruces.gov
MUNIS Dept. Number: 6610

Line of Business: Public Infrastructure
Project Manager: Sreedevi Bhathala Mohanraj
Phone: 575.541.2538

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue Account: 4100-40255005-599200
Expense Account: 4100-40255005-801000

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 11/03/2023
Project Code # 23988
Date to Accounting: 11/03/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date:
Requested Amount: $660,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 660,000.00
Grant Agreement #: 23-H2989

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2989 The Las Cruces Pioneer Women's Park
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, demolish, replace, renovate and equip a gazebo, park lighting, concrete foundations, walkways, seating, electrical systems, and other park improvements at Pioneer Women's Park in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Works
Program: Architectural Management
Email: sbhathalam@lascruces.gov
MUNIS Dept. Number: 6610

Line of Business: Public Infrastructure
Project Manager: Sreedevi Bhathala Moharai
Phone: 575.541.2538

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40255005-599200-23989
Expense account: 4100-40255005-805000-23989

Capital Assets: ☑ YES ☐ NO
Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Set-Up Date: 10/23/2023
Project Code # 23989
Date to Accounting: 10/23/2023
Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date:
Requested Amount: $300,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 300,000.00
Grant Agreement #: 23-H2990

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2990 Las Cruces Parks Improvements
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan design, construct, furnish, equip and improve park facilities, including parking, accessibility and code compliance and repairs and renovations to address safety, structural aesthetic and maintenance issues, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Parks and Recreation
Program: Parks, Sports Fields & Commy Forest
Email: cmathews@lascruces.gov
MUNIS Dept. Number: 3850

Line of Business: Constr, Maint. & Beautification
Project Manager: Catherine Mathews
Phone: 575.541.2592

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40245004-599200
Expense account: 4100-40245004-805000

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 10/23/2023
Project Code # 23990
Date to Accounting: 10/23/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date:
Requested Amount: $100,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 100,000.00
Grant Agreement #: 23-H2993

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2993 Las Cruces Trails Improvement
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, improve, install, repair and equip trails, multi-use trails and paths, including trail surfacing and infrastructure, erosion control, safety features, signage, access controls, fencing, lighting and electrical systems, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Parks and Recreation
Program: Parks, Sports Fields & Commy Forest
Email: cmathews@lascruces.gov
MUNIS Dept. Number: 3850

Line of Business: Constr, Maint. & Beautification
Project Manager: Catherine Mathews
Phone: 575.541.2592

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40245004-599200
Expense account: 4100-40245004-805000

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 10/23/2023
Project Code # 23993
Date to Accounting: 10/23/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date:
Requested Amount: $250,000.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 250,000.00
Grant Agreement #: 23-H2994

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H2994 Las Cruces Veterans Memorial Park Improvement
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2027

Grant Scope of Work:

To plan, design, construct, install, furnish and equip improvements to Veterans Memorial Park, including the memorial walkway and construction of a visitor center with restrooms and related infrastructure, in Las Cruces in Dona Ana County.

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

DEPARTMENT INFORMATION

Department: Public Works
Program: Architectural Management
Email: sbhathalam@lascruces.gov
MUNIS Dept. Number: 6610

Line of Business: Public Infrastructure
Project Manager: Sreedevi Bhathala Moharai
Phone: 575.541.2538

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40255005-599200-23994
Expense account: 4100-40255005-805000-23994

Capital Assets: ☑ YES ☐ NO
Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Set-Up Date: 10/23/2023
Project Code # 23994
Date to Accounting: 10/23/2023
Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 11/02/2023
Application Submission Date:
Requested Amount: $690,746.25
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 690,746.25
Grant Agreement #: 23-H4096

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H4096 Childrens Museum
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2025

Grant Scope of Work:

To plan, design, construct, furnish, and equip a children's museum in Las Cruces in Dona Ana County shall not be expended for the original purpose but is changed to plan, design, construct, expand, renovate, improve, furnish and equip facilities for a children's museum in Las Cruces.

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

DEPARTMENT INFORMATION

Department: Quality of Life
Program: Visitor Experience
Email: rslaughter@lascruces.gov
MUNIS Dept. Number: 540

Line of Business: Museums
Project Manager: Rebecca Slaughter
Phone: 575.541.2156

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40454001-599200
Expense account: 4100-40454001-721080

Capital Assets: ☐ YES ☑ NO

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

Grant Application #: N/A
Set-Up Date: 11/02/2023
Project Code # 24989
Date to Accounting: 11/02/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/23/2023
Application Submission Date:
Requested Amount: $10,317.00
Award Notification Date:
Funding Agency: State of New Mexico Department of Finance and Administration (DFA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 10,317.00
Grant Agreement #: 23-H4097

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H4097 Mesilla Valley Community of Hope Flooring System
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2025

Grant Scope of Work:

To plan, design, construct, purchase and install a flooring system at the Mesilla Valley Community of Hope Campus in Las Cruces in Dona County shall not be expended for the original purpose but is changed to plan, design, construct, purchase, equip and furnish building improvements at the Mesilla Valley Community of Hope Campus.

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

DEPARTMENT INFORMATION

Department: Public Works
Program: Architectural Management
Email: sbhathalam@lascruces.gov
MUNIS Dept. Number: 6610

Line of Business: Public Infrastructure
Project Manager: Sreedevi Bhathala Mohanraj
Phone: 575.541.2538

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 4100-40255005-599200-23097
Expense account: 4100-40255005-801000-23097

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 10/23/2023
Project Code # 23097
Date to Accounting: 10/23/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 10/26/2023
Application Submission Date:
Requested Amount:
Award Notification Date: 09/29/2023
Funding Agency: New Mexico Department of Transportation-Federal Highway Administration (FHWA
CFDA #:

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 379,327.00
Grant Agreement #: D19358-P123040
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: FFY 2023-2024 Federal Highway Administration (FHWA) Funding
Type of Funding: Federal Operating
Grantor Type: Federal
Match Description: Local Cash Match
Match Source: MPO Operating
Grant Effective Date: 10/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Non-Competitive/Entitlement Recu
Match Amount: $ 62,918.00
Match Percent/Ratio: 16.6%
Grant Reversion Date: 09/30/2024

Grant Scope of Work:

Through the New Mexico Department of Transportation (NMDOT), the Federal Highway Administration (FHWA) provides funding to the Mesilla Valley Metropolitan Planning Organization (MVMOP) to implement the FFY 2023-2024 Unified Planning Work Program.

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

DEPARTMENT INFORMATION

Department: Community Development
Program: MPO
Email: awray@lascruces.org
MUNIS Dept. Number: 460

Line of Business: MV Metropolitan Planning Org.
Project Manager: Andrew Wray
Phone: 575-528-3070

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Total $442,245 - Grant $379,327 and Match $62,918
Revenue accounts: 7490-599100-24080 - $379,327; 1000-990200-97490 - $41,211.29; 7490-599300-24080 - $21,077.53; 7490-599300-24080 - $629.18.
Expense accounts: 70546001-101180/600000/601000/601120/601130/601140/601160/601170/601180/601230/601260/701000/701020/701040/701040/701060/701080/721060/721070/721080/730100/731100/732300/760000/701180

Capital Assets: ☐ **YES** ☑ **NO**

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

Grant Application #: N/A
Set-Up Date:
Project Code # 24080
Date to Accounting: 10/27/2023

Accounting Department Info: Maria Sanchez

FHWA - 24080

Sum of New Budget		
Org	Object	Total
70546001	101180	$ 15,380.00
70546001	600000	$ 10,114.00
70546001	601000	$ 195,706.00
70546001	601010	$ -
70546001	601040	$ -
70546001	601120	$ 2,743.00
70546001	601130	$ 11,723.00
70546001	601140	$ 32,882.00
70546001	601160	$ 1,614.00
70546001	601170	$ 23,612.00
70546001	601180	$ 36.00
70546001	601200	$ -
70546001	601230	$ 168.00
70546001	601260	$ 3,915.00
70546001	701000	$ 4,974.00
70546001	701020	$ 2,487.00
70546001	701040	$ 819.00
70546001	701060	$ 2,985.00
70546001	701080	$ 1,756.00
70546001	721060	$ 2,500.00
70546001	721070	$ 12,000.00
70546001	721080	$ 103,249.00
70546001	730100	$ 1,990.00
70546001	731100	$ 398.00
70546001	732300	$ 3,574.00
70546001	760000	$ 5,000.00
70546001	701180	$ 2,620.00
70546001 Total		$ 442,245.00
Grand Total		$ 442,245.00

FED	7490	7490	599100	24080	$ 369,213.00	
FED	7490	7490	599100	24080	$ 10,114.00	
				FED	$ 379,327.00	
CITY	1000	1000	990200	97490	$ 41,211.29	
COUNTY	7490	7490	599300	24080	$ 21,077.53	
TOM	7490	7490	599300	24080	$ 629.18	
				MATCH	$ 62,918.00	
				TOTAL	$ 442,245.00	

(SHOULD MATCH TOTAL EXPENSES)

CITY OF LAS CRUCES

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

Today's Date: 10/26/2023
Application Submission Date:
Requested Amount:
Award Notification Date: 09/08/2023
Funding Agency: New Mexico Department of Transportation - Federal Transit Administration
CFDA #: 20505
Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 110,101.00
Grant Agreement #: M01850
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: FFY 2023-2024 Federal Transit Administration (FTA) Funding
Type of Funding: Federal Operating
Grantor Type: Federal
Match Description: Local Cash Match
Match Source: MPO Operating
Grant Effective Date: 10/01/2023
Starting Fiscal Year of Grant: FY2024
Type of Grant: Non-Competitive/Entitlement Recu
Match Amount: $ 27,525.00
Match Percent/Ratio: 25%
Grant Reversion Date: 09/30/2024

Grant Scope of Work:

Through the New Mexico Department of Transportation (NMDOT), the Federal Transit Administration (FTA) Section 5303 and Section 5304 provides funding to the Mesilla Valley Metropolitan Planning Organization (MVMOP) to implement the FFY 2023-2024 Transit Planning Work Program.

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

DEPARTMENT INFORMATION

Department: Community Development
Program: MPO
Email: awray@lascruces.org
MUNIS Dept. Number: 460
Line of Business: MV Metropolitan Planning Org.
Project Manager: Andrew Wray
Phone: 575-528-3070

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Total $137,626 - Grant $110,101 and Match $27,525

Revenue accounts: 7490-599100-24081 - $110,101; 7490-990100-9100 - $27,525

Expense accounts:

70546001-601000/601120/601130/601140/601160/601180/601230/601140/601160/601180/601230/601260/701000/701020/701040/701080/701180/721070/721080/760000

Capital Assets: ☐ **YES** ☑ **NO**

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

Grant Application #: N/A
Project Code # 24081
Set-Up Date:
Date to Accounting: 10/27/2023
Accounting Department Info: Maria Sanchez

FTA - 24081

Sum of New Budget			
Org	Object	Total	
70546001	601000	$	70,995.00
70546001	601010	$	-
70546001	601040	$	-
70546001	601120	$	1,028.00
70546001	601130	$	4,393.00
70546001	601140	$	13,120.40
70546001	601160	$	278.20
70546001	601170	$	-
70546001	601180	$	12.00
70546001	601200	$	-
70546001	601230	$	56.00
70546001	601260	$	1,420.00
70546001	701000	$	750.00
70546001	701020	$	750.00
70546001	701040	$	281.40
70546001	701060	$	81.00
70546001	701080	$	187.50
70546001	701180	$	1,155.00
70546001	721070	$	21,183.95
70546001	721080	$	21,184.55
70546001	760000	$	750.00
70546001 Total		$	137,626.00
Grand Total		$	137,626.00

FED	7490	7490	599100	24081	$110,101.00
MATCH	7490	7490	990100	91000	$27,525.00
					$137,626.00

(SHOULD MATCH TOTAL EXPENSES)

CITY OF LAS CRUCES

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

Today's Date: 11/03/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date: 7/18/23
Council Budget Adjustment Date: 12/04/2023
Requested Amount: $400,000
Amount of Award: $ 300,000.00
Award Notification Date: 10/11/2023
Grant Agreement #: N/A
Funding Agency: US Department of Energy, Building Technologies Office

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: American-Made Buildings Upgrade Prize
Type of Funding: Federal Operating
Type of Grant: Competitive
Grantor Type: Federal
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 11/01/2023
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 12/31/2024

Grant Scope of Work:

The prize amount of $300,000 is to launch a pilot home retrofit program that will increase affordability and resilience in equity-eligible neighborhoods.

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

DEPARTMENT INFORMATION

Department: Assistant City Manager
Line of Business: Sustainability (0540)
Program: Sustainability
Project Manager: Lisa Larocque
Email: llarocque@lascruces.gov
Phone: 575.541.2177
MUNIS Dept. Number: 0500

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 2100-20540001-599100

Expense account: 2100-20540001-721080

Capital Assets: ☐ YES ☑ NO

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

Grant Application #: N/A
Project Code # 24250
Set-Up Date: 11/02/2023
Date to Accounting: 11/03/2023

Accounting Department Info: Maria Sanchez

CITY OF LAS CRUCES

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

Today's Date: 10/31/2023
Application Submission Date:
Requested Amount: $100,000.00
Award Notification Date: 09/27/2023
Funding Agency: New Mexico Economic Development Department (EDD)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 100,000.00
Grant Agreement #: N/A

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Creative Industries
Type of Funding: State Operating
Type of Grant: Competitive
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Source: N/A
Match Percent/Ratio: N/A
Grant Effective Date: 09/27/2023
Starting Fiscal Year of Grant: FY2023
Grant Reversion Date: 06/30/2024

Grant Scope of Work:
To comprehensively support artists and local businesses within the creative economy, the City of Las Cruces Economic Development Department is collaboratively partnering with local business entities and the City' s Quality of Life Department.

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

DEPARTMENT INFORMATION

Department: Quality of Life
Program: Library Programs
Email: sbooth@lascruces.gov
MUNIS Dept. Number:

Line of Business: Libraries
Project Manager: Sarah Booth
Phone: 575-528-4017

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue accounts: 2100-10254001 - 599200

Expense accounts: 2100-
20254001 - 601050 $20,000; 20254001-701000 $ 5,000; 20254001-701180 $ 14,875
20254001 - 721080 $35,125; 20254001-780050- $ 5,000; 20254001-801000 $ 20,000

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Project Code # 24099
Set-Up Date: 11/02/2023
Date to Accounting: 11/02/2023

Accounting Department Info: N/A

CITY OF LAS CRUCES

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

Today's Date: 11/03/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date: 3/5/23
Council Budget Adjustment Date: 12/04/2023
Requested Amount: 1,000,000.00
Amount of Award: $ 1,000,000.00
Award Notification Date: 10/18/2023
Grant Agreement #:
Funding Agency: New Mexico Department of Finance and Administration

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Casa Connection Grant: Three Sisters Apartments
Type of Funding: State Capital
Type of Grant: Competitive
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: 0
Match Source: None
Grant Effective Date: 10/30/2023
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 06/30/2025

Grant Scope of Work:
To complete the re-design of The Three Sisters CIC, LLLP development to reduce construction costs on the buildings as well as retaining walls and more cost efficiently to retain water flows on site.

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

DEPARTMENT INFORMATION

Department: City Manager
Line of Business: Housing & Neighborhood Serv
Program: Affordable Housing
Project Manager: Natalie Green
Email: ngreen@lascruces.gov
Phone: 575-528-3086
MUNIS Dept. Number:

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

2100-20430021 721080 -State Revenue $1,000,000.00
2100-20430021 599100 - Expenses $1,000,000.00
2705-20430051-721080- TELSHOR FUND NO FUND SUMMARY

Capital Assets: ☑ YES ☑ NO

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

Grant Application #:
Project Code # 24272
Set-Up Date: 11/03/2023
Date to Accounting: 11/03/2023

Accounting Department Info:

CITY OF LAS CRUCES

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

Today's Date: 11/03/2023
Application Submission Date:
Requested Amount: $28,949.00
Award Notification Date:
Funding Agency: Federal Aviation Administration (FAA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 28,949.00
Grant Agreement #: FAA 3-35-0024-034-2020

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: AIP Grant No 3-35-0024-034-2020
Type of Funding: Federal Capital
Grantor Type: Federal
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 05/20/2020
Starting Fiscal Year of Grant: FY2024

Type of Grant: Competitive
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 06/30/2024

Grant Scope of Work:

Grant is to conduct Airport Related Environmental Assessment/Plan/Study and Preliminary Engineering for Design of decoupling of runway 8/26.

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

DEPARTMENT INFORMATION

Department: City Manager's Office
Program: Airport
Email: anume@lascruces.gov
MUNIS Dept. Number: 400

Line of Business: Office of the CM
Project Manager: Andy Hume
Phone: 575-541-2473

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 50140012-599100-11940
Expense account: 50140012-804000-11940

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Set-Up Date: 11/03/2023
Project Code # 11940
Date to Accounting:

Existing project number

Accounting Department Info:

CITY OF LAS CRUCES

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

Today's Date: 11/03/2023
Application Submission Date:
Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Requested Amount: $1,750,000
Amount of Award: $ 1,750,000.00
Award Notification Date: 09/20/2023
Grant Agreement #: 15JCOPS-23-GG-01724-TECP
Funding Agency: Department of Justice (DOJ)-Office of Community Oriented Policing Services (COP

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: FY23 COPS Technology and Equipment Program
Type of Funding: Federal Operating
Type of Grant: Competitive
Grantor Type: Federal
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 12/29/2022
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 12/31/2024

Grant Scope of Work:

The scope of this project is to replace aging SWAT team equipment used in the Southern New Mexico region. This includes an all-hazards mobile operations and communication center, a critical incident rescue vehicle and tow vehicle, a separate regional rescue vehicle, and a public safety response vehicle to transport swat officers to emergency locations.

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

DEPARTMENT INFORMATION

Department: City Manager Office
Line of Business: Police
Program: Administration
Project Manager: Laurie Padilla
Email: lpadilla@lascruces.gov
Phone: 575-528-4135
MUNIS Dept. Number:

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue account: 2100-20232006-599100

Expense account: 2100-20232006-80800

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Project Code # 23125
Set-Up Date: 11/02/2023
Date to Accounting: 11/02/2023

Accounting Department Info:

CITY OF LAS CRUCES

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

Today's Date: 11/03/2023
Application Submission Date:
Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Requested Amount: $450,000
Amount of Award: $ 450,000.00
Award Notification Date: 09/20/2023
Grant Agreement #: 15JCOPS-23-GG-01728-TECP
Funding Agency: Department of Justice (DOJ)-Office of Community Oriented Policing Services (COP

CFDA #:
Funder MUNIS CID #: 18

PROJECT INFORMATION

Grant Project Title: FY23 COPS Technology and Equipment Program
Type of Funding: State Operating
Type of Grant: Competitive
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 06/30/2027

Grant Scope of Work:
The scope of this project is to purchase crime deterrence equipment. This includes four mobile security trailer systems, automated license plate readers, and body and in-car camera unit integration systems.

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

DEPARTMENT INFORMATION

Department: City Manager Office
Line of Business: Police
Program: Administration
Project Manager: Laurie Padilla
Email: lpadilla@lascruces.gov
Phone: 575-528-4135
MUNIS Dept. Number:

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Revenue Account: 2100-20232006-599100

Expense Accounts:

2100-20232006-701020-$48,400

2100-20232006-808000-$201,600

2100-20232006-701200-$200,000

Capital Assets: ☑ YES ☐ NO

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

Grant Application #: N/A
Project Code # 23082
Set-Up Date: 11/02/2023
Date to Accounting: 11/02/2023

Accounting Department Info:

CITY OF LAS CRUCES

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

Today's Date: 11/02/2023
Application Submission Date: 10/23/23
Requested Amount: $72,250.00
Award Notification Date:
Funding Agency: New Mexico Crime Victims Reparation Commission (VOCA)

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/04/2023
Amount of Award: $ 72,250.00
Grant Agreement #: 2024-VA-313

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: FFY21 Voca Victim Assistance
Type of Funding: State Operating
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 10/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Non-Competitive/Entitlement Recu
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 09/30/2024

Grant Scope of Work:

The VOCA grant is awarded for a multi-year period and is resubmitted annually for continuation. The agreement is in the amount of $72,250 with no match required and provides for two Crime Victim Advocates.

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

DEPARTMENT INFORMATION

Department: City Managers Office
Program: Police
Email: lpadilla@lascruces.gov
MUNIS Dept. Number:

Line of Business: Police
Project Manager: Laurie Padilla
Phone: 575-528-4135

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Same as Project #23100
Revenue account: 2100-20132001-599100
Expense accounts: 2100-20132001-601010
2100-20132001-601110
2100-20132001-601140
2100-20132001-701000

Capital Assets: ☐ YES ☑ NO

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

Grant Application #: N/A
Set-Up Date: 11/03/2023
Project Code # 24100
Date to Accounting: 11/03/2023

Accounting Department Info: Maria Sanchez

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 223**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2977
- APPROPRIATION AMOUNT: $165,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 223
- ONE HUNDRED SIXTY-FIVE THOUSAND ($165,000.00),
- to plan, design, construct, demolish, equip, install and improve the Branigan cultural center, including repair of woodwork and stucco, windows, fire suppression systems, heating, ventilation and air conditioning systems, abatement of hazardous materials, structural stabilization and exterior painting and repair, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE HUNDRED SIXTY-FIVE THOUSAND $165,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ONE THOUSAND SIX HUNDRED FIFTY $1,650.00, which equals ONE HUNDRED SIXTY-THREE THOUSAND THREE HUNDRED FIFTY $163,350.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/25/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/11/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, Including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Joaquelin Rubalcava

Email: jrubalcava@las-cruces.org

Signature:

Email: ttrevino@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 224**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2978
- APPROPRIATION AMOUNT: $850,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 224
- EIGHT HUNDRED FIFTY THOUSAND ($850,000.00),
- to plan, design, construct, renovate and equip an economic and workforce development facility, including a commercially licensed and certified shared-use community kitchen, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed EIGHT HUNDRED FIFTY THOUSAND $850,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, EIGHT THOUSAND FIVE HUNDRED $8,500.00, which equals EIGHT HUNDRED FORTY-ONE THOUSAND FIVE HUNDRED $841,500.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/14/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

9/22/2023

Date

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 226**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2980
- APPROPRIATION AMOUNT: $100,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 226
- ONE HUNDRED THOUSAND ($100,000.00),
- to plan, design, construct, equip and improve fire station 2, including demolition and construction of walls, cement flooring, bay doors, drains and electrical system improvements, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE HUNDRED THOUSAND $100,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals ONE HUNDRED THOUSAND $100,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/14/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

9/22/2023

Date

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 228**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2982
- APPROPRIATION AMOUNT: $100,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 228
- ONE HUNDRED THOUSAND ($100,000.00),
- to plan, design, construct, equip and improve fire station 6, including building repairs and remodeling of restroom facilities, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE HUNDRED THOUSAND $100,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals ONE HUNDRED THOUSAND $100,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/29/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/11/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Joaquelin Rubalcava
Email: jrubalcava@las-cruces.org

Signature: David Sedillo
David Sedillo (Sep 21, 2023 08:37 MDT)
Email: dsedillo@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 229**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2983
- APPROPRIATION AMOUNT: $250,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 229
- TWO HUNDRED FIFTY THOUSAND ($250,000.00),
- to plan, design and construct, repair and replace a roof on the building on the Mesilla Valley community of hope campus in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed TWO HUNDRED FIFTY THOUSAND $250,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals TWO HUNDRED FIFTY THOUSAND $250,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. **Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:**

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. **Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. **Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. **Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/15/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/11/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

DocuSign Envelope ID: 9E8B88BA-A252-4B39-A42E-017FD48D62C9

Signature: Joaquelin Rubalcava
Email: jrubalcava@lascruces.gov

Signature: David Sedillo
David Sedillo (Sep 20, 2023 10:54 MDT)
Email: dsedillo@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 230**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2984
- APPROPRIATION AMOUNT: $210,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 230
- TWO HUNDRED TEN THOUSAND ($210,000.00),
- to plan, design, construct, improve, install, furnish and equip Klein park, including paths, walkways, sidewalks, play and shade structures, stages, lighting, landscaping, irrigation, picnic areas, bus stops and infrastructure, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed TWO HUNDRED TEN THOUSAND $210,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals TWO HUNDRED TEN THOUSAND $210,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/14/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

9/22/2023

Date

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 231**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2985
- APPROPRIATION AMOUNT: $1,050,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 231
- ONE MILLION FIFTY THOUSAND ($1,050,000.00),
- to plan, design, construct, renovate, purchase, furnish and equip infrastructure improvements, including utilities, for the Las Cruces international airport in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE MILLION FIFTY THOUSAND $1,050,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, TEN THOUSAND FIVE HUNDRED $10,500.00, which equals ONE MILLION THIRTY-NINE THOUSAND FIVE HUNDRED $1,039,500.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces
Entity Name

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

9/19/23
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...
By:

Its: Division Director

10/11/2023
Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Jacquelin Rubalcava
Email: jrubalcava@las-cruces.org

Signature: Andrew Hume
Email: AHUME@LAS-CRUCES.ORG

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 233**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I, PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2987
- APPROPRIATION AMOUNT: $1,025,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 233
- ONE MILLION TWENTY-FIVE THOUSAND ($1,025,000.00),
- to acquire rights of way and to plan, design, construct, improve and equip the Mesquite historic district, including lighting, signage, entryways, landscaping and infrastructure, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE MILLION TWENTY-FIVE THOUSAND $1,025,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals ONE MILLION TWENTY-FIVE THOUSAND $1,025,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/26/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/2/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Joaquin Rubalcava

Email: jrubalcava@las-cruces.org

Signature:

Email: ttrevino@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 234**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2988
- APPROPRIATION AMOUNT: $50,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 234
- FIFTY THOUSAND ($50,000.00),
- to plan, design, construct, furnish, equip, install and improve the museum of nature and science, including electrical and data cabling, ports and related infrastructure, sales area, adjacent structures and atrium entrance, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed FIFTY THOUSAND $50,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals FIFTY THOUSAND $50,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/26/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/2/2023

Date

DocuSign Envelope ID: 4FFDA9B3-E923-40D0-B434-7BF1CE9F0750

Signature: Joaquin Rubalcava

Email: jrubalcava@las-cruces.org

Signature:

Email: ttrevino@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 235**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2989
- APPROPRIATION AMOUNT: $660,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 235
- SIX HUNDRED SIXTY THOUSAND ($660,000.00),
- to plan, design, construct, demolish, replace, renovate and equip a gazebo, park lighting, concrete foundations, walkways, seating, electrical systems and other park improvements at Pioneer women's park in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed SIX HUNDRED SIXTY THOUSAND $660,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals SIX HUNDRED SIXTY THOUSAND $660,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
   i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
   ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
   iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces
Entity Name

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

9/25/25
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...
By:

Its: Division Director

10/11/2023
Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

DocuSign Envelope ID: 9E8B88BA-A252-4B39-A42E-017FD48D62C9

Signature: Jacqueline Rubalcava

Email: jrubalcava@las-cruces.org

Signature: Steven Bingham
Steven Bingham (Sep 18, 2023 14:50 MDT)

Email: sbingham@lascruces.gov

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 236**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2990
- APPROPRIATION AMOUNT: $300,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 236
- THREE HUNDRED THOUSAND ($300,000.00),
- to plan, design, construct, furnish, equip and improve park facilities, including parking, accessibility and code compliance and repairs and renovations to address safety, structural, aesthetic and maintenance issues, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed THREE HUNDRED THOUSAND $300,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, THREE THOUSAND $3,000.00, which equals TWO HUNDRED NINETY-SEVEN THOUSAND $297,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/15/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/11/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

DocuSign Envelope ID: 9E8B88BA-A252-4B39-A42E-017FD48D62C9

Signature: Jacquelin Rubalcava

Email: jrubalcava@lascruces.gov

Signature: Steven Bingham (Sep 20, 2023 15:56 MDT)

Email: sbingham@lascruces.gov

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 239**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2993
- APPROPRIATION AMOUNT: $100,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 239
- ONE HUNDRED THOUSAND ($100,000.00),
- to plan, design, construct, improve, install, repair and equip trails, multi-use trails and paths, including trail surfacing and infrastructure, erosion control, safety features, signage, access controls, fencing, lighting and electrical systems, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE HUNDRED THOUSAND $100,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals ONE HUNDRED THOUSAND $100,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
   i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
   ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
   iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/19/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/11/2023

Date

DocuSign Envelope ID: 9E8B88BA-A252-4B39-A42E-017FD48D62C9

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure Information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (I*f Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

DocuSign Envelope ID: 9E8B88BA-A252-4B39-A42E-017FD48D62C9

Signature: Jacquelin Rubalcava
Email: jrubalcava@las-cruces.org

Signature: Steven Bingham
Steven Bingham (Sep 15, 2023 15:05 MDT)
Email: sbingham@lascruces.gov

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 240**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2994
- APPROPRIATION AMOUNT: $250,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 240
- TWO HUNDRED FIFTY THOUSAND ($250,000.00),
- to plan, design, construct, install, furnish and equip improvements to Veterans memorial park, including the memorial walkway and construction of a visitor center with restrooms and related infrastructure, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed TWO HUNDRED FIFTY THOUSAND $250,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, TWO THOUSAND FIVE HUNDRED $2,500.00, which equals TWO HUNDRED FORTY-SEVEN THOUSAND FIVE HUNDRED $247,500.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
   i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
   ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
   iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/15/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/11/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, Including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

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Signature: Joaquin Rubalcava

Email: jrubalcava@las-cruces.org

Signature: David Sedillo
David Sedillo (Sep 21, 2023 09:51 MDT)

Email: dsedillo@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **City of Las Cruces**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2023, Chapter 203, Section 98, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

23-H4096 $690,746.25 APPROPRIATION REVERSION DATE: 30-JUN-2025
Laws of 2023, Chapter 203, Section 98, Six Hundred Ninety Thousand Seven Hundred Forty Six Dollars and Twenty Five cents ($690,746.25), to The unexpended balance of the appropriation to the local government division in Subsection 195 of Section 34 of Chapter 277 of Laws 2019 to plan, design, construct, furnish and equip a children's museum in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to plan, design, construct, expand, renovate, improve, furnish and equip facilities for a children's museum in Las Cruces. The time of expenditure is extended through fiscal year 2025.

The Grantee's total reimbursements shall not exceed Six Hundred Ninety Thousand Seven Hundred Forty Six Dollars and Twenty Five cents $690,746.25 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[49], if applicable, Zero Dollars and Zero Cents ($0.00), which equals Six Hundred Ninety Thousand Seven Hundred Forty Six Dollars and Twenty Five cents ($690,746.25) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." [OPTIONAL LANGUAGE: "Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict.] The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[50] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii)The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

---

[49] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[50] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or
b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St. Las Cruces NM 88001
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St. Las Cruces NM 88001
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Donna Stewart
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: DonnaJ.Stewart@dfa.nm.gov
Telephone: 505-231-2993

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025,** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or
(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
(iii) Termination for violation of the terms of this Agreement; or
(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the

database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or
(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Las Cruces** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Las Cruces's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Las Cruces** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New

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ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/25/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...

By:

Its: Division Director

10/11/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A.	Payment Request No.	
B.	Grant Amount:	$ 0.00
C.	AIPP Amount *(If Applicable)*:	$ 0.00
D.	Funds Requested to Date:	$ 0.00
E.	Amount Requested this Payment:	$ 0.00
F.	Reversion Amount (If *Applicable*):	$ 0.00
G.	Grant Balance:	$ 0.00

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : 2024 (July 1, 2023-June 30, 2024)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

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Signature: Jacqueline Rubalcava

Email: jrubalcava@las-cruces.org

Signature: Carol A. Brey
Carol A. Brey (Sep 19, 2023 14:04 MDT)

Email: cbrey@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Project Manager

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: $ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: Project Manager

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **City of Las Cruces**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2023, Chapter 203, Section 99, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

23-H4097 $10,317.00 APPROPRIATION REVERSION DATE: 30-JUN-2025
Laws of 2023, Chapter 203, Section 99, Ten Thousand Three Hundred Seventeen Dollars and Zero cents ($10,317.00), to The unexpended balance of the appropriation to the local government division in Subsection 197 of Section 34 of Chapter 277 of Laws 2019 to plan, design, construct, purchase and install a flooring system at the Mesilla Valley community of hope campus in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to plan, design, construct, purchase, equip and furnish building

improvements at the Mesilla Valley community of hope campus. The time of expenditure is extended through fiscal year 2025.

The Grantee's total reimbursements shall not exceed Ten Thousand Three Hundred Seventeen Dollars and Zero cents $10,317.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[51], if applicable, Zero Dollars and Zero Cents ($0.00), which equals Ten Thousand Three Hundred Seventeen Dollars and Zero cents ($10,317.00) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." [OPTIONAL LANGUAGE: "Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict.] The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[52] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of

[51] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[52] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or
b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St. Las Cruces NM 88001
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St. Las Cruces NM 88001
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Donna Stewart
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: DonnaJ.Stewart@dfa.nm.gov
Telephone: 505-231-2993

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025,** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or
(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
(iii) Termination for violation of the terms of this Agreement; or
(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee

shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acccptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
(ii) Twenty (20) days from date of Early Termination; or
(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:
(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse

the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate

bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Las Cruces** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Las Cruces's** decision as to

whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Las Cruces** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Las Cruces** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the **City of Las Cruces** may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **City of Las Cruces** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces
Entity Name

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

9/25/23
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
D891C24BB85B4E9...
By:

Its: Division Director

10/11/2023
Date

DocuSign Envelope ID: 9E8B88BA-A252-4B39-A42E-017FD48D62C9

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A.	Payment Request No.	
B.	Grant Amount:	$ 0.00
C.	AIPP Amount *(If Applicable)*:	$ 0.00
D.	Funds Requested to Date:	$ 0.00
E.	Amount Requested this Payment:	$ 0.00
F.	Reversion Amount (If *Applicable*):	$ 0.00
G.	Grant Balance:	$ 0.00

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : 2024 (July 1, 2023-June 30, 2024)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Jacquelin Rubalcava
Email: jrubalcava@las-cruces.org

Signature: David Sedillo
David Sedillo (Sep 21, 2023 09:00 MDT)
Email: dsedillo@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Project Manager

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: $ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: Project Manager

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Contract Number: D19358
Vendor Number: 54342

COOPERATIVE AGREEMENT

This Grant Agreement (Agreement) is between the New Mexico Department of Transportation (the **Department**) and Mesilla Valley Metropolitan Planning Organization (the **Grantee**), collectively referred to as "the Parties." This Agreement is effective as of the date of the last party to sign it on the signature page below. The Parties agree as follows:

1. **Award.** The Department hereby awards the Grantee funding for the following project: Mesilla Valley Metropolitan Planning Organization (MVMPO) Unified Planning Work Program for Federal Fiscal Years 2023-2026.

2. **Scope of Work.** The Grantee shall perform the professional services stated in the MVMPO Unified Planning Work Program available at the following address https://mesillavalleympo.org/, for the current fiscal year and the Department's Planning Procedures Manual, available at the following address: https://www.dot.nm.gov/planning-research-multimodal-and-safety/planning-division/multimodal-planning-and-programs-bureau/government-to-government/.

3. **Payment.** To be reimbursed for eligible expenses, the Grantee must submit timely, properly prepared reimbursement requests as provided in the Department's Planning Procedures Manual.

   a. The Grantee acknowledges the Department will not pay for any expenses incurred prior to the Parties signing the Agreement, after termination of the Agreement, or in excess of the amount of the federal award noted in Section 1.

   b. Reimbursement requests must be submitted at least quarterly (federal fiscal year) no later than twenty-five (25) days after the last day of the quarter. Each reimbursement request shall reflect the correct federal/local match ratio as applied to the total of costs incurred by the Grantee for the quarter, as noted in Section 1.

   c. When the Grantee pays more than its share of the total for a particular period, it must be clearly noted in the reimbursement request, and the amount of overpayment (over-match) will not be applied to future reimbursement requests.

   d. The Department reserves the right to withhold reimbursement if any of the aforementioned requirements are not met.

   e. The Grantee shall submit its final reimbursement request no later than thirty (30) days after termination of this Agreement.

f. If the Grantee fails to submit a reimbursement request for two contiguous quarters, the Grantee shall provide written justification for the lack of activity to the Department within fifteen (15) days of the end of the second contiguous quarter.

4. **Records and Audit.** The Grantee shall strictly account for all receipts and disbursements related to this Agreement. The Grantee shall record costs incurred, services rendered, and payment received, and shall maintain these financial records during the Agreement and for five (5) years from the date of submission of the final reimbursement request pursuant to 2 CFR 200.333 and 1.21.2 NMAC. On request, the Grantee shall provide the financial records to the Department and the state auditor, and shall allow the Department and the state auditor to inspect or audit these financial records during business hours at the Grantee's principal office during the Agreement and for five (5) years from the date of submission of the final reimbursement request. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty (30) days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the project, or otherwise used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty (30) days of written notice from the Department regarding the same.

5. **Officials Not to Benefit.** The parties intend that no member of the New Mexico legislature or the United States Congress, or any public official, public employee, tribal official, tribal council member, or tribal employee, in that person's individual capacity, will benefit from this Agreement.

6. **Termination.** The Department may terminate this Agreement for any reason, by giving the Grantee thirty (30) days written notice. On receipt of a "Notice of Cancellation" from the Department, the Grantee shall suspend work unless otherwise directed by the Department in writing. The Grantee may only terminate this Agreement based on the Department's uncured, material breach of the Agreement, by giving the Department thirty (30) days written notice. The Parties acknowledge that termination will not nullify obligations incurred prior to the date of Notice.

7. **Appropriations.** The Grantee acknowledges that:

   a. this Agreement is contingent upon sufficient appropriations and authorizations being made by the Congress of the United States or the New Mexico state legislature;

   b. if sufficient appropriations and authorizations are not made, this Agreement will terminate upon written notice by the Department to the Grantee; and

c. the Department will not expend any funds until they are approved for expenditure, and the Department's determination as to whether approval has been granted will be final.

8. **Compliance with Law.** The Grantee, its employees, agents and contractors, shall comply with the following:

a. Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the ADA Amendments Act of 2008, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, and 49 C.F.R. part 21;

b. all federal and state laws, rules, and regulations, and executive orders of the Governor of the state of New Mexico pertaining to equal employment opportunity, including the Human Rights Act, NMSA 1978, Sections 28-1-1through 28-1-15 (and in accordance with such, the Grantee states that no person, on the grounds of race, religion, national origin, sex, sexual orientation, gender identity, spousal affiliation, serious medical condition, age, disability, or other protected class will be excluded from employment with or participation in, denied the benefits of, or otherwise subjected to, discrimination in any activity performed under this Agreement; if the Grantee is found to be in violation of any of these requirements, the Grantee shall take prompt and appropriate steps to correct such violation and failure to do so may be regarded a material breach of this Agreement);

c. state laws applicable to workers compensation benefits for the Grantee's employees, including the Workers' Compensation Act, NMSA 1978, Sections 52-1-1 through 52-1-70, and related regulations.

9. **Notices.** For a notice under this Agreement to be valid, it must be in writing; be delivered by hand, registered or certified mail return receipt requested and postage prepaid, or e-mail; and be addressed as follows:

Department
Neala Krueger, Planning Liaison
NMDOT Government to Government Unit
P.O. Box 1149
Santa Fe, NM 87505-1149
505-231-2632
Neala.Krueger@state.nm.us

Grantee
Andrew Wray, MPO Officer
PO Box 20000
Las Cruces, NM 88001

575-528-3070
awray@las-cruces.org

10. **Severability**. The terms of this Agreement are lawful; performance of all duties and obligations shall confirm with and do not contravene any state, local, or federal statute, regulation, rule, or ordinance. The Parties intend that if any provision of this Agreement is held to be unenforceable, the rest of the Agreement will remain in effect as written.

11. **Liability.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with the Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.*, as amended. This paragraph is intended only to define the liabilities between the Parties, and is not intended to modify in any way, the Parties' liabilities as governed by common law or the New Mexico Tort Claims Act, and any other applicable law.

12. **Jurisdiction and Venue.** The Grantee acknowledges the jurisdiction of the courts of the state of New Mexico for any adversarial proceeding arising out of this Agreement, and that venue for any such proceeding will be in the First Judicial District Court for the county of Santa Fe, New Mexico.

13. **Project Responsibility.** The Grantee acknowledges that it bears sole responsibility for performing the services referred to in Section 2.

14. **Term.** This Agreement takes effect upon signature of all Parties. If the Grantee does not deliver the signed Agreement to the Department within sixty (60) days of the Department's signature, the Agreement will be voidable by the Department. The Agreement terminates at 12:00 a.m. on September 30, 2026, unless earlier terminated as provided in Section 6 or Section 7.

15. **Applicable Law.** The laws of the state of New Mexico, without giving effect to its choice of law principles, govern all adversarial proceedings arising out of this Agreement. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

16. **Amendment.** This Agreement may only be altered, modified, or amended by an instrument in writing executed by the Parties.

17. **No Third-party Beneficiary**. This Agreement does not confer any rights or remedies on anyone other than the Department and the Grantee.

18. **Merger.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of the Agreement and supersedes all other agreements,

whether written or oral, between the Parties, except that this Agreement does not supersede the Grantee's rights under any other grant agreement.

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

20. **Coordination.** The Department and Grantee agree to cooperatively develop and share information related to the requirements in 23 CFR 450.314(h). Procedural details are outlined in the Department's Planning Procedures Manual. Requirements in 23 CFR 450.314(h) relate to:

    a. transportation performance data;

    b. the selection of performance targets;

    c. the reporting of performance targets;

    d. the reporting of performance to be used in tracking critical outcomes for the region of the MPO; and

    e. the collection of data for the Department's asset management plan for the National Highway System.

The remainder of this page is intentionally left blank.

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Each party is signing this Agreement on the date stated opposite that party's signature. This Agreement is effective as of the date of the last party to sign it on the signature page below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: DocuSigned by: Justin Reese 79B5F2DB5F72463... Date: 7/25/2022

Cabinet Secretary or Designee

MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION

By: DocuSigned by: A88175AD2333440... Date: 7/13/2022

Title: Chairman, Board of County Commissioners

Approved as to form and legal sufficiency.

By: DocuSigned by: C750CEC1625D488... Date: 7/11/2022

Assistant General Counsel
Department of Transportation

Approved as to form and legal sufficiency.

By: DocuSigned by: Jennifer Vega 418FB5FB06394A7... Date: 7/25/2022

Title: City of Las Cruces, City Attorney

ATTACHMENT "R"

Contract# M01850
Vendor# 54342

FEDERAL FISCAL YEAR 2023 - 2026

MEMORANDUM OF AGREEMENT

BETWEEN

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

AND

MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION

This Agreement is between the **STATE OF NEW MEXICO**, acting through its **DEPARTMENT OF TRANSPORTATION**, Transit and Rail Division, (Department), and the **MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION** (MPO). This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, 49 U.S.C. Section 5303, authorizes federal assistance from the Federal Transit Administration (FTA) for multimodal transportation planning in metropolitan areas that is cooperative, continuous, and comprehensive, resulting in long-range transportation plans and short-range programs of transportation investment priority (Program);

Whereas, the Governor of New Mexico has designated the Department to receive and administer the federal funds under this program;

Whereas, the Department and the MPO have long worked together in transportation planning that involved Section 5303 funds and they want to continue; and

Now, therefore, pursuant to Section 67-3-69 NMSA 1978, the parties agree as follows:

1. Program.
The MPO shall develop and implement a biennial Unified Planning Work Program (UPWP) to identify specific tasks, with detailed scopes of work and funding estimates, related to transportation planning and programs. The UPWP is subject to the approval of the Department and the FTA. A copy of the UPWP is on file with the Department and the MPO.

The MPO shall comply with all applicable provisions of 49 USC Section 5303, specifically sections (i) through (j), which requires development and implementation of additional transportation plans and identifies the planning process, a performance-based approach to plan development as well as requirements for public notification and involvement. A copy of each additional plan is on file with the Department and the MPO.

Additional requirements are highlighted in the attached **Exhibit A**, Program Requirements.

2. Funding.
Funding is determined annually by the FTA, the Department and the MPO, which has a 20% funding match requirement. The Department upon consultation with the MPO will select specific tasks from the UPWP to fund and identify the amount for each task. Prior to the start of funding period, the Department will mail to the MPO a Work Authorization that identifies the tasks to be performed, the funding for each task and the local match requirement.

Funding is provided by FTA, Catalog of Federal Domestic Assistance (CFDA) Number 20.505. State funds will not be earmarked or disbursed to fund the Tasks. The Department shall not be responsible for any other costs incurred by the MPO. The MPO shall take all actions necessary to fund its share of the Program.

3. Method of Payment.
With federal funds, the Department shall reimburse the MPO for 80% of the eligible expenses. Invoices shall be submitted quarterly to the Department by the 25th day of the quarter following the close of the invoice period utilizing the Electronic Grants Management Performance System (BlackCat). All expenses must be actual rather than estimated and listed on the invoice as charged. The MPO must submit backup documentation for line items over $500. Rounding up or down, other than the total, is not permitted due to the possibility of audit exceptions. Reports and invoices shall be submitted to the Department electronically and must contain supporting documentation sufficient to allow the Department to determine what Project actions have been taken and what costs have been incurred by or on behalf of the MPO during each quarter. The Department reserves the right to request backup documentation for any line item submitted for reimbursement at any time. Only those expenses or percentage thereof, properly documented and deemed eligible by the Department, shall be reimbursed. The Department will withhold payment of any invoice that is incorrect and/or incomplete.

Invoices shall be certified by the MPO that they accurately reflect work completed, amount due and include the Work Authorization number, remaining work authorization balance, control and/or contract number.

4. Eligible Costs.
Eligible Costs are those costs attributable to and allowed under the Program and the provisions of 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. Costs incurred by the MPO prior to the effective date of this Agreement or subsequent to the termination date shall not be eligible for reimbursement as Program costs.

5. State General Appropriation Funds Not Obligated.
Nothing in this Agreement shall be construed as obligating state general appropriation funds for payment of any debt or liability arising under this Agreement. The parties expressly acknowledge that all payments made under this Agreement are from federal funds appropriated for these purposes.

6. Term.
This Agreement becomes effective upon the signature of all parties. The effective date is the date the last party signed the Agreement on the signature page below. All costs incurred under this agreement from October 1, 2022 to September 30, 2026 may be reimbursed. This Agreement shall expire September 30, 2026.

7. Termination for Convenience or Cause.
The Department has the option to terminate this Agreement if the MPO fails to comply with any provision. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the MPO breaches on which the termination is based.

The Department may provide the MPO a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the MPO has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the MPO has not begun and proceeded in good faith to correct the breach, the Department may declare the MPO in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

8. Appropriations.
The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Congress of the United States. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice from the Department to the MPO. The Department's decision as to whether sufficient appropriations are available shall be accepted by the MPO and shall be final.

9. Termination Management, Allowable Costs.
In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform. The MPO shall be paid for all the allowable costs incurred prior to the date of termination, subject to audit verification by the Department or its duly authorized representative.

The MPO shall not be paid for any costs incurred that are inconsistent with, or contrary to, the terms and conditions of this Agreement.

10. Breach and Dispute Resolution.
Disputes which cannot be resolved informally by the parties shall be decided in writing by a representative of the Department's Transit and Rail Division. The MPO has ten (10) days from receipt of the decision to file a written appeal with the Transit and Rail Division. Upon appeal, the MPO will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit and Rail Division on appeal shall be binding.

11. New Mexico Tort Claims Act.
As between the Department and the MPO, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, *et seq*., NMSA 1978. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by the common law of the New Mexico Tort Claims Act.

12. Retention of Records.
The MPO shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred in the Program for three (3) years after the date of termination or expiration of this Agreement.

13. Access to Records.
The MPO shall grant authorized representatives of the Department, the state and the federal government access to books, documents, papers, reports, and records of the MPO or its subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The MPO agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The MPO shall reimburse the Department for any expenditure for which it received payment or reimbursement, as applicable, which is disallowed by an audit exception by the Department, the state or federal government.

14. Audit.
The MPO shall ensure that an annual audit of the Program based on the MPO's fiscal year shall be conducted pursuant to 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. The MPO, prior to initiation of the audit, shall seek written approval from the Department of the auditing firm. The MPO agrees to provide the Department with a copy of the audit report concerning any portion of the Agreement period as soon as it is released, but in no case later than six months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the MPO fail to produce the annual audit, the Department may, at its option, commission such an audit payable out of Program funds.

15. Audit Exceptions.
If federal or state audit exceptions are made, the MPO shall reimburse all costs incurred by the State and the Department associated with defending against the exceptions, which includes but is not limited to costs of performing a new audit or a follow-up audit, court costs, attorneys' fees, travel costs, penalty assessments.

Immediately upon notification from the Department, the MPO shall reimburse the amount of the audit exception and any other related costs directly to the Department. In the notification, the Department may inform the MPO of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to MPO under this Agreement.

16. Third Party Beneficiaries.
It is not intended by any of the provisions of any part of this Agreement to create 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(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

17. Contracting and Assignment.
The MPO shall not contract any portion of this Agreement without prior written approval of the Department. No such contracting shall relieve the MPO from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Department.

Except to a successor in kind, the MPO shall not assign or transfer any interest in this Agreement or assign any claim for money due or to become due under this Agreement without the prior written approval of the Department.

Should subcontract(s) or an assignment be authorized by the Department, the subcontractor(s) and assignor(s) shall be subject to all provisions of this Agreement. It shall be the MPO's responsibility to duly inform the subcontractor(s) and assignor(s) by means of a contract or other legally binding document stipulating responsibility to this Agreement.

Subcontractors and Assignors of FTA funds must meet applicable Disadvantaged Business Enterprise (DBE) Program requirements when funds are used in whole or in part to finance procurements for applicable products and services.

18. No Federal Government Obligation to Third Parties.
The Department and MPO acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, MPO, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The MPO agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It further agrees that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

19. Civil Rights Laws and Regulations Compliance.
The MPO shall comply with all federal, state and local laws and ordinances applicable to the work called for under this Agreement.

A. Nondiscrimination – In accordance with Title VI of the Civil Rights Act, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the MPO shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The MPO shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue. The Nondiscrimination assurance is attached as Assurance-1.

B. Equal Employment Opportunity – The following equal employment opportunity requirements apply to this Agreement:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the MPO agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 *et seq*., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The MPO agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 623 and Federal transit law at 49 U.S.C. Section 5332, the MPO agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the MPO shall comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. Section 12112, the MPO agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.

C. The MPO shall include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

D. For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA at https://www.transit.dot.gov/funding/procurement/third-party-procurement/contract-clauses.

E. The MPO also agrees to include these requirements in each contract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

20. Disadvantaged Business Enterprise (DBE) Policy.

A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department's proposed overall goal for FTA participation for the 2019 fiscal year is 1.47%, through race-neutral means.

B. The MPO shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The MPO shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Program. Failure by the MPO to carry out these requirements is a material breach of the Agreement, which may result in the termination or other such remedy as the Department deems appropriate. Each contract the MPO signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. The MPO agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. DOT assisted contracts. The MPO will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

D. The MPO is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the awarded contractor's receipt of payment for that work from the Department.

E. The MPO must promptly notify the Department, whenever a DBE contractor is terminated or fails to complete its work, and must make good faith efforts to engage another DBE contractor to perform at least the same amount of work. The MPO may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Department.

A MPO of FTA funds must meet applicable DBE requirements when funds are used in whole or in part to finance procurements of and contracts for applicable products and services. A MPO with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients,* which is attached hereto as **Certification 2**.

21. Program Fraud and False or Fraudulent Statements or Related Acts.

A. The MPO acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Section 3801 *et seq*., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this program. The MPO certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant contract or FTA assisted program for which this work is being performed. The MPO further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the MPO to the extent the federal government deems appropriate.

B. The MPO also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a program that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the federal government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and any other applicable statute on the MPO, to the extent the federal government deems appropriate.

C. The MPO certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. MPO further agrees that these clauses shall not be modified, except to identify the subcontractor subject to its provisions.

D. All claims for compensation reimbursement and payment of any amounts due pursuant to this Agreement are governed by the Fraud Against Taxpayers Act, NMSA 1978, Sections 44-9-1 through 44-9-14.

22. Lobbying.
An MPO receiving $100,000 or more of 49 U.S.C. Section 5303 funds shall file the Lobbying Certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." The Lobbying Certification is attached as **Certification 3**. The MPO must certify that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. Section 1352.

If the MPO hires a third-party contractor, the contractor must provide the Lobbying Certification to the MPO. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the MPO.

23. Officials Not to Benefit.
Neither any member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

24. Notification Related to Fraud, Waste, Abuse, or Other Legal Matters
If a current or prospective legal matter that may affect the Federal Government emerges, the Subrecipient must promptly notify the Department so that it can notify the Federal Government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The MPO agrees to include a similar notification requirement in contracts exceeding $25,000 financed in whole or in part with federal assistance provided by FTA and must require each subcontractor to include an equivalent provision in its federally assisted subcontracts exceeding $25,000.

25. Energy Conservation.
The MPO agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

26. Clean Water and Air Requirements.

A. The MPO agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. Sections 1251 et seq., and the Clean Air Act, 42 U.S.C. Sections 7401 et seq. The MPO agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate United States Environmental Protection Agency Regional Office.

B. The MPO agrees to include these requirements in each subcontract exceeding $100,000.00 and financed in whole or in part with federal assistance provided by FTA.

27. Debarment and Suspension.
Executive Order No. 12549, "Debarment and Suspension of Participants in Federal Programs," February 18, 1986, 31 U.S.C. Section 6101 note, as amended by Executive Order No. 12689, "Debarment and Suspension," August 16, 1989 31 U.S.C. Section 6101 note, as implemented by 2 C.F.R. Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. Part 1200 prohibits FTA MPOs from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. MPOs shall include the certification and instruction language contained at 2 C.F.R. Part 1200 in all Invitations for Bids and Requests for Proposals (for inclusion by contractors in their bids or proposals) for all contracts expected to equal or exceed $25,000.00, regardless of the type of contract to be awarded.

The MPO is required to verify that none of the MPO's principals or affiliates are excluded or disqualified as defined, as defined by 2 C.F.R. Part 1200. By signing and submitting this Agreement, the Subrecipient certifies as follows:

> The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder/MPO or proposer/MPO knowingly rendered an erroneous certification, in addition to remedies available to the Department, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder/MPO or proposer/MPO agrees to comply with the requirements of 2 C.F.R. Part 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/MPO or proposer/MPO further agrees to include a provision requiring such compliance in its lower tier covered transactions.

28. Central Contractor Registration Requirements.
Prior to payment of invoices, MPO must register and maintain current registration in the Central Contractor Registration website, http://www.sam.gov. Registration requires having a Dun and Bradstreet Data Universal Number (DUNS), see http://www.dnb.com. The Department will not provide vehicles, or make payments, until the MPO demonstrates that it is registered with the System for Award Management (SAM) website.

29. Federal Grant Reporting Requirements.
Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of $25,000 or more. This information will be made available to the public on www.USASpending.gov.

The type of information the Department is required to report includes:

- Name of MPO receiving the award
- Amount of Award
- Funding Agency
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants
- Program source
- Award title descriptive of the purpose of the funding action
- Location of the MPO, which includes the Congressional District
- Place of performance of the program or activity, which includes the Congressional District

- Unique identifier—DUNS—of the MPO and its parent organization, if one exists
- Total compensation and names of the top five executives of the MPO. This information is required, if the MPO in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds $25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

30. Severability.
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

31. Scope of Agreement.
This Agreement incorporates all of the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

32. Applicable Law and Venue; Federal Changes.
The MPO shall comply with all federal, state and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this Agreement. This includes all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement by FTA. The MPO shall make as part of this Agreement between the Department and the MPO the assurances and warranties which were signed as part of the grant award. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

33. Incorporation of FTA Terms.
Provisions of this Agreement include, in part, certain Standard Terms and Conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circulars 4220.1F, and 9040.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The MPO shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the Department to be in violation of FTA terms and conditions, as referenced in the current Federal Transit Administration Master Agreement shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration. The Master Agreement can be viewed on the web at https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements.

34. Special Notification Requirement for States.
This project is funded in part by a grant from the Federal Transit Administration (FTA). The Catalog of Federal Domestic Assistance (CFDA) number is 20.505.

35. Federal Changes
MPO shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NMDOT and FTA, as they may be amended or promulgated from time to time during the term of this contract. MPO's failure to so comply shall constitute a material breach of this contract.

36. Amendment.
The terms of this Agreement may be altered, modified or amended by an instrument in writing executed by the parties. *Section 1. Program*, details how such changes are to be approved and documented.

In witness whereof, each party is signing this Agreement on the date stated below that party's signature.

New Mexico Department of Transportation

DocuSigned by:
Justin Reese
79B5F2DB5F72463...
Cabinet Secretary (or Designee)

9/13/2022
Date

Mesilla Valley Metropolitan Planning Organization

DocuSigned by:
A88175AD2333440...
Signature

Manuel A Sanchez Chairman, Board of County Commissi
Name/Title (please print)

9/12/2022
Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.

DocuSigned by:
C750CEC1625D488...
Deputy General Counsel

8/31/2022
Date

DocuSigned by:
Jennifer Vega City of Las Cruces, City Attorney
418FB5FB06394A7...
Mesilla Valley Metropolitan Planning Organization
Legal Counsel

9/9/2022
Date

EXHIBIT A
PROGRAM REQUIREMENTS

In addition to the requirements identified in Section 1, above, and 49 U.S.C. Section 5303 and 2 CFR 200, the MPO shall:

1. Act in the capacity as the designated lead agency for each Task identified in the Unified Planning Work Program (UPWP) and designate a point of contact.

2. Assure the development of the biennial UPWP and each Task.

3. Submit the draft UPWP to the Transit and Rail Division for review and approval prior to adoption by the MPO governing body. A copy of the MPO's draft UPWP must be submitted to the Transit and Rail Division no later than April 30 of the biennial UPWP cycle for renewal.

4. Submit quarterly reports to the Department describing progress on each of the Tasks. Quarterly performance of each Task will be reported relative to the annual requirements as specified in each individual Task.

5. Abide by the annual resolution passed by the MPO Policy Committee approving the biennial UPWP in support of each transit planning Task for the Metropolitan Planning Area.

6. Coordinate activities and the planning processes, as appropriate, with local governments and their bureaus overseeing land use, environmental, economic and transportation planning; RTDs, RTPOs and other MPOs; and the Department's Transit and Rail Division, the Statewide Planning Division and District Offices.

7. Consult with the NMDOT Transit Bureau to update the Transit Asset Management performance targets as needed.

8. Consult with the NMDOT Transit Bureau and the 5307 Small Urban areas to develop and update the Public Transportation Agency Safety Plans.

9. Assure all data collected under this MOA is made available to the Department upon request by the Department.

10. Comply with the New Mexico Open Meetings Act, NMSA 1978, Section 10-15-1, *et. seq*. Notification to the Department's Transit and Rail Division shall be transmitted by E-Mail. Provide for distribution of regular MPO meeting agendas and packets to member entities and to the designated Department Transit and Rail Division liaison not later than seven days prior to each meeting.

11. Develop and implement a Public Involvement Plan (PIP) in consultation with the Department, evaluate and report to the Department on the effectiveness of the PIP in contributing to transportation investment and policy decisions on an annual basis and refine as needed.

12. Designate a point of contact, develop and implement a plan and policies to assure Title VI compliance, maintain required documentation.

13. Develop and assure consistency between the Metropolitan Transportation Plan (MTP), the Transportation Improvement Plan (TIP), the UPWP and annual Performance and Expenditure (P&E) Reports.

14. The MPO shall take action on all written requests to the MPO for all Department changes affecting the TIP.

15. Assure that local entities submit detailed and accurate Project Information Forms, updated as needed to maintain consistency with the current TIP and Statewide Transportation Improvement Plan (STIP) to the Department to facilitate the timely preparation and execution of Local Government Agreements.

16. The Department and Grantee agree to cooperatively develop and share information related to the requirements in 23 CFR 450.314(h). Procedural details are outlined in the Department's Planning Procedures Manual. Requirements in 23 CFR 450.314(h) relate to:

    i. transportation performance data;
    ii. the selection of performance targets;
    iii. the reporting of performance targets;
    iv. the reporting of performance to be used in tracking critical outcomes for the region of the MPO; and
    v. the collection of data for the Department's asset management plan for the National Highway System.

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NEW MEXICO DEPARTMENT OF TRANSPORTATION
TRANSIT AND RAIL DIVISION

NONDISCRIMINATION ASSURANCE AGREEMENT
FOR
FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS

INTRODUCTION AND INSTRUCTIONS:

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subrecipients are responsible for complying with the requirements contained therein.

On behalf of this Agreement, the **MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION**; hereinafter referred to as "**Subrecipient**" assures that:

1. Subrecipient will comply with the following laws, regulations, and requirements so that no person in the
United States will be denied the benefits of, or otherwise be subjected to discrimination in, any U.S. DOT or FTA assisted program or activity (particularly in the level and quality of transportation services and transportation-related benefits) based on race, color, national origin, religion, sex, disability, or age including:

   a. Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity),
   b. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d,
   c. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (prohibiting discrimination based on race, color, religion, sex, (including gender identity and sexual orientation) or national origin,
   d. Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,
   e. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq.,f. U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25,
   g. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, et seq.,
   h. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.,
   i. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21,
   j. U.S. DOT regulations, specifically 49 CFR parts 27, 37, 38, and 39, and
   k. Any other applicable federal statutes that may be signed into law, federal regulations that may be issued, or federal requirements that may be imposed.

2. Subrecipient will comply with federal guidance implementing federal nondiscrimination laws, regulations, or requirements, except as FTA determines otherwise in writing.

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3. As required by 49 CFR § 21.7:

a. Subrecipient will comply with 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 in the manner that:

(1) Subrecipient implements its Award,

(2) Subrecipient undertakes property acquisitions, and

(3) Subrecipient operates all parts of its facilities, as well as its facilities operated in connection with its Award.

b. This assurance applies to its Award and to all parts of its facilities, as well as its facilities used to implement its Award.

c. Subrecipient will promptly take the necessary actions to carry out this assurance, including the following:

(1) Notifying the public that discrimination complaints about transportation-related services or benefits may be filed with U.S. DOT or FTA Headquarters Office of Civil Rights, and

(2) Submitting information about its compliance with these provisions to U.S. DOT or FTA upon their request.

d. If Subrecipient transfers U.S. DOT or FTA assisted real property, structures, or improvements to another party, any deeds and instruments recording that transfer will contain a covenant running with the land assuring nondiscrimination:

(1) While the property is used for the purpose that the federal assistance is extended, or

(2) While the property is used for another purpose involving the provision of similar services or benefits.

e. The United States has a right to seek judicial enforcement of any matter arising under:

(1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,

(2) U.S. DOT regulations, 49 CFR part 21, or

(3) This assurance.

f. Subrecipient will make any changes in its Title VI implementing procedures, as U.S. DOT or FTA may request, to comply with:

(1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,

(2) U.S. DOT regulations, 49 CFR part 21, and

(3) Federal transit law, 49 U.S.C. § 5332.

g. Subrecipient will comply with applicable federal guidance issued to implement federal nondiscrimination requirements, except as FTA determines otherwise in writing.

h. Subrecipient will extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 to each Third Party Participant, including any:

(1) Subrecipient,

(2) Transferee,

(3) Third Party Contractor or Subcontractor at any tier,

(4) Successor in Interest,

(5) Lessee, or

(6) Other Participant in its Award, except FTA and the Applicant (and later, the Recipient).

i. Subrecipient will include adequate provisions to extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 to each third party agreement, including each:

(1) Subagreement at any tier,

(2) Property transfer agreement,

(3) Third party contract or subcontract at any tier,

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(4) Lease, or
(5) Participation agreement.

j. The assurances you have made on your behalf remain in effect as long as FTA determines appropriate, including, for example, as long as:
(1) Federal assistance is provided for its Award,
(2) Subrecipient property acquired or improved with federal assistance is used for a purpose for which the federal assistance is extended, or for a purpose involving similar services or benefits,
(3) Subrecipient retains ownership or possession of its property acquired or improved with federal assistance provided for its Award,
(4) Subrecipient transfers property acquired or improved with federal assistance, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits, or
(5) FTA may otherwise determine in writing.

4. As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR part 27, specifically 49 CFR § 27.9, and consistent with 49 U.S.C. § 5332, you assure that:

a. Subrecipient will comply with the following prohibitions against discrimination based on disability listed below in subsection 4.b of this Category 01.D Assurance, of which compliance is a condition of approval or extension of any FTA assistance awarded to:
(1) Construct any facility,
(2) Obtain any rolling stock or other equipment,
(3) Undertake studies,
(4) Conduct research, or
(5) Participate in any benefit or obtain any benefit from any FTA administered program.

b. In any program or activity receiving or benefiting from federal assistance that U.S. DOT administers, no qualified individual with a disability will, because of his or her disability be:
(1) Excluded from participation,
(2) Denied benefits, or
(3) Otherwise subjected to discrimination.

AFFIRMATION OF APPLICANT

Name of Applicant: Mesilla Valley MPO

Printed Name of Authorized Representative: Manuel A Sanchez

Relationship of Authorized Representative: Chairman, Board of County Commissioners

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature: DocuSigned by: A88175AD2333440... Date: 9/12/2022

Printed Name of Signing Official: Manuel A Sanchez

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NEW MEXICO DEPARTMENT OF TRANSPORTATION
TRANSIT AND RAIL DIVISION

DISADVANTAGED BUSINESS ENTERPRISE
RACE-NEUTRAL IMPLEMENTATION AGREEMENT
FOR
FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS

INTRODUCTION AND INSTRUCTIONS:

The New Mexico Department of Transportation (NMDOT) Transit and Rail Division, through the NMDOT Office of Equal Opportunity Programs (OEOP), must ensure that Subrecipient of Federal Transit Administration (FTA) funds meet applicable DBE requirements when funds are used in whole or in part to finance procurement and contracts of products and service(s). To that end, Subrecipient with contracting opportunities must submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients* (Agreement).

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subrecipients are responsible for complying with the requirements contained therein.

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DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT for the **Mesilla Valley Metropolitan Planning Organization;** hereinafter referred to as "**Subrecipient.**"

I. Definition of Terms

The terms used in this agreement have the meanings defined in 49 CFR Part 26.5.

II. OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The Subrecipient intends to receive federal financial assistance from the U.S. Department of Transportation (USDOT) through the New Mexico Department of Transportation (NMDOT), and as a condition of receiving this assistance, the Subrecipient will sign the New Mexico Department of Transportation's Disadvantaged Business Enterprise Race Neutral Implementation Agreement (hereinafter referred to as Agreement).

The Subrecipient must implement a policy to ensure that DBEs, as defined in 49 CFR Part 26 (also referred to as the DBE Program), have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:
To ensure nondiscrimination in the award and administration of DOT-assisted procurement and contracts of products and services contracts.
To create a level playing field on which DBE's can compete fairly for DOT-assisted procurement and contracts of products and services contracts.
To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
To help remove barriers to the participation of DBEs in DOT-assisted procurement and contracts of products and services contracts.
To assist the development of firms that can compete successfully in the market place outside the DBE Program.

III. Nondiscrimination (§26.7)

Subrecipient will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Subrecipient will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

IV. Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)

Subrecipient will assist NMDOT to achieve its Overall Statewide DBE Goal by race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).
Race-neutral means include, but are not limited to, the following:

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1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

3. Providing technical assistance and other services;

4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has been historically low;

8. Ensuring distribution of the New Mexico DBE directory, through print and electronic means, to the widest feasible universe of potential contractors; and

9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Subrecipient will encourage utilization of DBE contractors whenever possible on its USDOT-assisted contracts. New Mexico Certified DBE firms and the fields of work in which they participate are listed in the electronic web-based DBE Directory located at https://nmdot.dbesystem.com

V. Quotas (§26.43)

Subrecipient will not use quotas or set-asides in any way in the administration of the DBE Program.

VI. DBE Liaison Officer (§26.25)

Subrecipient must designate a DBE Liaison Officer (DBELO). The DBELO is responsible for implementing the DBE Program as it pertains to the Subrecipient and ensures that the Subrecipient is fully and properly advised concerning DBE Program matters.

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VII. Federal Financial Assistance Agreement Assurance (§26.13)

The Subrecipient will sign the following assurance, applicable to and to be included in all USDOT-assisted procurements and contracts for products and services:

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

VIII. Required Contract Clauses (§§26.13, 26.29)

Subrecipient assures that the following clauses will be included in each USDOT-assisted prime contract:

A. Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted procurement and contracts of products and services contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

B. Prompt Payment

Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10 days of receipt of each progress payment. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the NMDOT's prior written approval. Any violation of this Section shall subject the violating contractor or subcontractor to penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Retainage

Subrecipient shall include either (1), (2), or (3) of the following provisions in their USDOT-assisted contracts to ensure prompt and full payment of retainage (withheld funds) to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors.

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Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

IX. Bidders List (§26.11)

The Subrecipient will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its USDOT-assisted procurement and contracts for products and services. The bidders list will include the name, address and telephone number of each quoting firm and whether the quoter is a New Mexico certified DBE. Subrecipient will include language in its procurement documents that requires each bidding Contractor, at the time that bids are submitted, to list the quotes received for the project as detailed above.

X. Reporting

Subrecipient will report bidders list and related DBE information to the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs upon request.

Subrecipient will complete and submit annually to the NMDOT Office of Equal Opportunity Programs the NMDOT Annual Profile Registration Form. This Form will be mailed to Subrecipient.

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Subrecipient will compile and provide such other information related to its procurements and the DBE Program as deemed necessary by the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs.

XI. Incorporation of Agreement

This Agreement is incorporated into Subrecipient's financial assistance agreement with NMDOT by reference and made a part of that agreement.

Date:	9/12/2022
Signature of Subrecipient Official	DocuSigned by: A88175AD2333440...
Phone Number:	575-386-9815
Printed Name of Subrecipient Official	Manuel A Sanchez

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LOBBYING CERTIFICATION

An Applicant that submits or intends to submit an application to FTA for Federal assistance exceeding $100,000 is required to provide the following certification. FTA may not award Federal assistance exceeding $100,000 until the Applicant provides this certification.

A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to FTA for Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352; and

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans, and cooperative agreements).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

AFFIRMATION OF APPLICANT

Name of Applicant: Mesilla Valley MPO

Printed Name of Authorized Representative: Manuel A Sanchez

Relationship of Authorized Representative: Chairman, Board of County Commissioners

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature: DocuSigned by: A88175AD2333440... Date: 9/12/2022

Printed Name of Signing Official: Manuel A Sanchez

Buildings UP

The Buildings Upgrade Prize

AMERICAN MADE
U.S. DEPARTMENT OF ENERGY

Building Upgrade Prize (Buildings UP) Phase 1 – Equity-Centered Innovation Pathway: Prize Acceptance Form

October 11, 2023

Dear City of Las Cruces,

Congratulations on winning Phase 1 of the American-Made Buildings Upgrade Prize (Buildings UP). You have won a $300,000 cash award of the total prize amount of $400,000. Please read through this letter, fill out the questions, sign, and return to us via e-mail to buildingsup@nrel.gov no later than October 20, 2023.

Prize Payment

Submission or Entry Title: Plugged in for Good

Lead Organization Name: City of Las Cruces

The Payment Recipient below, labeled as 'Entity Name,' was listed on the HeroX Submission Form as the designated recipient by the Lead Organization Team Captain. If you need to change the 'Entity Name' listed below, please contact buildingsup@nrel.gov.

Entity Name: City of Las Cruces

Split amount of the total award ($400,000) as designated by the Lead Organization Team Captain: $300,000 (75% of total award).

You will also need to submit an ACH and W9 form for payment which must both match the 'Entity Name' receiving payment. Please note that the entity receiving the prize payment will be responsible for paying all associated taxes.

Printed Name: Cynthia Alamillo

Relationship to Entity (if applicable): interim grants manager

Signature: Cynthia A.

Date: 10/19/23

Please return this form by October 20, 2023, to buildingsup@nrel.gov.

Supported by the U.S. Department of Energy, Building Technologies Office;
Directed by the National Renewable Energy Laboratory

STATE OF NEW MEXICO

(ECONOMIC DEVELOPMENT DEPARTMENT)
INTERGOVERNMENTAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **ECONOMIC DEVELOPMENT DEPARTMENT "EDD",** and the **CITY OF LAS CRUCES.**

ITIS AGREED BETWEEN THE PARTIES:

1. CITY OF LAS CRUCES Scope of Work,

The EDD shall provide this funding to CITY OF LAS CRUCES for the purpose of creating or assisting its client contractor in creating a **Creative Industries Division related project that seeks to achieve and improve one or more of the following measures: 1) Increasing and advancing creative industry based economic development in New Mexico, 2) Supporting entrepreneurs and small businesses in creative industries, 3) Assisting organizations that support creative industry companies and workers, 4) Supporting educational and workforce training initiatives that facilitate creative industry growth and success, 5) Identifying and helping establish public infrastructure to support creative industries, 6) Serving as au information clearinghouse by providing resources and opportunities to creative industry stakeholders, or** 7) **Acting as a liaison between creative industries-related businesses and organizations** in the CITY OF LAS CRUCES and smrounding stakeholder community.

Deliverables. CITY OF LAS CRUCES will create or subcontract to provide the deliverables, and scope of work laid out in, and attached hereto as **"EXHIBIT B"** and incorporated herein by reference, by June 30, 2024 in the following format:

1. Provide a single report at the close of contract that provides the following aspects:
    a. A title page
    b. A table of contents
    c. A two paragraph minimum to two page maximum summary of the outcomes of the project to date
    d. The county, or location of the project
    e. Any anticipated job creation if applicable
    f. An explanation of the community, stakeholder and industry participation
    g. Any overall economic contributions

h. Three to four photos of the project, and other media if applicable such as a link to a video.
i. An explanation, or result of each deliverable laid out in "EXHIBIT B" including any relevant data such as number of participants, and identify the creative industries that were focused on as defined by the division as part of the project.

2. **Compensation.**

A. The EDD shall pay to CITY OF LAS CRUCES in one (1) full advance payment for services upon execution of the agreement. The total amount payable to **CITY OF LAS CRUCES under this Agreement, including gross receipts tax and expenses, shall not exceed one hundred thousand dollars ($100,000.00).** The annual budget is attached hereto as **"EXHIBIT A - FINANCIAL INFORMATION SHEET"** and incorporated herein by reference.

3. **Term**

This Agreement shall terminate on **June 30, 2024** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. **Termination.**

A. Grounds. The EDD may terminate this Agreement for convenience or cause. CITY OF LAS CRUCES may only terminate this Agreement based upon the EDD's uncured, material breach of this Agreement or if CITY OF LAS CRUCES is no longer able in good faith to meet the requirements.

B. Notice

1. Except as otherwise provided in Paragraph (4)(8)(2), the EDD shall give CITY OF LAS CRUCES written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Notwithstanding the foregoing, the DFA may terminate this Agreement immediately upon written notice to the EDD (i) if the EDD becomes unable to perform the services specified in this Agreement, as determined by the DFA: (ii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. A notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. CITY OF LAS CRUCES shall submit a final report for all services completed under this Agreement as of the termination date.

D. Termination Management. Immediately upon receipt by either the EDD or CITY OF LAS CRUCES of notice of termination of this Agreement, the EDD shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the EDD; 2) comply with all directives issued by the EDD in the notice of termination as to the services set forth under this Agreement and the reversion of remaining funds advanced to CITY OF LAS CRUCES from the EDD.

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the EDD to CITY OF LAS CRUCES. The EDD's decision as to whether sufficient appropriations are available shall be accepted by CITY OF LAS CRUCES and shall be final.

6. **Assignment**

CITY OF LAS CRUCES shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the EDD.

7. **Amendment.**

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

B. If the EDD proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, CITY OF LAS CRUCES shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

s. **Merger.**

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

9. Equal Opportunity Compliance.

CITY OF LAS CRUCES agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, CITY OF LAS CRUCES assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If CITY OF LAS CRUCES fails to be in compliance with these requirements during the life of this Agreement, CITY OF LAS CRUCES agrees to take appropriate steps to correct these deficiencies.

10. Records and Financial Audit.

CITY OF LAS CRUCES shall maintain detailed time and expenditure records that

delivery maintained by the sending party) or hand-delivered, with a delivery receipt maintained by the sending party.

15. **Authority.**

If CITY OF LAS CRUCES is other than a natural person, the individual(s) signing this Agreement on behalf of CITY OF LAS CRUCES represents and warrants that he or she has the power and authority to bind CITY OF LAS CRUCES, and that no further action, resolution, or approval from CITY OF LAS CRUCES is necessary to enter into a binding contract.

IN **WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.**

By: _____ Date: 10/11/23
CITY OF LAS CRUCES

By: _____ Date: 10/17/2023
EDD Secretary or Designee

By: _____ Date: 10/17/2023
EDD's Legal Counsel - Certifying Legal Sufficient

EXHIBIT A FINANCIAL INFORMATION SHEET

Category	Budget
Project Budget	
Speakers/Instructors for Public Art and Library workshops	$ 40,000
Renovation/Upgrade of Las Cruces Public Libraries Makerspace	$ 20,000
Marketing/Promotion	$ 8,000
Supplies	$ 5,000
Equipment for Las Cruces Public Libraries Makerspace	$ 14,875
Food & Beverage for Workshops	$ 5,000
Interpretation English/Spanish (for non-English speaking participants – 75 hours @ $95 per hour)	$ 7,125
TOTAL	$100,000

TOTAL BUDGET AMOUNT $100,000.00

Note: The Contractor has flexibility to re-categorize the resources provided to accomplish the prescribed scope of work as needed.

Funding Source:

Fund	18900
Dept.	ZH5079
Bud Ref.	92324
Class	H5079

EXHIBIT B

Page 1 of 2 - Page 1 - Background Information

Page 2 of 2 - Page 2 - Contact Info & Application Questions

Community and Project Contact Information

Name of Community or Local Government
City of Las Cruces, NM
Name of Project
Cultivating Creativity in Las Cruces: Supporting arts businesses to grow our economy
First & Last Name of Primary Point of Contact Person for Project/Program
Cynthia Alamillo
Title
Interim Grants Manager
Email
Grants@lascruces.gov
Phone Number
575-541-2430

Application Questions

1. Pease select which of the following Creative Industries Division objectives/duties the proposed projects or programs will support if selected (select all that apply)
Increasing and advancing creative industry based economic development in New Mexico.,Supporting entrepreneurs and small businesses in creative industries.,Supporting educational and workforce training initiatives that facilitate creative industry growth and success.,Serving as an information clearinghouse by providing resources and opportunities to creative industry stakeholders.
2. Please provide a detailed description of the proposed project or program and how funding provided will be used to support it. Please include a program/project budget and timeline for completion:
To comprehensively support artists and local businesses within the creative economy, the City of Las Cruces Economic Development Department is partnering with local business entities and the City's Quality of Life Department. This collaborative effort will extend enhanced business assistance to individuals who actively engage in learning about strategies to participate in the creative economy through educational seminars and workshops, one-on-one

coaching, or availing themselves of the special entrepreneurial lending collections and services provided by the Las Cruces Public Libraries. The primary objective of this program is to guide and nurture these emerging creative industry ventures during their critical initial stages of development, equipping them with the essential resources vital for achieving sustainable success.

To actualize this goal, the Economic Development Department is forging a strategic alliance with the Small Business Development Center (SBDC) at Dona Ana Community College. Through this partnership, business owners will gain access to key trainings and indispensable tools that are imperative for achieving optimal outcomes. This program will consist of a series of free workshops, designed for individuals seeking to transition from the conceptual phase of a creative economy-driven business to the operational stages. The

workshops will cover a diverse range of pertinent topics, including but not limited to: the foundational aspects of initiating a business, effectively navigating workers' compensation and New Mexico Gross Receipts Tax, and comprehending crucial labor laws.

Furthering the support provided to artists and entrepreneurs within the creative economy, the Quality of Life Department will work through the lens of libraries and public art. Las Cruces Public Libraries are launching a project titled Artists + Libraries Innovative Collaborative Entrepreneurship (A.L.I.C.E.), a three-pronged approach to foster business artists in the community in partnership with established art entrepreneurs, involving:

A "Library of Things," to offer "outside of the box" items to check out to entrepreneurs, such as cakepans for the culinary arts, as well as fiber art hooks, needles, looms, and thread.

An updated Makerspace to facilitate hands-on learning through STEAM activities utilizing musical equipment and technology, 3D printers, sewing machines and related equipment.

Classes and workshops for art entrepreneurs using the makerspace and other resources to create and invent product prototypes. The type of workshops would include fine arts, fiber arts, culinary arts, decorative arts, architecture, sculpting, vinyl cutting, music, and more.

Public Art seeks to develop local artists' skills with practical tools and resources to better participate in the creative economy. They will provide public art-specific workshops, with the acumen of Economic Development and SBDC, titled "Art Smarter, Not Harder." The first workshop in the series will provide. participants a better understanding of how to apply effectively to call for artists, why and what insurance is required, and what happens after the commission is awarded. Three additional workshops will be held in consecutive months focusing on topics in specific areas to help artist professionals create a business, expand an existing business, or reinvent their creative skills to fit the job market.

3. How will the project/program benefit the State of New Mexico and local creative industry stakeholders and entrepreneurs?

New Mexico has been identified as a "small pond in the national and global creative economy" according to the Bureau of Business and Economic Research's (BBER) report. The report, from 2011, brings to light that among active participants in the creative and cultural occupations that dominate our state economy, Dona Ana County falls at a quotient of only 59% of what is deemed normal saturation for New Mexico counties. It further breaks down the types of occupations for artists in Dona Ana County, including artists and related workers (32%), performers (80%), producers/directors (0%), writers/authors (85%), total (50%). Las Cruces considers the "small size and intimacy of the state's creative economy" an opportunity to develop its large and diverse creative talent pool into a stronger, more competitive, and multi-faceted creative workforce by offering professional development workshops, and using the City's libraries as a makerspace and resource hub.

Providing tools and resources to participants in the creative economy, whether they are new to the field or seasoned professionals, is key to growth and/or continued success. Having access to a readily available inventory of knowledge-based and tangible resources such as the proposed lending library and workshops eases the burden of initial startup costs. It allows for creative entrepreneurs to focus on their vision, product, and develop better business plans without overextending their resources.

While the SBDC segment of the program incurs no cost, its intrinsic value cannot be overstated in shaping the trajectory of each participant's business prospects. Scheduled to commence in the fall of 2023 and extend throughout the fiscal year, these workshops are poised to yield benefits not only for the individual participants but also for the broader scope of the State of New Mexico and the City of Las Cruces. By equipping aspiring entrepreneurs with the essential skillset, these workshops contribute to the cultivation of a robust cohort of business owner's adept at steering their ventures toward success.

When considering the statistical landscape, it becomes evident that the entrepreneurial journey is fraught with challenges. Approximately 20-30 percent of businesses falter within their inaugural year, while 50-70 percent struggle to persevere through their first five years, and an even higher proportion—70-90 percent—may not endure beyond their first decade. In this context, while no guarantees can be given, workshops of this nature hold the potential to be the differentiating factor between short-lived setbacks and sustained accomplishments.

Furthermore, the overarching impact extends beyond the immediate realm of individual businesses. By fostering an environment conducive to acquiring indispensable business acumen, the workshops contribute to a new generation of entrepreneurs who are better equipped to navigate the intricacies of commerce. This dynamic ultimately fuels economic growth, strengthens local creative industries, and bolsters the entrepreneurial fabric of the state. The dividends of this program are poised to reverberate well beyond its immediate timeframe, leaving an enduring imprint on the creative landscape and entrepreneurial spirit of the region.

4. If applicable, who are the local partners the local government plans to work with to implement your proposed project or program?

Downtown Las Cruces Partnership

New Mexico State University /Museum of Art

New Mexico State University /Arrowhead Center

Dona Ana Community College

Dona Ana Arts Council

Cruces Creatives

Regional Art Organizations

Small Business Development Center

Alma d'Arte Charter High School

5. If applicable, how will the program/project provide services to support workers, entrepreneurs, and/or artists in the creative industry?

The core essence of the program is to provide robust support for business owners, entrepreneurs, and individuals aspiring to engage within the creative industries. This support is realized through educational seminars, special entrepreneurial lending collections and services provided by the Las Cruces Public Libraries, a strategic partnership with the SBDC, which will provide workshops aimed at equipping participants with the skills and knowledge required for effective business operations within Las Cruces and across New Mexico. The tools and insights made accessible to participants in our program will firmly guide them towards achieving success in their creative business endeavors.

6. If applicable, how will the program facilitate collaboration and network in your local creative industries?

Participants in all aspects of the program would be recruited through an extensive marketing campaign, and through contact with our partners in the region who work directly with those involved in the creative economy on a daily basis. Experts in the field would be hired to lead workshops, serve on panels, and to share their knowledge. Collaborators include New Mexico State University, Arrowhead Center, Dona Ana Arts Council, Downtown Las Cruces Partnership, Alma d'Arte, Cruces Creatives, Fine Art Flea Market, regional art groups/clubs, and Small Business Development Center.

Through workshops covering topics like strategic planning, financial management, and legal considerations, participants gain a collective reservoir of insights that accelerate their business journey. The networking opportunities provided through this program, will foster an environment of collaborative opportunity,

enabling entrepreneurs to form partnerships, share resources, and engage in joint ventures that lead to innovative projects and wider market reach.

Program networking opportunities can connect participants with potential investors, tapping into funding sources crucial for growth and innovation. Furthermore, the program's focus on legal intricacies and intellectual property ensures entrepreneurs not only understand their rights but also gain access to legal professionals who specialize in the creative sector, safeguarding their ideas and helping them navigate challenges.

7. If applicable, describe the workshops, seminars, and training that will be offered to support the skills development of individuals and small enterprises in the creative industries?

Advancing the creative economy depends not only on providing workspace and tools to execute the vision of small businesses and entrepreneurs, but also on the knowledge gained through workshops. The workshops we have curated encompass a rich spectrum of essential subjects aimed at empowering workers, entrepreneurs, and artists within the creative industry. The scope of these workshops extends beyond conventional business practices to equip participants with a well-rounded skillset crucial for success in their respective fields.

Our comprehensive approach covers foundational aspects of being a working artist and working within the creative economy. Participants will have access to working artists, entrepreneurs, experts in tax laws, marketing, and other practical business-related fields. Creative professionals will be tapped from the community to share their expertise offering insights into the strategic planning and logistical considerations necessary to transform creative concepts into thriving enterprises. Additionally, we will delve into the intricacies of workers' compensation and New Mexico Gross Receipts Tax, providing practical guidance on managing financial obligations while maintaining creative momentum.

Furthermore, our workshops delve into the labyrinth of labor laws, ensuring participants comprehend their rights and responsibilities as employers or employees. This aspect serves to foster harmonious workplaces and empower entrepreneurs to navigate legal complexities seamlessly.

Other workshop topics will delve more deeply into the unique needs of our diverse creative community:

Making It Public – A two-day intensive training, aimed at public artists, on various topics including community engagement, RFQ/RFPs, planning and process.

Creative Industry Job Opportunities – Explores creative industry sectors to identify how artists' unique and specialized skills can be applied to other fields.

Business Licenses, Taxes for Pop-Ups and Cottage Industry – Answers vendor and cottage industry specific business-related questions.

Resources for Creative Start-ups - A discussion of books and databases to help entrepreneurs kickstart their creative arts business.

Youth Programs for Kid Entrepreneurs – Business readiness for aspiring junior art entrepreneurs, as well as interactive activities to facilitate artistic expression.

Arts at Your Library- Art techniques to start a creative business, focusing on Fiber Art, Culinary Art, Visual Arts and Decorative Arts.

Get to Know Your Makerspace – Teaches participants how to operate and create using available equipment.

Marketing and Branding Essentials: Guides participants through strategies to effectively market their creative products or services.

Financial Management and Funding Strategies: Equips entrepreneurs with skills to manage their finances effectively, explore funding options, and make informed decisions for their creative businesses.

E-Commerce and Online Presence: Helps participants establish a robust online presence, understand e-commerce platforms, and harness digital tools to reach a global audience.

Networking and Collaboration: Teaches participants how to build professional networks and foster collaborations within the creative industry.

Intellectual Property Rights: Provides insights into understanding copyrights, trademarks, and patents, as week as navigating legal issues.

Customer Engagement and Feedback: Explores strategies for engaging customers, receiving feedback, and incorporating it into the creative process.

Sustainable Practices in the Creative Industry: Addresses sustainability concerns, including eco-friendly production methods, ethical sourcing, and promoting sustainable art and design practices.
8. How will the activities and success of the proposed project/program be measured and tracked if funding is provided?
This program is designed to provide a web of safety nets for entrepreneurs in the creative economy through resources such as a "Library of Things," workshops on best practices from professional artists, tools and practical hands-on time in the makerspace, and the attention of the business expertise of the faculty of SBDC. The success of these strategies will be measured by tracking attendance of multiple workshops, circulation statistics for the "Library of Things," samples of art products/prototypes created in the Makerspace, supply usage, pictures and engagement on our social media sites, and participation with SBDC mentors.

Specific to the business development programming and workshops, the SBDC provides each participating business with sustained support tailored to help each business track and measure their success through the program. Standards related to basic business practices will be universal across all participants, but specific goals can be customized to fit the needs of the various aspects of the creative industries.

There will be surveys at the end of each workshop to assist us in adjusting anything that needs immediate attention, surveys in May as the grant comes to an end for final feedback of the program in a more holistic manner, and surveys a year after the grant period to check-in with our participants to see how their creative business is growing, how the things they learned have been put to use, and if they still use the resources provided through A.L.I.C.E., Public Art, and SBDC.

In addition, we plan to continue many of the grant activities beyond the grant period, including the SBDC workshops, the Makerspace activities, Library of Things and other resources from the Las Cruces Public Libraries, and further workshops and resources for Las Cruces' public artists.
9. If applicable, please share with us how your program will address needs for underserved communities in creative industries. *Underserved community means "populations who face barriers in accessing and using business services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by U.S. Code."
The business development aspect of this program takes a holistic and inclusive approach to address the needs of under-served communities within the creative industries. Through a collaborative effort between the City of Las Cruces Economic Development Department, local partners, and the Small Business Development

Center (SBDC), the program is designed to provide comprehensive business support that caters to a diverse range of entrepreneurs and artists.

Through this project we plan to reach entrepreneurial young people who don't have funds for startup costs, overhead, or space – making them feel welcome and included in efforts to expand the creative industries in Las Cruces. Being located very close to the U.S. Mexico border, we will address language barriers, and include participants who initially lack the ability to support themselves from creative endeavors alone. We will also reach out to and include lower income neighborhoods/colonias, as well as those who have lost their business due to disaster/bankruptcy or other loss.

By partnering with local entities and offering a range of workshops and resources, the program ensures accessibility to a wider audience, including under-served communities. The program's free workshops, covering topics like business initiation, financial management, and legal considerations, create a level playing field where all participants can gain crucial knowledge regardless of their background or resources. This democratized access to business expertise is particularly important for under-served communities that may face barriers to entry.

Furthermore, the program's commitment to customization is noteworthy. While maintaining universal standards, the program acknowledges that the specific goals and needs of participants can vary greatly within the creative industries. This tailored approach recognizes the unique challenges faced by under-served communities and allows the program to address these challenges in a personalized manner. This customization ensures that the support provided aligns with the diverse aspirations and requirements of participants from different backgrounds.

Collaboration with the SBDC and local partners strengthens the program's ability to reach and support under-served communities. The SBDC's sustained support and tracking mechanisms offer ongoing guidance, which is particularly valuable for participants who may require additional assistance to navigate the intricacies of the business world. This support network demonstrates a commitment to nurturing the growth of businesses within under-served communities, ensuring that they receive the attention, resources, and mentorship necessary for success.

In conclusion, the program's inclusive approach, collaboration with local partners, and tailored support mechanisms collectively address the needs of under-served communities within the creative industries. By offering accessible workshops, personalized guidance, and ongoing support, the program strives to empower individuals from all backgrounds to embark on successful entrepreneurial journeys within the creative economy.

Please upload your scope of work proposal outlining what you intend to use the funds for. Include a detailed budget.

Name of Community or Local Government

City of Las Cruces, NM

Name of Project

Cultivating Creativity in Las Cruces: Supporting arts businesses to grow our economy

Overview: To comprehensively support artists and local businesses within the creative economy, the City of Las Cruces Economic Development Department is collaboratively partnering with local business entities and the City's Quality of Life Department. This collaborative effort aims to provide creative

industry business owners with greater success through participation in educational seminars and workshops, one-on-one coaching, or availing themselves of the special entrepreneurial lending collections and services provided by the Las Cruces Public Libraries (a Section of the Quality of Life Department.) The primary objective of this program is to guide and nurture these emerging creative industry ventures during their critical initial stages of development, equipping them with the essential resources vital for achieving sustainable success.

Strategic Alliance with SBDC: To actualize this goal, the Economic Development Department is forging a strategic alliance with the Small Business Development Center (SBDC) at Dona Ana Community College. Through this partnership, business owners will gain access to key trainings and indispensable tools that are imperative for achieving optimal outcomes. This program will consist of a series of workshops, all of which will be offered at no cost to the participants. These workshops are uniquely designed for individuals seeking to transition from the conceptual phase of a creative economy-driven business to the operational stages, whether in a physical or digital environment.
The workshops will cover a diverse range of pertinent topics, including but not limited to: the foundational aspects of initiating a business, effectively navigating workers' compensation and New Mexico Gross Receipts Tax, and comprehending crucial labor laws. This multifaceted approach underscores our commitment to empowering creative entrepreneurs with the practical knowledge and skillset needed to thrive in the competitive landscape of the creative economy.

Public Library Assistance: Las Cruces Public Libraries are launching a project titled Artists + Libraries Innovative Collaborative Entrepreneurship (A.L.I.C.E.), a three-pronged approach to foster business artists in the community with the partnership of established art entrepreneurs.
One component of this will involve a "Library of Things," to offer "outside of the box" items to check out to entrepreneurs, such as cakepans for the culinary arts, as well as fiber art hooks, needles, looms, and thread. The second component is to update our makerspace to facilitate hands-on learning through STEAM activities utilizing musical equipment and technology, 3D printers, sewing machines and related equipment. The final component is to have classes and workshops for art entrepreneurs using the makerspace and other resources to create and invent product prototypes. The type of workshops would include fine arts, fiber arts, culinary arts, decorative arts, architecture, sculpting, vinyl cutting, music, and more.

Public Art Assistance: Public Art seeks to develop local artists' skills with practical tools and resources to better participate in the creative economy. They will provide public art-specific workshops, with the acumen of Economic Development and SBDC, titled "Art Smarter, Not Harder." The workshop series begins with a two-day intensive training in various topics including community engagement, RFQ/RFPs, planning and process, etc. Participants will gain a better understanding of how to apply effectively to call for artists, why and what insurance is required, and what happens after the commission is awarded. Three additional workshops will be held in consecutive months focusing on topics in specific areas to help artist professionals create a business, expand an existing business, or reinvent their creative skills to fit the job market.

Timeline:

October – December 2023:

- Renovate, upgrade and furnish Makerspace;
- Purchase/organize lending/collections library
- Conduct business-related workshops with SBDC

January – May 2024:

- SBDC Business related workshops continue
- Conduct "Art Smarter, Not Harder" workshops & art/makerspace workshops
- Conduct workshops, classes and open Makerspace labs at Las Cruces Public Libraries
- Lending/collections library is open and available

Signature: Jacquelin Rubalcava

Email: jrubalcava@las-cruces.org

Signature: Elizabeth Teeters
Elizabeth Teeters (Oct 5, 2023 08:33 MDT)

Email: eteeters@las-cruces.org

Signature: Carol A. Brey
Carol A. Brey (Oct 5, 2023 10:19 MDT)

Email: cbrey@las-cruces.org

SUBRECIPIENT AGREEMENT BETWEEN
THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
CITY OF LAS CRUCES

THIS SUBRECIPIENT AGREEMENT ("Agreement") is hereby made and entered into this 30 day of October 2023, by and between the New Mexico Department of Finance and Administration ("DFA") (hereinafter referred to as "Grantee"), and CITY OF LAS CRUCES (hereinafter referred to as "SUBRECIPIENT").

WHEREAS, the U.S. Department of Treasury (hereinafter referred to as "GRANTOR") has made federal funds available to the GRANTEE under the Coronavirus State and Local Fiscal Recovery Fund ("CSLFRF") Program (Assistance Listing Number (ALN) 21.027);

WHEREAS, Recipients under the CSLFRF Program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 that receive a CSLFRF award. Subrecipients under the CSLFRF Program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the CSLFRF award on behalf of the recipient;

WHEREAS, Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the CSLFRF statute, CSLFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable; and,

WHEREAS, this Agreement addresses the flow of subaward funds from the GRANTEE to the SUBRECIPIENT, as legally allowed by the relevant law and regulations, for any approved scope of work as further discussed in Section 1 of this Agreement;

NOW THEREFORE, the GRANTEE and the SUBRECIPIENT do mutually agree to the following terms and conditions of this Agreement:

1. Scope of Work

The GRANTOR has provided funds, through its CSLFRF Program, to the GRANTEE who is then providing this same funding to the SUBRECIPIENT. Information related to the federal award is attached as **"Exhibit A."** The SUBRECIPIENT shall perform the necessary tasks required in order to accomplish the objectives of the GRANTOR'S Program which have been agreed to by the GRANTEE. This includes complying with all applicable federal, state or local laws, regulations and administrative policies as they relate to the SUBRECIPIENT'S specific approved project including but are not limited to the references above as well as the following:

(a) SUBRECIPIENT will comply with 31 CFR Part 35 Subpart A – Coronavirus State and Local Fiscal Recovery Funds.
(b) SUBRECIPIENT will comply with Title 2, Subtitle A, Chapter II, Part 200- Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards as well as any specific federal departmental grant requirement in other sections of the CFR.
(c) SUBRECIPIENT will adhere to both the Federal Procurement Laws contained in 2 C.F.R. § § 200.317 to 200.326 as well as the State Procurement Laws for Political Subdivisions contained in ENTER STATUTES.
(d) SUBRECIPIENT will adhere to the requirements of the GRANTOR'S CSLFRF Program.
(e) SUBRECIPIENT will adhere to the Scope of Work and Budget in **"Exhibit B."**
(f) SUBRECIPIENT will comply with the Assurances for Non-Construction Programs as outlined in Standard Form 424B (Rev. 7-97) where applicable.
(g) SUBRECIPIENT will comply with the Assurances for Construction Programs as outlined in Standard Form 424D (Rev. 7-97) where applicable.
(h) SUBRECIPIENT will incorporate, where applicable, the contractual provision requirements outlined in 2 CFR § 200.326 which is further discussed in Section 6 of this Agreement.
(i) SUBRECIPIENT will comply, when applicable, with any applicable National Policy Requirements for federal grants which is further discussed in Section 6 of this Agreement.
(j) SUBRECIPIENT will not pay any contractor who is listed by the federal government as debarred and/or suspended which is further discussed in Section 6 of this Agreement. SUBRECIPIENT agrees to alert the GRANTEE immediately if a contractor working for the SUBRECIPIENT becomes debarred or suspended.
(k) SUBRECIPIENT will fully cooperate at all times with the GRANTEE as the project manager who is ultimately accountable to the GRANTOR for all funds related to this project, as outlined in the Scope of Work and Budget in Exhibit B.

Pursuant to information submitted to the GRANTEE for inclusion in the GRANTOR'S CSLFRF Program, the SUBRECIPIENT shall perform the following tasks:

> Properly procure and complete the project as described in Exhibit B, Scope of Work and Budget. Any and all expenses associated with the project are the sole responsibility of the SUBRECIPIENT. The ownership of any property furnished hereunder will be the property of the SUB RECIPIENT. The SUBRECIPIENT shall have the sole responsibility to maintain possession of the said property, maintain the property, repair the property when needed and maintain any applicable insurance amounts. Any future costs related to these requirements remain the sole responsibility of the SUBRECIPIENT.

In compliance with the above, the SUBRECIPIENT agrees to notify the GRANTEE and GRANTOR, in writing, and request the preferred method of disposition for any property or equipment purchased with federal funds if said property or equipment is no longer of use to

the SUBRECIPIENT. In addition, if an annual inventory is requested by the GRANTEE then the SUBRECIPIENT will provide prompt access to all inventory records.

2. Term of Agreement

The terms of this Agreement shall become effective upon execution of this Agreement and shall continue for a period of five (5) years after closeout of the grant program. All funds must be obligated by the SUBRECIPIENT by December 31, 2024, and all funds must be expended and reimbursement requested by the SUBRECIPIENT to the GRANTEE by June 30, 2025.

3. Payment Terms of Grant Funding

The GRANTEE agrees to allocate and disburse the subaward funds to the SUBRECIPIENT for purposes specified in the Scope of Work in **Exhibit B** by paying a sum not to exceed $1,000,000 ("Subaward Funds"), per the Budget in **Exhibit B**. Payment of the Subaward Funds shall be made in installments according to the Budget in **Exhibit B** to this Agreement, which shall be approved by the GRANTEE. GRANTEE may withhold or delay disbursements if the GRANTEE determines the SUBRECIPIENT has failed to comply with its obligations under this Agreement. The SUBRECIPIENT must provide documentation to the GRANTEE showing the SUBRECIPIENT has obligated or expended 75% of its prior disbursement installment before the GRANTEE will release the next disbursement installment.

Advancement of funds, under this Agreement, is contingent upon the SUBRECIPIENT complying with all of the requirements for allowable uses for funds under the CSLFRF Program and providing sufficient documentation to the GRANTEE as determined by the GRANTEE. The SUBRECIPIENT is responsible for payment to its vendors unless otherwise specifically approved by the GRANTEE. The SUBRECIPIENT will provide copies of all related financial documentation to the GRANTEE with the first quarterly report, supplying sufficient documentation to meet the reporting requirements of the CSLFRF Program.

Any questioned costs which may occur at any point in this process (including the five-year period after grant closeout by the federal GRANTOR) will be the sole responsibility of the SUBRECIPIENT with respect to any activity covered by this Agreement.

If this Agreement extends beyond the current fiscal year and notwithstanding anything to the contrary and when applicable, both parties acknowledge and agree that pursuant to the applicable state law, this Agreement is subject to an annual appropriation dependency requirement to the effect that the renewal of this Agreement is contingent upon the appropriation of funds by either party to fulfill any future payment requirements of this Agreement. If either party fails to appropriate sufficient monies to provide for any future payment requirements under this Agreement, this Agreement shall terminate on the last day of the last fiscal year for which funds were appropriated.

4. Monitoring and Review

The SUBRECIPIENT is required to participate in monitoring and review activities necessary to assess the work performed under the Subaward and determine whether the SUBRECIPIENT has timely achieved the Scope of Work stated in Exhibit B to this Subaward. The ongoing monitoring of the SUBRECIPIENT will reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

The risk assessment may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Monitoring and review activities will be detailed in a Monitoring Plan based on the GRANTEE'S risk assessment of the SUBRECIPIENT and will be provided to the SUBRECIPIENT. The Monitoring Plan may include, but not be limited to, the SUBRECIPIENT'S technical progress compared to the intended milestones and deliverables; the SUBRECIPIENT'S actual expenditures compared to the approved budget, review of SUBRECIPIENT'S reimbursement requests including detailed backup documentation, or other subject matter specified by the GRANTEE.

5. Amendments and Assignments

If there is a need to review and/or revise this Agreement, the requesting party shall submit a written amendment to the other party, with the understanding that no amendment to this Agreement shall be valid unless it is agreed and signed by both parties. This Agreement shall not be assignable by either party without written consent of the other, except for assignment resulting from merger, consolidation, or reorganization of the assigning party.

6. Records, Audits, and Other Grant Compliance Issues

It is understood that this Agreement may be utilized as part of the American Rescue Plan Act (Coronavirus State and Local Fiscal Relief Fund – ALN 21.027) and therefore both parties agree to maintain accounts and records, including personnel, property, and financial records, adequately to identify and account for all costs pertaining to this Agreement and to ensure full compliance with the requirements of the above program. The SUBRECIPIENT will comply with all applicable federal law, regulations, executive orders, grant policies, procedures, and directives issued by DFA. Even though federal funding may be available, the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the GRANTEE, SUBRECIPIENT, or any other party pertaining to any matter resulting from the Agreement.

The SUBRECIPIENT may receive from the GRANTEE work product information that the GRANTEE utilizes. The SUBRECIPIENT assumes sole responsibility for verification of the accuracy of all information and for legal compliance with all rules and instructions required herein. The SUBRECIPIENT further acknowledges that the GRANTEE makes and assumes no representations or warranties with regard to the work product information. Work product information may include, but is not limited to, procurement policies, procurement forms, contractor insurance requirements, various standard contracts, specific grant program forms or

other relevant documents.

With respect to the SUBRECIPIENT'S use of any work product transmitted by or originally created by the GRANTEE, the SUBRECIPIENT acknowledges it is the SUBRECIPIENT'S decision to act accordingly. The SUBRECIPIENT has the option to either adopt such product as the SUBRECIPIENT'S own or the SUBRECIPIENT may utilize the following other options available to the SUBRECIPIENT:

(1) modify the GRANTEE'S work product appropriate to the SUBRECIPIENT'S own needs;

(2) create and adopt the SUBRECIPIENT'S own work product separate from the GRANTEE'S work products; or,

(3) adopt a work product created by other State or Federal agencies when applicable to the SUBRECIPIENT'S needs.

If the SUBRECIPIENT utilizes any of the GRANTEE'S work products in any way then the SUBRECIPIENT acknowledges that the GRANTEE makes no representations or warranties with regard to the same.

For audit purposes, all records will be made available by both parties to any authorized representative of either party and said records will be maintained and retained for five (5) years after closeout of the grant program. If any confidential information is obtained during the course of this Agreement, both parties agree not to release that information without the approval of the other party unless instructed otherwise by court order, grantor, auditor, public information request or as required by law.

The GRANTEE and SUBRECIPIENT agree that all records shall be made available to either party at no additional charge for such information. The SUBRECIPIENT also agrees to provide the GRANTEE, the Government Accountability Office (GAO), the Treasury's Office of Inspector General (OIG), Pandemic Relief Accountability Committee (PRAC), or any of their authorized representatives access to any books, documents, papers, and records of the SUBRECIPIENT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. The SUBRECIPIENT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed at no additional charge.

In compliance with grantor and national policy requirements, including the above referenced federal grant requirements, both parties agree to adhere to the following regulations, where applicable:

(a) Federally Required Contractual Provisions:

(1) **Administrative, Contractual or Legal Remedies** are required in all contracts in excess of the simplified acquisition threshold amount that are funded with federal funds and are addressed in various sections of this Agreement;

(2) **Termination Provision** requires all contracts in excess of $10,000 to contain a provision for termination of the contract for cause or convenience and this provision is addressed in Section 8 of this Agreement;

(3) For all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, **Equal Employment Opportunity**, including Executive Order 11246 which was further amended by Executive Order 11375, which requires equal opportunity for all persons, without regard to race, color, religion, sex or national origin, employed or seeking employment with government contractors or with contractors performing under federally assisted construction contracts (See Exhibit C);

(4) For all applicable contracts in excess of $100,000 that involve the employment of mechanics or laborers, **Contract Work Hours and Safety Standards Act** which prohibits certain unsanitary, hazardous or dangerous working conditions and requires that wages of every mechanic and laborer to be on the basis of a standard work week of forty hours with any work in excess of forty hours per week to be compensated at a rate of not less than one and one-half times the basic rate of pay (See Exhibit C);

(5) For all contracts that meet the definition of "funding Agreement" under 37 CFR Part 401.2(a) and involve a contract with a small business firm or nonprofit organization regarding the assignment or performance of experimental, developmental or research work must comply with the **Rights to Inventions Made Under a Contract or Agreement** contained in 37 CFR Part 401 (See Exhibit C);

(6) All contracts, subcontracts and sub-grants in excess of $150,000 must contain a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the **Clean Air Act** and the **Federal Water Pollution Control Act** (See Exhibit C);

(7) **Debarment and Suspension (Executive Orders 12549 and 12689 and 2 CFR Part 180)** which prohibit the contracting with any party listed on the "System for Award Management" (SAM), formerly identified as the "Excluded Parties List System" (EPLS.gov), which identifies all parties that have active exclusions (i.e., suspensions, debarments) imposed by a federal agency (See Exhibit C);

(8) **Byrd Anti-Lobbying Prohibition (31 U.S.C. 1352)** prohibits the use of federal funds to pay any person or organization for influencing or attempting in influence anyone with any federal contract, grant or other award covered by 31 U.S.C. 1352 and also requires that Contractors that apply or bid for an award exceeding $100,000 where federal funds are used must file the required certification stating that the parties will not and have not used federal funds to pay any person or organization for influencing or attempting to influence anyone with any federal contract, grant, or other award covered by 31 U.S.C. 1352 (See Exhibit C);

(9) For all construction contracts in excess of $2,000 and required by federal grant regulations, the **Davis Bacon Act** which requires payments of wages for laborers and mechanics at a rate not less than the minimum wages specified in a wage

determination made by the Secretary of Labor and said wage payments will be made at least weekly (See Exhibit D);

(10) **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment** wherein 2 CFR Part 200.216 prohibits use of federal grant or loan funds to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(11) **Domestic Preferences for Procurements** for when federal funds are utilized, and where appropriate and to the extent consistent with other laws and regulations, 2 CFR Part 200.322 allows a federal award to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products); and,

(12) **Procurement of Recovered Materials** as required by 2 CFR Part 200.323 which requires procurements in excess of $10,000 to contain the highest percentage of recovered materials practicable while consistent with maintaining a satisfactory level of competition.

(b)National Policy Requirements:

(1) **Civil Rights Act of 1964**, including Title VI, which states that no person shall on the grounds of race, color or national origin shall be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance;

(2) **Age Discrimination Act of 1975** which prohibits discrimination based on age in programs or activities receiving federal financial assistance;

(3) **Americans with Disabilities Act of 1990**, with respect to building construction or alteration, prohibits discrimination based on a disability defined as a physical or mental impairment that substantially limits a major life activity;

(4) **Section 504 of the Rehabilitation Act of 1973,** if specifically required by the federal agency, which prohibits the exclusion of an otherwise qualified individual because of a disability in programs receiving federal financial assistance including program accessibility, accessible new construction and alterations, reasonable accommodations and effective communication with hearing and visually disabled (this requirement may vary with each federal agency);

(5) For all construction or repair contracts, **Copeland "Anti-Kickback" Act** which requires all contracts and sub-grants for construction or repair to contain a provision that prohibits a contractor or sub-contractor from inducing, by any means, any person employed in the construction, completion or repairs of public work to give up any part of the compensation to which he is otherwise entitled;

(6) **National Environmental Policy Act and National Historic Preservation Act** which prohibit any activities that will have an adverse impact on the environment and regulate activity on property or structures that are deemed historic;

(7) **Energy Policy and Conservation Act** which require the contractors to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan;

(8) **Reporting Provision** requires that all contracts should include a requirement that the SUBRECIPIENT assist the GRANTEE, when applicable, with any awarding agency requirements and regulations pertaining to reporting;

(9) **Record Retention Provision** requires that any contract executed must include a provision that all required records will be maintained by the contractor/firm for a minimum period of three years after the GRANTEE formally closes out each federal program (GRANTEE and SUBRECIPIENT grant managers should verify the three-year record retention period with each respective grant agency to ensure that a longer period is not required);

(10) **2013 National Defense Authorization Act (41 United States Code (U.S.C.) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection)** subjects any subawards and contracts over the federal simplified acquisition threshold to the provisions of the above act regarding rights and remedies for employee whistleblower protections;

(11) **National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973** which require recipients of federal grants that are acquiring, constructing or repairing property in a special flood hazard area, and with an estimated cost in excess of $10,000, to purchase flood insurance;

(12) **Wild and Scenic Rivers Act of 1968** which protects components or potential components of the national wild and scenic rivers system;

(13) **Resource Conservation and Recovery Act** which requires proper handling and disposal of solid waste;

(14) **Toxic Substance Control Act** which places restrictions on chemicals that pose unreasonable risks, such as surfaces that could be covered with lead-based paint;

(15) **Federal Agency Seal(s), Logos, Crests, or Reproductions of Flags or Likeness of Federal Agency Officials** are prohibited from being utilized without specific federal agency pre-approval;

(16) **False Claims Act and 32 U.S.C. Chapter 38 (Administrative Remedies)** which prohibits the submission of false or fraudulent claims for payment to the federal government identifying administrative remedies for false claims and statements made which the CONTRACTOR herein acknowledges; and,

(17) **Section 603 Title VI of the Social Security Act** which establishes the Coronavirus State and Local Fiscal Recovery Fund and identifies eligible and ineligible uses for the Fund monies (See Exhibit E).

In compliance with Section 6(a)(8) above, the SUBRECIPIENT agrees to verify that all contractors or subcontractors employed are not parties listed as active exclusions (i.e., suspensions, debarments) on the "System for Award Management" (SAM) for parties debarred, suspended or otherwise excluded from contracting on any projects involving federal

funds. SUBRECIPIENT agrees to require the contractor to provide immediate notice, but in no case later than three (3) business days, after being notified that the contractor, or any subcontractor, has been added to the SAM or otherwise been debarred from contracting on any projects involving federal funds.

In no event shall the SUBRECIPIENT allow any contractor to utilize a subcontractor at any time during the duration of this Agreement who has been debarred from contracting on any projects involving federal funds. If the contractor is prohibited in any way from contracting on any projects involving federal funds at any time during the duration of this Agreement, then both the SUBRECIPIENT and GRANTEE must be notified. GRANTEE may, at its sole discretion, immediately implement the termination provisions discussed in Section 8 below if the SUBRECIPIENT decides to continue with the project using a "debarred" or "active exclusion" contractor or subcontractor.

7. Liability, Indemnity, and Insurance

The SUBRECIPIENT is responsible for the maintenance, upkeep, and insurance requirements related to the Scope of Work in Exhibit B. All related costs associated with this requirement are the sole responsibility of the SUBRECIPIENT.

This Agreement is intended for the benefit of the GRANTEE and the SUBRECIPIENT and does not confer any rights upon any other third parties. All rights by and between the GRANTEE and the SUBRECIPIENT are limited to the actions outlined in the applicable local, state and federal laws, regulations, and policies.

The SUBRECIPIENT will indemnify, defend, and hold harmless the GRANTEE, including the GRANTEE'S employees and agents, from and against any and all claims or liabilities arising from the fault of the SUBRECIPIENT, its employees or agents in carrying out the SUBRECIPIENT'S duties and obligations under the terms of this Agreement. The GRANTEE will indemnify, defend, and hold harmless the SUBRECIPIENT, including the SUBRECIPIENT'S employees and agents, from and against any and all claims or liabilities arising from the fault of the GRANTEE, its employees or agents in carrying out the GRANTEE'S duties and obligations under the terms of this Agreement. This section will survive the termination of this Agreement. In the event that either party takes any action to enforce this mutual indemnity provision, the prevailing party shall be entitled to recover reasonable attorney's fees and costs arising as a result thereof.

8. Termination of Agreement and Dispute Resolution

While both parties agree to negotiate all contractual disputes in good faith, the GRANTEE reserves the right to terminate this Agreement at any time upon written notice of termination or if the SUBRECIPIENT has failed to comply with the terms of this Agreement, the grant itself or any applicable law and regulation. All questioned costs are the sole responsibility of the SUBRECIPIENT.

If the parties are unable to independently and satisfactorily resolve any disAgreement, then both parties agree that any contractual disAgreement will be resolved under the jurisdiction of the State of New Mexico. In the event that court action is necessary then the parties agree that whoever prevails in the litigation is entitled to reasonable attorney's fees and costs as fixed by the Court.

9. Severability, Entire Agreement and Captions

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. If any provision of this Agreement is held invalid, void, or unenforceable under any law or regulation or by a court of competent jurisdiction, such provision will be deemed amended in a manner which renders it valid, or if it cannot be so amended, it will be deemed to be deleted. Such amendment or deletion will not affect the validity of any other provision of this Agreement. This Agreement, any CSLRF Grant Program documentation, any attached documents, and any referenced documents represent the entire Agreement between the GRANTEE and the SUBRECIPIENT and supersede all prior negotiations, representations or Agreements, either written or oral. In the event of a conflict between this Agreement and other documents, the terms of this Agreement shall control.

Each paragraph of this Agreement has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation.

IN WITNESS WHEREOF, the Grantee and the Subrecipient do hereby execute this Agreement as of the date of signature by the Subrecipient below.

THIS SUBRECIPIENT AGREEMENT has been approved by:

CITY OF LAS CRUCES

Ifo Pili/ City Manager — Date: 11/1/23

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

Wayne Propst, Cabinet Secretary — Date

APPROVED AS TO FORM:

City Attorney 10/31/23

EXHIBIT A

FEDERAL AWARD INFORMATION

In accordance with the Code of Federal Regulations (CFR), 2 CFR Section 200.331 requires that the following information be provided to any Subrecipient of a federal award:

Federal Award Identification: Coronavirus State and Local Fiscal Recovery Funds

Subrecipient Name: **City of Las Cruces**

Subrecipient Unique Identification (ID) Number: J3ZLWA2K1X47

Federal Award Identification Number: Coronavirus State and Local Fiscal Recovery Funds

Subaward Period of Performance (Start and End Date): Effective Date of this Agreement and June 30, 2025, the State of New Mexico reversion deadline

Amount of Federal Funds Obligated to Subrecipient: **$1,000,000** (One Million Dollars)

Federal Award Project Description (in accordance with Federal Funding Accountability and Transparency Act (FFATA): Coronavirus State and Local Fiscal Recovery Funds

Name of Federal Awarding Agency: U.S. Department of the Treasury

Name of Pass-Through Entity and Contact Information:

Department: Local Government Division of DFA
Name: Jeannette Gallegos
Title: Deputy Director
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: jeannette.gallegos@dfa.nm.gov
Telephone: (505) 827 - 4787

Assistance Listing Number (ALN): 21.027

EXHIBIT B

SCOPE OF WORK AND BUDGET

CSLFRF Program Funding ($1,000,000.00) will fund Direct Construction Costs as well as Architecture and Engineering for the Three Sisters Apartment ("The Project") complex a Low income Housing Tax Credit apartment complex for households earning up to 60% of area median income.

The City of Las Cruces will partner with Chelsea Investment Company and CC Housing (Catholic Charities of Albuquerque's affordable housing affiliate) in the construction of The Three Sisters Apartment complex. The 70- unit complex to be located at 2245 E Griggs Avenue ("The Property"), will contain 30 1-bedroom units, 20 2-bedroom units and 20 3-bedroom units. The complex in centrally located and close to schools, shopping, local bus routes and recreational facilities. The affordability period for the complex will be 35 years, meaning the complex will remain affordable housing for at least 35 years. Construction is expected to commence November 2023 and funding will be expended by all applicable deadlines.

The Project is eligible to receive, and has received funding under the Home Investment Partnerships Program ("HOME"), National Housing Trust Fund ("NHTF"), and the Low-Income Housing Tax Credit program ("LIHTC") and its eligibility for the receipt of ARPA CSLFRF funds is presumed under Treasury Presumption 1 from Treasury's Final Rule FAQ's 2.14;

The City of Las Cruces will ensure the Project meets all applicable requirements with respect to resident income restrictions, the Affordability Period and related covenant requirements for assisted units, resident protections, and housing quality standards.

The City will ensure compliance of all CSLFRF-Assisted Units of the Project with all applicable affordability requirements and will do so by executing and authorizing the recording against the Property and the Project of the Land Use Restriction Agreement ("LURA").

The City will ensure that all the Property and the Project meet applicable property standards and will ensure that all of the Property and the Project are maintained in compliance with state or local code requirements for the term of the LURA and the Affordability Period.

Major Milestones:

1. By November 15, 2023: Notice to Proceed to General Contractor
2. By February 1, 2025: Certificate of Occupancy issued by the City of Las Cruces
3. By May 1, 2025: Development is 100% leased.
4. By September 1, 2025: Conversion to permanent financing

THE THREE SISTERS
2245 Griggs, Las Cruces, NM88001
Las Cruces
Dona Ana

DEVELOPMENT COSTS & SOURCES

Development Costs:		
Land (including existing improvements)	$5,714/unit	400,000
Direct Construction Costs (inc Contingency)	$244,612/unit	17,122,811
Development Impact Fees	$3,055/unit	213,868
A&E	$11,389/unit	797,257
Financing Fees and Interest	$20,464/unit	1,432,461
Developer Fee	$20,464/unit	1,432,500
Other Soft Costs	$14,691/unit	1,028,372
Total Development Costs	$320,390/unit	**22,427,270**
Sources:		
Federal LIHTC Equity	$170,597/unit	11,941,822
Permanent Loans	$27,143/unit	1,900,000
Priority Deferred Developer Fee	$4,078/unit	285,448
Local Funds: City of Las Cruces Funds	$48,571/unit	3,400,000
State Funds: NHTF	$5,714/unit	400,000
State Funds: State CARES NMHTF	$50,000/unit	3,500,000
State Funds: HOME	$14,286/unit	1,000,000
Total Sources	$320,390/unit	**22,427,270**

Significant Changes to Scope of Work

The SUB RECIPIENT is required to notify and seek written approval of the GRANTEE in advance of any proposed changes to the scope of work under this Subaward (i.e., significant changes to the statement of project objectives or the schedule of technical milestones and deliverables). Such changes may require the GRANTEE to re-evaluate the eligibility of the work under this Subaward.

EXHIBIT C

CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS

Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 19641965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding Agreement" under 37 CFR section 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding Agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Clean Air Act and the Federal Water Pollution Control Act. Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 74017671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

EXHIBIT D

DAVIS-BACON ACT REQUIREMENTS
(IF APPLICABLE)

Overview

Section 1606 of the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009) (the "Recovery Act"), requires grant award recipients, subrecipients, contractors, and subcontractors to comply with the wage requirements of the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) and related acts, stating:

Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

Scope of the Davis-Bacon Act The Davis-Bacon Act prevailing wage requirements apply to laborers and mechanics employed under contracts or subcontracts in excess of $2,000 for construction, alteration, or repair activities (including but not limited to painting and decorating) that are funded, in whole or in part, under BTOP grant awards. In general:

- Laborers and mechanics – Are workers whose duties are manual or physical in nature, including apprentices, trainees and helpers, but do not include workers whose duties are primarily managerial, administrative, executive, or clerical. See 29 C.F.R. section 5.2(m).

- The $2,000 threshold – Pertains to the amount of the prime construction contract, not to the amount of individual subcontracts. Accordingly, if the prime construction contract exceeds $2,000, all construction work on the project (including subcontracts) is covered by the Davis-Bacon Act. See 29 C.F.R. section 5.5(a)(6).

- Construction, alteration, or repair activities – Are those occurring at the "site of the work" that involve the alteration, remodeling, or installation of items fabricated off-site; painting and decorating; manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work; and, in certain cases, transportation between the site of the work and other points. See 29 C.F.R. section 5.2(j).

- Site of the work – Is the physical place or places where the building or work called for in the contract will remain, and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project, and includes job headquarters, tool yards, batch plants, borrow pits, etc., if they are dedicated exclusively, or nearly so, to performance of the contract or project, and are adjacent or virtually adjacent to the site of the work. The site of the work does not include permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continued operation are determined wholly without regard to a particular Federal or Federally assisted contract or project. See 29 C.F.R. section 5.2(l).

- Application to Governmental Agencies - Governmental agencies, such as states or their political subdivisions, are not subject to the Davis Bacon Act requirements when construction work is being performed by their own employees on a "force account" basis. See 29 C.F.R. section 5.2(h).

Davis-Bacon Act prevailing wage requirements are likely to apply to construction and related activities undertaken in connection with Infrastructure Round 1 and Comprehensive Community Infrastructure (CCI) Round 2 projects. In many cases, Davis-Bacon Act prevailing wage requirements will also apply to activities under BTOP grants for Sustainable Broadband Adoption (SBA) and Public Computer Centers (PCC), when construction and related activities (including minor renovation of facilities) can be segregated from the other work contemplated by the grant. See 29 C.F.R. section 4.116; F.A.R. section 22.402(b).

Davis-Bacon Act Requirements

Required contract provisions (appearing at 29 C.F.R. section 5.5) and the applicable wage determination(s) for the activities contemplated by a construction project must be included in any contract or subcontract to which the Davis-Bacon Act applies providing, among other items, that:

- Laborers and mechanics must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) at least once a week;

- No paycheck deductions or rebates are permitted, except as permitted under Department of Labor (DOL) regulations (29 C.F.R. sections 3.5-3.6);

- Wage and fringe benefit rates must be no less than those contained in DOL wage determination for the labor classification for the work actually performed.

The recipient is responsible for ensuring that the required contract provisions appear in all contracts and subcontracts entered into by recipients, subrecipients, contractors, and subcontractors for construction, alteration and repair activities covered by the Davis-Bacon

Act and related acts. Applicable wage determinations included in the contract must be verified by the recipient within 10 days of the contract date.

In cases where state wage rates (determined under state statutes often called "Mini-Davis-Bacon Acts") are higher than the Federal wage rates, the state wage rates take precedence and should be included in contracts in lieu of the lower, Federal wage rates. In cases of construction projects on tribal lands, the recipient should contact its assigned Federal Program Officer (FPO) for guidance on the interplay among the Davis-Bacon Act, state Mini-Davis-Bacon acts, and the Tribal Employment Rights Ordinance (TERO).

Contracts for amounts over $100,000 that are covered by the Davis-Bacon Act must include additional standard clauses (also appearing in 29 C.F.R. section 5.5) providing, among other things, that overtime for laborers and mechanics must be paid at a rate 1.5 times the basic rate of pay for time worked in excess of 40 hours per week.

In addition, the DOL Davis-Bacon poster (WH-1321) must be prominently posted at the site of the work. Refer to: (www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf 1321).

Davis-Bacon Wage Rate Determinations

DOL conducts statewide surveys seeking payment data on wage and fringe benefit rates from construction contractors and other interested parties, such as labor unions. Wage determinations are issued by locality, typically on a county-by-county basis. Davis-Bacon Act wage determinations are published on DOL's Wage Determinations OnLine (WDOL) website accessible at: www.wdol.gov. The Davis-Bacon Act prevailing wages are determined by DOL based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area.

If DOL has not published a wage determination for work that is needed to complete a BTOP construction project, the recipient may seek a Conformance. The recipient must submit a Conformance request using Standard Form (SF) 1444. Please go to www.wdol.gov/library.aspx to obtain a copy of the form and instructions.

To complete the form, the recipient must describe the work to be done (identified with a classification that is used in the subject area in the construction industry) and propose a wage rate that bears a reasonable relationship to existing wage determinations. Typically, the rate must not be less than the wage determination for an unskilled laborer and, for a skilled craft, must be at least equal to the lowest wage determination for any other skilled craft.

Infrastructure and CCI recipients should submit the completed SF-1444 through Grants Online as an "Other Action Request." The SF1444 will be routed to the National Oceanic and Atmospheric Administration (NOAA) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

SBA and PCC recipients should submit completed SF-1444 Conformance requests through the Post-Award Monitoring (PAM) System. To do so, the recipient should create a report package of the type "POR: PAM Other Request." After filling out and attaching the Request Template, recipient should attach the completed SF-1444 form using the "Add File" button. The SF-1444 will be routed to the National Institute of Standards and Technology (NIST) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

Recordkeeping and Monitoring Obligations

Recipients, subrecipients, contractors, and subcontractors must prepare weekly certified payroll documentation using Form WH347 (available at: www.dol.gov/whd/forms/wh347.pdf), properly completed for laborers and mechanics performing activities covered by the Davis-Bacon Act requirements of the Recovery Act. Subrecipients, contractors, and subcontractors must submit this information to the BTOP grant award recipient on a weekly basis within seven days of the regular payment date of the subrecipient's, contractor's or subcontractor's payroll period.

A recipient must review the weekly certified payroll documentation it receives from its subrecipients, contractors and subcontractors on an ongoing basis. See 29 C.F.R. sections 3.3-3.4. If a subrecipient receives the original payroll documents, the subrecipient should review these documents and forward the original documents to the recipient on a weekly basis within the time period described above.

The recipient must maintain in its files the original Davis-Bacon Act payroll records it prepares for itself, as well as those prepared by subrecipients, contractors, and subcontractors. The recipient is not required to submit any of the payroll documents to the BTOP Grants Office unless the assigned Grants Officer makes a request for such records. The payroll records must be maintained so as to be easily accessed by BTOP Grants Officers and by other duly authorized officials. The recipient must retain these records as provided in the Department of Commerce (DOC) Uniform Administrative Requirements for Grants and Cooperative Agreements, 15 C.F.R. section 14.53 or 24.42, as applicable, generally for the later of three years after closeout of the award, or until any litigation, claim, or audit is resolved.

Enforcement and Penalties

Violation of the requirements of Section 1606 of the Recovery Act and the Davis-Bacon Act and related acts is a serious offense. Compliance is subject to audit during OMB Circular A-133 audits (including program-specific audits) of BTOP grant recipients and subrecipients, as well as audits and investigations by the DOC Office of Inspector General, the Government Accountability Office (GAO), the DOL Wage and Hour Division, and other duly authorized officials. A violation of the Davis-Bacon Act wage requirements may lead NTIA to impose appropriate enforcement action in connection with a BTOP grant award, up to and including suspension or termination of the award. In addition, contracting parties are subject to payment of back wages, and suspension or debarment from future contracts for a period of up to three

years. Monetary damages may also apply. Falsification of certified payroll records or the required kickback of wages may subject a violator to civil or criminal prosecution, the penalty for which may include fines and/or imprisonment.

EXHIBIT E

ELIGIBLE AND RESTRICTED USES OF CSLFRF FUNDS

As described in the CSLFRF statute and summarized above, there are four enumerated eligible uses of CSLFRF award funds. As a recipient of an award under the CSLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of CSLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the CSLFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

- A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
- Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
- A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
- A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and,
- A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

Treasury's most recent Interim Final Rule also provides more information on three important restrictions on use of CSLFRF award funds: recipients may not deposit CSLFRF funds into a pension fund; recipients that are States or territories may not use CSLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative interpretation; and, recipients may not use CSLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of CSLFRF funds outside the scope of eligible uses, including that recipients generally may not use CSLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's Interim Final Rule for more information on these restrictions.

U.S. Department of Transportation Federal Aviation Administration

Airports Division Southwest Region Louisiana,New Mexico

10101 Hillwood Pkwy Louisiana/New Mexico Airports District Office Fort Worth, TX 76177-1524

Mr. Andy Hume
8990 Zia Blvd
Las Cruces, NM 88007

Dear Mr. Hume:

Las Cruces International Airport

City of Las Cruces

AIP Grant No 3-35-0024-034-2020

UEI No J3ZLWA2K1X47

Letter Amendment (Amendment No.1)

This is in response to your letter dated June 1, 2023, requesting an amendment to the Grant Agreement for the subject AIP project to: (1) revise the project description, and (2) increase the maximum obligation of the United States as set forth in the Grant Agreement accepted by the Sponsor, on May 20, 2020. This letter, together with your letter, effects the amendment, as requested, and commits the Federal Aviation Administration, acting for and on behalf of the United States of America, to delete the project description, as shown in the above referenced Grant Agreement, and to substitute the following project description:

Conduct Airport Related Environmental Assessment/Plan/Study and Preliminary Engineering for Design of decoupling of runway 8/26.

Furthermore, this letter commits the Federal Aviation Administration, acting for and on behalf of the United States of America, to increase the maximum obligation of the United States by $28,949 from $192,994 to $221,943 to cover the Federal share of the total actual eligible and allowable project costs.

Under the terms of the Grant Agreement, this document is incorporated into and constitutes Amendment No. 1 to the above referenced Grant Agreement. All other terms and conditions of the Grant Agreement remain in full force and effect.

Sincerely,

JUSTIN R BARKER

Digitally signed by JUSTIN R BARKER
Date: 2023.06.16 14:11:07 -05'00'

Signature

Justin Barker

Name

ADO Manager

Title

Department of Justice (DOJ)

Office of Community Oriented Policing Services (COPS Office)

Washington, D.C. 20531

Name and Address of Recipient:	CITY OF LAS CRUCES 700 N MAIN ST
City, State and Zip:	LAS CRUCES, NM 88001
Recipient UEI:	J3ZLWA2K1X47
Project Title: FY23 COPS Technology and Equipment Program (Congressionally Directed Spending)	**Award Number:** 15JCOPS-23-GG-01724-TECP
Solicitation Title: FY 2023 COPS Technology and Equipment Program Invitational Solicitation	
Federal Award Amount: $1,750,000.00	**Federal Award Date:** 9/20/23
Awarding Agency:	Office of Community Oriented Policing Services
Funding Instrument Type:	Grant
Opportunity Category: D **Assistance Listing:** 16.710 - Public Safety Partnership and Community Policing Grants	
Project Period Start Date: 12/29/22	**Project Period End Date:** 12/31/24
Budget Period Start Date: 12/29/22	**Budget Period End Date**: 12/31/24

Project Description:

The FY 2023 COPS Office Technology and Equipment Program (TEP) is an invitation-only grant program designed to develop and acquire effective equipment, technologies, and interoperable communications that assist in responding to and preventing crime.

The objective is to provide funding for projects which improve police effectiveness and the flow of information among law enforcement agencies, local government service providers, and the communities they serve. Funding shall be used for the projects, and in the amounts, specified under the heading "Community Oriented Policing Services, Technology and Equipment Community Projects/ COPS Law Enforcement Technology and Equipment" in the Joint Explanatory Statement – Division B, which is incorporated by reference into Public Law 117-328.

Award Letter

September 20, 2023

Dear Miguel Dominguez,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Community Oriented Policing Services (the COPS Office) has approved the application submitted by CITY OF LAS CRUCES for an award under the funding opportunity entitled 2023 FY 2023 COPS Technology and Equipment Program Invitational Solicitation. The approved award amount is $1,750,000.
Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance. For COPS Office and OVW funding the Award Offer also includes any Other Award Documents.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by the COPS Office, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Prior to accepting the award, your Entity Administrator must assign a Financial Manager, Grant Award Administrator, and Authorized Representative(s) in the Justice Grants System (JustGrants). The Entity Administrator will need to ensure the assigned Authorized Representative(s) is current and has the legal authority to accept awards and bind the entity to the award terms and conditions. To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

To access your funds, you will need to enroll in the Automated Standard Application for Payments (ASAP) system, if you haven't already completed the enrollment process in ASAP. The Entity Administrator should have already received an email from ASAP to initiate this process.

Congratulations, and we look forward to working with you.

HUGH CLEMENTS
COPS Director

Office for Civil Rights Notice for All Recipients

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, require recipients of federal financial assistance to give assurances that they will comply with those laws. Taken together, these civil rights laws prohibit recipients of federal financial assistance from DOJ from discriminating in services and employment because of race, color, national origin, religion, disability, sex, and, for grants authorized under the Violence Against Women Act, sexual orientation and gender identity. Recipients are also prohibited from discriminating in services because of age. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with DOJ awards, see https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm.

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria.

These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a nondiscriminatory manner to their service population or have employment practices that meet equal-opportunity standards.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOPs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEOP requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5).

The OCR is available to help you and your organization meet the civil rights requirements that are associated with DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to contact the OCR at askOCR@ojp.usdoj.gov.

Award Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Recipient Information

Recipient Name
CITY OF LAS CRUCES

UEI
J3ZLWA2K1X47

ORI Number
NM00701

Street 1
700 N MAIN ST

Street 2

City
LAS CRUCES

State/U.S. Territory
New Mexico

Zip/Postal Code
88001

Country
United States

County/Parish

Province

Award Details

Federal Award Date
9/20/23

Award Type
Initial

Award Number
15JCOPS-23-GG-01724-TECP

Supplement Number
00

Federal Award Amount
$1,750,000.00

Funding Instrument Type
Grant

Assistance Listing Number	Assistance Listings Program Title
16.710	Public Safety Partnership and Community Policing Grants

Statutory Authority

The Public Safety Partnership and Community Policing Act of 1994, 34 U.S.C. § 10381 et seq

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Project Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Solicitation Title

2023 FY 2023 COPS Technology and Equipment Program Invitational Solicitation

Awarding Agency
COPS

Application Number
GRANT13847313

Grant Manager Name
ANNIE BEAMON
Phone Number
202-305-5263
E-mail Address
ANNE.BEAMON@USDOJ.GOV

Project Title
FY23 COPS Technology and Equipment Program (Congressionally Directed Spending)

Performance Period Start Date
12/29/2022

Performance Period End Date
12/31/2024

Budget Period Start Date
12/29/2022

Budget Period End Date
12/31/2024

Project Description

The FY 2023 COPS Office Technology and Equipment Program (TEP) is an invitation-only grant program designed to develop and acquire effective equipment, technologies, and interoperable communications that assist in responding to and preventing crime.

The objective is to provide funding for projects which improve police effectiveness and the flow of information among law enforcement agencies, local government service providers, and the communities they serve. Funding shall be used for the projects, and in the amounts, specified under the heading “Community Oriented Policing Services, Technology

and Equipment Community Projects/ COPS Law Enforcement Technology and Equipment" in the Joint Explanatory Statement – Division B, which is incorporated by reference into Public Law 117-328.

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Financial Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

A financial analysis of budgeted costs has been completed. All costs listed in the approved budget below were programmatically approved based on the final proposed detailed budget and budget narratives submitted by your agency to the COPS Office. Any adjustments or edits to the proposed budget are explained below.

Budget Clearance Date: 6/8/23 8:05 AM

Comments
No items

Budget Category	Proposed Budget	Change	Approved Budget	Percentages
Sworn Officer Positions:	$0	$0	$0	
Civilian or Non-Sworn Personnel:	$0	$0	$0	
Travel:	$0	$0	$0	
Equipment:	$1,750,000	$0	$1,750,000	
Supplies:	$0	$0	$0	
SubAwards:	$0	$0	$0	
Procurement Contracts:	$0	$0	$0	
Other Costs:	$0	$0	$0	
Total Direct Costs:	$1,750,000	$0	$1,750,000	
Indirect Costs:	$0	$0	$0	
Total Project Costs:	$1,750,000	$0	$1,750,000	
Federal Funds:	$1,750,000	$0	$1,750,000	100.00%
Match Amount:	$0	$0	$0	0.00%

Program Income:	$0	$0	$0	0.00%

Budget Category
Sworn Officer
Civilian Personnel
Travel
Equipment
Supplies
SubAwards
Procurement Contracts
Other Costs
Indirect Costs

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Other Award Documents

[ ]

I have read and understand the information presented in this section of the Federal Award Instrument.

No other award documents have been added.

Award Conditions

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

1

Reporting Subawards and Executive Compensation

The recipient agrees to comply with the following requirements of 2 C.F.R. Part 170, Appendix A to Part 170 – Award Term:
I. Reporting Subawards and Executive Compensation
a. Reporting of first-tier subawards.

Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds $30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions

in paragraph e. of this award term).

2. Where and when to report.

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to http://www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this Federal award equals or exceeds $30,000 as defined in 2 CFR 170.320;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at https://www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the

U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization

3. Executive means officers, managing partners, or any other employees in management positions.

4. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. Subrecipient means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

2

Restrictions on Internal Confidentiality Agreements: No recipient or subrecipient under this award, or entity that receives a 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 the lawful reporting of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information. Consolidated Appropriations Act, 2023, Public Law 117-328, Division E, Title VII, Section 742.

3

Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and COPS Office authority to terminate award): The recipient and subrecipient agree to comply with the requirements in 2 C.F.R. § 175.15(b) – Award Term:
I. Trafficking in persons.
a. Provisions applicable to a recipient that is a private entity.
1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
ii. Procure a commercial sex act during the period of time that the award is in effect; or
iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
A. Associated with performance under this award; or
B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by DOJ at 2 C.F.R. Part 2867.
b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
i. Associated with performance under this award; or
ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by DOJ at 2 C.F.R. Part 2867.
c. Provisions applicable to any recipient.
1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended 22 U.S.C. 7104(g), and
ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
d. Definitions. For purposes of this award term:
1. "Employee" means either:
i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
ii. Includes:
A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section

103 of the TVPA, as amended (22 U.S.C. 7102).

4

Duplicative Funding: The recipient understands and agrees to notify the COPS Office if it receives, from any other source, funding for the same item or service also funded under this award.

5

Termination: Recipient understands and agrees that the COPS Office may terminate funding, in whole or in part, for the following reasons:
(1) When the recipient fails to comply with the terms and conditions of a Federal award.
(2) When an award no longer effectuates the program goals or agency priorities, to the extent such termination is authorized by law.
(3) When the recipient agrees to the termination and termination conditions.
(4) When the recipient provides the COPS Office written notification requesting termination including the reasons, effective date, and the portion of the award to be terminated. The COPS Office may terminate the entire award if the remaining portion will not accomplish the purposes of the award.
(5) Pursuant to any other termination provisions included in the award.
2. C.F.R. § 200.340.

6

Award Owner's Manual: The recipient agrees to comply with the terms and conditions in the applicable 2023 COPS Office Program Award Owner's Manual; DOJ Grants Financial Guide; COPS Office statute (34 U.S.C. § 10381, et seq.) as applicable; Students, Teachers, and Officers Preventing (STOP) School Violence Act of 2018 (34 U.S.C. § 10551, et seq.) as applicable; the requirements of 2 C.F.R. Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted by the U.S. Department of Justice in 2 C.F.R. § 2800.101; 48 C.F.R. Part 31 (FAR Part 31) as applicable (Contract Cost Principles and Procedures); the Cooperative Agreement as applicable; representations made in the application; and all other applicable program requirements, laws, orders, regulations, or circulars.

Failure to comply with one or more award requirements may result in remedial action including, but not limited to, withholding award funds, disallowing costs, suspending, or terminating the award, or other legal action as appropriate.

Should any provision of an award condition be deemed invalid or unenforceable by its terms, that provision will be applied to give it the maximum effect permitted by law. Should the provision be deemed invalid or unenforceable in its entirety, such provision will be severed from this award.

7

Authorized Representative Responsibility: The recipient understands that, in accepting this award, the Authorized Representatives declare and certify, among other things, that they possess the requisite legal authority to accept the award on behalf of the recipient entity and, in so doing, accept (or adopt) all material requirements throughout the period of performance under this award. The recipient further understands, and agrees, that it will not assign anyone to the role of Authorized Representative during the period of performance under the award without first ensuring that the individual has the requisite legal authority.

8

Award Monitoring Activities: Federal law requires that recipients receiving federal funding from the COPS Office must be monitored to ensure compliance with their award conditions and other applicable statutes and regulations. The COPS Office is also interested in tracking the progress of our programs and the advancement of community policing. Both aspects of award implementation—compliance and programmatic benefits—are part of the monitoring process coordinated by the U.S. Department of Justice. Award monitoring activities conducted by the COPS Office include site visits, enhanced office-based grant reviews, alleged noncompliance reviews, financial and programmatic reporting, and audit resolution. As a COPS Office award recipient, you agree to cooperate with and respond to any requests for information pertaining to your award. This includes all financial records, such as general accounting ledgers and all supporting documents. All information pertinent to the implementation of the award is subject to agency review throughout the life of the award, during the close-out process and for three-years after the submission of the final expenditure report. 34 U.S.C. § 10385(a) and 2 C.F.R. §§ 200.334 and 200.337.

9

Contract Provision: All contracts made by the award recipients under the federal award must contain the provisions required under 2 C.F.R. Part 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Please see appendices in the Award Owner's Manual for a full text of the contract provisions.

10

Assurances and Certifications: The recipient acknowledges its agreement to comply with the Assurances and Certifications forms that were signed as part of its application.

11

Conflict of Interest: Recipients and subrecipients must disclose in writing to the COPS Office or pass-through entity, as applicable, any potential conflict of interest affecting the awarded federal funding in 2 C.F.R. § 200.112.

12

Debarment and Suspension: The recipient agrees not to award federal funds under this program to any party which is debarred or suspended from participation in federal assistance programs. 2 C.F.R. Part 180 (Government-wide Nonprocurement Debarment and Suspension) and 2 C.F.R. Part 2867 (DOJ Nonprocurement Debarment and Suspension).

13

Employment Eligibility: The recipient agrees to complete and keep on file, as appropriate, the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States. Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603.

14

Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information: Recipients and subrecipients agree not to discharge, demote, or otherwise discriminate against an employee as reprisal for the employee disclosing information that he or she reasonably believes is evidence of gross mismanagement of a federal contract or award, a gross waste of federal funds, an abuse of authority relating to a federal contract or award, a 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 award. Recipients and subrecipients also agree to provide to their employees in writing (in the predominant native language of the workforce) of the rights and remedies provided in 41 U.S.C. § 4712. Please see appendices in the Award Owner's Manual for a full text of the statute.

15

Equal Employment Opportunity Plan (EEOP): All recipients of funding from the COPS Office must comply with the federal regulations pertaining to the development and implementation of an Equal Employment Opportunity Plan. 28 C.F.R. Part 42 subpart E.

16

False Statements: False statements or claims made in connection with COPS Office awards may result in fines, imprisonment, debarment from participating in federal awards or contracts, and/or any other remedy available by law. 31 U.S.C. § 3729-3733.

17

Federal Civil Rights: The Applicant understands that the federal statutes and regulations applicable to the award (if any) made by the Department based on the application specifically include statutes and regulations pertaining to civil rights and nondiscrimination, and, in addition—
a. the Applicant understands that the applicable statutes pertaining to civil rights will include section 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); section 901 of the Education Amendments of 1972 (20 U.S.C. § 1681); and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. § 6102);

b. the Applicant understands that the applicable statutes pertaining to nondiscrimination may include section 809(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. § 10228(c)); section 1407(e) of the Victims of Crime Act of 1984 (34 U.S.C. § 20110(e)); section 299A(b) of the Juvenile Justice and Delinquency Prevention Act of 2002 (34 U.S.C. § 11182(b)); and that the grant condition set out at section 40002(b)(13) of the Violence Against Women Act (34 U.S.C. § 12291(b)(13)), which will apply to all awards made by the Office on Violence Against Women, also may apply to an award made otherwise;
c. the Applicant understands that it must require any subrecipient to comply with all such applicable statutes (and associated regulations); and
d. on behalf of the Applicant, I make the specific assurances set out in 28 C.F.R. §§ 42.105 and 42.204.
The Applicant also understands that (in addition to any applicable program-specific regulations and to applicable federal regulations that pertain to civil rights and nondiscrimination) the federal regulations applicable to the award (if any) made by the Department based on the application may include, but are not limited to, 2 C.F.R. Part 2800 (the DOJ "Part 200 Uniform Requirements") and 28 C.F.R. Parts 22 (confidentiality - research and statistical information), 23 (criminal intelligence systems), 38 (regarding faith-based or religious organizations participating in federal financial assistance programs), and 46 (human subjects protection).

18

Mandatory Disclosure: Recipients and subrecipients must timely disclose in writing to the Federal awarding agency or pass-through entity, as applicable, all federal criminal law violations involving fraud, bribery, or gratuity that may potentially affect the awarded federal funding. Recipients that receive an award over $500,000 must also report certain civil, criminal, or administrative proceedings in SAM and are required to comply with the Term and Condition for Recipient Integrity and Performance Matters as set out in 2 C.F.R. Part 200, Appendix XII to Part 200. Failure to make required disclosures can result in any of the remedies, including suspension and debarment, described in 2 C.F.R. § 200.339. 2 C.F.R. § 200.113.

19

Reports/Performance Goals: To assist the COPS Office in monitoring and tracking the performance of your award, your agency will be responsible for submitting semi-annual programmatic performance reports that describe project activities during the reporting period and quarterly Federal Financial Reports using Standard Form 425 (SF-425). 2 C.F.R. §§ 200.328 - 200.329. The performance report is used to track your agency's progress toward implementing community policing strategies and to collect data to gauge the effectiveness of increasing your agency's community policing capacity through COPS Office funding. The Federal Financial Report is used to track the expenditures of the recipient's award funds on a cumulative basis throughout the life of the award.

20

Recipient Integrity and Performance Matters: For awards over $500,000, the recipient agrees to comply with the following requirements of 2 C.F.R. Part 200, Appendix XII to Part 200 – Award Term and Condition for Recipient Integrity and Performance Matters:
A. Reporting of Matters Related to Recipient Integrity and Performance
1. General Reporting Requirement
If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report
Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five-year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures
Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency
During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions
For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

21

System for Award Management (SAM) and Universal Identifier Requirements: The recipient agrees to comply with the following requirements of 2 C.F.R. Part 25, Appendix A to Part 25 – Award Term:
I. System for Award Management and Universal Identifier Requirements
A. Requirement for System for Award Management
Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current

information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for Unique Entity Identifier
If you are authorized to make subawards under this Federal award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.

2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions
For purposes of this term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at https://www.sam.gov).

2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

3. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following, for purposes of this part:

a. A foreign organization;

b. A foreign public entity;

c. A domestic for-profit organization; and

d. A Federal agency.

4. Subaward has the meaning given in 2 CFR 200.1.

5. Subrecipient has the meaning given in 2 CFR 200.1.

22

Additional High-Risk Recipient Requirements: The recipient agrees to comply with any additional requirements that may be imposed during the award performance period if the awarding agency determines that the recipient is a high-risk recipient. 2 C.F.R. § 200.208.

23

Criminal Intelligence Systems: Recipients using award funds to operate an interjurisdictional criminal intelligence system must comply with the operating principles of 28 C.F.R. Part 23. At the time of application, the recipient assured the COPS Office that it will comply with the requirements of 28 C.F.R. Part 23.

24

State Information Technology Point of Contact: The recipient agrees to ensure that the appropriate State Information Technology Point of Contact receives written notification regarding any technology or information-sharing project funded by this award during the obligation and expenditure period. This is to facilitate communication among local and state governmental entities regarding various information technology projects being conducted with these award funds. In addition, the recipient agrees to maintain an administrative file documenting the meeting of this requirement. For a list of State Information Technology Points of Contact, go to https://it.ojp.gov/technology-contacts.

25

Requirement to report actual or imminent breach of personally identifiable information (PII).

The recipient (and any subrecipient at any tier) must have written procedures in place to respond in the event of an actual or imminent breach (as defined in OMB M-17-12) if it (or a subrecipient)-- 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of personally identifiable information (PII) (as defined in 2 C.F.R. 200.1) within the scope of a COPS Office grant-funded program or activity, or 2) uses or operates a Federal information system (as defined in OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to the recipient's COPS Office Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

26

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment: Recipient agrees that it, and its subrecipients, will not use award funds to extend, renew, or enter into any contract to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 CFR §200.216. Covered services and equipment include telecommunications or video surveillance services or equipment produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); or an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of China. The use of award funds on covered telecommunications or video surveillance services or equipment are unallowable.
2. C.F.R. § § 200.216 & 471. See also Section 889 of the John S. McCain National Defense Authorization Act of Fiscal Year 2019, Public Law 115-232.

27

Modifications: Award modifications are evaluated on a case-by-case basis in accordance with 2 C.F.R. § 200.308(f). For federal awards in excess of $250,000, any modification request involving the reallocation of funding between budget categories that exceed or are expected to exceed 10 percent (10%) of the total approved budget requires prior written approval by the COPS Office. Regardless of the federal award amount or budget modification percentage, any reallocation of funding is limited to approved budget categories. In addition, any budget modification that changes the scope of the project requires prior written approval by the COPS Office.

28

The Paperwork Reduction Act Clearance and Privacy Act Review: Recipient agrees, if required, to submit all surveys, interview protocols, and other information collections to the COPS Office for submission to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act (PRA). Before submission to OMB, all information collections that request personally identifiable information must be reviewed by the COPS Office to ensure compliance with the Privacy Act. The Privacy Act compliance review and the PRA clearance process may take several months to complete. 44 U.S.C. §§ 3501-3520 and 5 U.S.C. § 552a.

29

Computer Network Requirement: The recipient understands and agrees that no award funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. Nothing in this requirement limits the use of funds necessary for any federal, state, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities. Consolidated Appropriations Act, 2023, Public Law 117-328, Division B, Title V, Section 527.

30

Domestic preferences for procurements: Recipient agrees that it, and its subrecipients, to the greatest extent practicable, will provide a preference for the purchase, acquisition, or use of goods, products, and materials produced in, and services offered in, the United States. 2. C.F.R. § 200.322 and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers, January 25, 2021.

31

Sole Source Justification: Recipients who have been awarded funding for the procurement of an item (or group of items) or service in excess of $250,000 and who plan to seek approval for use of a noncompetitive procurement process must provide a written sole source justification to the COPS Office for approval prior to obligating, expending, or drawing down award funds for that item or service. 2 C.F.R. § 200.325(b)(2).

32

Supplementing, not Supplanting: State, local, and tribal government recipients must use award funds to supplement, and not supplant, state, local, or Bureau of Indian Affairs (BIA) funds that are already committed or otherwise would have been committed for award purposes (hiring, training, purchases, and/or activities) during the award period. In other words, state, local, and tribal government recipients may not use COPS Office funds to supplant (replace) state, local, or BIA funds that would have been dedicated to the COPS Office-funded item(s) in the absence of the COPS Office award. 34 U.S.C. § 10384(a).

33

Travel Costs: Travel costs for transportation, lodging and subsistence, and related items are allowable with prior approval from the COPS Office. Payment for allowable travel costs will be in accordance with 2 C.F.R. § 200.475.

34

Extensions: Recipients may request an extension of the award period to receive additional time to implement their award program. Such extensions do not provide additional funding. Only those recipients that can provide a reasonable justification for delays will be granted no-cost extensions. Extension requests must be received prior to the end date of the award. 2 C.F.R. §§ 200.308(e)(2) and 200.309.

35

Allowable Costs: The funding under this award is for the payment of approved costs for program-specific purposes. The allowable costs approved for your agency's award are limited to those listed in your agency's award package. In accordance with 2 C.F.R. § 200.400(g), the recipient must forgo any profit or management fee. Your agency may not use award funds for any costs not identified as allowable in the award package.

36

Evaluations: The COPS Office may conduct monitoring or sponsor national evaluations of its award programs. The recipient agrees to cooperate with the monitors and evaluators. 34 U.S.C. § 10385(b).

37

Contracts and/or MOUs with Other Jurisdictions: Items funded under this award must only be used for law enforcement activities or services that benefit your agency and the population that it serves and cannot be utilized by other agencies unless the items benefit the population that your agency serves.

38

Community Policing: Community policing activities to be initiated or enhanced by your agency were identified and described in your award application. All equipment, technology, training, and civilian positions awarded under the TEP award must be linked to the implementation or enhancement of community policing. 34 U.S.C. § 10382 (c)(10).

39

Build America, Buy America Act (BABAA): To the extent that provisions found in Pub. L. No. 117-58, §§70901-52, as supplemented by OMB guidance M-22-11 (April 18, 2022) are applicable, recipients must use iron, steel, manufactured products, and construction materials produced in the United States for any infrastructure projects funded under this award unless they first request and obtain a waiver from the Office of Community Oriented Policing Services (COPS Office).

The Build America, Buy America Act (BABAA), Pub. L. No. 117-58, §§70901-52, requires all federal agencies, including the COPS Office, to ensure by May 14, 2022, that no federal financial assistance for "infrastructure" projects is provided "unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States."

In accordance with section 70914 of the BABAA, COPS Office recipients receiving funding for infrastructure projects (e.g., construction, renovation, and broadband infrastructure) may not use their grant funds for these infrastructure projects or activities unless they comply with the BABAA sourcing requirements or request and obtain a waiver of the requirements from the COPS Office.

The COPS Office may approve, subject to notice and comment requirements and OMB review, the following types of waivers in accordance with sections 70914(b) and (d), 70921(b), 70935, and 70937 of the Build America, Buy America Act:
1. Nonavailability Waivers – Waivers addressing the unavailability of American made iron, steel, manufactured products, or construction materials.
2. Unreasonable Cost Waivers – Waivers reflecting that the overall cost of the infrastructure project with domestic iron, steel, manufactured products, or construction materials exceeds by more than 25 percent the overall cost of the project with foreign iron, steel, manufactured products, or construction materials.
3. Public Interest Waivers, which include:
i. de minimis standard waivers that exempt up to 5% of project costs up to the Simplified Acquisition Threshold when this would advance the public interest;
ii. small grants waivers for grants below the Simplified Acquisition Threshold when this would advance the public interest;
iii. adjustment period waivers such as brief, time limited waivers to allow recipients to transition to new rules and processes when this would advance the public interest;
iv. international trade obligations waivers when a recipient has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, and waivers to ensure compliance with such obligations may be in the public interest; and
v. general applicability waivers that are issued under limited conditions, e.g., product-specific waivers for which there are known domestic sourcing challenges.
4. Exigent Circumstances Waivers: In limited situations where there is an urgent need in an unforeseen and exigent circumstance, the COPS Office may waive the BABAA sourcing requirements without subjecting such waiver to public comments and the Office of Management and Budget's Made in America Office (MIAO) review.

Recipients do not need to obtain a waiver of the BABAA sourcing requirements from the COPS Office if they will use only American produced iron, steel, manufactured products, and construction materials for the project.

If a recipient determines a waiver is necessary, an application for a waiver should be submitted as soon as possible and provide detailed information to expedite the COPS Office's review. Recipients agree not to obligate, expend or draw down funds for infrastructure projects or activities unless they comply with the BABAA sourcing requirements or request and obtain a waiver of the requirements from the COPS Office.

If you have any questions about this requirement or requesting a waiver of the requirement, please contact your COPS Office Program Manager at 800-421-6770.

40

Compliance with National Environmental Policy Act and related statutes: Upon request, the recipient must assist the COPS Office 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. Accordingly, the recipient agrees to determine if new construction or renovation or remodeling of a property will be funded by the grant, and if so, agrees to comply with all NEPA requirements prior to obligating, expending, or drawing down award funds for any award purposes. The recipient understands and agrees that complying with NEPA may require the preparation of an environmental study, including an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS), as directed by the COPS Office. The NEPA compliance process may take several months to complete. 42 U.S.C. §§ 4321 et seq.

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Award Acceptance

Declaration and Certification to the U.S. Department of Justice as to Acceptance

By checking the declaration and certification box below, I--

A. Declare to the U.S. Department of Justice (DOJ), under penalty of perjury, that I have authority to make this declaration and certification on behalf of the applicant.

B. Certify to DOJ, under penalty of perjury, on behalf of myself and the applicant, to the best of my knowledge and belief, that the following are true as of the date of this award acceptance: (1) I have conducted or there was conducted (including by applicant's legal counsel as appropriate and made available to me) a diligent review of all terms and conditions of, and all supporting materials submitted in connection with, this award, including any assurances and certifications (including anything submitted in connection therewith by a person on behalf of the applicant before, after, or at the time of the application submission and any materials that accompany this acceptance and certification); and (2) I have the legal authority to accept this award on behalf of the applicant.

C. Accept this award on behalf of the applicant.

D. Declare the following to DOJ, under penalty of perjury, on behalf of myself and the applicant: (1) I understand that, in taking (or not taking) any action pursuant to this declaration and certification, DOJ will rely upon this declaration and certification as a material representation; and (2) I understand that any materially false, fictitious, or fraudulent information or statement in this declaration and certification (or concealment or omission of a material fact as to either) 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 subject me and the applicant to civil penalties and administrative remedies under the federal False Claims Act (including under 31 U.S.C. §§ 3729-3730 and/or §§ 3801-3812) or otherwise.

Agency Approval

Title of Approving Official	Name of Approving Official	Signed Date And Time
COPS Director	HUGH CLEMENTS	9/13/23 1:05 PM

Authorized Representative

Signature: Jacqueline Rubalcava

Email: jrubalcava@lascruces.gov

Signature: Jeremy Story
Jeremy Story (Nov 3, 2023 13:31 MDT)

Email: jstory@lascruces.gov

PD 23-060 COPS Packet

Final Audit Report 2023-11-03

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ATTACHMENT "X"

Contract# M01850
Vendor# 54342

FEDERAL FISCAL YEAR 2023 - 2026

MEMORANDUM OF AGREEMENT

BETWEEN

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

AND

MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION

This Agreement is between the **STATE OF NEW MEXICO**, acting through its **DEPARTMENT OF TRANSPORTATION**, Transit and Rail Division, (Department), and the **MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION** (MPO). This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, 49 U.S.C. Section 5303, authorizes federal assistance from the Federal Transit Administration (FTA) for multimodal transportation planning in metropolitan areas that is cooperative, continuous, and comprehensive, resulting in long-range transportation plans and short-range programs of transportation investment priority (Program);

Whereas, the Governor of New Mexico has designated the Department to receive and administer the federal funds under this program;

Whereas, the Department and the MPO have long worked together in transportation planning that involved Section 5303 funds and they want to continue; and

Now, therefore, pursuant to Section 67-3-69 NMSA 1978, the parties agree as follows:

1. Program.
The MPO shall develop and implement a biennial Unified Planning Work Program (UPWP) to identify specific tasks, with detailed scopes of work and funding estimates, related to transportation planning and programs. The UPWP is subject to the approval of the Department and the FTA. A copy of the UPWP is on file with the Department and the MPO.

The MPO shall comply with all applicable provisions of 49 USC Section 5303, specifically sections (i) through (j), which requires development and implementation of additional transportation plans and identifies the planning process, a performance-based approach to plan development as well as requirements for public notification and involvement. A copy of each additional plan is on file with the Department and the MPO.

Additional requirements are highlighted in the attached **Exhibit A**, Program Requirements.

2. Funding.
Funding is determined annually by the FTA, the Department and the MPO, which has a 20% funding match requirement. The Department upon consultation with the MPO will select specific tasks from the UPWP to fund and identify the amount for each task. Prior to the start of funding period, the Department will mail to the MPO a Work Authorization that identifies the tasks to be performed, the funding for each task and the local match requirement.

Funding is provided by FTA, Catalog of Federal Domestic Assistance (CFDA) Number 20.505. State funds will not be earmarked or disbursed to fund the Tasks. The Department shall not be responsible for any other costs incurred by the MPO. The MPO shall take all actions necessary to fund its share of the Program.

3. Method of Payment.
With federal funds, the Department shall reimburse the MPO for 80% of the eligible expenses. Invoices shall be submitted quarterly to the Department by the 25th day of the quarter following the close of the invoice period utilizing the Electronic Grants Management Performance System (BlackCat). All expenses must be actual rather than estimated and listed on the invoice as charged. The MPO must submit backup documentation for line items over $500. Rounding up or down, other than the total, is not permitted due to the possibility of audit exceptions. Reports and invoices shall be submitted to the Department electronically and must contain supporting documentation sufficient to allow the Department to determine what Project actions have been taken and what costs have been incurred by or on behalf of the MPO during each quarter. The Department reserves the right to request backup documentation for any line item submitted for reimbursement at any time. Only those expenses or percentage thereof, properly documented and deemed eligible by the Department, shall be reimbursed. The Department will withhold payment of any invoice that is incorrect and/or incomplete.

Invoices shall be certified by the MPO that they accurately reflect work completed, amount due and include the Work Authorization number, remaining work authorization balance, control and/or contract number.

4. Eligible Costs.
Eligible Costs are those costs attributable to and allowed under the Program and the provisions of 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. Costs incurred by the MPO prior to the effective date of this Agreement or subsequent to the termination date shall not be eligible for reimbursement as Program costs.

5. State General Appropriation Funds Not Obligated.
Nothing in this Agreement shall be construed as obligating state general appropriation funds for payment of any debt or liability arising under this Agreement. The parties expressly acknowledge that all payments made under this Agreement are from federal funds appropriated for these purposes.

6. Term.
This Agreement becomes effective upon the signature of all parties. The effective date is the date the last party signed the Agreement on the signature page below. All costs incurred under this agreement from October 1, 2022 to September 30, 2026 may be reimbursed. This Agreement shall expire September 30, 2026.

7. Termination for Convenience or Cause.
The Department has the option to terminate this Agreement if the MPO fails to comply with any provision. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the MPO breaches on which the termination is based.

The Department may provide the MPO a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the MPO has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the MPO has not begun and proceeded in good faith to correct the breach, the Department may declare the MPO in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

8. Appropriations.
The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Congress of the United States. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice from the Department to the MPO. The Department's decision as to whether sufficient appropriations are available shall be accepted by the MPO and shall be final.

9. Termination Management, Allowable Costs.
In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform. The MPO shall be paid for all the allowable costs incurred prior to the date of termination, subject to audit verification by the Department or its duly authorized representative.

The MPO shall not be paid for any costs incurred that are inconsistent with, or contrary to, the terms and conditions of this Agreement.

10. Breach and Dispute Resolution.
Disputes which cannot be resolved informally by the parties shall be decided in writing by a representative of the Department's Transit and Rail Division. The MPO has ten (10) days from receipt of the decision to file a written appeal with the Transit and Rail Division. Upon appeal, the MPO will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit and Rail Division on appeal shall be binding.

11. New Mexico Tort Claims Act.
As between the Department and the MPO, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, *et seq*., NMSA 1978. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by the common law of the New Mexico Tort Claims Act.

12. Retention of Records.
The MPO shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred in the Program for three (3) years after the date of termination or expiration of this Agreement.

13. Access to Records.
The MPO shall grant authorized representatives of the Department, the state and the federal government access to books, documents, papers, reports, and records of the MPO or its subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The MPO agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The MPO shall reimburse the Department for any expenditure for which it received payment or reimbursement, as applicable, which is disallowed by an audit exception by the Department, the state or federal government.

14. Audit.
The MPO shall ensure that an annual audit of the Program based on the MPO's fiscal year shall be conducted pursuant to 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. The MPO, prior to initiation of the audit, shall seek written approval from the Department of the auditing firm. The MPO agrees to provide the Department with a copy of the audit report concerning any portion of the Agreement period as soon as it is released, but in no case later than six months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the MPO fail to produce the annual audit, the Department may, at its option, commission such an audit payable out of Program funds.

15. Audit Exceptions.
If federal or state audit exceptions are made, the MPO shall reimburse all costs incurred by the State and the Department associated with defending against the exceptions, which includes but is not limited to costs of performing a new audit or a follow-up audit, court costs, attorneys' fees, travel costs, penalty assessments.

Immediately upon notification from the Department, the MPO shall reimburse the amount of the audit exception and any other related costs directly to the Department. In the notification, the Department may inform the MPO of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to MPO under this Agreement.

16. Third Party Beneficiaries.
It is not intended by any of the provisions of any part of this Agreement to create 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(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

17. Contracting and Assignment.
The MPO shall not contract any portion of this Agreement without prior written approval of the Department. No such contracting shall relieve the MPO from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Department.

Except to a successor in kind, the MPO shall not assign or transfer any interest in this Agreement or assign any claim for money due or to become due under this Agreement without the prior written approval of the Department.

Should subcontract(s) or an assignment be authorized by the Department, the subcontractor(s) and assignor(s) shall be subject to all provisions of this Agreement. It shall be the MPO's responsibility to duly inform the subcontractor(s) and assignor(s) by means of a contract or other legally binding document stipulating responsibility to this Agreement.

Subcontractors and Assignors of FTA funds must meet applicable Disadvantaged Business Enterprise (DBE) Program requirements when funds are used in whole or in part to finance procurements for applicable products and services.

18. No Federal Government Obligation to Third Parties.
The Department and MPO acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, MPO, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The MPO agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It further agrees that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

19. Civil Rights Laws and Regulations Compliance.
The MPO shall comply with all federal, state and local laws and ordinances applicable to the work called for under this Agreement.

A. Nondiscrimination – In accordance with Title VI of the Civil Rights Act, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the MPO shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The MPO shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue. The Nondiscrimination assurance is attached as Assurance-1.

B. Equal Employment Opportunity – The following equal employment opportunity requirements apply to this Agreement:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the MPO agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 *et seq*., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The MPO agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 623 and Federal transit law at 49 U.S.C. Section 5332, the MPO agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the MPO shall comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. Section 12112, the MPO agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.

C. The MPO shall include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

D. For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA at https://www.transit.dot.gov/funding/procurement/third-party-procurement/contract-clauses.

E. The MPO also agrees to include these requirements in each contract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

20. Disadvantaged Business Enterprise (DBE) Policy.

A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department's proposed overall goal for FTA participation for the 2019 fiscal year is 1.47%, through race-neutral means.

B. The MPO shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The MPO shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Program. Failure by the MPO to carry out these requirements is a material breach of the Agreement, which may result in the termination or other such remedy as the Department deems appropriate. Each contract the MPO signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. The MPO agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. DOT assisted contracts. The MPO will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

D. The MPO is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the awarded contractor's receipt of payment for that work from the Department.

E. The MPO must promptly notify the Department, whenever a DBE contractor is terminated or fails to complete its work, and must make good faith efforts to engage another DBE contractor to perform at least the same amount of work. The MPO may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Department.

A MPO of FTA funds must meet applicable DBE requirements when funds are used in whole or in part to finance procurements of and contracts for applicable products and services. A MPO with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients,* which is attached hereto as **Certification 2**.

21. Program Fraud and False or Fraudulent Statements or Related Acts.

A. The MPO acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Section 3801 *et seq*., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this program. The MPO certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant contract or FTA assisted program for which this work is being performed. The MPO further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the MPO to the extent the federal government deems appropriate.

B. The MPO also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a program that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the federal government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and any other applicable statute on the MPO, to the extent the federal government deems appropriate.

C. The MPO certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. MPO further agrees that these clauses shall not be modified, except to identify the subcontractor subject to its provisions.

D. All claims for compensation reimbursement and payment of any amounts due pursuant to this Agreement are governed by the Fraud Against Taxpayers Act, NMSA 1978, Sections 44-9-1 through 44-9-14.

22. Lobbying.
An MPO receiving $100,000 or more of 49 U.S.C. Section 5303 funds shall file the Lobbying Certification required by 49 C.F.R. Part 20, “New Restrictions on Lobbying.” The Lobbying Certification is attached as **Certification 3**. The MPO must certify that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. Section 1352.

If the MPO hires a third-party contractor, the contractor must provide the Lobbying Certification to the MPO. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the MPO.

23. Officials Not to Benefit.
Neither any member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

24. Notification Related to Fraud, Waste, Abuse, or Other Legal Matters
If a current or prospective legal matter that may affect the Federal Government emerges, the Subrecipient must promptly notify the Department so that it can notify the Federal Government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

The MPO agrees to include a similar notification requirement in contracts exceeding $25,000 financed in whole or in part with federal assistance provided by FTA and must require each subcontractor to include an equivalent provision in its federally assisted subcontracts exceeding $25,000.

25. Energy Conservation.
The MPO agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

26. Clean Water and Air Requirements.

A. The MPO agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. Sections 1251 et seq., and the Clean Air Act, 42 U.S.C. Sections 7401 et seq. The MPO agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate United States Environmental Protection Agency Regional Office.

B. The MPO agrees to include these requirements in each subcontract exceeding $100,000.00 and financed in whole or in part with federal assistance provided by FTA.

27. Debarment and Suspension.
Executive Order No. 12549, "Debarment and Suspension of Participants in Federal Programs," February 18, 1986, 31 U.S.C. Section 6101 note, as amended by Executive Order No. 12689, "Debarment and Suspension," August 16, 1989 31 U.S.C. Section 6101 note, as implemented by 2 C.F.R. Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. Part 1200 prohibits FTA MPOs from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. MPOs shall include the certification and instruction language contained at 2 C.F.R. Part 1200 in all Invitations for Bids and Requests for Proposals (for inclusion by contractors in their bids or proposals) for all contracts expected to equal or exceed $25,000.00, regardless of the type of contract to be awarded.

The MPO is required to verify that none of the MPO's principals or affiliates are excluded or disqualified as defined, as defined by 2 C.F.R. Part 1200. By signing and submitting this Agreement, the Subrecipient certifies as follows:

> The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder/MPO or proposer/MPO knowingly rendered an erroneous certification, in addition to remedies available to the Department, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder/MPO or proposer/MPO agrees to comply with the requirements of 2 C.F.R. Part 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/MPO or proposer/MPO further agrees to include a provision requiring such compliance in its lower tier covered transactions.

28. Central Contractor Registration Requirements.
Prior to payment of invoices, MPO must register and maintain current registration in the Central Contractor Registration website, http://www.sam.gov. Registration requires having a Dun and Bradstreet Data Universal Number (DUNS), see http://www.dnb.com. The Department will not provide vehicles, or make payments, until the MPO demonstrates that it is registered with the System for Award Management (SAM) website.

29. Federal Grant Reporting Requirements.
Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of $25,000 or more. This information will be made available to the public on www.USASpending.gov.

The type of information the Department is required to report includes:

- Name of MPO receiving the award
- Amount of Award
- Funding Agency
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants
- Program source
- Award title descriptive of the purpose of the funding action
- Location of the MPO, which includes the Congressional District
- Place of performance of the program or activity, which includes the Congressional District

- Unique identifier—DUNS—of the MPO and its parent organization, if one exists
- Total compensation and names of the top five executives of the MPO. This information is required, if the MPO in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds $25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

30. Severability.
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

31. Scope of Agreement.
This Agreement incorporates all of the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

32. Applicable Law and Venue; Federal Changes.
The MPO shall comply with all federal, state and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this Agreement. This includes all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement by FTA. The MPO shall make as part of this Agreement between the Department and the MPO the assurances and warranties which were signed as part of the grant award. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

33. Incorporation of FTA Terms.
Provisions of this Agreement include, in part, certain Standard Terms and Conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circulars 4220.1F, and 9040.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The MPO shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the Department to be in violation of FTA terms and conditions, as referenced in the current Federal Transit Administration Master Agreement shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration. The Master Agreement can be viewed on the web at https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements.

34. Special Notification Requirement for States.
This project is funded in part by a grant from the Federal Transit Administration (FTA). The Catalog of Federal Domestic Assistance (CFDA) number is 20.505.

35. Federal Changes
MPO shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NMDOT and FTA, as they may be amended or promulgated from time to time during the term of this contract. MPO's failure to so comply shall constitute a material breach of this contract.

36. Amendment.
The terms of this Agreement may be altered, modified or amended by an instrument in writing executed by the parties. *Section 1. Program*, details how such changes are to be approved and documented.

In witness whereof, each party is signing this Agreement on the date stated below that party's signature.

New Mexico Department of Transportation

DocuSigned by:
Justin Reese
79B5F2DB5F72463...
Cabinet Secretary (or Designee)

9/13/2022
Date

Mesilla Valley Metropolitan Planning Organization

DocuSigned by:
A88175AD2333440...
Signature

Manuel A Sanchez Chairman, Board of County Commissi
Name/Title (please print)

9/12/2022
Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.

DocuSigned by:
C750CEC1625D488...
Deputy General Counsel

8/31/2022
Date

DocuSigned by:
Jennifer Vega City of Las Cruces, City Attorney
418FB5FB06394A7...
Mesilla Valley Metropolitan Planning Organization
Legal Counsel

9/9/2022
Date

EXHIBIT A
PROGRAM REQUIREMENTS

In addition to the requirements identified in Section 1, above, and 49 U.S.C. Section 5303 and 2 CFR 200, the MPO shall:

1. Act in the capacity as the designated lead agency for each Task identified in the Unified Planning Work Program (UPWP) and designate a point of contact.

2. Assure the development of the biennial UPWP and each Task.

3. Submit the draft UPWP to the Transit and Rail Division for review and approval prior to adoption by the MPO governing body. A copy of the MPO's draft UPWP must be submitted to the Transit and Rail Division no later than April 30 of the biennial UPWP cycle for renewal.

4. Submit quarterly reports to the Department describing progress on each of the Tasks. Quarterly performance of each Task will be reported relative to the annual requirements as specified in each individual Task.

5. Abide by the annual resolution passed by the MPO Policy Committee approving the biennial UPWP in support of each transit planning Task for the Metropolitan Planning Area.

6. Coordinate activities and the planning processes, as appropriate, with local governments and their bureaus overseeing land use, environmental, economic and transportation planning; RTDs, RTPOs and other MPOs; and the Department's Transit and Rail Division, the Statewide Planning Division and District Offices.

7. Consult with the NMDOT Transit Bureau to update the Transit Asset Management performance targets as needed.

8. Consult with the NMDOT Transit Bureau and the 5307 Small Urban areas to develop and update the Public Transportation Agency Safety Plans.

9. Assure all data collected under this MOA is made available to the Department upon request by the Department.

10. Comply with the New Mexico Open Meetings Act, NMSA 1978, Section 10-15-1, *et. seq*. Notification to the Department's Transit and Rail Division shall be transmitted by E-Mail. Provide for distribution of regular MPO meeting agendas and packets to member entities and to the designated Department Transit and Rail Division liaison not later than seven days prior to each meeting.

11. Develop and implement a Public Involvement Plan (PIP) in consultation with the Department, evaluate and report to the Department on the effectiveness of the PIP in contributing to transportation investment and policy decisions on an annual basis and refine as needed.

12. Designate a point of contact, develop and implement a plan and policies to assure Title VI compliance, maintain required documentation.

13. Develop and assure consistency between the Metropolitan Transportation Plan (MTP), the Transportation Improvement Plan (TIP), the UPWP and annual Performance and Expenditure (P&E) Reports.

14. The MPO shall take action on all written requests to the MPO for all Department changes affecting the TIP.

15. Assure that local entities submit detailed and accurate Project Information Forms, updated as needed to maintain consistency with the current TIP and Statewide Transportation Improvement Plan (STIP) to the Department to facilitate the timely preparation and execution of Local Government Agreements.

16. The Department and Grantee agree to cooperatively develop and share information related to the requirements in 23 CFR 450.314(h). Procedural details are outlined in the Department's Planning Procedures Manual. Requirements in 23 CFR 450.314(h) relate to:

    i. transportation performance data;
    ii. the selection of performance targets;
    iii. the reporting of performance targets;
    iv. the reporting of performance to be used in tracking critical outcomes for the region of the MPO; and
    v. the collection of data for the Department's asset management plan for the National Highway System.

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NEW MEXICO DEPARTMENT OF TRANSPORTATION
TRANSIT AND RAIL DIVISION

NONDISCRIMINATION ASSURANCE AGREEMENT
FOR
FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS

INTRODUCTION AND INSTRUCTIONS:

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subrecipients are responsible for complying with the requirements contained therein.

On behalf of this Agreement, the **MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION**; hereinafter referred to as "**Subrecipient**" assures that:

1. Subrecipient will comply with the following laws, regulations, and requirements so that no person in the
United States will be denied the benefits of, or otherwise be subjected to discrimination in, any U.S. DOT or FTA assisted program or activity (particularly in the level and quality of transportation services and transportation-related benefits) based on race, color, national origin, religion, sex, disability, or age including:

   a. Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity),
   b. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d,
   c. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (prohibiting discrimination based on race, color, religion, sex, (including gender identity and sexual orientation) or national origin,
   d. Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,
   e. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq.,f. U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25,
   g. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, et seq.,
   h. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.,
   i. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21,
   j. U.S. DOT regulations, specifically 49 CFR parts 27, 37, 38, and 39, and
   k. Any other applicable federal statutes that may be signed into law, federal regulations that may be issued, or federal requirements that may be imposed.

2. Subrecipient will comply with federal guidance implementing federal nondiscrimination laws, regulations, or requirements, except as FTA determines otherwise in writing.

3. As required by 49 CFR § 21.7:

a. Subrecipient will comply with 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 in the manner that:

(1) Subrecipient implements its Award,

(2) Subrecipient undertakes property acquisitions, and

(3) Subrecipient operates all parts of its facilities, as well as its facilities operated in connection with its Award.

b. This assurance applies to its Award and to all parts of its facilities, as well as its facilities used to implement its Award.

c. Subrecipient will promptly take the necessary actions to carry out this assurance, including the following:

(1) Notifying the public that discrimination complaints about transportation-related services or benefits may be filed with U.S. DOT or FTA Headquarters Office of Civil Rights, and

(2) Submitting information about its compliance with these provisions to U.S. DOT or FTA upon their request.

d. If Subrecipient transfers U.S. DOT or FTA assisted real property, structures, or improvements to another party, any deeds and instruments recording that transfer will contain a covenant running with the land assuring nondiscrimination:

(1) While the property is used for the purpose that the federal assistance is extended, or

(2) While the property is used for another purpose involving the provision of similar services or benefits.

e. The United States has a right to seek judicial enforcement of any matter arising under:

(1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,

(2) U.S. DOT regulations, 49 CFR part 21, or

(3) This assurance.

f. Subrecipient will make any changes in its Title VI implementing procedures, as U.S. DOT or FTA may request, to comply with:

(1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,

(2) U.S. DOT regulations, 49 CFR part 21, and

(3) Federal transit law, 49 U.S.C. § 5332.

g. Subrecipient will comply with applicable federal guidance issued to implement federal nondiscrimination requirements, except as FTA determines otherwise in writing.

h. Subrecipient will extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 to each Third Party Participant, including any:

(1) Subrecipient,

(2) Transferee,

(3) Third Party Contractor or Subcontractor at any tier,

(4) Successor in Interest,

(5) Lessee, or

(6) Other Participant in its Award, except FTA and the Applicant (and later, the Recipient).

i. Subrecipient will include adequate provisions to extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 to each third party agreement, including each:

(1) Subagreement at any tier,

(2) Property transfer agreement,

(3) Third party contract or subcontract at any tier,

(4) Lease, or
(5) Participation agreement.

j. The assurances you have made on your behalf remain in effect as long as FTA determines appropriate, including, for example, as long as:
(1) Federal assistance is provided for its Award,
(2) Subrecipient property acquired or improved with federal assistance is used for a purpose for which the federal assistance is extended, or for a purpose involving similar services or benefits,
(3) Subrecipient retains ownership or possession of its property acquired or improved with federal assistance provided for its Award,
(4) Subrecipient transfers property acquired or improved with federal assistance, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits, or
(5) FTA may otherwise determine in writing.

4. As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR part 27, specifically 49 CFR § 27.9, and consistent with 49 U.S.C. § 5332, you assure that:

a. Subrecipient will comply with the following prohibitions against discrimination based on disability listed below in subsection 4.b of this Category 01.D Assurance, of which compliance is a condition of approval or extension of any FTA assistance awarded to:
(1) Construct any facility,
(2) Obtain any rolling stock or other equipment,
(3) Undertake studies,
(4) Conduct research, or
(5) Participate in any benefit or obtain any benefit from any FTA administered program.

b. In any program or activity receiving or benefiting from federal assistance that U.S. DOT administers, no qualified individual with a disability will, because of his or her disability be:
(1) Excluded from participation,
(2) Denied benefits, or
(3) Otherwise subjected to discrimination.

AFFIRMATION OF APPLICANT

Name of Applicant: Mesilla Valley MPO

Printed Name of Authorized Representative: Manuel A Sanchez

Relationship of Authorized Representative: Chairman, Board of County Commissioners

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature: DocuSigned by: A88175AD2333440... Date: 9/12/2022

Printed Name of Signing Official: Manuel A Sanchez

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NEW MEXICO DEPARTMENT OF TRANSPORTATION
TRANSIT AND RAIL DIVISION

DISADVANTAGED BUSINESS ENTERPRISE
RACE-NEUTRAL IMPLEMENTATION AGREEMENT
FOR
FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS

INTRODUCTION AND INSTRUCTIONS:

The New Mexico Department of Transportation (NMDOT) Transit and Rail Division, through the NMDOT Office of Equal Opportunity Programs (OEOP), must ensure that Subrecipient of Federal Transit Administration (FTA) funds meet applicable DBE requirements when funds are used in whole or in part to finance procurement and contracts of products and service(s). To that end, Subrecipient with contracting opportunities must submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients* (Agreement).

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subrecipients are responsible for complying with the requirements contained therein.

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DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT for the **Mesilla Valley Metropolitan Planning Organization;** hereinafter referred to as "**Subrecipient.**"

I. Definition of Terms

The terms used in this agreement have the meanings defined in 49 CFR Part 26.5.

II. OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The Subrecipient intends to receive federal financial assistance from the U.S. Department of Transportation (USDOT) through the New Mexico Department of Transportation (NMDOT), and as a condition of receiving this assistance, the Subrecipient will sign the New Mexico Department of Transportation's Disadvantaged Business Enterprise Race Neutral Implementation Agreement (hereinafter referred to as Agreement).

The Subrecipient must implement a policy to ensure that DBEs, as defined in 49 CFR Part 26 (also referred to as the DBE Program), have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:
To ensure nondiscrimination in the award and administration of DOT-assisted procurement and contracts of products and services contracts.
To create a level playing field on which DBE's can compete fairly for DOT-assisted procurement and contracts of products and services contracts.
To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
To help remove barriers to the participation of DBEs in DOT-assisted procurement and contracts of products and services contracts.
To assist the development of firms that can compete successfully in the market place outside the DBE Program.

III. Nondiscrimination (§26.7)

Subrecipient will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Subrecipient will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

IV. Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)

Subrecipient will assist NMDOT to achieve its Overall Statewide DBE Goal by race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).
Race-neutral means include, but are not limited to, the following:

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1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

3. Providing technical assistance and other services;

4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has been historically low;

8. Ensuring distribution of the New Mexico DBE directory, through print and electronic means, to the widest feasible universe of potential contractors; and

9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Subrecipient will encourage utilization of DBE contractors whenever possible on its USDOT-assisted contracts. New Mexico Certified DBE firms and the fields of work in which they participate are listed in the electronic web-based DBE Directory located at https://nmdot.dbesystem.com

V. Quotas (§26.43)

Subrecipient will not use quotas or set-asides in any way in the administration of the DBE Program.

VI. DBE Liaison Officer (§26.25)

Subrecipient must designate a DBE Liaison Officer (DBELO). The DBELO is responsible for implementing the DBE Program as it pertains to the Subrecipient and ensures that the Subrecipient is fully and properly advised concerning DBE Program matters.

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VII. Federal Financial Assistance Agreement Assurance (§26.13)

The Subrecipient will sign the following assurance, applicable to and to be included in all USDOT-assisted procurements and contracts for products and services:

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

VIII. Required Contract Clauses (§§26.13, 26.29)

Subrecipient assures that the following clauses will be included in each USDOT-assisted prime contract:

A. Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted procurement and contracts of products and services contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

B. Prompt Payment

Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10 days of receipt of each progress payment. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the NMDOT's prior written approval. Any violation of this Section shall subject the violating contractor or subcontractor to penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Retainage

Subrecipient shall include either (1), (2), or (3) of the following provisions in their USDOT-assisted contracts to ensure prompt and full payment of retainage (withheld funds) to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors.

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Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

IX. Bidders List (§26.11)

The Subrecipient will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its USDOT-assisted procurement and contracts for products and services. The bidders list will include the name, address and telephone number of each quoting firm and whether the quoter is a New Mexico certified DBE. Subrecipient will include language in its procurement documents that requires each bidding Contractor, at the time that bids are submitted, to list the quotes received for the project as detailed above.

X. Reporting

Subrecipient will report bidders list and related DBE information to the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs upon request.

Subrecipient will complete and submit annually to the NMDOT Office of Equal Opportunity Programs the NMDOT Annual Profile Registration Form. This Form will be mailed to Subrecipient.

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Subrecipient will compile and provide such other information related to its procurements and the DBE Program as deemed necessary by the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs.

XI. Incorporation of Agreement

This Agreement is incorporated into Subrecipient's financial assistance agreement with NMDOT by reference and made a part of that agreement.

Date:	9/12/2022
Signature of Subrecipient Official	DocuSigned by: A88175AD2333440...
Phone Number:	575-386-9815
Printed Name of Subrecipient Official	Manuel A Sanchez

DocuSign Envelope ID: D7505891-ABD7-4AB9-94A7-E41FD224F3B0

LOBBYING CERTIFICATION

An Applicant that submits or intends to submit an application to FTA for Federal assistance exceeding $100,000 is required to provide the following certification. FTA may not award Federal assistance exceeding $100,000 until the Applicant provides this certification.

A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to FTA for Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352; and

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans, and cooperative agreements).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

AFFIRMATION OF APPLICANT

Name of Applicant: Mesilla Valley MPO

Printed Name of Authorized Representative: Manuel A Sanchez

Relationship of Authorized Representative: Chairman, Board of County Commissioners

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature: DocuSigned by: A88175AD2333440... Date: 9/12/2022

Printed Name of Signing Official: Manuel A Sanchez

CVRC NEW MEXICO

STATE OF NEW MEXICO
CRIME VICTIMS REPARATION COMMISSION
Victims of Crime Act (VOCA) Victim Assistance Formula Grant

Subrecipient Award
FFY2024

1. SUBRECIPIENT NAME AND ADDRESS (Including Zip Code) Board of Commissioners City of Las Cruces Police Department 700 N. Main St Las Cruces, NM 88001	6. PROJECT TITLE FY2021 VOCA Victim Assistance
	7. FEDERAL AWARD NUMBER: 15POVC-21-GG-00588-ASSI
2. SUBRECIPIENT IRS/TAX ID NO. 85-6000147	8. AWARD EFFECTIVE: 10/01/2023
3. SUBRECIPIENT UEI NO. J3ZLWA2K1X47	9. SUBGRANT AWARD NUMBER: 2024-VA-313
4. APPROVED INDIRECT COST RATE (IF APPLICABLE) NA	10. PROJECT PERIOD: FROM 10/01/2023. TO. 9/30/2024 BUDGET PERIOD: FROM 10/01/2023 TO 9/30/2024
5. METHOD OF PAYMENT Reimbursement	11. PREVIOUS AWARD AMOUNT: $0.00
	12. SUBRECIPIENT FEDERAL AWARD AMOUNT: $72,250.00 SUBRECIPIENT MATCH REQUIREMENT: $0.00 TOTAL AWARD: $72,250.00

13. STATUTORY AUTHORITY FOR GRANT

This project is supported under 42 U.S.C. § 10603 (a) The New Mexico Crime Victims Reparation Commission FY21 VOCA VA Allocation is $6,913,001 for the award period 10/1/2020 to 9/30/2024, the Subrecipient federal award amount for this project period comes from this federal allocation.

14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number)

16.575 - Crime Victim Assistance

15. SPECIAL CONDITIONS

This award is not a R & D award. The above subgrant project is approved subject to such conditions or limitations as are set forth on the attached page(s).

16. AGENCY NAME signifies acceptance of this Victims of Crime Act (VOCA) Victim Assistance award in accordance with the applicable rules and regulations as set forth in the State and Federal Guidelines and in adherence to the special conditions provided.

AGENCY APPROVAL	SUBRECIPIENT ACCEPTANCE
17. NMCVRC AUTHORIZED OFFICAL Frank Zubia, Director	21. NAME AND TITLE OF SUBRECIPIENT FINANCIAL POINT OF CONTACT Leeann DeMouche, Finance Director
18. SIGNATURE OF AUTHORIZED OFFICIAL Frank Zubia	22. SIGNATURE OF SUBRCIPIENT FINANCIAL POINT OF CONTACT Leeann DeMouche
19. NMCVRC COMMISSION CHAIR Allyn Summa, Chair	23. NAME AND TITLE OF AUTHORIZED SUBRECIPIENT OFFICIAL Ifo Pili, City Manager
20. SIGNATURE OF COMMISSION CHAIR Allyn B Summa	24. SIGNATURE OF AUTHORIZED SUBRECIPIENT OFFICIAL

CVRC NEW MEXICO

STATE OF NEW MEXICO
CRIME VICTIMS REPARATION COMMISSION
FFY2023 Victims of Crime Act (VOCA) Victim Assistance Formula Grant Special Conditions

The Subrecipient shall administer the project for which this award is given in accordance with the applicable rules, regulations and conditions as set forth in the Federal and State Guidelines. In addition, the attached Special Conditions must be followed. By accepting this award, the Subrecipient assumes the following administrative and financial responsibilities:

I. PAYMENT: Payment is on a reimbursement basis.
II. TERMINATION: This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty days prior to the intended date of termination.
III. RECORDS AND AUDIT: Detailed expenditure records must be maintained. These records shall be subject to inspection by NMCVRC and its representative(s), and the United States Department of Justice, Office of Justice Programs. NMCVRC shall have the right to audit the expenditures both before and after payment. Payment under this Agreement shall not foreclose the right of NMCVRC to recover excessive and/or illegal payments.
IV. ASSIGNMENT: The Subrecipient shall not assign or transfer any interest in the Agreement without prior written approval from NMCVRC.
V. AMENDMENTS: This agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto.
VI. EQUAL OPPORTUNITY COMPLIANCE: The Subrecipient agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. The Subrecipient agrees that no person shall, on the basis of actual or perceived race, color, national origin, sex, religion, sexual preference, age or handicap, be excluded from employment with or participation in, be denied services, or be otherwise subjected to discrimination under any program or activity performed under this agreement. The Subrecipient agrees to submit an Office for Civil Rights certification of compliance form within 45 days of the beginning date of the grant award.
VII. EFFECTIVE DATE: The VOCA Victim Assistance grant as set forth in the approved program of the State of New Mexico Grant Application. The New Mexico Crime Victims Reparation Commission (NMCVRC) as referenced in the Victims of Crime Act (VOCA VA) authorizes this award. This award may be used for a period from October 1, 2023 through September 30, 2024.

The above Special Conditions become part of the Grant Award and are accepted by the subrecipient.

1. VOCA funds must be used for direct services to victims of crime in accordance with the conditions of the Victims of Crime Act (VOCA) of 1984, sections 1404(a)(2), and 1404(b)(1) and (2), 42 U.S.C. 10603(a)(2) and (b)(1) and (2), and the applicable program guidelines and regulations, as required. Subrecipient acknowledges their agency's award letter may also contain Special Restrictions and Conditions on your agency's award. Your agency is responsible for adherence to these restrictions.
2. The Subrecipient must be in compliance with specifications outlined in the Request for Proposals under which the approved application was submitted. The program Request for Proposal is hereby incorporated by reference into this award.
3. Grant funds may be used only for the purposes in the Subrecipient's approved application. The Subrecipient shall not undertake any work or activities that are not described in the grant application, or that use staff, equipment, or other goods or services paid for with grant funds, without prior written approval from NMCVRC.
4. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Office for Victims of Crime, for the performance of this Agreement. If sufficient appropriations and authorization are not made this Agreement shall terminate upon written notice being given by NMCVRC to the Subrecipient.
5. The Subrecipient understands and agrees that misuse of award funds may result in a range of penalties, including suspension or termination of current and future funds, suspension or debarment from federal grants, recoupment

of monies provided under an award, and civil and/or criminal penalties.

1. The Primary Project Components (Project Plan) will guide the scope of work.
2. Payment is reimbursement only. In order to receive payment, the agency must submit an Invoice and Record of Match reflecting expenditures of the previous month into https://nmcvrcgrants.com/ by 11:59 PM on or before the 10th of each month. If the 10th is on a Friday, weekend or holiday the deadline will be the following business day by 11:59 PM. Subrecipients, unless mandated by additional monitoring and special conditions, are mandated to submit quarterly. Monthly invoice submission is optional. If documentation is late or inaccurate, reimbursement will be delayed until the following month or until the submitted documentation is corrected and may result in a change in subgrantee status to that of "high risk" or probationary status.
3. Maintain separate accounts and accounting records for the VOCA funds. Maintenance of project-based accounting records does not provide enough detail to track federal VOCA funds, therefore, VOCA funds must be accounted for separately to ensure they are not commingled with any other funding source.
4. Maintain and furnish to NMCVRC and the United States Department of Justice, upon request, detailed accounting and supportive records of expenditures and of the matching funds.
5. The Subrecipient agrees to supplement and not supplant state or local funds.
6. Subrecipient shall provide VOCA-funded direct services at no charge, unless NMCVRC grants a waiver allowing the subrecipient to generate program income by charging for services. Program income, where allowed, shall be subject to federal grant rules and the requirements of the DOJ Grants Financial Guide, which, as of July, 8, 2016, require in most cases that any program income be restricted to the same uses as the sub-award funds and expended during the grant period in which it is generated.
7. Consultant compensation rates. Subrecipient acknowledges that consultants paid with award funds generally may not be paid at a rate in excess of $81.25 per hour, not to exceed $650 per day. To exceed this specified maximum rate, Subrecipient must submit to NMCVRC a detailed justification and have such justification approved by OVC through NMCVRC, prior to obligation or expenditure of such funds. Issuance of this award or approval of the award budget alone does not indicate approval of any consultant rate in excess of $81.25 per hour, not to exceed $650 per day. Although prior approval is not required for consultant rates below this specified maximum rate, Subrecipient is required to maintain documentation to support all daily or hourly consultant rates.
8. Due to requirements by the NM Department of Finance, all cash reimbursement invoices for grant expenditures made prior to June 30th will be due no later than July 10th, or an alternative date issued by NMCVRC. Cash reimbursement invoices received after the July deadline for expenditures and receipt of purchases made prior to the deadlines cannot be processed and those expenditures will become the responsibility of the Subrecipient.
9. The Subrecipient, upon final payment of the amount due under this Agreement, releases NMCVRC from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.
10. The Subrecipient agrees to **inform** all potentially eligible victims with crime victims' compensation, **assist all eligible victims in filling out** the application, and **assist in submission** of applications to NMCVRC. In addition, the Subrecipient agrees to assist NMCVRC staff regarding compensation inquiries.
11. All staff within the organization providing direct services to victims must attend a minimum of one compensation workshop held by NMCVRC during the grant year.
12. The Subrecipient agrees to cooperate and coordinate services with and acknowledge services of other NMCVRC funded programs and other service providers in their region that serve victims of crime.
13. All Subrecipients that are working with victims must have a Limited English Proficiency (LEP) and accessibility plan and policy in place and in practice to ensure that LEP persons, Deaf and Hard of Hearing and individuals with disabilities have meaningful access to services. All staff must be provided with a copy of this plan and be trained on how to implement the policy and procedures.

14. The Subrecipient agrees to inform and assist eligible victims of crime with the New Mexico's Statewide Automated Victim Information and Notification Services (VINE) which accesses information about particular offenders, or a particular State and/or County inmate's release, transfer, or escape from participating agencies over the phone, through the internet, or by email. When applicable, the Subrecipient agrees to inform and assist eligible victims of crime with the New Mexico SAVIN (State Automated Victim Information Notification) System, a free service that provides information to crime victims and any interested members of the public with case status and hearing notifications on criminal court cases in the State of New Mexico.

15. The Subrecipient agrees to submit quarterly performance reports on the performance metrics identified by OVC and NMCVRC, and in the manner required by OVC and NMCVRC. Quarterly statistical and performance reports are to be received by NMCVRC no later than 15 days after the end of the quarter unless otherwise specified. Late or inaccurate reporting will delay the payment process. All demographic information that is required in program and annual reporting must be collected unless a victim declines.

16. The project manager and anyone completing quarterly progress and/or financial reports must attend the NMCVRC VOCA/VAWA Grant Reporting training at least once during the grant budget period, unless a waiver is granted.

17. Unless a waiver is granted, two members of the direct services staff within the agency shall register, pay for and attend at least one training approved by NMCVRC. Scholarship funds provided by NMCVRC do not meet this requirement.

18. The Subrecipient agrees to allow NMCVRC access to the grant-funded project's documentation, redacted client files and other sources in order to determine that funds are being utilized in accordance with VOCA funding guidelines/contractual agreements and other state and federal guidelines. In lieu of a file redaction, the parties may agree to NMCVRC staff signing a confidentiality agreement prior to review of files, to ensure confidentiality of clients.

19. The Subrecipient agrees that all equipment and/or technology purchased with grant funds will be used solely to assist victims of crime during and for the life of the equipment and/or technology following the end of the grant budget period. Equipment purchased with grant funds shall be tagged and tracked in an organized inventory. The Subrecipient agrees to notify NMCVRC of any changes regarding the use or distribution of equipment or technology purchased with VOCA funds.

20. VOCA award funding cannot be used to purchase food and/or beverages for any meeting, conference, training, or other event.

21. All materials and publications (written, visual, or sound) funded by this award shall contain the following statements: "This project was supported by subgrant # ___, awarded by the NMCVRC for the VOCA VA Grant Program. The opinions, findings, conclusions and recommendations expressed in the publication/program/ exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office for Victims of Crime or the New Mexico Crime Victims Reparation Commission."

22. Provide NMCVRC with an audit of the program, the audit management letter and a resolution of all the findings if your agency meets the conditions of OMB Circular 133 or A-21, which requires an audit if your agency expends at least $750,000.00 of federal funds during the subrecipients fiscal year. If your agency does not meet the conditions of the OMB Circular 133 or A-21, please submit a "program-specific audit" with a copy of the audit management letter and resolution of all findings. Subrecipient understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues are not satisfactorily and promptly addressed as required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

23. If the subrecipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to NMCVRC by email at CVRC.Grants@cvrc.nm.us. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the

recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency. The Subrecipient agrees to comply with any additional requirements that may be imposed during the grant performance period if NMCVRC determines that the Subrecipient is a "high risk" grantee.

24. Prior to the final selection of personnel to be hired with grant funds, the subrecipient agrees to provide NMCVRC with the names and resumes of the candidates recommended for hiring. NMCVRC shall review and approve all recommendations regarding personnel selection and/or hiring prior to final selection of candidates. Project staff resumes, including staff being used as match must be submitted to NMCVRC in order for reimbursement for expenditures to occur. Once work has started, the Subrecipient will make no changes of personnel without the prior written consent of NMCVRC. Replacement of any subrecipient personnel, if approved, shall be with personnel of equal ability, experience and qualifications. Approval of replacement personnel shall not be unreasonably withheld. NMCVRC shall retain the right to request the removal of any of the Subrecipient's personnel at any time.

25. The Subrecipient agrees to utilize volunteers within the organization to support the agency's services and mission.

26. Project staff and consultants must be provided with a copy of the project proposal including the Primary Project Components and appropriate budget information. In addition, the program manager agrees to disseminate project information to the project staff, including any external parties responsible for financial management of agency expenses.

27. The Subrecipient agrees to complete and keep on file, as appropriate, Department of Homeland Security Employment Eligibility Verification Form (I-9). This form is to be used to verify that persons are eligible to work in the United States.

28. All information furnished to the VOCA VA Subrecipient agencies by victims of crime, including identifying information, is confidential, with the following exceptions: a) court subpoena, b) in situations where a trained professional assesses that a victim is in danger of harming themselves or others (i.e. suicide or homicide), c) periodic review of files by the funding agency, and d) in the event the victim provides written consent for a release of information. Any person suspecting abuse who knows or has reasonable suspicion that a child is being abused or neglected in New Mexico are mandated to report the matter immediately to the NM Children, Youth and Families Department and/or law enforcement. NM Child Abuse Laws 32A-4-1, et seq.

29. If compelled by court order to release personally identifying information or information collected in connection with services requested, utilized, or denied through Subrecipient's programs, the Subrecipient shall: a) make reasonable attempts to provide notice to victims affected by the disclosure, and document in writing such attempts; and b) take steps necessary to protect the privacy and safety of persons affected, and document in writing such necessary steps.

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

30. Federal laws prohibit recipients of financial assistance from discriminating on the basis of actual or perceived race, color, national origin, religion, sex, or disability in funded programs or activities, not only with respect to employment practices but also in the delivery of services or benefits. Federal law also prohibits funded programs or activities from discriminating on the basis of age in the delivery of services or benefits. The subrecipient agrees to collect and keep on file nondiscrimination/demographic information on race, sex, primary language, national origin, age and disability of recipients for which services are provided, where such information is voluntarily furnished by those receiving assistance.

31. The Subrecipient agrees to comply with the NMCVRC's Civil Rights Compliance/Anti-Harassment policy and procedures found on the NMCVRC website.

32. The Subrecipient agrees that the Program Manager or appropriate designee shall attend the NMCVRC's Subgrantee Civil Rights Compliance training or webinar and agrees to disseminate this information to VOCA VA funded staff and volunteers. The Subrecipient must also 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 the Subrecipient, or individuals defined (for purposes of this condition) as "employees" of the Subrecipient.

33. Subrecipients must permanently post grievance policies and procedures in a conspicuous place within the agency including the agency website; this posting must include the names and contact information for NMCVRC as an agency funder.

34. The subrecipient agrees to inform NMCVRC of all grievances, critical incidents, or major issues within the agency to NMCVRC.

35. The Subrecipient understands that they must promptly refer to NMCVRC any credible evidence that a principal, employee, agent, subrecipient, subgrantee, subsubreciepeint, or other person has either: 1) submitted a false claim for grant funds under 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 involving grant funds.

36. Potential or perceived fraud, waste, abuse, or misconduct, including EEOC complaints, shall be reported to NMCVRC. No subrecipient under this award or entity that receives a procurement contract or subcontract with any fund under this award, may require any employee or subrecipient 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.

37. Requirements of the Award; Remedies for Non-Compliance or for Materially-False Statements: The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the recipient 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 Just 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 recipient, 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 recipient that relate to conduct during the period of performance.

Failure to comply with any one or more of these award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or a certification or assurance related to conduct during the award period -- may result in OJP/NMCVRC taking appropriate action with respect to the subrecipient and the award. Among other things, the OJP/NMCVRC may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP and/or NMCVRC, 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.

38. 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 2019 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2019 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 2019 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 recipient (and any subrecipient ("subgrantee") at any tier) 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 recipient (and any subrecipient ("subgrantee") 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. 200.333.

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 recipient is to contact OJP promptly for clarification.

39. Compliance with DOJ Grants Financial Guide: The recipient agrees to comply with the 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.

40. Requirements related to "De minimis" indirect cost rates: A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

41. Requirement to report potentially duplicative funding: If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

42. Requirements related to System for Award Management and Universal Identifier Requirements: The recipient 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 recipient 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 recipient) the unique entity identifier requires for SAM registration.

The details of the recipient's obligations related to SAM and to the unique entity identifiers are posted on the OJP web site at http://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).

43. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed $250,000.

The recipient, and any subrecipient ("subgrantee") at any tier, 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.htm (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.

44. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award): The recipient, and any subrecipient ("subgrantee") at any tier, 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 recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient'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.

45. Compliance with applicable rules regarding approval, planning, and reporting of Conferences, Meetings, Trainings, and Other Events: The recipient, any subrecipient ("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").

46. OJP Training Guiding Principles: Any training or training materials that the recipient – or any subrecipient ("subgrantee") at any tier – develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm.

47. Compliance with DOJ regulations pertaining to Civil Rights and Nondiscrimination – 28 C.F.R. Part 42: The recipient, and any subrecipient ("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.

48. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38: The recipient, and any subrecipient ("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 recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients 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.

49. Compliance with General Appropriations-Law Restrictions on the use of Federal Funds (FY2021): 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, 2018, are set out at https://ojp.gov/funding/Explore/FY21AppropriationsRestrictions.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 NMCVRC who will contact OJP for guidance, and may not proceed without the express prior written approval of NMCVRC.

50. Reporting potential fraud, waste, and abuse, and similar misconduct: The recipient and any subrecipients ("subgrantees") 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 OIG by—(1) online submission accessible via the OIG webpage at https://oig.justice.gov/hotline/contact-grants.htm (select "Submit Report Online"; (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

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

51. Restrictions and certifications regarding non-disclosure agreements and related matters: No recipient or subrecipient ("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 recipient—
   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;
   b. and 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 recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both—
   a. it represents that—
      i. 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
      ii. 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.

52. Discrimination Findings: The recipient assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the ground of race, religion, national origin, sex, or disability against a recipient of victim assistance formula funds under this award, the recipient will forward a copy of the findings to the Office for Civil Rights of OJP.

53. NEPA: recipient understands that all OJP awards are subject to the National Environmental Policy Act (NEPA, 42 U.S.C. section 4321 et seq.) and other related Federal laws (including the National Historic Preservation Act), if applicable. The recipient agrees to assist the Office of Justice Programs (OJP) in complying with NEPA and other related federal environmental impact analyses requirements in the use of grant funds, whether the funds are used directly by the recipient or by a subrecipients or third party. Accordingly, prior to obligating funds for any of the activities specified below, the grantee must first ensure compliance with OJP NEPA procedures. The specified activities requiring environmental analysis are: (1) New construction; (2) Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including property (a) listed on or eligible for listing on the National Register of Historic Places, or (b) located within a 100-year flood plain, a wetland, or habitat for an endangered species; (3) A renovation that will change the basic prior use of a facility or significantly change its size; (4) Research and technology whose anticipated and future application could be expected to have an effect on the environment; (5) Implementation of a program involving the use of chemicals (including the identification, seizure, or closure of clandestine methamphetamine laboratories)

Complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by OJP. Further, for programs relating to methamphetamine laboratory operations, the preparation of a detailed Mitigation Plan will be required. Please be sure to carefully review the grant conditions on your award document, as it may contain more specific information about environmental compliance.

For more information about NEPA requirements, including which projects may qualify for categorical exclusions, and the preparation of an environmental review documents, please see https://ceq.doe.gov/docs/get-involved/citizens-guide-to-nepa-2021.pdf

54. Restrictions on Lobbying: In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, 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 recipient, 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 recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

55. 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 recipients and subrecipients ("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.

56. VOCA Requirements: The recipient assures that the State and its subrecipients will comply with the conditions of the Victims of Crime Act (VOCA) of 1984, sections 1404(a)(2), and 1404(b)(1) and (2), 34 U.S.C. 20103(a)(2) and (b)(1) and (2) (and the applicable program guidelines and regulations), as required. Specifically, the State certifies that funds under this award will: a) be awarded only to eligible victim assistance organizations, 34 U.S.C. 20103(a)(2); b) not be used to supplant State and local public funds that would otherwise be available for crime victim assistance, 34 U.S.C. 20103(a)(2), or for administering the state victim assistance program, 34 U.S.C. 20110(h); and c) be allocated in accordance with program guidelines or regulations implementing 34 U.S.C. 20103(a)(2)(A) and 34 U.S.C. 20103(a)(2)(B) to, at a minimum, assist victims in the following categories: sexual assault, child abuse, domestic violence, and underserved victims of violent crimes as identified by the State.

57. OVC/OCFO Access to Records: The recipient, and any subrecipient ("subgrantee") at any tier, must authorize the Office for Victims of Crime (OVC) and/or the Office of the Chief Financial Officer (OCFO), and its representatives, access to and the right to examine all records, books, paper, or documents related to the VOCA grant.

58. Requirements for data on performance and effectiveness under the award: The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

59. Performance Measures – PMT: The recipient agrees to submit (and, as necessary, require sub-recipients to submit) quarterly performance reports on the performance metrics identified by OVC, and in the manner required by OVC. This information on the activities supported by the award funding will assist in assessing the effects that VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction.

60. Subawards Must Have Specific Federal Authorization: The recipient, and any subrecipient ("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.

61. Compliance with DOJ regulations pertaining to Civil Rights and Nondiscrimination – 28 C.F.R. Part 54: The recipient, and any subrecipient ("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."

62. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal, notice to employees): The recipient (and any subrecipient 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 recipient 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 DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

63. Recipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS: The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of recipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at http://ojp.gov/funding/FAPIIS.htm (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

64. Reclassification of various statutory provisions to a new Title 34 of the United States Code: On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is,, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to

Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

65. Requirement to report actual or imminent breach of personally identifiable information (PII): The recipient (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)—1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or 2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

66. 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 recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, 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.

67. Employment eligibility verification for hiring under the award

1 The recipient (and any subrecipient at any tier) must—

A. 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 recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both—

1. this award requirement for verification of employment eligibility, and
2. 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.

C. 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).

D. 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.

2. Monitoring
The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. 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.

4. Rules of construction

A. 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 recipient (or any subrecipient) 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.

B. Employment eligibility confirmation with E-Verify
For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) 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.

C. "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.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, 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 NMCVRC who will seek guidance from OJP, before award acceptance.

68. Safe policing and law enforcement subrecipients: If this award is a discretionary award, the recipient agrees that it will not make any subawards to State, local, college, or university law enforcement agencies unless such agencies have been certified by an approved independent credentialing body or have started the certification process. To become certified, law enforcement agencies must meet two mandatory conditions: (1) the agency's use of force policies adhere to all applicable federal, state, and local laws; and (2) the agency's use of force policies prohibit chokeholds except in situations where use of deadly force is allowed by law. For detailed information on this certification requirement, see https://cops.usdoj.gov/SafePolicingEO.

Organizations, which do not adhere to these Special Conditions, will be in violation of the terms of this Grant, and the VOCA VA Award will be subject to appropriate administrative action, including withholding of funds or possible termination of the Grant Award.

Signature: Jacquelin Rubalcava

Email: jrubalcava@las-cruces.org

Signature: Jeremy Story
Jeremy Story (Oct 18, 2023 14:19 MDT)

Email: jstory@lascruces.gov

3052; Council Bill No. 24-010

City Council Action and Executive Summary

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

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	November 20, 2023	**Adopted:**	December 4, 2023
Drafter:	Justin Allen	**Department:**	Fire Department
Program:	Community Risk Reduction	**Line of Business:**	Fire Prevention and Risk Reduction

Title: **AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, (LCMC) CHAPTER 11, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE PREVENTION CODE, BY REPEALING THE ADOPTED 2015 EDITION OF THE INTERNATIONAL FIRE CODE AND ENACTING THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE AS AMENDED WITH CERTAIN RELATED APPENDICES.**

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

PURPOSE(S) OF ACTION:

Adopt the 2021 International Fire Code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces has been utilizing the 2015 edition of the International Fire Code (IFC) to govern the conditions hazardous to life and property. The 2015 edition of the IFC has been updated into the 2021 edition of the IFC by the International Code Council (ICC) which promulgates the IFC and publishes a new edition every three (3) years. The new edition is revised through code change hearings to keep code provisions updated and current. The IFC is one of several codes in the international family of codes. It is designed to be the companion document for the International Building Code (IBC) as well as the remainder of the international codes in publication.

Fire staff recommends the adoption of the 2021 edition of the IFC to provide consistency within the community. Most of the amendments are consistent with those currently in effect. The Community Development Department is also recommending the adoption of the 2021 edition of the IBC by a separate ordinance, simultaneously with this proposed ordinance. The adoption of the 2021 IFC would provide consistency between building code and fire code requirements within the City of Las Cruces' jurisdiction.

Staff has prepared this ordinance in a manner that would allow a grace period for enforcement of the proposed 2021 edition of the IFC from the date of adoption through **03/31/2024**. Until such time, a project may proceed under the 2015 or the 2021 edition of the IFC. This is beneficial for projects which may currently be in the design phase.

SUPPORT INFORMATION:

Exhibit "A" - Chapter 11-FIRE PREVENTION AND PROTECTION
Attachment "A" - Chapter 11-FIRE PREVENTION AND PROTECTION

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

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 action will amend the LCMC Chapter 11, Fire Prevention and Protection, Article II, Fire Prevention Code by repealing the adopted 2015 edition of the IFC and enacting the 2021 edition of the IFC as amended with certain related appendices.
2. Vote "No"; this action will not amend the LCMC Chapter 11, Fire Prevention and Protection, Article II, Fire Prevention Code. The adopted 2015 edition of the IFC will not be repealed and the 2021 edition of the IFC as amended with certain related appendices will not be enacted.
3. Vote to "Amend"; this could change the Ordinance based on City Council Direction.
4. Vote to "Table"; this would delay taking action until a further date.

ORDINANCE 3052; COUNCIL BILL NO. 24-010

AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, (LCMC) CHAPTER 11, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE PREVENTION CODE, BY REPEALING THE ADOPTED 2015 EDITION OF THE INTERNATIONAL FIRE CODE AND ENACTING THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE AS AMENDED WITH CERTAIN RELATED APPENDICES.

The City Council is informed that:

WHEREAS, the City of Las Cruces recognizes the need to have regulations governing conditions hazardous to life and property from fire, hazardous materials, or explosions; and

WHEREAS, the 2015 International Fire Code currently in adoption within the City of Las Cruces has been updated into the 2021 edition of the International Fire Code; and

WHEREAS, utilizing the 2021 International Fire Code will provide consistency with the building code adopted within the City of Las Cruces.

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

(I)

THAT LCMC Chapter 11, Fire Prevention and Protection, Article 11, Fire Prevention Code is hereby amended by repealing the adopted 2015 edition of the International Fire Code and enacting the 2021 edition of the International Fire Code as amended with certain related appendices as shown in Exhibit "A", attached hereto, and made a part of this Ordinance.

(II)

THAT the 2021 edition of the International Fire Code as amended with certain related appendices adopted herein will be fully enforced starting March 31st, 2024.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Chapter 11 FIRE PREVENTION AND PROTECTION[1]

[1]Cross reference(s)—Alarm systems and private security firms, ch. 4; health and human services, ch. 12; woodburning, § 12-86 et seq.; smoking in public places, § 12-124; smoking in places of employment, § 12-125; smoking in city-owned buildings, § 12-126; buildings and building regulations, ch. 30.

Exhibit "A"

ARTICLE I. IN GENERAL

Secs. 11-1—11-25. Reserved.

ARTICLE II. FIRE PREVENTION CODE[2]

[2]Editor's note(s)—Ord. No. 2668, §§ I, II(exh. A), adopted Oct. 1, 2012, amended art. II in its entirety to read as herein set out. A grace period from the date of adoption will be in place allowing use of either the 2006 or 2009 editions until Jan. 1, 2013. 2009 editions will be fully enforced starting Jan. 1, 2013. Former art. II, §§ 11-26—11-117, pertained to similar subject matter and derived from: Code 1988, §§ 14-16—14-25; Ord. No. 1796, § I, adopted May 1, 2000; Ord. No. 2073, §§ I, II, adopted Jan. 5, 2004; and Ord. No. 2477, § II, adopted Nov. 17, 2008.

State law reference(s)—State fire prevention standards, NMSA 1978, § 59-17-13; local governments to comply with same, NMSA 1978, § 59-17-24.

Exhibit "A"

DIVISION 1. GENERALLY

Sec. 11-26. Adopted.

(a) The Las Cruces Fire Department is established for the purpose of protecting the health, safety and welfare of the citizens of Las Cruces by responding to fires, emergency medical calls, release of hazardous materials and other emergency and nonemergency incidents within the incorporated city limits. The Las Cruces Fire Department is further charged with preventing conditions hazardous to life and property from fire, hazardous materials or explosion through the adoption of that certain code known as the International Fire Code, 2021 edition, including the following appendix chapters:

(1) Appendix B, Fire-flow requirements for buildings.

(2) Appendix C, Fire hydrant locations and distribution.

(3) Appendix D, Fire apparatus access roads.

(4) Appendix E, Hazard Categories

(5) Appendix F, Hazard Ranking

(6) Appendix G, Cryogenic Fluids-Weight and Volume Equivalents

(7) Appendix H, Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions

(8) Appendix I, Fire protection Systems-Noncompliant Conditions.

(9) Appendix K, Construction requirements for existing healthcare facilities.

(10) Appendix L, Requirements for Fire Fighter Air Replenishment Systems

(11) Appendix M, High rise buildings-retroactive automatic sprinkler systems.

(12) Appendix N, Indoor trade shows and exhibitions

(b) The International Fire Code mentioned in subsection (a) of this section is adopted, save and except such portions as are deleted, modified or amended by section 11-33 and divisions 2 and 3 of this article. One copy of the code is filed in the office of the city clerk. The International Fire Code is adopted and incorporated as fully as if set out at length in this section, and the provisions thereof shall be controlling within the city limits.

(Code 1988, § 14-16; Ord. No. 1796, § I, 5-1-00) Charter reference(s)—Code of technical regulations, § 2.12.

Sec. 11-27. Establishment and duties of fire prevention services.

The fire code as adopted in section 11-26 and as amended in this article shall be enforced by the fire prevention services in the fire and emergency services division of the city, which is established and which shall be operated under the supervision of the fire marshal.

(Code 1988, § 14-17)

Sec. 11-28. Definitions.

The following definitions shall be added to the fire code adopted in section 11-26:

Fire marshal is the chief of the fire prevention services; interchangeable with the term fire code official under this code.

Jurisdiction: This code shall be applicable to all property within the corporate limits of the City of Las Cruces, New Mexico.

(Code 1988, § 14-18)Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-29. Establishment of limits of districts in which storage of flammable or combustible liquids in outside above ground tanks prohibited.

The limits referred to in sections 5704.2.9.6.1 and 5706.2.4.4 of the fire code adopted in section 11-26, in which the storage of flammable or combustible liquids is restricted, is established as and shall be in accordance with the city's zoning code in chapter 38.

(Code 1988, § 14-19)

Sec. 11-30. Establishments of limits in which storage of liquefied petroleum gases prohibited.

The limits referred to in section 6104.2 of the fire code adopted in section 11-26, in which storage and use of liquefied petroleum gas is restricted, are established and shall be in accordance with the city's zoning code in chapter 38. The aggregate capacity of any one installation shall not exceed a 2,000-gallon water capacity in residential areas. Exception is a multi-container location such as a dispensing station, and bulk facilities.

(Code 1988, § 14-20)

Sec. 11-31. Establishment of limits of districts in which storage of flammable cryogenic fluids in stationary containers prohibited.

The limits referred to in section 5806.2 of the fire code adopted in section 11-26, in which storage of flammable cryogenic fluids in stationary containers is prohibited, shall be in accordance with the city's zoning code in chapter 38.

(Code 1988, § 14-21)

Sec. 11-33. Amendments.

The fire code adopted in section 11-26 is amended as set forth in this section. When an existing section number of the fire code is referred to in this section, the text in this section shall control. When a new section or subsection is referred to in this section it shall be added to the fire code as adopted. The fire code is amended and changed as follows:

Chapter 1 Scope and Administration.

Section 101.1 Title shall be amended to read as follows:

> These regulations shall be known as the Fire Code of the City of Las Cruces, hereinafter referred to as "this code".

Section 104.6 Official records shall be amended to read as follows:

> The fire code official shall keep official records as required by Sections 104.6.1 through 104.6.4. Such records shall be retained in accordance with the record retention requirements established by the City of Las Cruces and State of New Mexico.

Section 104.11.2 Fire prevention personnel and police authority is added to read as follows:

A. Members of the fire prevention services shall have the powers of a police officer in performing their duties under this code when:

   1. Such members of the fire prevention services have been certified by a law enforcement academy authorized by the State of New Mexico; and

   2. Such members have been commissioned as police officers by the City of Las Cruces.

B. Members of the fire prevention services who meet the requirement stated in paragraphs (1) and (2) of subpart A of this section shall have the following powers:

   1. Powers of arrest for criminal matters;

   2. Authority to carry such weapons and utilize such equipment necessary in the discharge of their duties pursuant to this code;

   3. Authority to investigate arson and related crimes if so appointed and authorized by the Las Cruces Police Chief.

C. All other members of the fire department who do not meet the requirements of subpart A of this section shall have the power to issue citations only for violations of this code and chapter 11 of the Las Cruces Municipal Code.

Section 104.12.2 Obstructing operations shall be amended to read as follows:

> No person shall obstruct the operations of the fire department in connection with extinguishment or control of any fire, or actions relative to other emergencies, nonemergency incidents or training, or disobey

any lawful command of the fire chief or member of the fire department or any lawful order of a police officer assisting the fire department.

Section 105.1 General shall be amended to read as follows:

Permits required by the fire code official shall be in accordance with section 105.

Exception: Permits issued by the City of Las Cruces Community Development Department.

Section 106Construction documents shall be amended to read as follows:

Construction documents shall be in accordance with this section and requirements established by the City of Las Cruces Community Development Department.

Section 105 Required construction permits shall be amended to read as follows:

The fire code official is authorized to issue construction permits for work as set forth in Sections 105.1.1 through 105.6.24. Such permits shall be processed through the City of Las Cruces Community Development Department and shall be in conformance with the requirements established by this code and the Community Development Department.

Section 105.6.1.1 Design Safety Margin shall be added to read as follows:

Unless otherwise approved by the Fire Code Official all automatic sprinkler systems shall be designed with a minimum ten psi safety margin.

Section 105.6.1.2 Hydraulic calculations required shall be added to read as follows:

When required by the Fire Code Official, hydraulic calculations shall be provided for modification to an existing automatic fire-extinguishing system requiring the installation of additional heads when either of the following occur:

1. Number of heads being added exceeds ten.
2. Number of heads being added is greater than ten percent of total heads for the system.

The fire code official may require hydraulic calculations be submitted for any modification to an existing system when deemed necessary to adequately evaluate the impact on the system.

Section 111.1Board of appeals established shall be amended to read as follows:

Whenever the Fire Chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, applicant may appeal from the decision to city council by writing to the fire chief requesting an appeal within 30 days of the aggrieved action.

Section 111.2Limitations on authority shall be deleted in its entirety.

Section 111.3Qualifications shall be deleted in its entirety.

Section 112.4Violation penalties shall be amended to read as follows:

> Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation for the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a petty misdemeanor, punishable by a fine of not more than $500.00 or by imprisonment not exceeding 90 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section 113.4Failure to comply shall be amended to read as follows:

> Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be considered to be in violation of this code and shall be subject to the penalties as set forth in Section 112.4

Chapter 3 General Requirements

Section 315.1 is added to read as follows:

Electric Vehicles & Personal mobility devices. Electrically powered vehicles and personal mobility devices shall not be displayed, stored, or serviced indoors unless specifically authorized by the Fire Code Official or in conformance with the provisions of Appendix N.

Chapter 4 Emergency Planning and Preparedness

Table 405.3Fire and evacuation drill frequency and participation shall be amended as follows:

> Group H occupancies shall be included with Group A occupancies in the table.

Chapter 5 Fire Service Features

Section 505.1 Address numbers shall be amended to read as follows:

> New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Numbers shall be not less than two inches in width and three inches in height. Address identification shall also conform to section 30-1 of the Las Cruces Municipal Code.

Section 507.5.1.2 Fire protection in recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots is added to read as follows:

> Fire protection in recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots shall provide and maintain fire hydrants and access roads in accordance with sections 503 and 507.

Chapter 9 Fire Protection and Life Safety Features

Section 901.4.7 Pump and Riser room size shall be amended to read as follows:

> Where provided, fire pump rooms and automatic sprinkler system riser rooms shall be designated with adequate space for all equipment necessary for the installation, as defined by the manufacturer, with sufficient working space around the stationary equipment. Clearances around equipment to the elements of permanent construction, including other installed equipment and appliances, shall be sufficient to allow inspection, service, repair, or replacement without removing such elements of permanent construction or disabling the function of a required fire-resistance rated assembly. Fire pump and automatic sprinkler system riser rooms shall be provided with a door(s) to the exterior and an unobstructed passageway large enough to allow removal of the largest piece of equipment.

Section 902.1 Definitions shall have the definition of Standpipe System, Classes of, amended to read as follows:

> Standpipe classes are as follows:
>
> *Class I system.* A system providing 2.5-inch (64 mm) hose connections to supply water for use by fire departments and those trained in handling heavy fire streams.
>
> *Class II system.* A system providing 1.5-inch (38 mm) hose stations to supply water for use primarily by the building occupants or by the fire department during initial response. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.
>
> *Class III system.* A system providing 1.5-inch (38 mm) hose stations to supply water for use by building occupants and 2.5-inch (64 mm) hose connections to supply a larger volume of water for use by fire departments and those trained in handling heavy fire streams. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.

Section 903.2 Exception shall be deleted in its entirety.

Section 903.3.9 Unservicable Fire Sprinkler Systems is added to read as follows:

Where a large concealed space, such as a shallow attic space, greater than 3000CF(85 M^3), requires protection and the system is not serviceable in that area, as determined by the Fire Marshal, the area shall be designed such that sprinkler protection is not required as per NFPA 13.

Section 903.4 Exceptions shall be amended to read as follows:

2. Limited area systems serving fewer than 20 sprinklers in other than Group H and Group I occupancies.

Section 903.4.4 Multi Story Buildings shall be added to read as follows:

When required by the Fire Code Official, approved supervised indicating control valves shall be provided in multi-story buildings and attached tenant spaces. For the purpose of this section a basement shall be considered a story.

Section 913.4 Valve supervision shall be amended to read as follows:

Where provided, the fire pump suction, discharge and bypass valves, and the isolation valves on the backflow prevention device or assembly shall be supervised open by one of the following methods:

1. Central-station, proprietary, or remote-station signaling service.
2. Local signaling service that will cause the sounding of an audible signal at a constantly attended location when approved by the fire code official.

Numbers 3. and 4. shall be deleted in their entirety.

Chapter 10 Means of Egress

Section 1020.1.1 - Corridor Hold-Opens is added to read as follows:

Where a corridor is required to be fire rated as per Table 1020.1, Door hold opens are required on some or all rooms that the corridor serves, as determined by the Fire Marshal. The hold opens shall be released upon automatic smoke detection in the corridor.

Chapter 23 Motor Fuel-Dispensing Facilities and Repair Garages

Section 2306.2.3.1 Existing above-ground tanks used for dispensing into motor vehicles is added to read as follows:

Existing above-ground tanks shall comply with Section 2306.2.3

Chapter 24 Flammable Finishes

Section 2404.9.2 Frequency shall be amended to read as follows:

Spraying operations shall not be of a continuous nature and shall not exceed 9 square feet per day.

Chapter 56 Explosives and Fireworks

Section 5601.1.3 Exceptions shall be amended as follows:

Exception 2 shall be deleted in its entirety.

Chapter 61 Liquefied Petroleum Gases

Section 6108.1 General shall be amended to read as follows:

Fire protection shall be provided for installations having storage containers with a water capacity of more than 4,000 (15,140 L) gallons as required by Section 6.25 of NFPA 58.

(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)

Chapter 80 Referenced Standards

Add NFPA 1 – Most recent edition

Sec. 11-34. Penalties.

(a) Any person who violates any of the provisions of the fire code as adopted and amended in this article, who fails to comply with the fire code, who violates or fails to comply with any order made under the fire code, who builds in violation of any order made under the fire code, who builds in violation of any detailed statement of specifications or plans submitted and approved under the fire code or any certificate or permit issued under the fire code and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by this article or by a court or competent jurisdiction, within the required time, shall severally for each and every such violation and noncompliance, respectively, be guilty of a petty misdemeanor, punishable by a fine of not more than $500.00 or by imprisonment for not more than 90 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

(b) The application of the penalty in subsection (a) of this section shall not be held to prevent the enforced removal of prohibited conditions.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Secs. 11-35—-11-60. Reserved.

Se

Secs. 11-69—11-105. Reserved.

Secs. 11-118—11-145. Reserved.

ARTICLE III. FIREWORKS[3]

[3]Editor's note(s)—Ord. No. 1754, § I, adopted Aug. 2, 1999, repealed the former art. III, §§ 11-146—11-149, and adding a new art. III, §§ 11-146—11-150. Former art. III pertained to similar subject matter, and derived from Ord. No. 1650, adopted Dec. 15, 1997.

Sec. 11-146. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Display fireworks means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than 130 milligrams of explosive composition; aerial shells containing more than 40 grams of chemical composition exclusive of lift charge; and other exhibit display items that exceed the limits of permissible fireworks.

Permissible fireworks for possession, use or sale means, in this article, fireworks legal for sale and use in the state under the provisions of NMSA 1978, § 60-2C-7, the Fireworks Licensing and Safety Act as amended, with the exception of all aerial devices and ground audible devices.

(Ord. No. 1754, § I, 8-2-99; Ord. No. 2154, §§ I, II, 12-6-04; Ord. No. 2226, §§ I, II, 8-1-05)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-147. Administration.

(a) For the purposes of regulating fireworks within the city, the provision of the Fireworks Licensing and Safety Act, NMSA § 60-2C-1 et seq., as amended, shall apply except as indicated in this article.

(b) Permissible fireworks may be sold at retail between June 20 and July 6 of each year and six days preceding and including New Year's Day and three days preceding and including Chinese New Year, the 16th of September and Cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism.

(c) It shall be unlawful for a person to possess, use or sell all aerial devices and ground audible devices as outlined in NMSA §§ 60-2C-7(A)(2) and (A)(3).

(d) All temporary fireworks sales stands used solely as fireworks sales stands shall not be set up more than one week prior to the approved sales periods and shall be dismantled or removed from the location within one week after the approved sales period.

(Ord. No. 1754, § I, 8-2-99; Ord. No. 2154, §§ I, II, 12-6-04; Ord. No. 2226, §§ I, II, 8-1-05)

Sec. 11-148. Drought conditions—Fireworks restrictions.

(a) If extreme or severe drought conditions exist or potentially exist, the city council may hold a hearing and pass a resolution to issue a proclamation that would impose fireworks restrictions within the city limits.

(b) The findings of the city council, in passing the resolution, shall be based on current drought indices published by the National Weather Service and any other relevant information supplied by the United States Forest Service.

(c) Pursuant to the hearing, the city council shall issue a proclamation declaring extreme or severe drought conditions exist within the city limits.

(d) The proclamation shall be issued no less than 20 days prior to a holiday for which fireworks may be sold, shall be effective for 30 days, and said proclamation may be modified or rescinded within the 30-day period by the city council upon conducting an emergency hearing to determine if weather conditions have improved.

(e) The proclamation shall read as follows:

"WHEREAS, the City Council is the governing body of the City of Las Cruces; and

WHEREAS, the City Council has obtained information and forecasts from the National Weather Service concerning drought indices; and

WHEREAS, the City Council of the City of Las Cruces has obtained information and forecasts from the United States Forest Service concerning drought indices; and

WHEREAS, the City Council held a public hearing on _____ *(date)* _____, to determine whether the City of Las Cruces is affected by extreme or severe drought conditions and whether fireworks restrictions should be imposed within the municipal boundaries of the City; and

WHEREAS, the City Council made certain findings of fact based upon information provided during the public hearing and said findings are included in the resolution passed at the hearing authorizing this Proclamation; and

WHEREAS, the findings of the City Council was that the City of Las Cruces is affected by extreme or severe drought conditions based upon current drought indices published by the National Weather Service and other information supplied by the United States Forest Service.

NOW, THEREFORE, be it Proclaimed by the Governing Body of the City of Las Cruces, New Mexico;

(I) THAT extreme or severe drought conditions exist within the municipal boundaries of the City of Las Cruces.

(II) THAT in addition to any ordinance enacted pursuant to NMSA 1978 §60-2C-7.C, the sale and use within the municipal boundaries of the City of Las Cruces of missile-type rockets, helicopters, aerial spinners, and stick-type rockets, are prohibited by this Proclamation.

(III) THAT in addition to any ordinance enacted pursuant to NMSA 1978 §60-2C-7.C, the sale and use within the municipal boundaries of the

City of Las Cruces of ground audible devices such as chasers and firecrackers, are prohibited by this Proclamation.

(IV) THAT the Governing Body is authorized to and has limited the use of otherwise permissible fireworks, including cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinner, illuminating torches, toy smoking devices and wheels, to areas within the municipal boundaries that are paved, barren, or areas that have a readily accessible source of water.

(V) THAT the Governing Body, having consulted with the state forester, is authorized to and has banned the use of all fireworks within areas that are covered wholly or in part by timber, brush or native grass.

(VI) THAT the Governing Body is authorized to and has prohibited or restricted the sale or use of display fireworks.

(VII) THAT this Proclamation is effective for a period for thirty days from this date unless a subsequent Proclamation is issued by the Governing Body.

APPROVED THIS _____TH DAY OF _____, _____.

_____ Mayor

_____ Date

ATTEST:

_____ City Clerk

(SEAL)"

(f) Items under the heading of "(V)" and "(VI)" of subsection (e) above, may be removed from the proclamation by the city council based on their findings of fact within the public hearing based on the drought conditions. If removed from the proclamation, subsequent headings within the proclamation shall be renumbered accordingly.

(Ord. No. 1754, § I, 8-2-99)

Sec. 11-149. Manufacture.

The manufacture of fireworks is prohibited within the city.

(Ord. No. 1754, § I, 8-2-99)

Sec. 11-150. Penalties.

Violations of this article shall be punishable pursuant to the provisions of section 1-10 of this Code.

(Ord. No. 1754, § I, 8-2-99)

Secs. 11-151—11-180. Reserved.

ARTICLE IV. TRANSPORTATION OF DANGEROUS SUBSTANCES[4]

[4]Cross reference(s)—Traffic, ch. 27.

Sec. 11-181. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adjacent area means any area within five miles of the boundaries of the city.

Class A poisons means extremely dangerous poisonous gases or liquids of such nature that a very small amount of gas or vapor of the liquid, mixed with air, is dangerous to life.

Class B poisons means less dangerous poisonous liquids or solids, including pastes or semiliquids, that are less dangerous than class A poisons and that are chiefly dangerous by external contact with the body or by being taken internally, as in contaminated foods or feeds. The vapors of some of this class of poison are also offensive and dangerous, but to a lesser extent than class A poisons.

Class C poisons means tear gas or irritating substances in liquid or solid form which give off dangerous or intensely irritating fumes when exposed to air or upon contact with fire.

Class D poisons means radioactive material and substances which spontaneously emit radiations that are capable of penetrating and severely damaging living tissues and surrounding shipments.

Compressed gas means any material or mixture having in the container a pressure exceeding 40 pounds per square inch at 70 degrees Fahrenheit; or a pressure exceeding 104 pounds per square inch at 130 degrees Fahrenheit; or any liquid flammable material having a vapor pressure exceeding 40 pounds per square inch at 100 degrees Fahrenheit.

Corrosive material means any liquid or solid which will cause severe damage to living tissue and to freight by chemical action when in contact therewith; liquids which may also cause fire when in contact with organic matter or certain chemicals.

Explosive means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion.

Flammable liquids means any liquid which gives off flammable vapors.

Flammable solids means solids, other than explosives, which are liable to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from the manufacturing or processing of the commodity.

Oxidizing material means substances that yield oxygen readily to stimulate the combustion of organic matter.

Recreational vehicle means a vehicle composed of a chassis, or frame with wheels, which either has its own mode of power or is drawn by another vehicle, and a camping body primarily designed or converted for use as temporary living quarters for recreation, camping, or travel activities.

(Code 1988, § 14-61)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-182. Exceptions.

This article shall not apply under the following conditions and circumstances:

(1) When any truck, trailer, motor vehicle or any other form of vehicle is carrying any of the material defined in section 11-181 to commercial consumers, domestic consumers, gasoline service stations or bulk stations located within the corporate limits of the city and adjacent areas.

(2) When any truck, trailer, motor vehicle. or any other form of vehicle is carrying any of the material defined in section 11-181 for the sole purpose of propelling the truck, trailer, or motor vehicle.

(3) When any truck, trailer, motor vehicle or any other form of vehicle loaded or partly loaded with any of the products defined in section 11-181 has stopped on any of the streets or highways designated as provided in section 11-183 at a gasoline service station or garage for necessary repairs. Under this circumstance the vehicle shall not remain at the gasoline service station or garage longer than 30 minutes unless the police department is notified that it is necessary to remain for a longer period than 30 minutes.

(4) When any truck, trailer, motor vehicle or any other form of vehicle used for carrying any of the products defined in section 11-181 has broken down, has a flat tire, needs repair, needs gasoline for its own propulsion to the extent that it cannot be propelled with its own power, the necessary repairs can be made where the vehicle has been forced to stop, provided the vehicle can be repaired within a period of two hours. The driver of the vehicle shall immediately notify the police department of the forced stoppage, and during the period allowed for repair a police officer or someone designated by him shall remain at the place of stoppage to warn other persons using the street or highway of the danger.

(5) When any truck, trailer, motor vehicle or any other form of vehicle needs immediate repairs and is not loaded or partially loaded with any of the products defined in section 11-181 and is on direct route to a garage or to the private property or place of business of the owner of the vehicle or the owner's place of business exclusively controlled by the owner.

(6) When any truck, trailer, motor vehicle or any other form of vehicle is loaded or partially loaded with any of the products defined in section 11-181 has broken down and is in need of repair to the extent that the vehicle cannot be repaired within two hours. The police department shall be notified that the vehicle is being removed from the place of stoppage or breakdown to a garage or

some other place within the corporate limits of the city and shall only be moved under the direction of the police department.

(7) When any person who is engaged in the business of hauling any of the materials defined in section 11-181 has his place of business within the corporate limits of the city, he shall have a right to convey the truck, trailer, motor vehicle, or any other form of vehicle to his place of business without police protection.

(Code 1988, § 14-62)

Sec. 11-183. Vehicles used for carrying and travel routes.

(a) It shall be unlawful for any person to drive or cause to be driven or operate or maintain any motor vehicle, truck, trailer or any other vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle used for the carrying of any of the materials defined in section 11-181 over any street, highway or alley within the corporate limits of the city, except:

(1) Those streets shown on exhibit A labeled "Hazardous Material and Intercity Truck Routes," incorporated in this section by reference.

(2) Other streets may be traveled upon when in the opinion of the traffic engineer and the city manager the safety of the property and its citizens demands it and when they are designated by the traffic engineer with the approval of the city manager by visible markers and signs.

(b) In order to determine the truck routes and delivery routes of hazardous material, refer to section 12-10-3.1 of the Uniform Traffic Ordinance, as adopted in section 27-1 and as amended in section 27-2.

(Code 1988, § 14-63)

Sec. 11-184. Parking.

(a) It shall be unlawful for any person to park or cause to be parked on the highway, street or alley within the corporate limits of the city any truck, trailer, motor vehicle or other form of vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle used for carrying any of the materials defined in section 11-181, whether loaded, partially loaded or empty of such products. This subsection shall not apply to the stopping of any vehicle on any of the streets and highways designated in section 11-183 at filling stations for service or because of breakdown of the vehicle on the designated streets or highways.

(b) It shall be unlawful for any person to park or cause to be parked or to maintain any truck, trailer, motor vehicle or any other form of vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle filled or partially filled with any of the materials defined in section 11-181 on any street, alley, public place or any place within the corporate limits of the city.

(Code 1988, § 14-64)

Secs. 11-185—11-210. Reserved.

ARTICLE V. CHEMICAL EMERGENCY PREPAREDNESS AND HAZARDOUS MATERIAL/CHEMICAL INVENTORY/DISCLOSURE STATEMENT

Sec. 11-211. Penalty for violation.

Violations of this article shall be punished as provided in section 1-10.

(Code 1988, § 14-91)

Sec. 11-212. Development of standard operating procedures.

The fire chief shall have the primary responsibility of developing standard operating emergency procedures, and the standard operating procedures for the purpose of chemical emergency planning within the city. A copy of the plan will be forwarded by the fire chief to the office of emergency preparedness for inclusion in the hazardous material/chemical emergency response plan.

(Code 1988, § 14-81)

Sec. 11-213. Emergency hazardous material/chemical response plan.

The designated emergency hazardous material/chemical response planning agency shall consist of state, county, and local officials; police, fire, public, health, civil preparedness, environmental, hospital, transportation officials; and certain private businesses. They shall evaluate and establish resources for preparing and responding to a potential chemical accident within the city. This plan is subject to the approval of the fire chief and shall include the following:

(1) Identification of facilities and transportation routes for extremely hazardous substances through the city.

(2) Development of emergency response procedures, on site and off site, in accordance with mandated regulations.

(3) Development and maintenance of emergency notification procedures.

(4) Development of methods for determining the occurrence of a release and the probable affected area and population.

(5) Development of a training program for emergency response personnel, including schedules.

(6) Presentation of methods and schedules for exercising emergency response plans.

(Code 1988, § 14-82)

Sec. 11-214. Fire department response.

The fire department shall provide initial response to incidents involving hazardous materials and chemicals, as mandated by the hazardous materials emergency response (HMER) plan of the state Emergency Management Act, as amended in 1984.

(Code 1988, § 14-83)

Sec. 11-215. Training and certification for emergency response personnel.

Designated emergency response personnel shall complete training and receive certification specified by the hazardous materials safety board as consistent with emergency response functions to be performed during an emergency.

(Code 1988, § 14-84)

Sec. 11-216. Applicability of article; list of hazardous materials and chemicals.

This article shall apply to hazardous materials and chemicals that shall have been defined as such by the Environmental Protection Agency or the state environmental department, or both. The chief of the fire department shall be responsible on or before December 1 of every year to acquire from the state department of public safety and the environmental department information of chemicals and products defined by them as being hazardous, and shall make such information available, without charge, to all citizens of the city and to all persons or entities doing business within the city limits. Such information shall be recorded with the city clerk on or before December 10 of each year, and the list shall be in effect for the following year, but no list shall become obsolete until its successor is recorded.

(Code 1988, § 14-85)

Sec. 11-217. Declaration of inventory.

(a) All persons, businesses or other entities possessing any of the products on the list referred to in section 11-216 must declare their inventory with the fire chief of such chemicals or products on or before March 15 of each year. An updated report of new or additional chemicals added to the inventory within the year must be reported to the fire chief within 15 days of acquisition of the chemicals.

(b) Any person filing for business registration shall complete the inventory at that time. Such list shall be filed with the fire chief on a form to be approved by the fire chief. All other persons, organizations, or entities must submit a list to the fire chief by the effective date of the ordinance from which this article derives.

(c) Any person or entity so filing shall also indicate the method by which such hazardous waste or chemicals or any waste generated on site therefrom are to be disposed of.

(d) There shall be no filing fee for the filing of such declarations.

(e) The fire chief will provide a copy of the hazardous materials/chemical facility inventory form to the office of emergency civil preparedness.

(Code 1988, § 14-86)

Sec. 11-218. Site inspection.

Inspection of each site on which materials are stored or disposed of pursuant to this article shall be made at least annually by the fire chief. The office of emergency civil preparedness and the local emergency planning committee will provide technical information and perform emergency planning. The fire chief shall forward the inspection form labelled "Emergency Civil Preparedness Copy" to the office of emergency civil preparedness. The city council, by ordinance, may adopt regulations establishing classification of material, by the nature of the material, the quantity stored, the area in which stored, and the potential for contamination of groundwater or any other significant factor which would increase the frequency of inspection according to the characteristics detailed in the regulations.

(Code 1988, § 14-87)

Sec. 11-219. Adoption of standards; enforcement.

(a) The standards of the National Fire Protection Association (NFPA), rule 704, requiring the labeling of the buildings in which hazardous materials are stored, are specifically adopted and incorporated in this article by reference. Each site shall display metal signs in a readily visible location for emergency responders. The size and quantity of placards to be displayed will be determined at the discretion of the inspector at the time of the on-site inspection. Size of the placards will be a minimum of six inches by six inches to a maximum of 15 inches by 15 inches inside and outside.

(b) The standards adopted in subsection (a) of this section and such amendments, updates or revisions thereof as may be adopted by resolution of the city council shall be enforced by the fire chief.

(Code 1988, § 14-88)

Sec. 11-220. Applicability of standards to facilities.

The standards adopted in section 11-210 shall be applicable to all facilities, as follows:

(1) Those facilities that commence storage, manufacture or use of hazardous materials after November 28, 1989, must comply with the standards upon the effective date of the ordinance from which this article derives.

(2) Those facilities that expand their physical plant for storage, manufacture or use of hazardous materials after November 28, 1989, or that add additional hazardous materials or increase their inventory or output of hazardous materials by at least 15 percent after November 28, 1989, must comply with the standards upon the date of such expansion, addition, or increase.

(3) Those facilities which, before November 28, 1989, were of the type covered by the standards adopted in section 11-219 but which do not come under subsection (2) of this section must comply with the standards within 90 days of the effective date of the ordinance from which this article derives.

(Code 1988, § 14-89)

Sec. 11-221. Certification of compliance.

It is the responsibility of all facilities subject to this article to file a certification of compliance with this article with the fire chief on or before March 15 for each calendar year, or within 30 days of the commencement of activities bringing the facility under this article. Such certification shall be on a form acceptable to the responsible official, and such forms shall be made available as provided in subsection 11-217(e). There shall be no charge for the filing of this certification, which shall be filed with the responsible official.

(Code 1988, § 14-90)

Secs. 11-222—11-250. Reserved.

ARTICLE VI. FIRE LANES[5]

[5]Cross reference(s)—Traffic, ch. 27.

Sec. 11-251. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fire lane means any area appurtenant to a building deemed necessary by the fire chief to remain free and clear of parked vehicles for access to such building in case of fire or other emergency and designated by him as such, and may include sidewalks, driveways, portions of parking lots or any other area adjacent to or near a building or fire hydrant, as required by the fire chief.

Private property means property that is privately owned, but where numbers of persons work, live or congregate from time to time for any purpose, where the parking of motor vehicles or presence of other obstructions can interfere with the ingress and egress of emergency vehicles (police, fire, ambulance) for the protection of persons and property thereon, and shall include, but not be limited to, shopping centers, bowling lanes, theaters, hospitals, churches, factories, schools, lodginghouses, convalescent homes, hotels, asylums and public halls. Private property shall not include single-family dwellings, duplexes, fourplexes and condominiums.

Public property means property owned by any political subdivision not specifically exempted by state or federal law.

Shopping center means a group of commercial business establishments operated as a unit with off-street parking provided on the property, and related in locations, sizes and types of shops to the trade area that the unit serves.

(Code 1988, § 14-101)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-252. Authority to designate; maintenance responsibility.

The fire chief is authorized to designate fire lanes on property of shopping centers and other private or public property where such areas must

be kept free of parked vehicles and other obstructions to provide ready access in such areas in case of fire or other emergency. The designation by the fire chief of such fire lanes shall never be held to make the city responsible for the maintenance of such fire lanes on private property, but the owner of such property shall continue to be responsible for the maintenance of such area. The official records of the designation and location of any such fire lanes shall be kept in the office of the fire chief.

(Code 1988, § 14-102)

Sec. 11-253. Shopping center construction or construction on private property.

Before plot plans of proposed shopping center construction or construction on private property are submitted to the Community Development Department for issuance of building permits, such plans shall be

submitted to the fire chief for his review and approval of the adequacy of the fire lanes provided therefor. The specific requirements of this section as applicable to a specific structure may be modified by the fire chief in recognition of varying occupancies, size, and hazards of buildings and the provision of other means of access or fixed fire protection.

(Code 1988, § 14-103)

Sec. 11-254. Submission of plot plan to fire chief required.

(a) The fire chief may require the owners of existing shopping centers and existing facilities on private property to submit plot plans for his use in determining whether to designate fire lanes on the property. The fire chief may require that the fire lane for existing buildings be established to provide access for fire suppression operations by improving existing conditions.

(b) Fire lanes established for new and existing structures shall conform to fire lane requirement applicable at the time of construction. If no fire lane requirements were applicable at the time of construction, the fire chief may require establishment of fire lanes to conform with the requirements of this section, insofar as is practicable without requiring any construction, structural modification or substantial financial hardship.

(Code 1988, § 14-104)

Sec. 11-255. No parking signs.

Upon the designation of a fire lane pursuant to this article, the fire chief shall give notice of such designation to the owner of such shopping center and other areas, directing the owner to cause signs to be posted, at the expense of the owner, at designated locations, and stating "No Parking At Any Time—Fire Lane (tow away zone)." Such signs shall be of a standard size and color, of standard lettering and mounting, conforming to specifications established by the traffic engineer and fire chief. It is unlawful to park any vehicle other than authorized emergency vehicles in a designated fire lane when such signs are in place.

(Code 1988, § 14-105)

Sec. 11-256. Unlawful parking.

It is unlawful to park any vehicle other than an authorized emergency vehicle in any fire lane established pursuant to this article, except as may be specifically permitted by the fire chief (i.e., an armored vehicle may park in the fire lane for a brief period of time during the performance of duty after obtaining a permit from the fire department).

Nothing in this section shall prohibit a city bus from stopping briefly in a fire lane for the purpose of dropping off or picking up passengers.

(Code 1988, § 14-106; Ord. No. 2508, § I, 3-2-09)

Sec. 11-257. Towing authorized.

Unauthorized vehicles parked in designated fire lanes that block fire department or other emergency vehicle access may be towed at the owner's expense to a designated storage facility by the authority of the fire chief and the police department.

(Code 1988, § 14-107)

Sec. 11-258. Removal of signs.

It is unlawful for any person, without lawful authority, to attempt to remove any sign designating a fire lane established pursuant to this article.

(Code 1988, § 14-108)

Sec. 11-259. Unauthorized signs.

(a) It is unlawful for any person to place, maintain or display any unauthorized sign which purports to be or is an imitation of or resembles an official sign designating a fire lane.

(b) Every such prohibited sign is declared to be a public nuisance, and the fire chief is empowered to remove the sign or cause it to be removed.

(c) Undesignated fire lanes in compliance with the fire lane requirements shall meet the stipulations of this article. Failure to comply with proper fire lane establishment procedures shall, in addition to the provisions of this article, be prosecuted according to the limitations of this Code.

(Code 1988, § 14-109)

Sec. 11-260. Standards for markings and signs.

Fire lanes designated by the fire department, in accordance with this article, shall be posted in the following manner:

(1) *Curb markings.*

a. The curb adjacent to an officially designated fire lane shall be painted red.

b. The legend "fire lane" shall be stenciled in white with four-inch upper case letters on the top and face of the curb adjacent to a fire lane. This legend shall be repeated at intervals of 50 feet.

c. No parking areas not officially designated as fire lanes shall not be painted red or marked in such a fashion as to be confused with an official fire lane.

d. No parking areas other than officially designated fire lanes should be painted yellow, to be consistent with city and state standards for establishing no parking areas.

(2) *Signs.*

a. The standard size of an official fire lane sign shall be 12 inches by 18 inches. An aluminum blank with rounded corners is recommended.

b. The standard color of an official fire lane sign shall be follows:

   1. The background shall be reflective white.

   2. The lettering and border shall be red.

c. The standard legend and lettering of an official fire lane sign shall be as shown on the approved drawing which is on file and available in the city offices.

d. The standard fire lane sign shall be posted as follows:

   1. One sign shall be posted at each end of an official fire lane. Each sign shall have a single head arrow showing the appropriate direction of the fire lane.

   2. A fire lane longer than 150 feet shall have intermediate signs posted at even intervals. Intermediate signs shall have a double head arrow indicating the fire lane is continuous. The intermediate signs may be posted as necessary, but in no case shall the intervals between fire lane signs be greater than 100 feet.

   3. The fire lane sign shall be securely fastened to a suitable pole or support, with a minimum vertical clearance above the sidewalk of seven feet.

   4. When poles are used to mount fire lane signs, they shall be placed two feet and six inches behind the face of the curb. In accordance with the fire code, no pole or obstruction may be placed within three feet of a fire hydrant.

   5. Fire lane signs shall be posted parallel to the lane or curb to which they apply.

   6. When the distance between the curb and a building, light standard, or other structure is eight feet or less, the fire lane sign may be posted on the face of the building, light standard, or other structure. The bottom of the sign shall be located seven feet above the adjacent sidewalk.

(Code 1988, § 14-110)

Chapter 11 FIRE PREVENTION AND PROTECTION[1]

[1]Cross reference(s)—Alarm systems and private security firms, ch. 4; health and human services, ch. 12; woodburning, § 12-86 et seq.; smoking in public places, § 12-124; smoking in places of employment, § 12-125; smoking in city-owned buildings, § 12-126; buildings and building regulations, ch. 30.

ARTICLE I. IN GENERAL

Secs. 11-1—11-25. Reserved.

ARTICLE II. FIRE PREVENTION CODE[2]

[2]Editor's note(s)—Ord. No. 2668, §§ I, II(exh. A), adopted Oct. 1, 2012, amended art. II in its entirety to read as herein set out. A grace period from the date of adoption will be in place allowing use of either the 2006 or 2009 editions until Jan. 1, 2013. 2009 editions will be fully enforced starting Jan. 1, 2013. Former art. II, §§ 11-26—11-117, pertained to similar subject matter and derived from: Code 1988, §§ 14-16—14-25; Ord. No. 1796, § I, adopted May 1, 2000; Ord. No. 2073, §§ I, II, adopted Jan. 5, 2004; and Ord. No. 2477, § II, adopted Nov. 17, 2008.

State law reference(s)—State fire prevention standards, NMSA 1978, § 59-17-13; local governments to comply with same, NMSA 1978, § 59-17-24.

DIVISION 1. GENERALLY

Sec. 11-26. Adopted.

(a) The Las Cruces Fire Department is established for the purpose of protecting the health, safety and welfare of the citizens of Las Cruces by responding to fires, emergency medical calls, release of hazardous materials and other emergency and nonemergency incidents within the incorporated city limits. The Las Cruces Fire Department is further charged with preventing conditions hazardous to life and property from fire, hazardous materials or explosion through the adoption of that certain code known as the International Fire Code, 2021~~15~~ edition, including the following appendix chapters:

(1) Appendix B, Fire-flow requirements for buildings.

(2) Appendix C, Fire hydrant locations and distribution.

(3) Appendix D, Fire apparatus access roads.

(4) Appendix E, Hazard Categories

(5) Appendix F, Hazard Ranking

(6) Appendix G, Cryogenic Fluids-Weight and Volume Equivalents

(7) Appendix H, Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions

(8~~4~~) Appendix I, Fire protection S~~s~~ystems-Noncompliant Conditions.

(9~~5~~) Appendix K, Construction requirements for existing healthcare facilities.

(10) Appendix L, Requirements for Fire Fighter Air Replenishment Systems

(11~~6~~) Appendix M, High rise buildings-retroactive automatic sprinkler systems.

(12) Appendix N, Indoor trade shows and exhibitions

(b) The International Fire Code mentioned in subsection (a) of this section is adopted, save and except such portions as are deleted, modified or amended by section 11-33 and divisions 2 and 3 of this article. One copy of the code is filed in the office of the city clerk. The International Fire Code is adopted and incorporated as fully as if set out at length in this section, and the provisions thereof shall be controlling within the city limits.

(Code 1988, § 14-16; Ord. No. 1796, § I, 5-1-00) ~~(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

Charter reference(s)—Code of technical regulations, § 2.12.

Sec. 11-27. Establishment and duties of fire prevention services.

The fire code as adopted in section 11-26 and as amended in this article shall be enforced by the fire prevention services in the fire and emergency services division of the city, which is established and which shall be operated under the supervision of the fire marshal.

(Code 1988, § 14-17)~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

Sec. 11-28. Definitions.

The following definitions shall be added to the fire code adopted in section 11-26:

Fire marshal is the chief of the fire prevention services; interchangeable with the term fire code official under this code.

Jurisdiction: This code shall be applicable to all property within the corporate limits of the City of Las Cruces, New Mexico.

(Code 1988, § 14-18)~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-29. Establishment of limits of districts in which storage of flammable or combustible liquids in outside above ground tanks prohibited.

The limits referred to in sections 5704.2.9.6.1 and 5706.2.4.4 of the fire code adopted in section 11-26, in which the storage of flammable or combustible liquids is restricted, is established as and shall be in accordance with the city's zoning code in chapter 38.

(Code 1988, § 14-19)~~(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

Sec. 11-30. Establishments of limits in which storage of liquefied petroleum gases prohibited.

The limits referred to in section 6104.2 of the fire code adopted in section 11-26, in which storage and use of liquefied petroleum gas is restricted, are established and shall be in accordance with the city's zoning code in chapter 38. The aggregate capacity of any one installation shall not exceed a 2,000-gallon water capacity in residential areas. Exception is a multi-container location such as a dispensing station, and bulk facilities.

(Code 1988, § 14-20)~~(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

Sec. 11-31. Establishment of limits of districts in which storage of flammable cryogenic fluids in stationary containers prohibited.

The limits referred to in section 5806.2 of the fire code adopted in section 11-26, in which storage of flammable cryogenic fluids in stationary containers is prohibited, shall be in accordance with the city's zoning code in chapter 38.

(Code 1988, § 14-21)~~(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

~~Sec. 11-32. Reserved.~~

Sec. 11-33. Amendments.

The fire code adopted in section 11-26 is amended as set forth in this section. When an existing section number of the fire code is referred to in this section, the text in this section shall control. When a new section or subsection is referred to in this section it shall be added to the fire code as adopted. The fire code is amended and changed as follows:

Chapter 1 Scope and Administration.

Section 101.1 Title shall be amended to read as follows:

> These regulations shall be known as the Fire Code of the City of Las Cruces, hereinafter referred to as "this code".

Section 104.6 Official records shall be amended to read as follows:

> The fire code official shall keep official records as required by Sections 104.6.1 through 104.6.4. Such records shall be retained in accordance with the record retention requirements established by the City of Las Cruces and State of New Mexico.

Section 104.1~~*0*~~*.2 Fire prevention personnel and police authority* is added to read as follows:

A. Members of the fire prevention services shall have the powers of a police officer in performing their duties under this code when:

   1. Such members of the fire prevention services have been certified by a law enforcement academy authorized by the State of New Mexico; and

   2. Such members have been commissioned as police officers by the City of Las Cruces.

B. Members of the fire prevention services who meet the requirement stated in paragraphs (1) and (2) of subpart A of this section shall have the following powers:

   1. Powers of arrest for criminal matters;

   2. Authority to carry such weapons and utilize such equipment necessary in the discharge of their duties pursuant to this code;

3. Authority to investigate arson and related crimes if so appointed and authorized by the Las Cruces Police Chief.

C. All other members of the fire department who do not meet the requirements of subpart A of this section shall have the power to issue citations only for violations of this code and chapter 11 of the Las Cruces Municipal Code.

Section 104.1~~2~~1.2 Obstructing operations shall be amended to read as follows:

No person shall obstruct the operations of the fire department in connection with extinguishment or control of any fire, or actions relative to other emergencies, nonemergency incidents or training, or disobey any lawful command of the fire chief or member of the fire department or any lawful order of a police officer assisting the fire department.

Section 105.1 General shall be amended to read as follows:

Permits required by the fire code official shall be in accordance with section 105.

Exception: Permits issued by the City of Las Cruces Community Development Department.

Section 106~~105.4~~ Construction documents shall be amended to read as follows:

Construction documents shall be in accordance with this section and requirements established by the City of Las Cruces Community Development Department.

Section 105.~~7~~ Required construction permits shall be amended to read as follows:

The fire code official is authorized to issue construction permits for work as set forth in Sections 105.1~~7~~.1 through 105.6~~7~~.2~~1~~4. Such permits shall be processed through the City of Las Cruces Community Development Department and shall be in conformance with the requirements established by this code and the Community Development Department.

Section 105.6~~7~~.1.1 Design Safety Margin shall be added to read as follows:

Unless otherwise approved by the Fire Code Official all automatic sprinkler systems shall be designed with a minimum ten psi safety margin.

Section 105.6~~7~~.1.2 Hydraulic calculations required shall be added to read as follows:

When required by the Fire Code Official, hydraulic calculations shall be provided for modification to an existing automatic fire-extinguishing system requiring the installation of additional heads when either of the following occur:

1. Number of heads being added exceeds ten.
2. Number of heads being added is greater than ten percent of total heads for the system.

The fire code official may require hydraulic calculations be submitted for any modification to an existing system when deemed necessary to adequately evaluate the impact on the system.

Section 111.1~~108.1~~ Board of appeals established shall be amended to read as follows:

Whenever the Fire Chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, applicant may appeal from the decision to city council by writing to the fire chief requesting an appeal within 30 days of the aggrieved action.

Section 111.2~~108.2~~ Limitations on authority shall be deleted in its entirety.

Section 111.3~~108.3~~ Qualifications shall be deleted in its entirety.

Section 112.4~~109.3~~ Violation penalties shall be amended to read as follows:

Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation for the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a petty misdemeanor, punishable by a fine of not more than $500.00 or by imprisonment not exceeding ~~179~~ 90 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section 113.4~~111.4~~ Failure to comply shall be amended to read as follows:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be considered to be in violation of this code and shall be subject to the penalties as set forth in Section 112.4~~109.3.~~

Chapter 3 General Requirements

Section 315.1 is added to read as follows:

Electric Vehicles & Personal mobility devices. Electrically powered vehicles and personal mobility devices shall not be displayed, stored, or serviced indoors unless specifically authorized by the Fire Code Official or in conformance with the provisions of Appendix N.

Chapter 4 Emergency Planning and Preparedness

Table 405.3~~405.2~~ Fire and evacuation drill frequency and participation shall be amended as follows:

Group H occupancies shall be included with Group A occupancies in the table.

Chapter 5 Fire Service Features

Section 505.1 Address numbers shall be amended to read as follows:

> New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Numbers shall be not less than two inches in width and three inches in height. Address identification shall also conform to section 30-1 of the Las Cruces Municipal Code.

Section 507.5.1.~~2~~1 Fire protection in recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots is added to read as follows:

> Fire protection in recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots shall provide and maintain fire hydrants and access roads in accordance with sections 503 and 507.

~~*Section 507.5.7 Hydrant reflectors* is added to read as follows:~~

> ~~Where new hydrants are required, an approved reflective marker shall be installed in fire department access roadways to make hydrants more discernible to approaching apparatus. Placement and location of markers shall be determined by the fire code official.~~

Chapter 9 Fire Protection and Life Safety Features

Section 901.4.7~~901.4.6~~ Pump and Riser room size shall be amended to read as follows:

> Where provided, fire pump rooms and automatic sprinkler system riser rooms shall be designated with adequate space for all equipment necessary for the installation, as defined by the manufacturer, with sufficient working space around the stationary equipment. Clearances around equipment to the elements of permanent construction, including other installed equipment and appliances, shall be sufficient to allow inspection, service, repair, or replacement without removing such elements of permanent construction or disabling the function of a required fire-resistance rated assembly. Fire pump and automatic sprinkler system riser rooms shall be provided with a door(s) to the exterior and an unobstructed passageway large enough to allow removal of the largest piece of equipment.

Section 902.1 Definitions shall have the definition of Standpipe System, Classes of, amended to read as follows:

> Standpipe classes are as follows:
>
> *Class I system.* A system providing 2.5-inch (64 mm) hose connections to supply water for use by fire departments and those trained in handling heavy fire streams.
>
> *Class II system.* A system providing 1.5-inch (38 mm) hose stations to supply water for use primarily by the building occupants or by the fire department during initial response. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.

Class III system. A system providing 1.5-inch (38 mm) hose stations to supply water for use by building occupants and 2.5-inch (64 mm) hose connections to supply a larger volume of water for use by fire departments and those trained in handling heavy fire streams. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.

Section 903.2 Exception shall be deleted in its entirety.

Section 903.3.9 Unservicable Fire Sprinkler Systems is added to read as follows:

Where a large concealed space, such as a shallow attic space, greater than 3000CF(85 M^3), requires protection and the system is not serviceable in that area, as determined by the Fire Marshal, the area shall be designed such that sprinkler protection is not required as per NFPA 13.

Section 903.4 Exceptions shall be amended to read as follows:

2. Limited area systems serving fewer than 20 sprinklers in other than Group H and Group I occupancies.

Section 903.4.4 Multi Story Buildings shall be added to read as follows:

When required by the Fire Code Official, approved supervised indicating control valves shall be provided in multi-story buildings and attached tenant spaces. For the purpose of this section a basement shall be considered a story.

Section 913.4 Valve supervision shall be amended to read as follows:

Where provided, the fire pump suction, discharge and bypass valves, and the isolation valves on the backflow prevention device or assembly shall be supervised open by one of the following methods:

1. Central-station, proprietary, or remote-station signaling service.
2. Local signaling service that will cause the sounding of an audible signal at a constantly attended location when approved by the fire code official.

Numbers 3. and 4. shall be deleted in their entirety.

Chapter 10 Means of Egress

Section 1020.1.1 - Corridor Hold-Opens is added to read as follows:

Where a corridor is required to be fire rated as per Table 1020.1, Door hold opens are required on some or all rooms that the corridor serves, as determined by the Fire Marshal. The hold opens shall be released upon automatic smoke detection in the corridor.

Chapter 23 Motor Fuel-Dispensing Facilities and Repair Garages

Section 2306.2.3.1 Existing above-ground tanks used for dispensing into motor vehicles is added to read as follows:

Existing above-ground tanks shall comply with Section 2306.2.3

Chapter 24 Flammable Finishes

Section 2404.9.2 Frequency shall be amended to read as follows:

Spraying operations shall not be of a continuous nature and shall not exceed 9 square feet per day.

Chapter 56 Explosives and Fireworks

Section 5601.1.3 Exceptions shall be amended as follows:

Exception 2 shall be deleted in its entirety.

Chapter 61 Liquefied Petroleum Gases

Section 6108.1 General shall be amended to read as follows:

Fire protection shall be provided for installations having storage containers with a water capacity of more than 4,000 (15,140 L) gallons as required by Section 6.25 of NFPA 58.

(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)

Chapter 80 Referenced Standards

Add NFPA 1 – Most recent edition

Sec. 11-34. Penalties.

(a) Any person who violates any of the provisions of the fire code as adopted and amended in this article, who fails to comply with the fire code, who violates or fails to comply with any order made under the fire code, who builds in violation of any order made under the fire code, who builds in violation of any detailed statement of specifications or plans submitted and approved under the fire code or any certificate or permit issued under the fire code and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by this article or by a court or competent jurisdiction, within the required time, shall severally for each and every such violation and noncompliance, respectively, be guilty of a petty misdemeanor, punishable by a fine of not more than $500.00 or by imprisonment for not more than ~~179~~ 90 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

(b) The application of the penalty in subsection (a) of this section shall not be held to prevent the enforced removal of prohibited conditions.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Secs. 11-35—-11-60. Reserved.

DIVISION 2. FIRE APPARATUS ACCESS ROADS

Sec. 11-61. Scope.

Appendix D of the fire code adopted in section 11-26 shall be amended to read as set forth in this division. In the case of conflict with differing codes, the most restrictive of code will prevail.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-62. Required access.

Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34,050 kg).

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-63. Minimum specifications.

(a) Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 20 feet (6,096 mm).

(b) Fire apparatus access roads shall not exceed ten percent in grade unless approved by the fire code official.

(c) The minimum turning radius shall be determined by the fire code official.

(d) Dead-end fire apparatus access roads in excess of 150 feet (45,720 mm) shall be provided with width and turnaround provisions in accordance with City of Las Cruces Design Standards or as approved by the fire code official.

(e) Where required by the fire code official, gates securing the fire apparatus access roads shall comply with all of the following criteria:

(1) The minimum gate width shall be 20 feet (6,096 mm).

(2) Gates shall be of the swinging or sliding type.

(3) Construction of gates shall be of materials that allow manual operation by one person.

(4) Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.

(5) Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be approved by the fire code official.

(6) Manual opening gates shall not be locked with a padlock or chain and padlock unless they are capable of being opened by means of forcible entry tools.

(7) Locking device specifications shall be submitted for approval by the fire code official.

(8) Electric gate operators, where provided, shall be listed in accordance with UL 325.

(9) Gates intended for automatic operation shall be designed, constructed and installed to comply with requirements of ASTM F 2200.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-64. Required signs.

(a) Where required by the fire code official, fire apparatus access roads shall be marked with permanent signs complying with chapter 11, article VI of the Las Cruces Municipal Code.

(b) Fire apparatus access roads 20 to 26 feet wide shall be posted on both sides as a fire lane.

(c) Fire apparatus access roads more than 26 feet wide to 32 feet wide shall be posted on one side of the road as a fire lane.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-65. Commercial and industrial developments.

(a) Buildings or facilities exceeding 30 feet or three stories in height shall have at least two means of fire apparatus access for each structure.

(b) Buildings or facilities having a gross building area of more than 62,000 square feet shall be provided with two separate and approved fire apparatus access roads.

Exception: When approved by the fire code official, projects having a gross building area of up to 124,000 square feet (11,520 m^2) that have a single approved fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems.

(c) Where two access roads are required, they shall be placed a distance apart equal to not less than one-half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-66. Aerial fire apparatus access roads.

(a) Where required by the fire code official, buildings or portions of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway.

(b) Fire apparatus access roads shall have a minimum unobstructed width of 26 feet in the immediate vicinity of any building or portion of building more than 30 feet in height.

(c) At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-67. Multiple-family residential developments.

(a) Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire access roads.

Exception: When approved by the fire code official, projects having up to 200 dwelling units may have a single approved fire apparatus access road when all buildings, including nonresidential occupancies, are equipped throughout with approved automatic sprinkler systems installed in accordance with Sections 903.3.1.1 or 903.3.1.3 of the fire code adopted in section 11-26.

(b) Multiple-family residential projects having more than 200 dwelling units shall be provided with two separate and approved fire apparatus access roads regardless of whether they are equipped with an approved automatic sprinkler system.

(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)

Sec. 11-68. One- or two-family residential developments.

Developments of one- or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with separate and approved fire apparatus access roads, and shall meet the requirements of subsection 11-65(c). For the purpose of this section a structure meeting the definition of a townhouse and constructed in accordance with the 2015 International Residential Code (IRC) shall be considered a one-family dwelling.

Exception 1. When approved by the fire code official, where there are 30 or more dwelling units on a single public or private access way and all dwelling units are protected by an approved automatic sprinkler systems, access from two directions shall not be required.

Exception 2. The number of dwelling units on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official.

(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)

Secs. 11-69—11-105. Reserved.

DIVISION 3. FIRE-FLOW REQUIREMENTS FOR BUILDINGS AND FIRE HYDRANT LOCATIONS AND DISTRIBUTION

Sec. 11-106. Scope.

(a) Appendix B and C of the fire code adopted in section 11-26 shall be amended to read as set forth in this division.

(b) The procedure determining fire-flow requirements for buildings or portions of buildings constructed shall be in accordance with this division. This division requires that adequate fire flow be provided for protection of life and property. It establishes and develops guidelines and rules for providing fire hydrant locations.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-107. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Fire-flow means the flow rate of water supply, measured at 20 psi residual pressure, that is available for firefighting.

Fire-flow calculation area means the floor area, in square feet, used to determine the required fire flow.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-108. Modifications.

(a) *Increases.* The fire code official is authorized to increase fire-flow requirements where conditions indicate an unusual susceptibility to group fires or conflagrations. An increase shall not be more than twice that required for the building under consideration.

(b) *Decreases.* The fire code official is authorized to reduce the fire-flow requirements for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-109. Fire area.

(a) *Computation.* For the purpose of this division, the fire-flow calculation area shall be the total floor area of all floor levels within the exterior walls, and under the horizontal projections of the roof of a building, except as modified in type IA and type IB construction.

(b) *Area separation.* Portions of buildings which are separated by fire walls without openings, constructed in accordance with the International

Building Code are allowed to be considered as separate fire-flow calculation areas.

(c) *Type IA and type IB construction.* The fire-flow calculation area of buildings constructed of type IA and type IB construction shall be the area of the three largest successive floors.

Exception: Fire-flow calculation area for open parking garages shall be determined by the area of the largest floor.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-110. Fire-flow requirements for one- and two-family dwellings.

The minimum fire-flow requirements for one- and two-family dwellings shall not be less than 1,000 gallons per minute. The fire-flow duration for one- and two-family dwellings shall not be less than that specified in Table A in section 11-117.

Exception: A reduction in required fire-flow of 50 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-111. Buildings other than one- and two-family dwellings.

The minimum fire-flow and flow duration for buildings other than one- and two-family dwellings shall not be less than that specified in Table A in section 11-117.

Exception: A reduction in required fire-flow of up to 75 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with Sections 903.3.1.1 or 903.3.1.2 of the International Fire Code. The resulting fire-flow shall not be less than 1,500 gallons per minute in addition to the sprinkler demand for the prescribed duration as specified in Table A in section 11-117.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-112. Fire hydrant location.

Fire hydrants shall be provided in accordance with Table B in section 11-117, for the protection of buildings or portions of buildings constructed. Fire hydrants shall be provided along required fire apparatus access roads and public streets.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-113. Number of fire hydrants.

The minimum number of fire hydrants available to a building shall not be less than that listed in Table B in section 11-117. The number of fire hydrants available to a complex or subdivision shall not be less than that determined by

spacing requirements listed in Table B in section 11-117, when applied to fire apparatus access roads and perimeter public streets from which fire operations could be conducted.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-114. Consideration of existing fire hydrants.

For the purpose of this division, existing fire hydrants on public streets are allowed to be considered as available when approved by the fire code official. Existing fire hydrants on adjacent properties shall not be considered available unless fire apparatus access roads extend between properties and easements are established to prevent obstruction of such roads.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-115. Distribution of fire hydrants.

(a) Each new development will be analyzed for fire-flow and fire hydrant needs. Fire hydrant requirements will vary with the size and layout of the buildings, building design and construction materials, and access from and proximity to the public right-of-way.

(b) The average spacing between fire hydrants shall not exceed that listed in Table B in section 11-117. Exceptions to this requirement are as follows:

(1) Exception 1. The fire chief may accept a deficiency of up to ten percent where existing fire hydrants provide all or a portion of the required fire hydrant service.

(2) Exception 2. The fire hydrant spacing in one- and two-family dwelling subdivisions may be increased to 600 feet.

(c) Regardless of the average spacing, fire hydrants shall be located such that all points on street and access roads adjacent to a building are within the distances listed in Table B in section 11-117.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-116. Installation of fire hydrants.

Fire hydrants shall be installed in accordance with the city standards and policies and shall be available for use prior to the beginning of development or building construction.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-117. Tables.

Table A and Table B referred to in this division shall be as follows:

TABLE A
MINIMUM REQUIRED FIRE FLOW AND FLOW DURATION FOR BUILDINGS

Fire Area (square feet)

x 0.0929 for m^2					Fire Flow (GPM)[2]	
Type IA and IB[1]	**Type IIA and IIIA[1]**	**Type IV and V-A[1]**	**Type IIB and IIIB[1]**	**Type V-B[1]**	**x 3.785 for L/min.**	**Flow Duration (hours)**
Up to 22,700	Up to 12,700	Up to 8,200	Up to 5,900	Up to 3,600	1,500	2
30,200	17,000	10,900	7,900	4,800	1,750	2
38,700	21,800	12,900	9,800	6,200	2,000	2
48,300	24,200	17,400	12,600	7,700	2,250	2
59,000	33,200	21,300	15,400	9,400	2,500	2
70,900	39,700	25,500	18,400	11,300	2,750	2
83,700	47,100	30,100	21,800	13,400	3,000	3
97,700	54,900	35,200	25,900	15,600	3,250	3
112,700	63,400	40,600	29,300	18,000	3,500	3
128,700	72,400	46,400	33,500	20,600	3,750	3
145,900	82,100	52,500	37,900	23,300	4,000	4
164,200	92,400	59,100	42,700	26,300	4,250	4
183,400	103,100	66,000	47,700	29,300	4,500	4
203,700	114,600	73,300	53,000	32,600	4,750	4
225,200	126,700	81,100	58,600	36,000	5,000	4
247,700	139,400	89,200	65,400	39,600	5,250	4
271,200	152,600	97,700	70,600	43,400	5,500	4
295,900	166,500	106,500	77,000	47,400	5,750	4
Greater	Greater	115,800	83,700	51,500	6,000	4
"	"	125,500	90,600	55,700	6,250	4
"	"	135,500	97,900	60,200	6,500	4
"	"	145,800	106,800	64,800	6,750	4
"	"	156,700	113,200	69,600	7,000	4
"	"	167,900	121,300	74,600	7,250	4
"	"	179,400	129,600	79,800	7,500	4
"	"	191,400	138,300	85,100	7,750	4
"	"	Greater	Greater	Greater	8,000	4

~~[1] Types of construction are based upon the building code.~~

~~[1] Measured at 20 psi (137.9 kPa). See the definition of fire-flow in section 11-107.~~

~~TABLE B~~

~~NUMBER AND DISTRIBUTION OF FIRE HYDRANTS~~

Fire-Flow Requirement (GPM)	Minimum No. of Hydrants	Spacing Between Hydrants[1, 2, 3](feet)	Maximum Distanc From Any Point or Street or Road Frontage to Hydrant[4]
x 3.785 for L/min.		x 304.8 for mm	
1,750 or less	1	500	250
1,750—2,250	2	450	225
2,500	3	450	225
3,000	3	400	225
3,500—4,000	4	350	210
4,500—5,000	5	300	180
5,500	6	300	180
6,000	6	250	150
6,500—7,000	7	250	150
7,500 or more	8 or more5	200	120

~~[1] Reduce by 100 feet (30 480 mm) for dead-end streets or roads.~~

~~[2] Where streets are provided with median dividers which cannot be crossed by firefighters pulling hose lines, or arterial streets are provided with four or more traffic lanes and have a traffic count of more than 30,000 vehicles per day, hydrant spacing shall average 500 feet (152.4) on each side of the street and shall be arranged on an alternating basis up to a fire-flow requirement of 7,000 gallons per minute (26 495 L/min.) and 400 feet (122 m) for higher fire-flow requirements.~~

~~[3] Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 1,000 feet (305 m) to provide for transportation hazards or as required by the chief.~~

~~[4] Reduce by 50 feet (15,240 mm) for dead-end streets or roads.~~

~~[5] One hydrant for each 1,000 gallons per minute (3,785 L/min.) or fraction thereof.~~

~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

Secs. 11-118—11-145. Reserved.

ARTICLE III. FIREWORKS[3]

[3]Editor's note(s)—Ord. No. 1754, § I, adopted Aug. 2, 1999, repealed the former art. III, §§ 11-146—11-149, and adding a new art. III, §§ 11-146—11-150. Former art. III pertained to similar subject matter, and derived from Ord. No. 1650, adopted Dec. 15, 1997.

Sec. 11-146. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Display fireworks means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than 130 milligrams of explosive composition; aerial shells containing more than 40 grams of chemical composition exclusive of lift charge; and other exhibit display items that exceed the limits of permissible fireworks.

Permissible fireworks for possession, use or sale means, in this article, fireworks legal for sale and use in the state under the provisions of NMSA 1978, § 60-2C-7, the Fireworks Licensing and Safety Act as amended, with the exception of all aerial devices and ground audible devices.

(Ord. No. 1754, § I, 8-2-99; Ord. No. 2154, §§ I, II, 12-6-04; Ord. No. 2226, §§ I, II, 8-1-05)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-147. Administration.

(a) For the purposes of regulating fireworks within the city, the provision of the Fireworks Licensing and Safety Act, NMSA § 60-2C-1 et seq., as amended, shall apply except as indicated in this article.

(b) Permissible fireworks may be sold at retail between June 20 and July 6 of each year and six days preceding and including New Year's Day and three days preceding and including Chinese New Year, the 16th of September and Cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism.

(c) It shall be unlawful for a person to possess, use or sell all aerial devices and ground audible devices as outlined in NMSA §§ 60-2C-7(A)(2) and (A)(3).

(d) All temporary fireworks sales stands used solely as fireworks sales stands shall not be set up more than one week prior to the approved sales periods and shall be dismantled or removed from the location within one week after the approved sales period.

(Ord. No. 1754, § I, 8-2-99; Ord. No. 2154, §§ I, II, 12-6-04; Ord. No. 2226, §§ I, II, 8-1-05)

Sec. 11-148. Drought conditions—Fireworks restrictions.

(a) If extreme or severe drought conditions exist or potentially exist, the city council may hold a hearing and pass a resolution to issue a proclamation that would impose fireworks restrictions within the city limits.

(b) The findings of the city council, in passing the resolution, shall be based on current drought indices published by the National Weather Service and any other relevant information supplied by the United States Forest Service.

(c) Pursuant to the hearing, the city council shall issue a proclamation declaring extreme or severe drought conditions exist within the city limits.

(d) The proclamation shall be issued no less than 20 days prior to a holiday for which fireworks may be sold, shall be effective for 30 days, and said proclamation may be modified or rescinded within the 30-day period by the city council upon conducting an emergency hearing to determine if weather conditions have improved.

(e) The proclamation shall read as follows:

"WHEREAS, the City Council is the governing body of the City of Las Cruces; and

WHEREAS, the City Council has obtained information and forecasts from the National Weather Service concerning drought indices; and

WHEREAS, the City Council of the City of Las Cruces has obtained information and forecasts from the United States Forest Service concerning drought indices; and

WHEREAS, the City Council held a public hearing on _____ *(date)* _____, to determine whether the City of Las Cruces is affected by extreme or severe drought conditions and whether fireworks restrictions should be imposed within the municipal boundaries of the City; and

WHEREAS, the City Council made certain findings of fact based upon information provided during the public hearing and said findings are included in the resolution passed at the hearing authorizing this Proclamation; and

WHEREAS, the findings of the City Council was that the City of Las Cruces is affected by extreme or severe drought conditions based upon current drought indices published by the National Weather Service and other information supplied by the United States Forest Service.

NOW, THEREFORE, be it Proclaimed by the Governing Body of the City of Las Cruces, New Mexico;

(I) THAT extreme or severe drought conditions exist within the municipal boundaries of the City of Las Cruces.

(II) THAT in addition to any ordinance enacted pursuant to NMSA 1978 §60-2C-7.C, the sale and use within the municipal boundaries of the City of Las Cruces of missile-type rockets, helicopters, aerial spinners, and stick-type rockets, are prohibited by this Proclamation.

(III) THAT in addition to any ordinance enacted pursuant to NMSA 1978 §60-2C-7.C, the sale and use within the municipal boundaries of the

City of Las Cruces of ground audible devices such as chasers and firecrackers, are prohibited by this Proclamation.

(IV) THAT the Governing Body is authorized to and has limited the use of otherwise permissible fireworks, including cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinner, illuminating torches, toy smoking devices and wheels, to areas within the municipal boundaries that are paved, barren, or areas that have a readily accessible source of water.

(V) THAT the Governing Body, having consulted with the state forester, is authorized to and has banned the use of all fireworks within areas that are covered wholly or in part by timber, brush or native grass.

(VI) THAT the Governing Body is authorized to and has prohibited or restricted the sale or use of display fireworks.

(VII) THAT this Proclamation is effective for a period for thirty days from this date unless a subsequent Proclamation is issued by the Governing Body.

APPROVED THIS _____TH DAY OF _____, _____.

_____ Mayor

_____ Date

ATTEST:

_____ City Clerk

(SEAL)"

(f) Items under the heading of "(V)" and "(VI)" of subsection (e) above, may be removed from the proclamation by the city council based on their findings of fact within the public hearing based on the drought conditions. If removed from the proclamation, subsequent headings within the proclamation shall be renumbered accordingly.

(Ord. No. 1754, § I, 8-2-99)

Sec. 11-149. Manufacture.

The manufacture of fireworks is prohibited within the city.

(Ord. No. 1754, § I, 8-2-99)

Sec. 11-150. Penalties.

Violations of this article shall be punishable pursuant to the provisions of section 1-10 of this Code.

(Ord. No. 1754, § I, 8-2-99)

Secs. 11-151—11-180. Reserved.

ARTICLE IV. TRANSPORTATION OF DANGEROUS SUBSTANCES[4]

[4]Cross reference(s)—Traffic, ch. 27.

Sec. 11-181. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adjacent area means any area within five miles of the boundaries of the city.

Class A poisons means extremely dangerous poisonous gases or liquids of such nature that a very small amount of gas or vapor of the liquid, mixed with air, is dangerous to life.

Class B poisons means less dangerous poisonous liquids or solids, including pastes or semiliquids, that are less dangerous than class A poisons and that are chiefly dangerous by external contact with the body or by being taken internally, as in contaminated foods or feeds. The vapors of some of this class of poison are also offensive and dangerous, but to a lesser extent than class A poisons.

Class C poisons means tear gas or irritating substances in liquid or solid form which give off dangerous or intensely irritating fumes when exposed to air or upon contact with fire.

Class D poisons means radioactive material and substances which spontaneously emit radiations that are capable of penetrating and severely damaging living tissues and surrounding shipments.

Compressed gas means any material or mixture having in the container a pressure exceeding 40 pounds per square inch at 70 degrees Fahrenheit; or a pressure exceeding 104 pounds per square inch at 130 degrees Fahrenheit; or any liquid flammable material having a vapor pressure exceeding 40 pounds per square inch at 100 degrees Fahrenheit.

Corrosive material means any liquid or solid which will cause severe damage to living tissue and to freight by chemical action when in contact therewith; liquids which may also cause fire when in contact with organic matter or certain chemicals.

Explosive means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion.

Flammable liquids means any liquid which gives off flammable vapors.

Flammable solids means solids, other than explosives, which are liable to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from the manufacturing or processing of the commodity.

Oxidizing material means substances that yield oxygen readily to stimulate the combustion of organic matter.

Recreational vehicle means a vehicle composed of a chassis, or frame with wheels, which either has its own mode of power or is drawn by another vehicle, and a camping body primarily designed or converted for use as temporary living quarters for recreation, camping, or travel activities.

(Code 1988, § 14-61)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-182. Exceptions.

This article shall not apply under the following conditions and circumstances:

(1) When any truck, trailer, motor vehicle or any other form of vehicle is carrying any of the material defined in section 11-181 to commercial consumers, domestic consumers, gasoline service stations or bulk stations located within the corporate limits of the city and adjacent areas.

(2) When any truck, trailer, motor vehicle. or any other form of vehicle is carrying any of the material defined in section 11-181 for the sole purpose of propelling the truck, trailer, or motor vehicle.

(3) When any truck, trailer, motor vehicle or any other form of vehicle loaded or partly loaded with any of the products defined in section 11-181 has stopped on any of the streets or highways designated as provided in section 11-183 at a gasoline service station or garage for necessary repairs. Under this circumstance the vehicle shall not remain at the gasoline service station or garage longer than 30 minutes unless the police department is notified that it is necessary to remain for a longer period than 30 minutes.

(4) When any truck, trailer, motor vehicle or any other form of vehicle used for carrying any of the products defined in section 11-181 has broken down, has a flat tire, needs repair, needs gasoline for its own propulsion to the extent that it cannot be propelled with its own power, the necessary repairs can be made where the vehicle has been forced to stop, provided the vehicle can be repaired within a period of two hours. The driver of the vehicle shall immediately notify the police department of the forced stoppage, and during the period allowed for repair a police officer or someone designated by him shall remain at the place of stoppage to warn other persons using the street or highway of the danger.

(5) When any truck, trailer, motor vehicle or any other form of vehicle needs immediate repairs and is not loaded or partially loaded with any of the products defined in section 11-181 and is on direct route to a garage or to the private property or place of business of the owner of the vehicle or the owner's place of business exclusively controlled by the owner.

(6) When any truck, trailer, motor vehicle or any other form of vehicle is loaded or partially loaded with any of the products defined in section 11-181 has broken down and is in need of repair to the extent that the vehicle cannot be repaired within two hours. The police department shall be notified that the vehicle is being removed from the place of stoppage or breakdown to a garage or

some other place within the corporate limits of the city and shall only be moved under the direction of the police department.

(7) When any person who is engaged in the business of hauling any of the materials defined in section 11-181 has his place of business within the corporate limits of the city, he shall have a right to convey the truck, trailer, motor vehicle, or any other form of vehicle to his place of business without police protection.

(Code 1988, § 14-62)

Sec. 11-183. Vehicles used for carrying and travel routes.

(a) It shall be unlawful for any person to drive or cause to be driven or operate or maintain any motor vehicle, truck, trailer or any other vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle used for the carrying of any of the materials defined in section 11-181 over any street, highway or alley within the corporate limits of the city, except:

(1) Those streets shown on exhibit A labeled "Hazardous Material and Intercity Truck Routes," incorporated in this section by reference.

(2) Other streets may be traveled upon when in the opinion of the traffic engineer and the city manager the safety of the property and its citizens demands it and when they are designated by the traffic engineer with the approval of the city manager by visible markers and signs.

(b) In order to determine the truck routes and delivery routes of hazardous material, refer to section 12-10-3.1 of the Uniform Traffic Ordinance, as adopted in section 27-1 and as amended in section 27-2.

(Code 1988, § 14-63)

Sec. 11-184. Parking.

(a) It shall be unlawful for any person to park or cause to be parked on the highway, street or alley within the corporate limits of the city any truck, trailer, motor vehicle or other form of vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle used for carrying any of the materials defined in section 11-181, whether loaded, partially loaded or empty of such products. This subsection shall not apply to the stopping of any vehicle on any of the streets and highways designated in section 11-183 at filling stations for service or because of breakdown of the vehicle on the designated streets or highways.

(b) It shall be unlawful for any person to park or cause to be parked or to maintain any truck, trailer, motor vehicle or any other form of vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle filled or partially filled with any of the materials defined in section 11-181 on any street, alley, public place or any place within the corporate limits of the city.

(Code 1988, § 14-64)

Secs. 11-185—11-210. Reserved.

ARTICLE V. CHEMICAL EMERGENCY PREPAREDNESS AND HAZARDOUS MATERIAL/CHEMICAL INVENTORY/DISCLOSURE STATEMENT

Sec. 11-211. Penalty for violation.

Violations of this article shall be punished as provided in section 1-10.

(Code 1988, § 14-91)

Sec. 11-212. Development of standard operating procedures.

The fire chief shall have the primary responsibility of developing standard operating emergency procedures, and the standard operating procedures for the purpose of chemical emergency planning within the city. A copy of the plan will be forwarded by the fire chief to the office of emergency preparedness for inclusion in the hazardous material/chemical emergency response plan.

(Code 1988, § 14-81)

Sec. 11-213. Emergency hazardous material/chemical response plan.

The designated emergency hazardous material/chemical response planning agency shall consist of state, county, and local officials; police, fire, public, health, civil preparedness, environmental, hospital, transportation officials; and certain private businesses. They shall evaluate and establish resources for preparing and responding to a potential chemical accident within the city. This plan is subject to the approval of the fire chief and shall include the following:

(1) Identification of facilities and transportation routes for extremely hazardous substances through the city.

(2) Development of emergency response procedures, on site and off site, in accordance with mandated regulations.

(3) Development and maintenance of emergency notification procedures.

(4) Development of methods for determining the occurrence of a release and the probable affected area and population.

(5) Development of a training program for emergency response personnel, including schedules.

(6) Presentation of methods and schedules for exercising emergency response plans.

(Code 1988, § 14-82)

Sec. 11-214. Fire department response.

The fire department shall provide initial response to incidents involving hazardous materials and chemicals, as mandated by the hazardous materials emergency response (HMER) plan of the state Emergency Management Act, as amended in 1984.

(Code 1988, § 14-83)

Sec. 11-215. Training and certification for emergency response personnel.

Designated emergency response personnel shall complete training and receive certification specified by the hazardous materials safety board as consistent with emergency response functions to be performed during an emergency.

(Code 1988, § 14-84)

Sec. 11-216. Applicability of article; list of hazardous materials and chemicals.

This article shall apply to hazardous materials and chemicals that shall have been defined as such by the Environmental Protection Agency or the state environmental department, or both. The chief of the fire department shall be responsible on or before December 1 of every year to acquire from the state department of public safety and the environmental department information of chemicals and products defined by them as being hazardous, and shall make such information available, without charge, to all citizens of the city and to all persons or entities doing business within the city limits. Such information shall be recorded with the city clerk on or before December 10 of each year, and the list shall be in effect for the following year, but no list shall become obsolete until its successor is recorded.

(Code 1988, § 14-85)

Sec. 11-217. Declaration of inventory.

(a) All persons, businesses or other entities possessing any of the products on the list referred to in section 11-216 must declare their inventory with the fire chief of such chemicals or products on or before March 15 of each year. An updated report of new or additional chemicals added to the inventory within the year must be reported to the fire chief within 15 days of acquisition of the chemicals.

(b) Any person filing for business registration shall complete the inventory at that time. Such list shall be filed with the fire chief on a form to be approved by the fire chief. All other persons, organizations, or entities must submit a list to the fire chief by the effective date of the ordinance from which this article derives.

(c) Any person or entity so filing shall also indicate the method by which such hazardous waste or chemicals or any waste generated on site therefrom are to be disposed of.

(d) There shall be no filing fee for the filing of such declarations.

(e) The fire chief will provide a copy of the hazardous materials/chemical facility inventory form to the office of emergency civil preparedness.

(Code 1988, § 14-86)

Sec. 11-218. Site inspection.

Inspection of each site on which materials are stored or disposed of pursuant to this article shall be made at least annually by the fire chief. The office of emergency civil preparedness and the local emergency planning committee will provide technical information and perform emergency planning. The fire chief shall forward the inspection form labelled "Emergency Civil Preparedness Copy" to the office of emergency civil preparedness. The city council, by ordinance, may adopt regulations establishing classification of material, by the nature of the material, the quantity stored, the area in which stored, and the potential for contamination of groundwater or any other significant factor which would increase the frequency of inspection according to the characteristics detailed in the regulations.

(Code 1988, § 14-87)

Sec. 11-219. Adoption of standards; enforcement.

(a) The standards of the National Fire Protection Association (NFPA), rule 704, requiring the labeling of the buildings in which hazardous materials are stored, are specifically adopted and incorporated in this article by reference. Each site shall display metal signs in a readily visible location for emergency responders. The size and quantity of placards to be displayed will be determined at the discretion of the inspector at the time of the on-site inspection. Size of the placards will be a minimum of six inches by six inches to a maximum of 15 inches by 15 inches inside and outside.

(b) The standards adopted in subsection (a) of this section and such amendments, updates or revisions thereof as may be adopted by resolution of the city council shall be enforced by the fire chief.

(Code 1988, § 14-88)

Sec. 11-220. Applicability of standards to facilities.

The standards adopted in section 11-210 shall be applicable to all facilities, as follows:

(1) Those facilities that commence storage, manufacture or use of hazardous materials after November 28, 1989, must comply with the standards upon the effective date of the ordinance from which this article derives.

(2) Those facilities that expand their physical plant for storage, manufacture or use of hazardous materials after November 28, 1989, or that add additional hazardous materials or increase their inventory or output of hazardous materials by at least 15 percent after November 28, 1989, must comply with the standards upon the date of such expansion, addition, or increase.

(3) Those facilities which, before November 28, 1989, were of the type covered by the standards adopted in section 11-219 but which do not come under subsection (2) of this section must comply with the standards within 90 days of the effective date of the ordinance from which this article derives.

(Code 1988, § 14-89)

Sec. 11-221. Certification of compliance.

It is the responsibility of all facilities subject to this article to file a certification of compliance with this article with the fire chief on or before March 15 for each calendar year, or within 30 days of the commencement of activities bringing the facility under this article. Such certification shall be on a form acceptable to the responsible official, and such forms shall be made available as provided in subsection 11-217(e). There shall be no charge for the filing of this certification, which shall be filed with the responsible official.

(Code 1988, § 14-90)

Secs. 11-222—11-250. Reserved.

ARTICLE VI. FIRE LANES[5]

[5]Cross reference(s)—Traffic, ch. 27.

Sec. 11-251. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fire lane means any area appurtenant to a building deemed necessary by the fire chief to remain free and clear of parked vehicles for access to such building in case of fire or other emergency and designated by him as such, and may include sidewalks, driveways, portions of parking lots or any other area adjacent to or near a building or fire hydrant, as required by the fire chief.

Private property means property that is privately owned, but where numbers of persons work, live or congregate from time to time for any purpose, where the parking of motor vehicles or presence of other obstructions can interfere with the ingress and egress of emergency vehicles (police, fire, ambulance) for the protection of persons and property thereon, and shall include, but not be limited to, shopping centers, bowling lanes, theaters, hospitals, churches, factories, schools, lodginghouses, convalescent homes, hotels, asylums and public halls. Private property shall not include single-family dwellings, duplexes, fourplexes and condominiums.

Public property means property owned by any political subdivision not specifically exempted by state or federal law.

Shopping center means a group of commercial business establishments operated as a unit with off-street parking provided on the property, and related in locations, sizes and types of shops to the trade area that the unit serves.

(Code 1988, § 14-101)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-252. Authority to designate; maintenance responsibility.

The fire chief is authorized to designate fire lanes on property of shopping centers and other private or public property where such areas must

be kept free of parked vehicles and other obstructions to provide ready access in such areas in case of fire or other emergency. The designation by the fire chief of such fire lanes shall never be held to make the city responsible for the maintenance of such fire lanes on private property, but the owner of such property shall continue to be responsible for the maintenance of such area. The official records of the designation and location of any such fire lanes shall be kept in the office of the fire chief.

(Code 1988, § 14-102)

Sec. 11-253. Shopping center construction or construction on private property.

Before plot plans of proposed shopping center construction or construction on private property are submitted to the ~~department of plannin~~Community Development Department ~~g~~ for issuance of building

permits, such plans shall be submitted to the fire chief for his review and approval of the adequacy of the fire lanes provided therefor. The specific requirements of this section as applicable to a specific structure may be modified by the fire chief in recognition of varying occupancies, size, and hazards of buildings and the provision of other means of access or fixed fire protection.

(Code 1988, § 14-103)

Sec. 11-254. Submission of plot plan to fire chief required.

(a) The fire chief may require the owners of existing shopping centers and existing facilities on private property to submit plot plans for his use in determining whether to designate fire lanes on the property. The fire chief may require that the fire lane for existing buildings be established to provide access for fire suppression operations by improving existing conditions.

(b) Fire lanes established for new and existing structures shall conform to fire lane requirement applicable at the time of construction. If no fire lane requirements were applicable at the time of construction, the fire chief may require establishment of fire lanes to conform with the requirements of this section, insofar as is practicable without requiring any construction, structural modification or substantial financial hardship.

(Code 1988, § 14-104)

Sec. 11-255. No parking signs.

Upon the designation of a fire lane pursuant to this article, the fire chief shall give notice of such designation to the owner of such shopping center and other areas, directing the owner to cause signs to be posted, at the expense of the owner, at designated locations, and stating "No Parking At Any Time—Fire Lane (tow away zone)." Such signs shall be of a standard size and color, of standard lettering and mounting, conforming to specifications established by the traffic engineer and fire chief. It is unlawful to park any vehicle other than authorized emergency vehicles in a designated fire lane when such signs are in place.

(Code 1988, § 14-105)

Sec. 11-256. Unlawful parking.

It is unlawful to park any vehicle other than an authorized emergency vehicle in any fire lane established pursuant to this article, except as may be specifically permitted by the fire chief (i.e., an armored vehicle may park in the fire lane for a brief period of time during the performance of duty after obtaining a permit from the fire department).

Nothing in this section shall prohibit a city bus from stopping briefly in a fire lane for the purpose of dropping off or picking up passengers.

(Code 1988, § 14-106; Ord. No. 2508, § I, 3-2-09)

Sec. 11-257. Towing authorized.

Unauthorized vehicles parked in designated fire lanes that block fire department or other emergency vehicle access may be towed at the owner's expense to a designated storage facility by the authority of the fire chief and the police department.

(Code 1988, § 14-107)

Sec. 11-258. Removal of signs.

It is unlawful for any person, without lawful authority, to attempt to remove any sign designating a fire lane established pursuant to this article.

(Code 1988, § 14-108)

Sec. 11-259. Unauthorized signs.

(a) It is unlawful for any person to place, maintain or display any unauthorized sign which purports to be or is an imitation of or resembles an official sign designating a fire lane.

(b) Every such prohibited sign is declared to be a public nuisance, and the fire chief is empowered to remove the sign or cause it to be removed.

(c) Undesignated fire lanes in compliance with the fire lane requirements shall meet the stipulations of this article. Failure to comply with proper fire lane establishment procedures shall, in addition to the provisions of this article, be prosecuted according to the limitations of this Code.

(Code 1988, § 14-109)

Sec. 11-260. Standards for markings and signs.

Fire lanes designated by the fire department, in accordance with this article, shall be posted in the following manner:

(1) *Curb markings.*

a. The curb adjacent to an officially designated fire lane shall be painted red.

b. The legend "fire lane" shall be stenciled in white with four-inch upper case letters on the top and face of the curb adjacent to a fire lane. This legend shall be repeated at intervals of 50 feet.

c. No parking areas not officially designated as fire lanes shall not be painted red or marked in such a fashion as to be confused with an official fire lane.

d. No parking areas other than officially designated fire lanes should be painted yellow, to be consistent with city and state standards for establishing no parking areas.

(2) *Signs.*

a. The standard size of an official fire lane sign shall be 12 inches by 18 inches. An aluminum blank with rounded corners is recommended.

b. The standard color of an official fire lane sign shall be follows:

    1. The background shall be reflective white.

    2. The lettering and border shall be red.

c. The standard legend and lettering of an official fire lane sign shall be as shown on the approved drawing which is on file and available in the city offices.

d. The standard fire lane sign shall be posted as follows:

    1. One sign shall be posted at each end of an official fire lane. Each sign shall have a single head arrow showing the appropriate direction of the fire lane.

    2. A fire lane longer than 150 feet shall have intermediate signs posted at even intervals. Intermediate signs shall have a double head arrow indicating the fire lane is continuous. The intermediate signs may be posted as necessary, but in no case shall the intervals between fire lane signs be greater than 100 feet.

    3. The fire lane sign shall be securely fastened to a suitable pole or support, with a minimum vertical clearance above the sidewalk of seven feet.

    4. When poles are used to mount fire lane signs, they shall be placed two feet and six inches behind the face of the curb. In accordance with the fire code, no pole or obstruction may be placed within three feet of a fire hydrant.

    5. Fire lane signs shall be posted parallel to the lane or curb to which they apply.

    6. When the distance between the curb and a building, light standard, or other structure is eight feet or less, the fire lane sign may be posted on the face of the building, light standard, or other structure. The bottom of the sign shall be located seven feet above the adjacent sidewalk.

(Code 1988, § 14-110)

City Council Action and Executive Summary

3053; Council Bill 24-011

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

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ N/A		
1st Reading:	December 4, 2023	**Adopted:**	December 18, 2023
Drafter:	Adam Ochoa	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title:	**AN ORDINANCE APPROVING A ZONE CHANGE FROM R-4 (MULTI-DWELLING HIGH DENSITY – LIMITED RETAIL AND OFFICE) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR A PROPERTY ENCOMPASSING 0.812 + ACRES AND LOCATED AT 6281 REYNOLDS DRIVE. SUBMITTED BY GABRIEL ORTIZ, REPRESENTATIVE. (23ZO0500124).**

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

PURPOSE(S) OF ACTION:

Zone Change.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

The applicant is requesting a zone change from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity) for a property approximately 0.812 acres in size and located at 6281 Reynolds Drive. The purpose of the proposed zone change is to allow for more opportunities for development of the vacant parcel including a shopping center or storage units.

The property is zoned R-4 (Multi-Dwelling High Density – Limited Retail and Office) which does not permit the proposed commercial land uses. The proposed zone change request will allow for the applicant's potential commercial uses while not eliminating the use of multi-family dwellings. The surrounding neighborhood is primarily single-family and multi-family land uses. There are limited commercial nodes such as a gas station, religious institution, and the East Mesa Recreation Center. Based on the existing neighborhood, the proposed zone change is compatible with the surrounding area, increases commercial services specifically to the residential districts, and would be in harmony with Section 38-2 of the 2001 Zoning Code.

The property is located within a suburban place type as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. Suburban neighborhoods are intended to provide for low-to-moderate density residential land uses intermixed with areas of commercial development. Predominant land uses include single-family and multi-family development, retail and office uses, and other ancillary institutional and public uses such as schools, parks, and places of worship.

On October 24, 2023, the case was heard by the Planning and Zoning Commission at their regular meeting. The zone change request had no opposition from area residents. Staff did receive one phone call supporting the commercial designation as there are several multi-family development sites still available. The Planning and Zoning Commission voted 4-2-0 (one Commissioner vacancy) to recommend approval of the zone district change. Please see Attachment "B" for more information.

SUPPORT INFORMATION:

Exhibit "A" - Site Plan
Exhibit "B" - Findings
Attachment "A" - P&Z Staff Report
Attachment "B" - P&Z Minutes from October 24, 2023

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 6281 Reynolds Drive will be rezoned from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity).
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current R-4 (Multi-Dwelling High Density and Limited Retail and Office) will remain.
3. Vote to "Amend"; this could allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.
4. Vote to "Table"; this could allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3053; COUNCIL BILL 24-011

AN ORDINANCE APPROVING A ZONE CHANGE FROM R-4 (MULTI-DWELLING HIGH DENSITY – LIMITED RETAIL AND OFFICE) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR A PROPERTY ENCOMPASSING 0.812 + ACRES AND LOCATED AT 6281 REYNOLDS DRIVE. SUBMITTED BY GABRIEL ORTIZ, REPRESENTATIVE. (23ZO0500124).

The City Council is informed that:

WHEREAS, Gabriel Ortiz, representative, has submitted a request for a zone change from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity); and

WHEREAS, the subject property is approximately 0.812 acres in size, vacant, and the proposed zone change will increase the potential development opportunities; and

WHEREAS, the proposed C-2 (Commercial Medium Intensity) zone is consistent with the Suburban Place Type per the Elevate Las Cruces Comprehensive Plan and is supported by various goals and policies contained therein; and

WHEREAS, the proposed zone change meets the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on October 24, 2023, recommended that the zone change request be approved by a vote of 4-2-0 (one Commissioner vacancy).

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

(I)

THAT the land as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-2 (Commercial Medium Intensity).

(II)

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

(III)

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

(IV)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

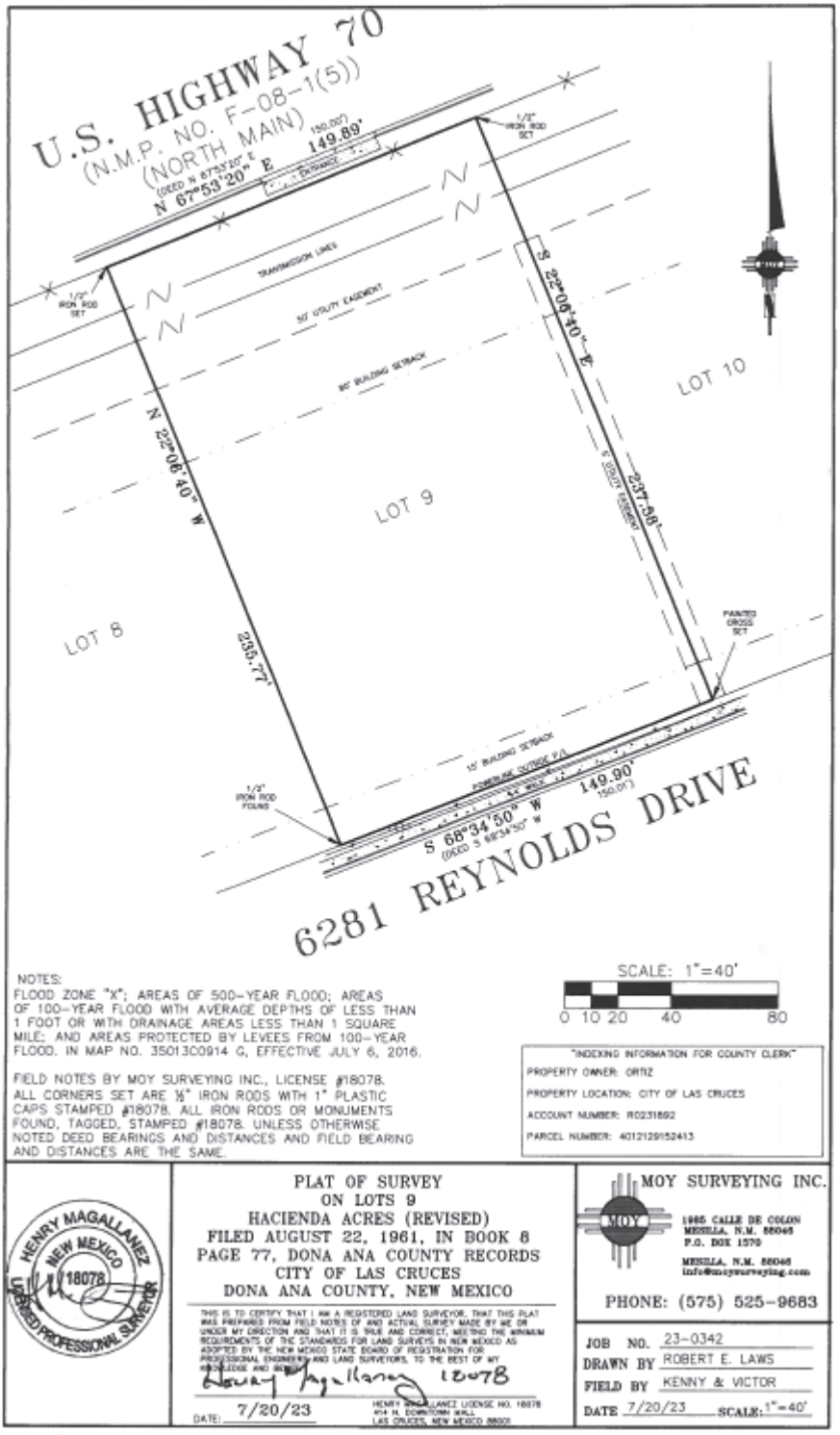
Seconded by:

AYES

NAYS

EXHIBIT "A"

Site Plan:



NOTES:
FLOOD ZONE "X"; AREAS OF 500-YEAR FLOOD; AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD. IN MAP NO. 35013C0914 G, EFFECTIVE JULY 6, 2016.

FIELD NOTES BY MOY SURVEYING INC., LICENSE #18078. ALL CORNERS SET ARE ½" IRON RODS WITH 1" PLASTIC CAPS STAMPED #18078. ALL IRON RODS OR MONUMENTS FOUND, TAGGED, STAMPED #18078. UNLESS OTHERWISE NOTED DEED BEARINGS AND DISTANCES AND FIELD BEARING AND DISTANCES ARE THE SAME.

SCALE: 1"=40'
0 10 20 40 80

"INDEXING INFORMATION FOR COUNTY CLERK"
PROPERTY OWNER: ORTIZ
PROPERTY LOCATION: CITY OF LAS CRUCES
ACCOUNT NUMBER: R0231892
PARCEL NUMBER: 4012128152413

HENRY MAGALLANEZ NEW MEXICO 18078 LICENSED PROFESSIONAL SURVEYOR

PLAT OF SURVEY
ON LOTS 9
HACIENDA ACRES (REVISED)
FILED AUGUST 22, 1961, IN BOOK 8
PAGE 77, DONA ANA COUNTY RECORDS
CITY OF LAS CRUCES
DONA ANA COUNTY, NEW MEXICO

THIS IS TO CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, THAT THIS PLAT WAS PREPARED FROM FIELD NOTES OF AND ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECTION AND THAT IT IS TRUE AND CORRECT, MEETING THE MINIMUM REQUIREMENTS OF THE STANDARDS FOR LAND SURVEYS IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Henry Magallanez 18078

DATE: 7/20/23

HENRY MAGALLANEZ LICENSE NO. 18078
414 N. DOWNTOWN MALL
LAS CRUCES, NEW MEXICO 88001

MOY SURVEYING INC.
1985 CALLE DE COLON
MESILLA, N.M. 88046
P.O. BOX 1570
MESILLA, N.M. 88046
info@moysurveying.com
PHONE: (575) 525-9683

JOB NO. 23-0342
DRAWN BY ROBERT E. LAWS
FIELD BY KENNY & VICTOR
DATE 7/20/23 SCALE: 1"=40'

EXHIBIT "B"

Findings:

1. The zone change will allow for the development of vacant property in an established area of the City of Las Cruces (2001 Zoning Code, Section 38-2K).
2. The zone change will allow for multiple commercial uses. (2001 Zoning Code, Section 38-33).
3. The subject property is located on a minor arterial (Bataan Memorial East) and local (Reynolds Road) roadways which allows for commercial land uses.
4. The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).

CITY OF LAS CRUCES

ZONING

Planning & Zoning Commission 10/24/2023

CASE 23ZO0500124: Zone Change

STAFF CONTACT:	Christina Abeyta-Corella, (575) 528-3063, cabeyta@las-cruces.org
OWNER:	Martha E Ortiz
REPRESENTATIVE:	Gabriel Ortiz
DISTRICT:	District #6
SITE ADDRESS:	6281 Reynolds Drive
EXISTING ZONING:	R-4 (Multi-Dwelling High Density and Limited Retail and Office)
REQUEST:	To rezone from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity)
CONCURRENT APPLICATIONS:	N/A
RECOMMENDATION:	Approval

SUMMARY OF REQUEST CASE 23ZO0500124:
The applicant is requesting a zone change from R-4 (Multi-dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity) for a property located at 6281 Reynolds Drive and encompassing approximately .812 acres. The subject property is located south of Bataan Memorial East and north of Reynolds Drive.

SUMMARY OF RECOMMENDATION:
Staff is recommending **Approval** based on the findings listed below:

- The zone change will allow for the development of vacant property in an established area of the City of Las Cruces (2001 Zoning Code, Section 38-2K).
- The zone change will allow for multiple commercial uses. (2001 Zoning Code, Section 38-33).
- The subject property is located on a minor arterial (Bataan Memorial East) and local (Reynolds Road) roadways which allows for commercial land uses.
- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:
The applicant is seeking a zone change for a property located at 6281 Reynolds Drive from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity). The proposed zone change would allow the vacant property to be developed with either a commercial shopping center or mini storage units. The proposed zone change request will not eliminate the existing multi-family land use but provide an opportunity for commercial services in an area where services are not readily available.

LAND USE HISTORY:
The vacant property is located within the Hacienda Acres Subdivision, recorded in 1987.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Elevate Las Cruces Comprehensive Plan	Yes
Mesilla Valley MPO Thoroughfare Plan	Yes
Purpose and Intent of the Code: Section 38-2	Yes
Criteria for Decisions: Section 2-382	Yes
New Mexico Case Law	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:
The surrounding area contains a mixture of land uses included single-family, multi-family, and commercial. The City of Las Cruces East Mesa Recreation Center is located to the west side of the property and a religious institution is located on the east. Given the development pattern described, there should be no adverse impact to the surrounding neighborhood in terms of character and compatibility.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

- Goal CE-3 - Centers and corridors: Support community growth through concentrated development at activity centers an along key corridor.
  - Policy CE-3.1: Promote the development of mixed-use centers to support surrounding neighborhoods and serve as focal points for community life.
  - Policy CE-3.2: Allow for a mix of development type and intensity along major throughfares that reflect surrounding urban, suburban, and rural contexts.
- Goal CE-4 – Complete neighborhoods: Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
  - Policy CE-4.2 – Incorporate employment and shopping nodes into new and redeveloping neighborhoods to provide residents with convenient access to services.
- Goal CP-2 – Economic Equality: Generate employment opportunities that create economic security for all residents.
  - Policy CP-2.2: Support efforts to connect vulnerable populations to job opportunities.

- Action CP-2.2.2: Identify and promote places of employment to minimize commutes and increase accessibility to other transportation modes to create a job-housing balance.

The property is located on a suburban place type overlay as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. Suburban neighborhoods are intended to provide for low-to-moderate density residential land uses intermixed with areas of commercial development. Predominant land uses include single-family and multi-family development, retail and office uses, and other ancillary institutional and public uses such as schools, parks, and places of worship.

COMPLIANCE WITH MPO THOROUGHFARE PLAN:
Bataan Memorial East is classified as a minor arterial roadway and Reynolds Drive is classified as a local roadway by the Mesilla Valley Metropolitan Planning Organization (MPO) and the Elevate Las Cruces Comprehensive Plan. Commercial land uses are supported along designated thoroughfares due to the capacity of the roadway.

CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:
Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.
The regulations relevant to the proposed zone change include:

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

The City of Las Cruces determined the proposed zone change would not adversely impact the surrounding area and would be in harmony with Section 38-2 of the 2001 Zoning Code.

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

The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth;

- Impairment of the public health, safety or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, design standards and other companion codes.

Based on reviews of applicable codes and policies, City Staff did not identify any issues associated with the proposed zone change and associated variance. The proposed land uses should not unreasonably contradict the purpose and intent of the zoning code, nor establish spot zoning.

NEW MEXICO CASE LAW:

1. There was an error when the existing zoning map pattern was created; or
2. Changed neighborhood or community conditions justify the change; or
3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other applicable City master plan(s), even though criterion (1) or (2) above do not apply because
    a. there is a public need for a change of the kind in question, and
    b. that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

The neighborhood has a variety of land uses including single-family, multi-family, institutional, and commercial which is not out of character with the proposed use being requested by the applicant.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:
The subject property is zoned R-4 and approximately 0.812 acres in size. R-4 allows for limited office and retail uses with a residential component. The property is currently undeveloped.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:
The proposed zone change will allow the property owner to utilize the vacant parcel for a variety of uses. The property has the potential to be developed with multi-family, commercial or even mixed use. Any development on the property will be required to follow all applicable building, fire, and zoning codes.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:
City water, gas and sewer are available and will not be negatively impacted by the zone change request. Bataan Memorial East and Reynolds Drive provide adequate paved access to the property. Development of this lot will require the installation of sidewalks for the entire length of the lot along Bataan Memorial and Reynolds Drive closing some of the existing sidewalk gaps within the area.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT: Notification letters were mailed to property owners within 500 feet on October 6, 2023. Staff has received no public input for the proposed zone change request.

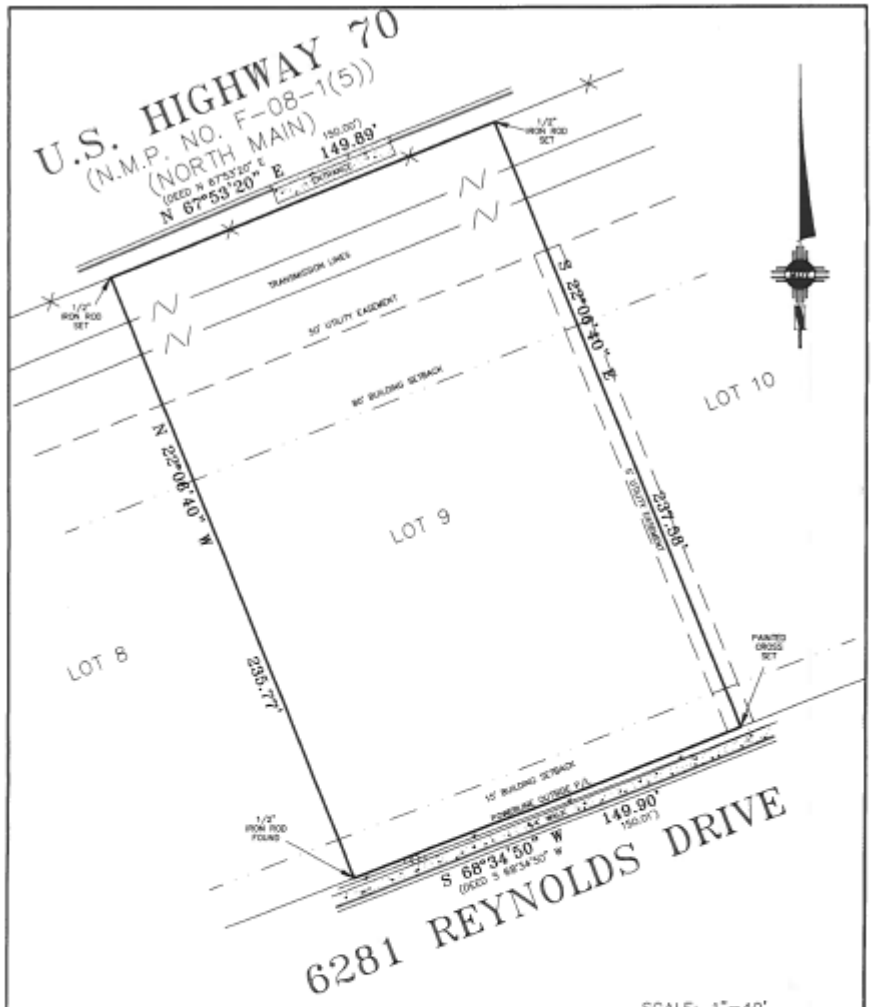
STAFF COMMENTS:
No reviewing department had any negative comments and there have been no objections to the proposed rezoning.

ATTACHMENTS:
1. Zoning Map
2. Aerial Map
3. Legal Site Plan
4. Department Review Comments

ATTACHMENT 1
Zoning Map

ATTACHMENT 2
Aerial Map

ATTACHMENT 3
Legal Site Plan



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PROPERTY LOCATION: CITY OF LAS CRUCES
ACCOUNT NUMBER: R0231892
PARCEL NUMBER: 4012128152413

HENRY MAGALLANEZ NEW MEXICO 18078 LICENSED PROFESSIONAL SURVEYOR

PLAT OF SURVEY
ON LOTS 9
HACIENDA ACRES (REVISED)
FILED AUGUST 22, 1961, IN BOOK 8
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DATE: 7/20/23

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LAS CRUCES, NEW MEXICO 88001

MOY SURVEYING INC.
1985 CALLE DE COLON
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P.O. BOX 1570
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info@moysurveying.com
PHONE: (575) 525-9683

JOB NO. 23-0342
DRAWN BY ROBERT E. LAWS
FIELD BY KENNY & VICTOR
DATE 7/20/23 SCALE: 1"=40'

ATTACHMENT 4
Department Review Comments

Department: Planning

Status: Approved with Contingencies – Final Action determined by City Council

Department: Traffic Engineering

Status: Not required

Department: Engineering

Status: Not required

Department: Utility Engineering

STATUS: Approved

Department: Fire

Status: Approved

Department: Parks and Recreation

Status: Approved

Department: City MPO
Status: Approved

CITY OF LAS CRUCES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
October 24, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Enrico Smith, Vice-Chair
James Bennett, Secretary
Joaquin Acosta, Member
Connor Murray, Member
Vanessa Porter, Member

STAFF PRESENT:

David Weir, Deputy Director Community Planning
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Sara Gonzales, Senior Planner
Vincent Banegas, Interim Planner
John Castillo, Planner
Brad Douglas, Deputy City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening, folks. It is 6:00 p.m. on October 24th. We'll go ahead and call this meeting of the Planning and Zoning Commission to order.

2. CONFLICT OF INTEREST

Kaiser: Do we have any conflicts of interest from the Commissioners tonight? All right. Seeing none.

3. APPROVAL OF MINUTES – September 26, 2023

Kaiser: Are there any comments on the minutes from the September 26th meeting? None. Can I get a motion to approve?

Bennett: I make a motion to approve the September 26th meeting.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Board Member Porter.

Murray: Abstain.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

4. POSTPONEMENTS

Kaiser: Okay. I don't think there's any postponements tonight. Is that correct?

Ochoa: No, sir. None tonight.

Kaiser: All right.

5. ACCEPTANCE OF THE AGENDA

Kaiser: So before we go to the acceptance of the agenda, I'd like to pull item 7.1 and 7.2 from the consent agenda tonight for discussion. So we will make those our first order of business. So with that change can I get a motion to accept the agenda?

Bennett: I make a motion to accept the agenda.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Board Member Porter.

Murray: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

6. PUBLIC PARTICIPATION

Kaiser: Okay. Going to public participation. Is there anybody in the audience tonight who wishes to speak on an item that is not on tonight's agenda please raise your hand? Okay. Seeing none.

We'll go ahead and move forward. So there's no additional items of the consent agenda so we will go ahead and start.

7. OLD BUSINESS

Kaiser: And there's also no old business.

8. CONSENT AGENDA

7.1 Case # 23CS0500158: Moved to New Business.

Kaiser: So we'll go ahead and start with item 7.1. And if staff has a presentation, I'll be happy to entertain that.

Castillo: Good evening, Commission. Staff has created a presentation. If you guys want to hear it, we can. If you would just like to ask any questions about the development, we can also do that as well.

Kaiser: I think I'd prefer a presentation mainly because some of the attachments made it really difficult to sort of reconcile what was in the staff report versus what's on those attachments so a presentation would be great.

Castillo: Sounds good. So this is John Castillo for the record. Tonight, we have all the Organ Mountain Plaza master plan. It's currently located on the northwest corner of Bataan Memorial West and McGuffey Street. The address is 4299 Bataan Memorial West. It's located within Council District 5. It encompasses 9.525 acres. The current zoning designation is a stacked zoning of M-1, M-2 and C-3, which is our industrial standard and commercial high intensity.

As the property sits right now, it's currently a vacant, undeveloped parcel of land. As you can see from the aerial image, the highlighted part is what we're looking at right now. Here is the zoning of the tract of land and these are some street views. It is quite a stretch of land so it was hard to get a lot of pictures in there.

So the master plan proposes a multiphase, nonresidential development. It's going to propose anywhere between 20 to 30 lots for commercial and industrial land uses. The subject property is to be developed in phases utilizing either the alternate summary subdivision process or the preliminary plat process. If the developer wishes to use alternate summary subdivision process, the 9.525 acre parcel will get divided into various lot sizes, meeting either the C-3 development standards or the M-1/M-2 development standards. If they wish to go through forward with the preliminary plat, he can develop in phases either as one single lot or individual lots. Here's an image of the proposed master plan. The item down here at the bottom is what we're looking at.

Public input was sent to all relevant agencies and departments. All of them supported the proposed master plan. Notice was sent to surrounding properties within 500 feet. Staff did receive a couple of phone calls regarding development on the master planned area and just general questions regarding the property as a whole as well as the master planned area.

This went before our Development Review Committee or DRC, which was conducting a meeting on October 4th. The DRC reviews subdivisions from an infrastructure, utilities, and improvement standpoint. There was discussion regarding the proposed access points along Bataan Memorial West and NMDOT's approval of those access points. Based on that discussion staff gave a unanimous approval as a recommendation.

Today staff recommends approval as well as DRC recommending approval based on the following findings. The proposed master plan meets the objectives of a master plan as required by the subdivision code based on relevant City staff review. The proposed master plan complies with all requirements of the 2001 Zoning Code as amended as well as the City of Las Cruces' designs standards. The proposed master plan also fulfills the

intent and purpose of Elevate Las Cruces Comprehensive Plan. It also meets the purpose and intent requirements of Section 38-2 of the Zoning Code as well as the Section 2-382 of the Las Cruces Municipal Code. And DRC also gave their recommendation of approval on October 4th.

Today your options are to vote "yes" to approve, "no" to deny, vote to amend, or vote to table.

Kaiser: Thank you. I certainly have some questions but I'll turn to my colleagues first. Does anyone have any questions or comments? So I think my first question is I think you kind of alluded to it just now but it was in the staff report. It says there's 20, the development would allow for 20 to 30 lots in phases but that does not appear to be shown anywhere in the I guess proposed master plan in attachment three, so I'm just wondering if you could clarify what that is? And what that looks like?

Castillo: Mr. Chair, Commission. Speaking with the developer they would be utilizing, like I said before, either the alternate summary subdivision. So based on land uses that would go in, they would parcel out the tract of land into various sized lot sizes which could range anywhere between 20 to 30 lots on the property based on land uses and what the proposed use is going to require.

Kaiser: Okay. So I guess I'm confused as to what is the plan. What are we, I mean I see one giant tract of land that you're saying could be split up in an infinite number of ways depending on what the developer chooses to do in the future, but we're being asked to approve a master plan. What's the plan?

Castillo: Mr. Chair, Commission. So the master plan for the property is to look at the overall utility infrastructure that would be on the property as well as propose any type of infrastructure regarding roadways. They are going to be using shared access points between all of it. I'm going to let Sara speak real quick.

Gonzales: Mr. Chair and Commission. Sara Gonzales with Community Development. The process for a master plan is basically used for developers in order to create an administrative process for subdividing the land. Property is already zoned, it just allows the applicant to come forth and utilize basically the alternate summary process to say this person may need an acre in size.

If we go and develop each piece, they would have to come back to P&Z every time they cut out a portion. So the master plan is used in order to alleviate that process because it already meets the intent of the code and it meets the zoning. So this process is just allowing them to have it zoned and master planned in a way to where they can come in and now utilize the administrative process.

Kaiser: Okay. Thank you for that clarification. I guess along those lines there, let's see. Let me find it on my page here. Yes, here we go. So the purpose of a master plan process is to advance the goals and objectives of the City's Comprehensive Plan and to address a variety of environmental and social issues that are being proposed in the development. So could you speak to what some of those issues might be? And how this master plan addresses them?

Castillo: Mr. Chair, Commission. Keeping in line with Elevate Las Cruces, the southern half of Bataan Memorial East is considered a regional commercial zone. I don't believe it's a part of a mixed use corridor but it is a major thoroughfare within our City. So keeping with that this would enhance that regional commercial corridor moving forward to the north creating a buffer between any type of residential development.

It also provides once again depending on the type of use that goes in, it can fill the need for any type of food desert that maybe there or provide some other kind of amenity to the neighborhood.

Kaiser: Okay. Thank you. All right. I don't have any further questions. I'm just sort of struggling with we're being asked to approve a master plan but there's no plan. But I don't know if that's a flaw in the process or the requirements in the code but it's one lot. We're saying that they can develop it you know 50 different ways to Sunday but we don't what. We're just giving them the go ahead to go ahead and do that. And as long as it adheres to the master plan then they're good to go but I just don't know what the plan is. So I don't know what we can do about it here tonight but that's just a concern I have, so I appreciate it. Thank you.

Are there any other questions or comments from the Commission? No. All right. Going to the public. Is there anybody in the public who wishes to comment on this item? All right. Seeing none. I'll come back to the Commission. If there's no other comments or questions looking for a motion to approve.

Bennett: I make a motion to approve 7.1.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes based on staff recommendation and Elevate Las Cruces.

Baum: Board Member Smith.

Smith: I vote yes based on staff recommendation.

Baum: Board Member Murray.

Murray: Yes, based on staff recommendation.

Baum: Board Member Porter.

Porter: I vote yes based on staff recommendations and Elevate Las Cruces.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation and DRC recommendation.

Baum: Chair Kaiser.

Kaiser: No, based on the fact that I just I don't have enough information. I don't know what I'm approving as part of this master plan.

Baum: Passes five to one.

7.2 Case # 23ZO0500124: Moved to New Business

Kaiser: Okay. Moving onto item 7.2. This is a zone change request from R-4 to C-2 at 6281 Reynolds Drive. Go ahead, staff. If you have a presentation.

Ochoa: Good evening, Commission. Adam Ochoa with Community Development. I'm actually covering this case for another staff that couldn't make it tonight unfortunately. So bear with me when I go through this for you all and I'll try to answer as many questions as I can to clarify for you all.

So currently the property is zoned R-4 which stands for multi dwelling, high density and limited retail and office. The property encompasses roughly 0.812 acres and is currently undeveloped. Surrounding area which is kind of, we go a little forward first, the southern portion if you will, of Bataan Memorial here between I believe what is Dunn and Porter to the west. It's surrounded commercial properties to the west which are owned by the City to be utilized for the East Mesa campus that's to be developed in the future. Religious institutions, single-family uses, multifamily uses as well. And then vacant multifamily development as well right along that area of Reynolds.

This area is categorized by Elevate Las Cruces and it is suburban place type which actually does encourage that variety of uses, multifamily, single-family, and different ranges of densities. Commercial nodes, if you will, to support those and multifamily zoning as well.

Again, you're showing here the subject property here. Right next to what is that vacant commercial area that is currently zoned by the City of Las Cruces. A little further west you can see the East Mesa Complex there. Highlighted property here, religious institution to the east, multifamily, vacant commercial property that's all City owned, and just a sea of what is large lots, single-family residential lots to the south.

The applicant is proposing to rezone the subject property to C-2 which is commercial medium intensity property. It only requires a C-2 zone designation because it doesn't require a C-3 commercial high intensity because the lot isn't large enough to require that. It will allow for the development of either a commercial shopping center as what the applicant is really trying to propose or possibly a ministorage unit facility as well. A zone change will not eliminate the existing multifamily land use as we all know commercial does allow for multifamily and allows that flexibility if that is wanted in the future at a higher density as well. Here's just a quick site plan of that vacant piece of property. Bataan Memorial to the north. Reynolds to the south.

So when staff analyzed the proposed zone change, we did see no real health, safety, or welfare issues associated with the zone change. The proposed zoning district would provide the capability for, I guess the surrounding area kind of utilize actual commercial area. I don't know if you all had a chance to drive it out there. There's really limited commercial uses, service uses, in this area. So staff saw that this is something that is supported by Elevate Las Cruces and the suburban place type adding this additional commercial property on the actual commercial zoning on the property.

Showing here kind of what I reiterated. To get to any services in the area, it's a limited access highway as we all know. The State of New Mexico, we love our limited access highways. So to get to any type of services, there is a small commercial node here or commercial use, if you will, gas station right on the corner on the north side. But then you'd have to come all the way down to Mesa Grande to really reach any other type of services of commercial land uses for this area. Really everything to the south is either single-family zoning designations or rural single-family zoning designations so just a large cluster of it in this area.

With that staff does recommend approval for the proposed zone change. We believe that it does meet the intent of the 2001 Zoning Code. A zone change will allow for a multitude of commercial land uses on the subject property. It is located along a minor arterial roadway and a local roadway to the south, but would allow additional commercial uses in the area. And the proposed zone change is supported by Elevate Las Cruces

Comprehensive Plan and meets the purpose and intent of Section 38-2 of the 2001 Zoning Code.

Let's see here. City of Las Cruces staff, we did send required public notice to all surrounding properties. We did receive no input from anybody around the area.

With that, ladies and gentlemen, your options tonight is one, vote "yes" to approve the proposal or recommend approval for the proposed zone change to City Council. Two, to vote "no" and deny, recommend denial for the proposal and change. Of course, reminder, any denial - staff findings are for approval, so any vote for a denial will require new findings of fact. Three, to vote "yes" and amend the proposal and change. And four, table or postpone and direct staff accordingly.

The applicant is here if you have any questions for them. And I stand for questions as well.

Kaiser: Thank you. Before I ask my questions, anyone on the Commission have questions or comments? Commissioner Smith.

Smith: I just want a clarification. So basically, this is just giving them an option to maintain a residential zone and also the opportunity to develop as a commercial zone also?

Ochoa: Commissioner Smith, Chairman Kaiser. Correct. It kind of gives them a little step up in the ability to develop this property. As you know, R-4 you're allowed multifamily high density which basically it's the same density that is allowed also in the proposed C-2 zoning. But on top of that R-4 allows limited office and retail. Very limited office and retail on the property. And it requires certain types of development to occur on there, limited uses. But the C-2 would allow a lot more potential commercial land uses as well. So just opens the options for this property to be developed more than what its current zoning designation allows.

Smith: All right. Thank you.

Ochoa: Yes, sir.

Kaiser: Any other Commissioners have questions? Go ahead.

Porter: I wanted to know so we're approving basically either a storage unit or a shopping center, right, basically, that's kind of what he's requesting, right? I know that he's saying that there's not really any other like shopping centers unless you go around to Mesa Grande and this will put this one at Reynolds. But how would we know what we're approving if we're approving a storage

unit or if we're approving another shopping center which would benefit the community on that spot because that's what the presentation is coming off to me. When would we, like that's no clarification to me right now as in if it's a storage unit or if it's going to actually be something that will be able to provide a little bit more for the residents in that area.

Ochoa: Sure. Commissioner Porter, Chairman Kaiser. Those two uses are just what the applicant is currently looking at potentially developing the property for. But really, it's any C-2 use would be allowed on the property. Anywhere from, like I said before, multifamily to that shopping center, the storage unit facility, and a plethora of other things as well. A standalone restaurant could go there. Offices can go there. Even mixed use development can occur over there as well as long as densities and heights and all other development standards will be met. So those are just two examples of what they're thinking of developing, but it's not really set in stone yet.

Porter: Okay. Thank you.

Ochoa: Yes.

Kaiser: So I have very similar concerns as my colleagues up here. I think my biggest concern is that we're not guaranteed residential units under a C-2 zone, right. I mean the applicant is indicating that that's not their intent. And I have serious reservations about that because we already have limited opportunities to develop something other than single-family residential units in this City.

We've got housing affordability issues and you know this is one, I think it's what, less than an acre in size? So we can sit here and say well it's not that big of a deal, it's less than an acre. But the problem in my mind is that everyone of these is just another chip off the block that we no longer have the opportunity to go develop that into residential units. And so, I'm very concerned that we're going to approve this tonight and they're going to go develop a ministorage unit. That's hugely problematic to me.

Even if they decide to do a commercial center, I still have reservations because under the R-4, you're saying that there is limited retail opportunity there. So my question would be what is the applicant not able to get out of that R-4 zone as far as retail or commercial? I mean could they not get or put in a market that would actually serve the residents of this community?

Ochoa: Mr. Chair. The actual list of permitted commercial are service uses under the R-4 is extremely limited. Top of that it is also limited on square footage as well. So it would extremely restrict how much that property can be developed for any type of commercial use. So even if an office went in there or let's say like you stated like a grocery store, the square footage of it would

be extremely limited than just if we went with the C-2 zoning designation. That's the major difference just extreme constraints. And for instance, we currently had …

Kaiser: Do you have your code by any chance?

Ochoa: Let me get those exact numbers for you. If you give me one minute, sir.

Kaiser: Yes. And while we're waiting. I guess I understand the constraints part and I think that's the whole point, right, is we're trying to get the residential units. We're trying to require that. So I understand that there's constraints on the commercial because what we want to see with R-4 zone is residential. You know, I'd be curious to know you know what the applicants thoughts are as far as the R-4 and what may or may not be possible.

The other concern I have is this is next to the west of it, there's already I think there's a C-3 parcel. So I mean there's opportunity already right there to develop a commercial development. Yes. And I think it was earlier in your presentation you had the zoning on it. Yes, there you go. So it is a C-3 already. So I mean there's opportunity there. So I'm concerned that we would be giving up residential opportunities here.

And then also the location next to the park. I mean it just doesn't make sense to me that we would put in a ministorage unit next to a park. I mean that's a perfect opportunity for residential development. So I have a lot of concerns and I think that pretty much covers the extent for me.

From the use perspective while you're looking. I would mainly be curious about the retail pieces of it, like what they could do?

Ochoa: Mr. Chair. To answer your question. So for instance, retail it's even more limited. It's really just services that would be allowed there. Offices use is what would be allowed there. Accountant's office, professional offices so on and so forth. Limiting maximum of either 35% coverage of the property or 1,500 square feet max of the entire property would be allowed for commercial or I guess really office use, if you will.

On top of that though, I did want to clarify that piece of property to the left is owned by the City of Las Cruces, the vacant commercial property, and that's for the future continued growth of what is the East Mesa Complex out there, sir.

Kaiser: Okay. So our plan to do future park improvements expansions is that …

Ochoa: I believe that's still in the plan. Yes, sir.

Kaiser: Okay. So it would be right next door to a park that's expanding. I mean that seems like a great place to have an apartment complex or some other multifamily development. Any other questions or comments from the Commission? All right. Go ahead and go to public comments. Is there anybody in the audience who wishes to speak on this item tonight? Okay. Seeing none. Coming back to the Commission. If there's no additional comments or questions, looking for a motion to approve.

Bennett: I make a motion to approve 7.2.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve based on staff recommendation and Elevate Las Cruces.

Baum: Board Member Smith.

Smith: I vote yes to approve based on staff recommendation and this is consistent with the purpose and intent of the zoning ordinance.

Baum: Board Member Murray.

Murray: I vote yes based on Elevate Las Cruces and staff recommendation.

Baum: Board Member Porter.

Porter: I vote no due to recent findings.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation.

Baum: Chair Kaiser.

Kaiser: No. Based on the potential impact of affordable housing in this community and the inconsistency with policies of Las Cruces.

Baum: Passes four to two.

9.1 **Case No. 23ZO0500091:** A request to approve a Special Use Permit (SUP) to allow a cannabis-based business less than the required 300-foot buffer distance from another cannabis-based business. The subject property is located at 1760 W. Hadley Avenue, encompassing 1.02 ± acres and is

3054; Council Bill 24-012

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 4, 2023	**Adopted:**	December 18, 2023
Drafter:	Chris Faivre	**Department:**	Economic Development
Program:	Business Development	**Line of Business:**	Business Development

Title: **AN ORDINANCE AMENDING ORDINANCE NO. 3028, UPDATING THE PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., TO ADD AN ADDITIONAL $2,800,000 TO GO TOWARDS RENOVATIONS OF MULTIPLE FACILITIES.**

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

PURPOSE(S) OF ACTION:

To amend Ordinance No. 3028 and update the Project Participation Agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 20, 2023, the Las Cruces City Council approved Ordinance No. 3028, as the 828 Productions, LLC., Local Economic Development Act (LEDA) Project Ordinance. The ordinance authorized the City Manager to enter into a Project Participation Agreement (PPA) and Intergovernmental Agreement (IGA) which are incorporated into the Ordinance and made a part thereof by reference.

The PPA was based on a preliminary project schedule to designate $897,596 for cinematic infrastructure through capital outlay funds. The purpose of this amendment is to assign the additional $2,800,000 in Hold Harmless funds that the City designated in 2015 for the specific and sole purpose of cinematic infrastructure. These funds cannot be used for any other purpose and must be spent on the establishment of cinematic infrastructure in Las Cruces.

828 Productions, LLC., will be investing approximately $75,000,000 and plans to hire 100 full-time persons. They have purchased multiple facilities within Las Cruces which these funds will be going towards to renovate. Details of the proposed use of the different facilities and a breakdown of renovations can be found in Exhibit "A".

Other than the amount of funds the City will be providing towards the project, all other terms and conditions remain unchanged.

SUPPORT INFORMATION:

Exhibit "A" 828 LEDA Amendment
Attachment "A" LEDA Application
Attachment "B" Executive Summary
Attachment "C" Inter Governmental Agreement
Attachment "D" Project Participation Agreement

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

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: 3,000,000	**AVAILABLE AMOUNT:** 3,000,000	**EXPENDITURE AMOUNT:** 2,800,000

Funding Source(s):
Fund 2100 - Org 20247001 - Obj 721080 - project 23828

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 amendment and authorize the City to provide additional local LEDA funding to 828 Productions, LLC.
2. Vote "No", this will not approve the Ordinance amendment and authorize the City to provide additional local LEDA funding to 828 Productions, LLC.
3. Vote to "Amend", this could delay the Ordinance amendment and would require City Council to provide direction to staff.
4. Vote to "Table", this would delay the Ordinance amendment and require City Council to provide direction to staff.

REFERENCE INFORMATION:
Ordinance No. 3028

ORDINANCE 3054; COUNCIL BILL 24-012

AN ORDINANCE AMENDING ORDINANCE NO. 3028, UPDATING THE PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., TO ADD AN ADDITIONAL $2,800,000 TO GO TOWARDS RENOVATIONS OF MULTIPLE FACILITIES.

The City Council is informed that:

WHEREAS, on March 20, 2023, the Las Cruces City Council approved Ordinance No. 3028, as the 828 Productions, LLC., Local Economic Development Act (LEDA) Project Ordinance; and

WHEREAS, the ordinance authorized the City Manager to enter into a Project Participation Agreement (PPA) and Intergovernmental Agreement (IGA) which are incorporated into the Ordinance and made a part thereof by reference; and

WHEREAS, the PPA was based on a preliminary project schedule to designate $897,596 for cinematic infrastructure through capital outlay funds; and

WHEREAS, the purpose of this amendment is to designate an additional $2,800,000 the City has set aside for cinematic infrastructure; and

WHEREAS, 828 Productions, LLC., will be investing approximately $75,000,000 and plan to hire 100 full-time persons; and

WHEREAS, 828 Productions, LLC., has purchased multiple facilities within Las Cruces which these funds will be going towards to renovate the different facilities tied to cinematic infrastructure.

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

(I)

THAT the City hereby enters into an amended Project Participation Agreement, as shown in Exhibit "A" attached hereto and made part of this Ordinance, with 828 Productions, LLC., subject to the requirements of LEDA and the adopted LEDA Plan of the City, for the additional $2,800,000 in investment in the project.

(II)

THAT other than the amount of funds the City will be providing towards the project, all other terms and conditions remain unchanged.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit A

Amendment to Agreement for LEDA Project as established by City of Las Cruces Ordinance No. 3028 approving the 828 Productions, LLC., Economic Development Project.

On March 20, 2023, the governing body of the City of Las Cruces approved Ordinance No. 3028, as the 828 Productions, LLC., Local Economic Development Act (LEDA) Project Ordinance. The ordinance authorized the City Manager to enter into a Project Participation Agreement (PPA) and Intergovernmental Agreement (IGA) which are incorporated into the Ordinance and made part thereof by reference.

The PPA was based on a preliminary project schedule to designate $897,596 for cinematic infrastructure through capital outlay funds. The purpose of this amendment is to designate an additional $2,800,000 the City has set aside for cinematic infrastructure.

828 Productions, LLC., has purchased multiple facilities within Las Cruces which these funds will be going towards to renovate. A description of each property and their proposed uses can be found in Attachment A. They will be investing approximately $75,000,000 on these facilities and plan to hire 100 full-time persons. The funds designated for this amendment will be put towards the facility improvements, including:

City of Las Cruces LEDA Disbursement Schedule		
Tranche	*Amount of Local Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$1,718,000*	Renovations to 1053 Hayner Ave.**
2	$702,000*	Renovations to 106 S. Miranda**
3	$240,000*	Renovations to 100 S. Church**
4	$138,000*	Renovations to 300 S. Compress**
*For detailed fund breakdown of renovations, please see Cinematic Infrastructure Funds Expenditure List **For a facility breakdown, please see Facility Overview		

Other than the amount of funds the City will be providing towards the project, all other terms and conditions remain unchanged. This amendment is only for the City of Las Cruces' contribution, the State of New Mexico's contribution is unchanged.

Amendment accepted and acknowledged:

_____
Ifo Pili
City of Las Cruces City Manager

_____
Todd Lundbohm, CEO
828 Productions, LLC.

Exhibit A

828 PRODUCTIONS

RE: Jonathon Sepp
106 S. Miranda Las Cruces, NM
575-323-1895

Cinematic Infrastructure Funds Expenditure List

Address	Facility / Facility Type	Cinematic Infrastructure	Additional Details
1053 Hayner Ave.			
	30,000sf Building		
		Consulting	
			Soundstage Management
			Engineering
			Construction
			Fire Safety
		Patch EXT Metal Siding	
			Create "Rat Holes"
			Patch holes
			Metal Art Installation
		Patch EXT Metal Roof	
			Patch Holes
			Exhaust Ports
			Cover Skylights
			Ensure Roof is Waterproof
			Confirm Load Ratings
		INT Floor	
			Repair Cracks
			Resurface and Level
			Install Subfloor
			Confirm Load Ratings
			Ensure Load Ratings Match Needs of Production
		Interior Walls	
			Insulation
			Soundproofing
			Confirm Load Ratings
		INT Seperating Wall	
			Seperate Stage From Mill
			Access Doors
			Sound Proofing
			Insulation
			Additional Doorways
		INT Seperating Wall #2	
			Seperate Mill From Holding Area
			Additional Doorways
		Interior Electric	
			110v Access Through Building
			Transformer Maintenance
			Repair/Install Electrical Panels
		EXT Elephant Door #1	
			Repair Door
			Install New Trim

			Install New Hardware
		EXT Elephant Door #2	
			Repair Door
			Install New Trim
			Install New Hardware
		EXT Elephant Door #3	
			Repair Door
			Install New Trim
			Install New Hardware
		EXT Doors	
			Repair/Replace Doors
			Repair/Replace Hardware
			Upgrade Locks
			Secure Access
		EXT Signage	
			Label & Mark All Entryways
			828 Logo on North and South Side of Building
		EXT Lighting	
			Install Work Lights
			Install Security Lights
		EXT Electric	
			Transformer Maintenance
			Repair/Install Electrical Panels
			Run Power to Lights & Signage
		HVAC	
			Heating & Cooling System/s
			Exhaust
		Plumbing	
			Fire Safety
			EXT Faucets
	40,000sf Building	Patch EXT Metal Siding	
			Patch Holes
			Repair Structural Damage
		Patch EXT Metal Roof	
			Patch Holes
			Ensure Roof is Waterproof
		Entry Ways	
			Close Up Entry Ways
			No Access Signs
	Water Tower		
		Three Sided 828 Logo	
		Signage Lighting	
	Civil Engineering		
		Planning & Design	
		Amador Lot Grading	
		Drainage Throughout Property	
		Parking Lot Maintenance/Repair	
		Parking Additions	
		West Lot Grading	
		North Lot Grading	
		Road Maintenance/Repair	
		Solar Power	
		Above/Below Ground Utilities Maintenance/Repair	
	General Property		

		Planning & Design		
		Concrete/Trash Removal		
		Land Clearing		
		Dirt Work		
		Security		
		Utlilities		
		Safety Measures		
	Fence, Wall, & Gate			
		Planning & Design		
		Fence Extentions		
		Fence Repairs		
		Gate Repairs		
		Additional Gates		
		Signage		
		Lighting/Electric		
		Privacy Walls		
	Consulting			
		Soundstage Management		
		Engineering		
		Construction		
		Fire Safety		
	Lease Reimbursements			
	1053 Hayner Ave. Submission 1a Total:		$	43,000.00
	1053 Hayner Ave. Submission 2a Total:		$	170,000.00
	1053 Hayner Ave. Submission 3a Total:		$	63,000.00
	1053 Hayner Ave. Submission 4a Total:		$	280,000.00
	1053 Hayner Ave. Submission 5a Total:		$	525,000.00
	1053 Hayner Ave. Submission 6a Total:		$	175,000.00
	1053 Hayner Ave. Submission 7a Total:		$	462,000.00
106 S. Miranda				
	General Building			
		Planning & Design		
		HVAC		
			Heating & Cooling System/s	
			Exhaust	
		Solar Power		
			Solar System Installation	
		Cleaning		
			Deep Clean Facility	
		Security		
			Additional Security Cameras	
			Additional Security Sound Devices	
			Key Fob Maintenance/Repairs	
			Alarm System Maintenance/Repairs	
		Internet		
			High Speed Internet Access	
		Landscaping		
			Landscape Improvements	

			Sprinkler Maintenance/Repairs	
			Tree Trimming/Removal	
			Courtyard Wall Repair	
		Asbestos Remediation		
		Signage		
			Interior Signage	
			Exterior Signage	
		Post-Production		
			Post-Production Bays	
			High Speed Internet Access	
			Viewing Center	
		INT Remodel		
			Support Structures	
			Electric	
			Walls/Framing	
			Flooring	
			Doors	
			Furnishing	
			Fire Safety	
		EXT Remodel		
			Electric	
			Curb Appeal	
			Maintenance	
			Paint/Design	
		Utilities		
	Parking Lots			
		Planning & Design		
		Repair/Maintenance		
		Landscaping		
		Plumbing		
		Signage		
		Lighting/Electric		
	Consulting			
	Lease Reimbursements			
		106 S. Miranda Submission 1b Total:	$	63,000.00
		106 S. Miranda Submission 2b Total:	$	90,000.00
		106 S. Miranda Submission 3b Total:	$	45,000.00
		106 S. Miranda Submission 4b Total:	$	28,000.00
		106 S. Miranda Submission 5b Total:	$	345,000.00
		106 S. Miranda Submission 6b Total:	$	45,000.00
		106 S. Miranda Submission 7b Total:	$	86,000.00
100 S. Church				
	General Property			
		Planning & Design		
		Plumbing		
			Fire Safety	
			EXT Faucets	
		Signage		
			Interior Signage	

			Exterior Signage	
		Security		
			Additional Security Cameras	
			Additional Security Sound Devices	
			Key Fob Maintenance/Repairs	
			Alarm System Maintenance/Repairs	
		EXT Maintenance/Repair		
			Create "Rat Holes"	
			Patch holes	
			Maintenance	
			Metal Art Installation	
		INT Remodel		
			Support Structures	
			Electric	
			Walls/Framing	
			Flooring	
			Doors	
			Furnishing	
			Fire Safety	
		Utilities		
		HVAC		
			Heating & Cooling System/s	
			Exhaust	
	Courtyard			
		Planning & Design		
		Remodel		
		Fence Maintenance/Repair		
	Parking Lots			
		Planning & Design		
		Repair/Maintenance		
		Electric/Ligthing		
		Guard Stations		
		Signage		
		Landscaping		
	Consulting			
	Lease Reimbursements			
		100 S. Church Submission 1c Total:	$	30,000.00
		100 S. Church Submission 2c Total:	$	50,000.00
		100 S. Church Submission 3c Total:	$	30,000.00
		100 S. Church Submission 4c Total:	$	40,000.00
		100 S. Church Submission 5c Total:	$	60,000.00
		100 S. Church Submission 6c Total:	$	20,000.00
		100 S. Church Submission 7c Total:	$	10,000.00
300 S. Compress				
	2,900sf Office			
		INT Remodel		
			Planning & Design	

Exhibit A

			Repair/Maintenance
			Electric/Ligthing
			Plumbing
			Fire Safety
			Security
			Flooring
		EXT Maintenance/Repair	
		Signage	
	Fence, Wall, & Gate		
		Planning & Design	
		Fence Extentions	
		Fence Repairs	
		Gate Repairs	
		Additional Gates	
		Signage	
		Lighting/Electric	
		Privacy Walls	
	Gin Building		
		Deep Clean	
		Repair/Maintenance	
		Security	
		Fire Safety	
		Signage	
	General Property		
		Safety	
		Clean	
		Grading	
		Security	
		Utilities	
		Landscaping	
	Lease Reimbursements		
	300 S. Compress Submission 1d Total:		$ 22,000.00
	300 S. Compress Submission 2d Total:		$ 44,000.00
	300 S. Compress Submission 3d Total:		$ 22,000.00
	300 S. Compress Submission 4d Total:		$ 6,000.00
	300 S. Compress Submission 5d Total:		$ 22,000.00
	300 S. Compress Submission 6d Total:		$ 22,000.00
	300 S. Compress Submission 7d Total:		$ -

828 | PRODUCTIONS

Facility Overview

106 S. Miranda

Our 106 S. Miranda campus will be the hub of film production in Las Cruces. Internally and externally, this facility will provide the necessary space for administrative office and production support activity, as well as a filming destination and workforce development space.

The administrative office space of a film production company is a microcosm of the creative and collaborative process of filmmaking. It is a space where ideas are born, scripts are developed, budgets are created, and schedules are managed. It is also a space where the nuts and bolts of filmmaking are handled, such as development, sales, legal, and distribution.

The production office space of a film production company is a busy and vibrant place. It is a space where creative ideas are turned into reality, and where the magic of filmmaking happens.

The facility will be divided into several different workspaces, including:

- Executive offices: These are the offices of the company's top executives, such as the producer, director, screenwriter, and showrunner. They are typically spacious and well-appointed, with large desks, comfortable chairs, and plenty of meeting space.
- Production offices: These are the offices of the key members of the production team, such as the production manager, line producer, and various other departments. They are typically smaller and more utilitarian than the executive offices, but they are still comfortable and functional.
- Accounting offices: These are the offices where the finances are handled. They are typically located in a quiet area of the office space, away from the hustle and bustle of the production offices.
- Conference rooms: These are the rooms where meetings are held between executives, producers, and other members of the team. They are typically large enough to accommodate a group of people, and they are equipped with whiteboards, projectors, and other audiovisual equipment.
- Soundstage: This is a flex use space in a pre-existing auditorium where filming, training, and screening will occur.
- Post-Production: 828 Post-Production will supply the film and digital media industry with high-quality post-production and visual effects services, helping them to achieve their creative vision and deliver a finished product that meets or exceeds their expectations.
- Vendor Incubator: 828 Productions will provide space for film-specific vendors to be co-located with many of the 828 divisions and productions based out of this facility.

828 Productions is actively coordinating numerous ways to interact and enhance the film and digital media training available through K-12 and post-secondary education in Las Cruces and Doña Ana County. For post-secondary education, this will include use of our auditorium (sanctuary) for lectures, guest speakers, hands-on exercises, and various other presentation formats. Students in K-12 will have the opportunity to tour our facility and participate in internships through programs like the Doña Ana County Summer Internship. Post-secondary programs in southern New Mexico will have the opportunity to attend lectures, workshops, on-the-job training, and internships at this facility.

1053 Hayner Ave.

1053 Hayner Ave. will be home to 828 Production's first soundstage-specific construction. As we roll out our master plan for a complete overhaul of the site, 828 Productions will fill the construction timeline gap with a unique approach to a soundstage environment that will transition into mill and/or office space as the master plan comes to fruition. 828 Productions has contracted multiple experts to guide our phased approach that will allow us to capture additional production traffic immediately as construction rolls out over the course of multiple years. One of those experts is Rick Clemente, the previous studio operator and pioneer of i25 Studios (now Cinelease Studios), a previous microchip manufacturing facility.

300 S. Compress

As 828 Productions plans to focus the first phase of purpose-built soundstages, office space, and a warehouse retrofit on the 1053 Hayner Ave property, the property at 300 S. Compress will initially focus on ancillary services and needs for the 1053 Hayner Ave property. This will include additional office space, vehicle & trailer parking, vendor support, storage, and various other needs the film production campus may require.

100 S. Church

Located in the heart of Downtown Las Cruces, 100 S. Church will become a beehive of activity for office space tailored to production activity, vendor administrative services, and coworking space. Many of the office-supporting infrastructure listed under 106 S. Miranda will be available here.

The downtown location of the film production's office space provides a number of advantages. First, it is centrally located and easily accessible to clients, partners, and filming locations. Second, it is close to a variety of amenities, such as restaurants, shops, and public transportation. Third, it provides the company with a high-profile presence in the city's business district.

A studio apartment on the second floor will be tailored to hospitality for producers, directors, talent, and various other filmmakers providing them the best access to experience Downtown Las Cruces.

FY22 LEDA Application

Applicant	Todd Lundbohm
Applicant ID	APP-015963
Company Name	~~828 Studio NM, LLC~~ 828 Productions LLC
Email	todd@828productions.com
Status	Submitted
Application Amount	$0.00
Funded/Approved	☐
LEDA Starting Job Count	0
LEDA PPA Job Count Target	335

Contact Information

Question: Legal Company Name

828 Productions LLC

Question: Trade Name (dba)

828 Productions LLC

Question: Project Name

828 Studios

Question: Company Street Address

~~100 South Church Street~~ 106 S Miranda St

Question: Company City

Las Cruces

Question: Company State

NM

Question: Company Zip

~~88001~~ 88005

Question: Phone

2089124075

Question: Website

https://828productions.com/

Question: Primary Contact Person First Name

Todd

Question: Primary Contact Person Last Name

Lundbohm

Question: Federal Tax ID #

83-2900195

Question: NM State Tax and Revenue (CRS) #

03568111000

Question: City/County Business License Registration will be pursued

- [x] Yes
- [ ] No

Question: NAICS Code(s)

512199

Question: DUNS # (preferred but not required)

Applied For

Question: This Business is organized as a:

- [ ] C-Corporation
- [ ] S-Corporation
- [x] LLC
- [ ] Partnership
- [ ] Sole Proprietorship

☐ B-Corporation

Question: Incorporation Papers

828 PRODUCTIONS, LLC - DE - FORMATION.pdf (9/17/2022, 11:10 AM)

Question: Resumes of all principals (owners, partners, directors or officers; required for businesses 1 year or younger)

Todd bio.pdf (9/17/2022, 11:13 AM)
SDenton Bio 12 6 21 v3.pdf (9/17/2022, 11:13 AM)
Mark Andrews Bio.pdf (9/17/2022, 11:13 AM)

Question: Company Contact for Project Administration (if different from above)

Christine Sheppard

Question: Title

Project Coordinator

Question: Telephone

~~5755206905~~ 575-323-1895

Question: Cell Phone

~~5755206905~~ 575-323-1895

Question: Email

csheppard@828productions.com

Project Information

Please include detailed information such as:

• Executive Summary; Business description and history

• Infrastructure Development/Needs

• Market analysis and strategy

• Summary of competition

• Tax Reporting Status

• Effect on Existing Industry and Commerce during and after Construction

- Land Acquisition
- Local Purchasing
- Water Conservation
- Relocation of Individuals or Businesses
- Construction Schedule
    - Target Close Date
    - General Contract Signed
    - Construction Start
    - Construction End
    - New Facility Operational Date
- Operations plan; Organizational chart
- Any document or record that the local governing body, in its sole discretion, deems necessary.

Question: Description of the Proposed Development, its product and its timeline.

828 Productions plans to construct a movie studio in Las Cruces, New Mexico (the “Studio”) as well as provide financing for independent films. Construction on the first phase of the project is anticipated to begin in Q4 of 2022 with an estimated construction period of 18 months. Employees started to be hired in May of 2022 and will continue for initial management employees. Start up hiring for the studio operation will begin six months prior to construction completion. The film financing operations are anticipated to begin in Q4 of 2022/ Q1 of 2023.

Question: Provide a detailed scope of work that is specific to the funding request/award and what the funds will be used for.

828 Productions plans to construct a movie studio in Las Cruces, New Mexico (the “Studio”) and will be managing the production of films in Las Cruces as well as in other locations. Over 100 employees in the next 6 years will be hired. The first phase of the studio will include 4 sound stages, office space, mill, etc. Funding will be used for construction as well as start-up payroll for an approximate 6 month period that studio operations ramps up.

Question: Business Plan (required for businesses 1 year or younger)

See supporting documentation - studio model with construction costs as well as start-up budget and estimated revenues and expenses.

Question: Supporting Documentation

828 Studios Redevelopment Schedule Rev 09 16 22.pdf (9/29/2022, 3:58 PM)

Financial Information

*Upload sources and uses chart; enter N/A and zero for questions that do not apply to your business

Question: Provide detailed assumptions for your project including three years of projected cash flow income statements. If the applicant has been in business less than one year, you may be requested to provide additional financial information after review.

828 Operating Financials Phase I CONFIDENTIAL Rev 9.10.22.pdf (9/29/2022, 4:01 PM)

Question: Provide financial statements (balance sheet, profit and loss and cash flow) or tax returns for the past three years. Also provide interim statements within 90 days of application date.

828 Productions financial history description.docx (9/17/2022, 11:31 AM)

Question: What is the collateral/security to be pledged to the funds awarded?

- ☐ Letter of Credit
- ☑ Surety Bond
- ☐ Mortgage Security
- ☐ Security Agreement/Escrow
- ☐ Security Agreement/Lien
- ☐ Security Interest/Lien

Question: What is the method of appraisal for stated security (if Security Mortgage or Lien were selected above)?

N/A

Question: What is the equity investment from the applicant?

$1,000,000.00

Question: External Equity Investment Sources

Equity raised from outside investors

Question: External Equity Investment Amount

$25,000,000.00

Question: City/County Funding Source

City of Las Cruces Cinematic Infrastructure funds

Question: City/ County Funding Amount

$897,596.12

Question: Bank Loan Source (financial institution names), type (commercial, USDA, SBA 504, etc.), and stage (applied or approved)

Currently working on initial discussions with banks

Question: Bank Loans Amount Total

$25,000,000.00

Question: Other Loans Source

~~828 Media Capital~~ 828 Affiliates

Question: Other Loans Amount

$20,000,000.00

Question: Other Sources

N/A

Question: Other Sources Amount

$0.00

Question: Total Project Amount (Sum of above)

$71,000,000.00

Question: Supporting financial documentation

LEDA Job Creation Additional Financial Information.pdf (9/30/2022, 1:20 PM)

Company History and Background

Question: How long has the company been in operation, as of the date of application?

828 Productions was formed in 2021 and will begin operations with the beginning of this project 2022

Question: At the time of this application, how many full-time employees do you currently employ? Please provide the most recent Department of Workforce Solutions report below. If no employees, disregard report. Enter 0.

3.00

Question: List owners with more than 20% ownership stake in the company. Additionally, please list principal directors and/or officers.

Owners
Todd Lundbohm

Directors/officers
Stephanie Denton
Mark Andrews

Question: Are owners and/or officers current with financial obligations/payments to the State of New Mexico or any other Federal or State entity? If no, please explain.

Yes

Question: Does the applicant have any loans or other financial obligations on which payments are not current? If yes, please explain.

No

Question: Please identify any financially affiliated/associated companies in which any of the applicant's owners have a 20% stake.

828 Productions, Inc is the only entity associated with 828 Productions LLC. There are other entities that were formed to lend or invest in, movies specifically, that have not been listed. ~~Please let us know if you need a more detailed list of entities.~~

Community Aspects

Question: At the community level, what are the infrastructure needs not yet in place or in process that will affect this project's application?

TBD

Question: What specific incentives are being REQUESTED from the COMMUNITY? Please explain where the applicant is in this process and provide an idea of a timeline for incentives' deployment.

1. Asking for allocation of funds from the EDD. Application is ongoing. We anticipate deployment of funds in Q4 of 2022/Q1 2023
2. Asking for allocation of funds from JTIP. We anticipate deployment of funds in Q4 of 2022/ Q1 2023
3. Asking for allocation of funds from the City of Las Cruces. We anticipate deployment of funds in Q4 of 2022/ Q1 2023

Question: What specific incentives will be PROVIDED from the COMMUNITY?(e.g. parcel of

land, building lease, waiver of fees, utility access/extension)?

City of Las Cruces Cinematic Infrastructure funds, LEDA funds

Job Creation / Performance

Please download the job creation worksheet to work up the required information for this section.

- Job Creation Worksheet

Question: Outline the number and types of jobs to be created.

Additoinal part time jobs (annually) depending on production type

Full Time Jobs - total 100 :

Year Round Management
Year Round Studio Staff
Year Round Studio Crew
Year Round VFX, LED, MoCap & Post Team
Year Round Accounting Team

Question: Outline the proposed pay scale and payroll proposed by the entity.

100 jobs with an average salary of $75,000 per year.

Question: Outline the benefits offered to the employees, including but not limited to health care and retirement.

Permanent employees will be offered PTO, health, dental, and 401(k) with discretionary match.

Question: Outline any efforts being made or proposed by the applicant to hire people within the local employment pool.

We are going to fill as many jobs locally as possible. All efforts will be made to relocate individuals that are needed for employment outside of the local job pool.

Question: Attach job creation worksheet

828 Job Creation Worksheet Final.pdf (9/30/2022, 1:09 PM)

Question: Starting Headcount (from worksheet above)

0.00

Question: Total new jobs to be created Year 1 (from worksheet above)

62.00

Question: Total new payroll Year 1 (from worksheet above)

$4,635,000.00

Question: Total number of new jobs to be created Year 2 (from worksheet above)

28.00

Question: Total new payroll Year 2 (from worksheet above)

$2,295,000.00

Question: Total number of new jobs to be created Year 3 (from worksheet above)

10.00

Question: Total new payroll Year 3 (from worksheet above)

$575,000.00

Economic Impact Analysis

NMEDD will perform an Economic Impact Analysis to address the impact to the local tax base, the school system, etc. using the Economic Impact Datasheet provided by the applicant.

Question: Outline any impacts to the environment, positively or negatively.

The studio will be built as sustainably possible with the smallest carbon footprint feasible. Modern building standards will be used with renewable energy sources utilized where feasible(i.e. solar).

Question: Status of permitting/regulatory matters needed for project.

In process with City of Las Cruces

Attachments

Please download the authorization for examination and release of information template and the example employer quarterly wage and contribution report.

- Authorization for examination and release of information form
- Employer quarterly wage and contribution report example

If you are a new business, please apply for a NM Tax Identification Number here:

http://www.tax.newmexico.gov/Businesses/wage-witholding-tax.aspx

Please download the LEDA Application Affirmation Template here:

LEDA Application Affirmation Template

Click here to view a filled out sample.

Question: New Mexico Economic Development Department authorization for examination and release of information.

FE Authorization for examination and release of information Notarized.pdf (9/30/2022, 1:13 PM)

Question: Latest New Mexico employer's quarterly wage and contribution report submitted to the Department of Workforce Solutions.

LEDA NM Quarterly Wage Report.pdf (9/30/2022, 1:18 PM)

Question: Affirmation and any other supporting documents

FE_2020_LEDA_App_Affirmationpdp.pdf (9/26/2022, 9:21 AM)

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "828 PRODUCTIONS, LLC", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF DECEMBER, A.D. 2018, AT 7:52 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

7202282 8100
SR# 20188269978

Authentication: 204150649
Date: 12-20-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:52 PM 12/19/2018
FILED 07:52 PM 12/19/2018
SR 20188269978 - File Number 7202282

STATE OF DELAWARE
CERTIFICATE OF FORMATION
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is 828 Productions, LLC.

2. The Registered Office of the limited liability company in the State of Delaware is located at 850 New Burton Road, Suite 201 (street), in the City of Dover, Zip Code 19904. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is COGENCY GLOBAL INC.

By: Morgan Sloane
Authorized Person

Name: Morgan Sloane
Print or Type

Todd Lundbohm is an award-winning filmmaker with broad ranging experience in Development, Production, Postproduction and VFX. He began his career as an Art Director for NXNW Productions, working on several national campaigns before diving headfirst into narrative filmmaking: writing, directing and producing multiple projects, working throughout the US, Mexico, South America and Western Europe. Todd's feature screenplay, MERIDIAN has won numerous awards, as well as recognition from the SXSW Film Festival and Francis Ford Coppola's American Zoetrope writing competition.

As Founder and CEO of 828 Media Capital, Todd has financed projects with a total production spend north of $50 million. 828 is a full-service film finance and production company, whose recent films include millennial murder mystery, ***Helen's Dead***, starring Tyrese Gibson, Anabelle Dexter-Jones, and Emile Hirsch; *Deauville Film Festival Grand Special Prize Nominee* ***The Last Son*** starring Sam Worthington, Colson Baker, Thomas Jane, and Heather Graham; Camille Delmarre's high octane action film, ***Assassin Club***, starring, Henry Golding, Noomi Rapace and Sam Neil; ***The Price We Pay***, from legendary horror director Ryûhei Kitamura, starring Emile Hirsch and Stephen Dorff; Gothic horror ***Raven's Hollow*** starring William Moseley, Melanie Zanetti, Kate Dickie and David Hayman*;* WWII Submarine movie ***Operation Seawolf*** Starring Dolph Lundgren and Frank Grillo; ***The Requin*** starring Alicia Silverstone and James Tupper; and *SXSW Grand Jury Prize winner* ***The Fallout*** starring Jenna Ortega, Maddie Ziegler, Shailene Woodley, and Julie Bowen.

Stephanie Denton is a feature film and television executive who has headed up acquisitions, sales, and distribution divisions for the industry's leading independent film and television companies, including Lionsgate International, Lakeshore Entertainment, Initial Entertainment Group and Bold Films.

Over the last 25 years, Denton has sold over 250 feature films, worked with legendary filmmakers such as Martin Scorsese, Lasse Halstrom, Sam Rami, Mark Pellington, Jon Amiel, Garry Marshall, Peter Howitt, James Mangold, Stephen Merchant, and James Wan to produce and sell high-profile films out of the independent film sector. Noteworthy releases include *THE **AVIATOR, UNFINISHED LIFE, THE GIFT, ARLINGTON ROAD, LAWS OF ATTRACTION, UNDERWORLD, 310 TO YUMA, WAR, HOTEL RWANDA, DAYBREAKERS, RUNAWAY BRIDE, FIGHTING WITH MY FAMILY,*** and the box office record-breaking ***SAW*** franchise.

Denton's steady hand as a film and tv executive was evident in her leadership of the launch of Arc Animation Studios Original I.P. and Sales division during its transition from STARZ Entertainment, and her experience in acquisitions and co-production for WWE Studios in Los Angeles where she drove the company's marketing and production initiative to release brand adjacent content across platforms, and spearheaded a theatrical co-distribution deal in North America with Blumhouse Productions for Festival film favorites, ***OCCULUS***, ***SLIGHT,*** and ***BIRTH OF A DRAGON***.

A few of Denton's premier accomplishments include the development and production of Len Wiseman's hugely successful ***UNDERWORLD*** franchise for Lakeshore Entertainment, sourcing and selling high profile projects such as ***WAR*** starring Jason Statham and Jet Li, and ***DAYBREAKERS*** starring Ethan Hawke for Lionsgate Entertainment. She also closed multi-picture domestic distribution deals with Sony/Screen Gems, Universal Pictures, and Paramount Studios.

Denton began consulting for 828 Media in 2020, assisting with the company's expanding lending portfolio, and has since become a member of the 828 Productions team. Utilizing her extensive relationships in Production and Distribution, Denton's main focus will be sourcing co-production and development opportunities, and securing key distribution alliances in both the Domestic and International markets that will establish 828 Productions as an industry leader in the Indie Film space.

BIOGRAPHY

Mark Andrews

Mark started his career in finance & management consulting but his real passion was for film. This passion was realized in 1995 when he invested in his first feature film '**Mainline Run**'. Three years later he took the plunge and became a full time producer, co-writing and producing the feature film '***Distant Shadow'*** which made more than 4 times its budget**.** This lead to being hired to produce budgets & schedules for the UK's Spice Factory and oversee production on '**Redemption Road**'.

Seeing the opportunities film financing in the United Kingdom offered, Mark co-founded '**Studio Finance**,' a UK Film tax shelter utilizing the UK Government's Section 48 Tax breaks for film production before going on to consult for another film financing group, '**UKFS**' backed by Guernsey based Channel House Trustees. In their three yers of operating, UKFS were responsible for more than $300 million of tax shelter film financing for the UK film industry. It was here acting as a Senior Finance Executive that he oversaw such films as '**Wake of Death,' 'Modigliani,' 'School for Seduction,' 'Out of Season'** and '**Battle of the Brave'** amongst others.

In 2004 Mark moved to Los Angeles where he began consulting for various production companies, investors and independent producers, was Head of Entertainment for Exemplar Capital an East Coast Investment Bank and Law Firm and was instrumental in forming various film financing structures including a $150m film fund.

Some of the projects he has been instrumental in developing or setting up at various companies are Animated Horror '**Down Satan**' in partnership with re-known Horror Author '**Clive Barker'**; Supernatural Thriller **'Indelible'** being Directed by National Film Award Winner '**Howard J Ford'** (The Dead 1&2, Never Let Go); '**Kill the Messenger'** from the creator of (RoboCop), '**Michael Miner,**' and the Epic Western **'The Girl With No Name'** in conjunction with **Co-Op Entertainment** and **LegionM** being directed by '**Tanya Wexler**' (Buffaloed, Jolt).

In 2018 Mark produced the movie '**Dead Water**' starring '**Casper Van Dien**' and '**Judd Nelson,**' released by **Saban** in July 2019.

He currently oversees the development, financing and production operations for 828 Productions a west coast full service film finance and production company where he has executive produced and produced such films as **THE FALLOUT** starring Jenna Ortega, Maddie Ziegler, Shailene Woodley and Julie Bowen, **THE LAST SON** starring Sam Worthington, Colson Baker, Thomas Jane and Heather Graham, **THE PRICE WE PAY**, directed by horror legend Ryûhei Kitamura, starring Emile Hirsch and Stephen Dorff, and the recently wrapped **RAVENS HOLLOW** starring William Moseley, Melanie Zanetti, Kate Dickie and David Hayman.

In summary, Mark is a highly accomplished and seasoned writer, producer & production executive with a proven track record of over twenty years of experience in development, financing, production and distribution. He is a high impact contributor and versatile professional with exceptional business and production acumen who is comfortable working alone or managing hundreds of individuals while ensuring timely completion of project deadlines and remaining on, or under budget.

He holds a National Diploma in Business and Finance from the UK and a Certificate of Achievement for Contract Law from HarvardX University.

Mark lives in Colorado Springs with his wife and dog 'Piper'.

PROJECT OVERVIEW

MON 8/15/22 - MON 11/18/24

% COMPLETE

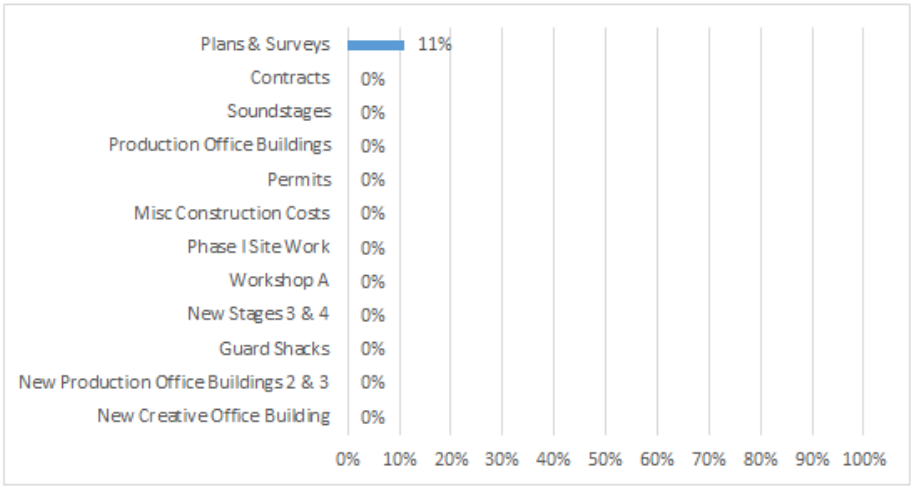
1%

MILESTONES DUE

Milestones that are coming soon.

Name	Finish
Stage 1 COA	Thu 10/26/23
Stage 2 COA	Mon 8/12/24
Workshop A COA	Tue 7/9/24
Stage 3 COA	Fri 12/29/23
Stage 4 COA	Mon 1/8/24

% COMPLETE



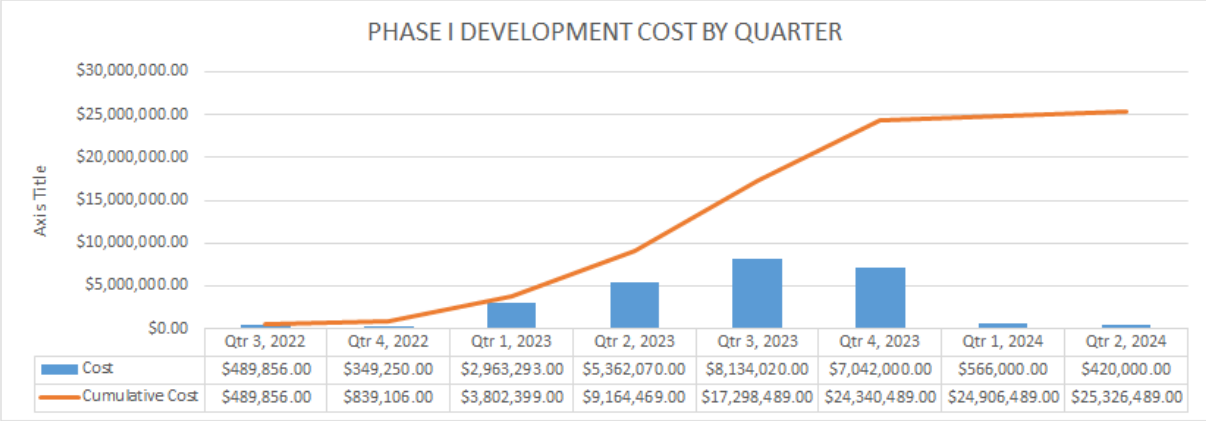
LATE TASKS

Tasks that are past due.

Name	Start	Finish	% Complete
DD Drawings	Mon 9/12/22	Mon 12/26/22	0%

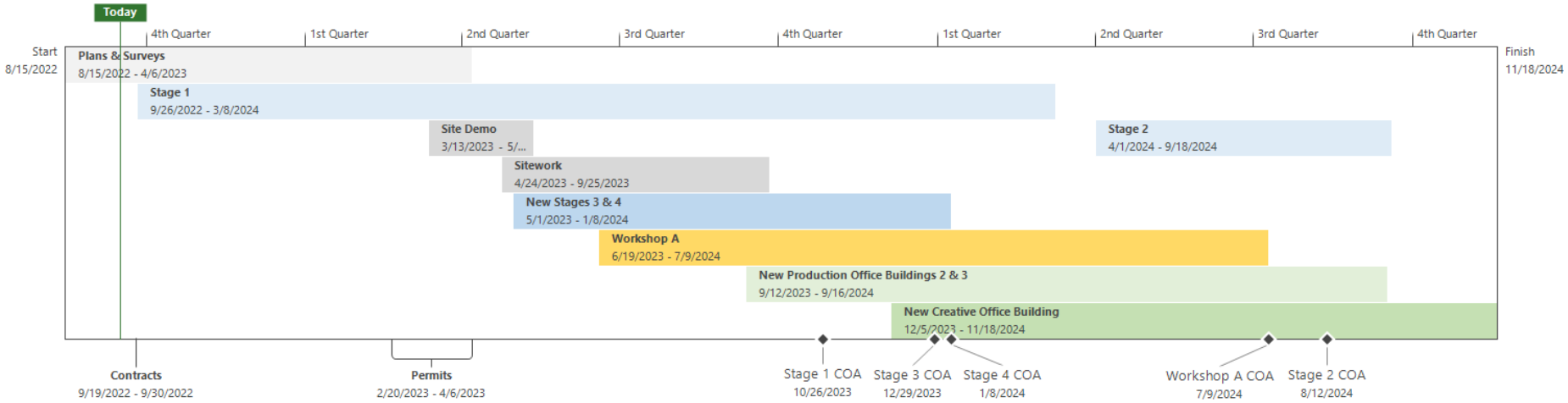
CASH FLOW

Cost	Remaining Cost
$25,326,489.00	$25,326,489.00



	Qtr 3, 2022	Qtr 4, 2022	Qtr 1, 2023	Qtr 2, 2023	Qtr 3, 2023	Qtr 4, 2023	Qtr 1, 2024	Qtr 2, 2024
Cost	$489,856.00	$349,250.00	$2,963,293.00	$5,362,070.00	$8,134,020.00	$7,042,000.00	$566,000.00	$420,000.00
Cumulative Cost	$489,856.00	$839,106.00	$3,802,399.00	$9,164,469.00	$17,298,489.00	$24,340,489.00	$24,906,489.00	$25,326,489.00

Name	Cost	Start	Unique ID
828 STUDIOS NM	$25,326,489.00	Mon 8/15/22	1
RENOVATION	$9,341,489.00	Mon 8/15/22	171
Contracts	$0.00	Mon 9/19/22	2
Plans & Surveys	$532,100.00	Mon 8/15/22	7
Permits	$103,500.00	Mon 2/20/23	312
Phase I Site Work	$1,858,393.00	Mon 3/13/23	17
Misc Construction Costs	$166,141.00	Mon 3/13/23	314
Soundstages	$4,743,605.00	Mon 9/26/22	68
Workshop A	$1,846,000.00	Mon 6/19/23	110
Production Office Buildings	$91,750.00	Tue 11/1/22	157
NEW CONSTRUCTION	$15,985,000.00	Mon 5/1/23	172
New Stages 3 & 4	$14,000,000.00	Mon 5/1/23	173
New Production Office Buildings 2 & 3	$1,280,000.00	Tue 9/12/23	298
New Creative Office Building	$640,000.00	Tue 12/5/23	141
Guard Shacks	$65,000.00	Tue 9/5/23	158

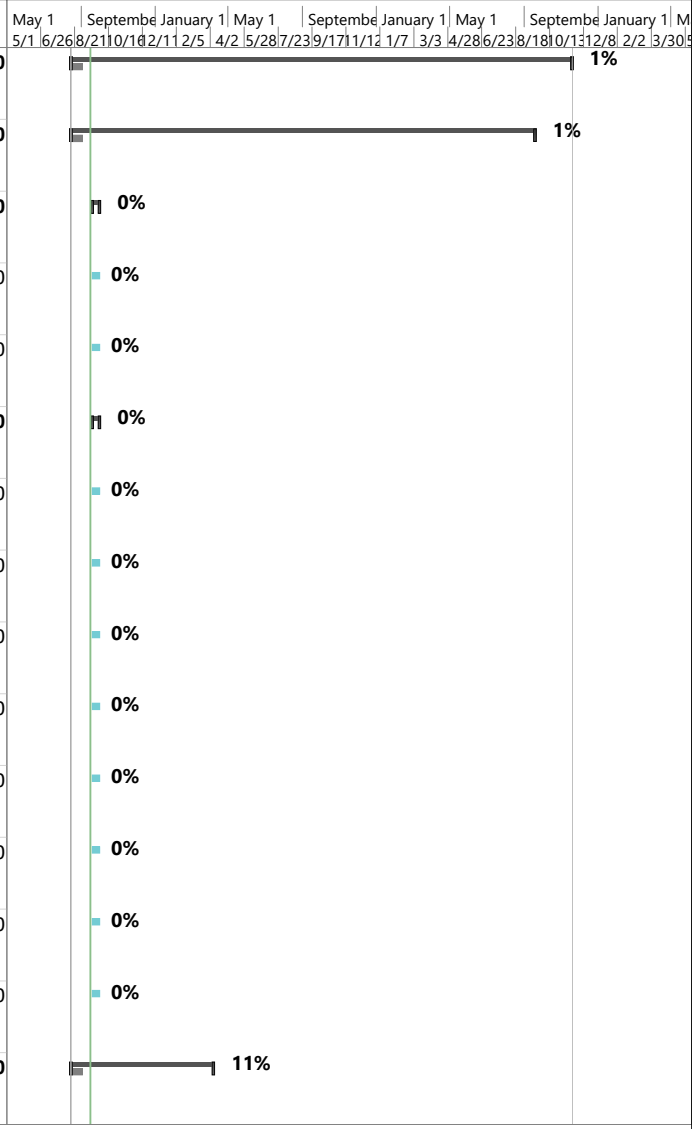


Project Timeline and Budgetary Estimates are derived from Highland Enterprises Inc. and Giant Entertainment & Management Inc. with supporting detail located in the appendix of this project summary.

Although preliminary in nature, the following schedule and associated costs are based on prior experience in respective fields. Even so, fixed costs can only be determined after full review of Construction Drawings, still to be developed.

828 Studios Redevelopment Schedule.mpp

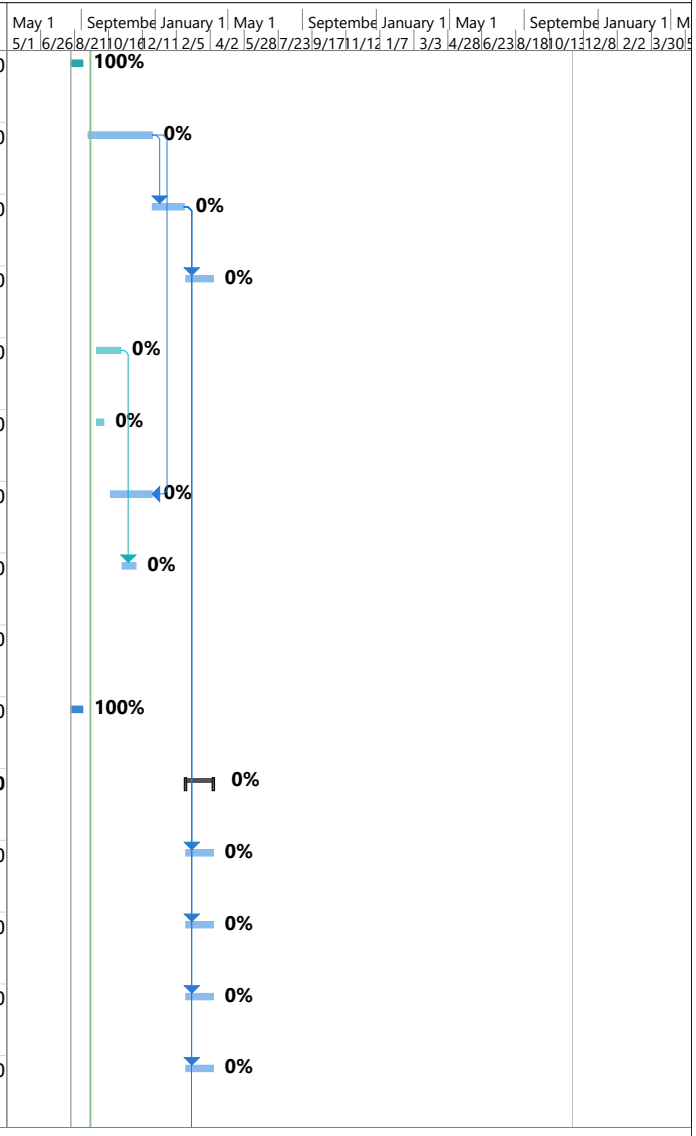
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
1		**828 STUDIOS NM**	**578 days?**	**Mon 8/15/22**	**Mon 11/18/24**	**$25,326,489.00**
2		**RENOVATION**	**535 days?**	**Mon 8/15/22**	**Wed 9/18/24**	**$9,341,489.00**
3		**Contracts**	**10 days**	**Mon 9/19/22**	**Fri 9/30/22**	**$0.00**
4		General Contractor	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
5		Architectural	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
6		**Engineering**	**10 days**	**Mon 9/19/22**	**Fri 9/30/22**	**$0.00**
7		Mechanical	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
8		Electrical	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
9		Plumbing	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
10		Structural	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
11		Civil	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
12		Surveys	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
13		Geotech	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
14		Project Management	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
15		**Plans & Surveys**	**156 days?**	**Mon 8/15/22**	**Thu 4/6/23**	**$532,100.00**



Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
16		Conceptual Site Plans	15 days	Mon 8/15/22	Fri 9/2/22	$0.00
17		DD Drawings	76 days	Mon 9/12/22	Mon 12/26/22	$257,500.00
18		Construction Drawings	39 days	Tue 12/27/22	Fri 2/17/23	$257,500.00
19		Demo Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
20		Geotechnical Survey	30 days	Mon 9/26/22	Fri 11/4/22	$8,000.00
21		Topographical Survey	10 days	Mon 9/26/22	Fri 10/7/22	$9,100.00
22		Stormwater Plans	41 days	Wed 10/19/22	Mon 12/26/22	$0.00
23		Materials testing	15 days	Mon 11/7/22	Tue 11/29/22	$0.00
24		Traffic Study				$0.00
25		Traffic Circulation Plan	15 days	Mon 8/15/22	Fri 9/2/22	$0.00
26		**Permits**	**34 days?**	**Mon 2/20/23**	**Thu 4/6/23**	**$103,500.00**
27		Grading Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
28		Underground Utilities Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
29		MEP Permits	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
30		Structural Building Plans/Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00



Critical	Task Progress	Baseline	Summary	Inactive Task
Critical Split	Manual Task	Baseline Split	Manual Summary	Inactive Milestone
Critical Progress	Start-only	Baseline Milestone	Project Summary	Inactive Summary
Task	Finish-only	Milestone	External Tasks	Deadline
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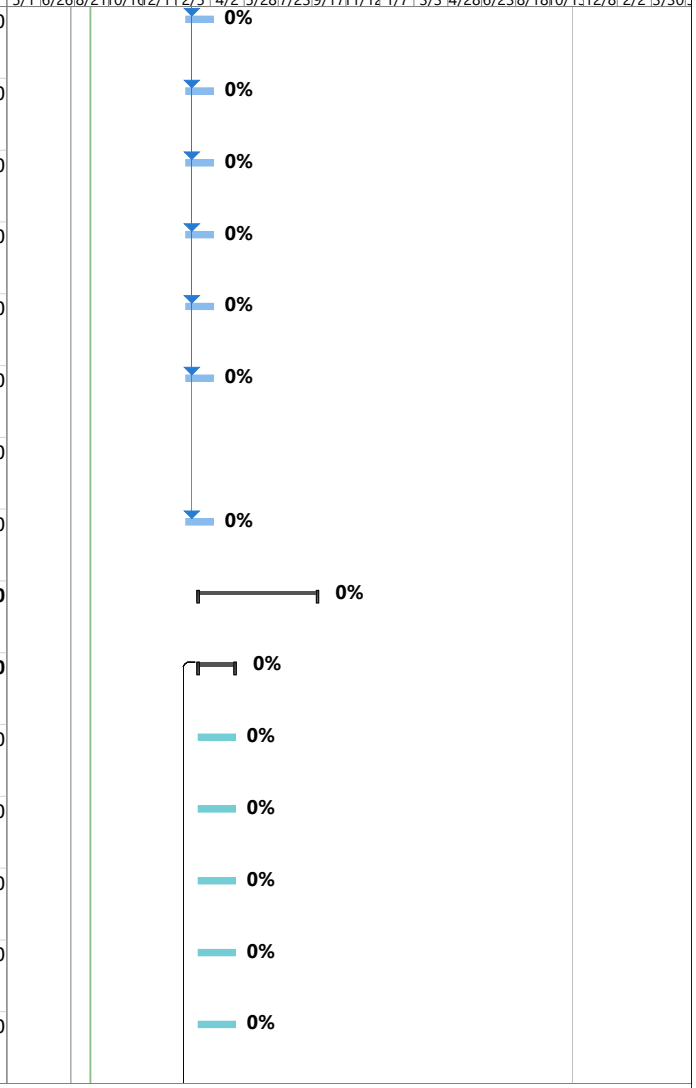
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
31		Stormwater Retention Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
32		Landscaping Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
33		Fire Life Safety Permits	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
34		Stage 1 Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
35		Stage 2 Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
36		Workshop Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
37		Creative Office Building Permit				$0.00
38		Guard Shack Permits	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
39		**Phase I Site Work**	**141 days**	**Mon 3/13/23**	**Mon 9/25/23**	**$1,858,393.00**
40		**Site Demo**	**45 days**	**Mon 3/13/23**	**Fri 5/12/23**	**$390,403.00**
41		Tree removal	45 days	Mon 3/13/23	Fri 5/12/23	$52,096.00
42		Removal of volcanic rock to Phase 2	45 days	Mon 3/13/23	Fri 5/12/23	$166,000.00
43		Removal of tires	45 days	Mon 3/13/23	Fri 5/12/23	$1,500.00
44		Removal of trash and debris	45 days	Mon 3/13/23	Fri 5/12/23	$18,226.00
45		Removal of RV trailer	45 days	Mon 3/13/23	Fri 5/12/23	$2,700.00



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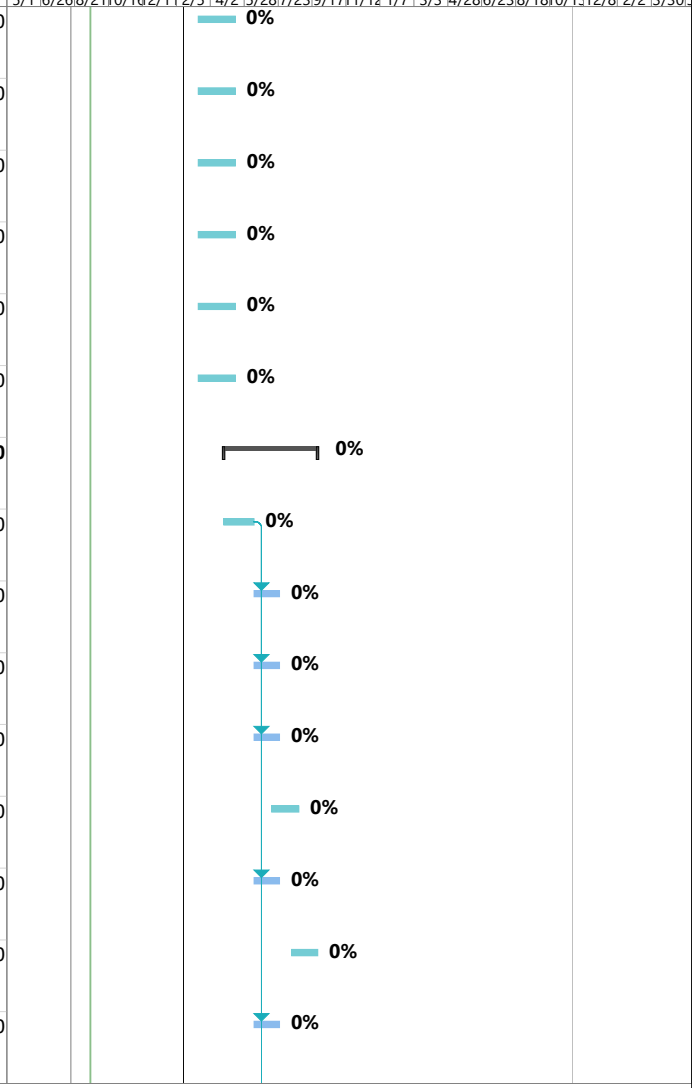
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
46		Waste Removal; Stage 1	45 days	Mon 3/13/23	Fri 5/12/23	$8,650.00
47		Waste Removal; Stage 2	45 days	Mon 3/13/23	Fri 5/12/23	$37,100.00
48		Waste Removal WS-A	45 days	Mon 3/13/23	Fri 5/12/23	$30,000.00
49		Clean and expose RR Tracks	45 days	Mon 3/13/23	Fri 5/12/23	$22,601.00
50		Demolition - above grade concrete	45 days	Mon 3/13/23	Fri 5/12/23	$44,830.00
51		Demo Bagging Equip WS-A	45 days	Mon 3/13/23	Fri 5/12/23	$6,700.00
52		**Sitework**	**111 days**	**Mon 4/24/23**	**Mon 9/25/23**	**$1,467,990.00**
53		Rough Grading	36 days	Mon 4/24/23	Mon 6/12/23	$0.00
54		Access road to Stage 1 and Work Shop	30 days	Tue 6/13/23	Mon 7/24/23	$304,790.00
55		Asphalt Parking - Lot 4	30 days	Tue 6/13/23	Mon 7/24/23	$159,100.00
56		Asphalt Parking - Lot 5	30 days	Tue 6/13/23	Mon 7/24/23	$167,015.00
57		Asphalt Parking Work Shop	33 days	Wed 7/12/23	Fri 8/25/23	$96,144.00
58		Asphalt Parking - Lot 6	30 days	Tue 6/13/23	Mon 7/24/23	$172,715.00
59		Asphalt Parking - Stage 1 Lot	31 days	Mon 8/14/23	Mon 9/25/23	$83,328.00
60		Asphalt Parking - POB Lots 2&3	30 days	Tue 6/13/23	Mon 7/24/23	$119,900.00



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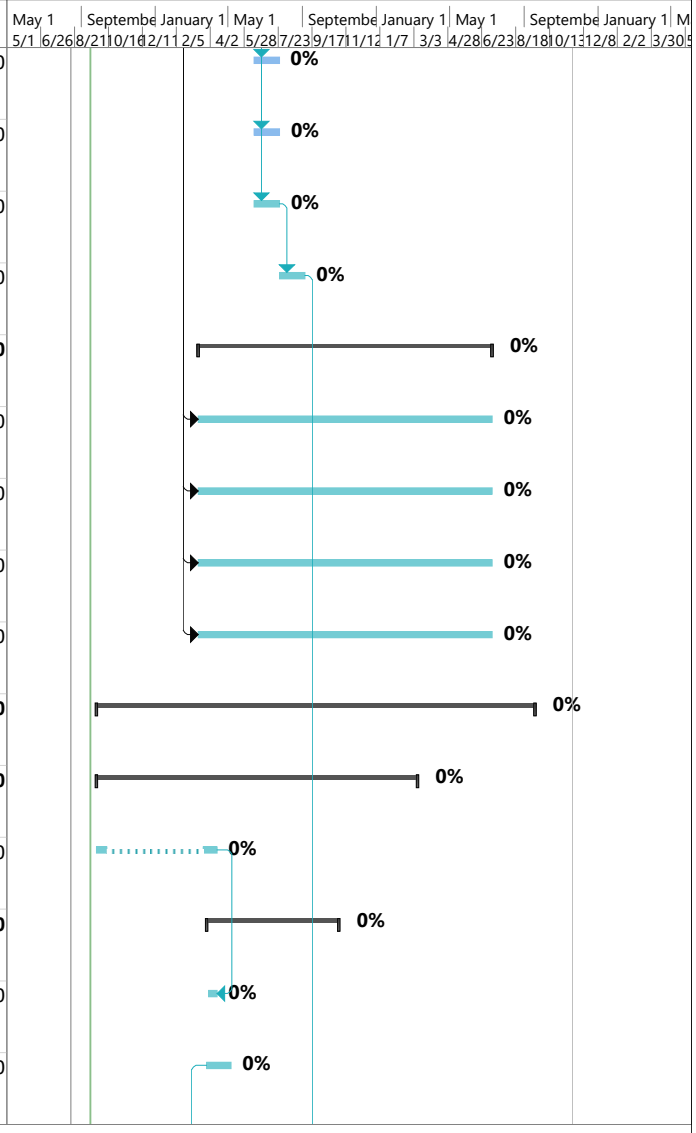
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
61		Graveled area temp power plants	30 days	Tue 6/13/23	Mon 7/24/23	$33,250.00
62		Cantina Slab	30 days	Tue 6/13/23	Mon 7/24/23	$7,200.00
63		Underground Retention Ponds	30 days	Tue 6/13/23	Mon 7/24/23	$75,000.00
64		Landscape Phase 1 (12,000 SF)	30 days	Tue 7/25/23	Mon 9/4/23	$249,548.00
65		**Misc Construction Costs**	**347 days**	**Mon 3/13/23**	**Tue 7/9/24**	**$166,141.00**
66		Contractor Fee	347 days	Mon 3/13/23	Tue 7/9/24	$125,000.00
67		Temporary Facillities	347 days	Mon 3/13/23	Tue 7/9/24	$2,100.00
68		Temporary Utilities	347 days	Mon 3/13/23	Tue 7/9/24	$19,041.00
69		Builders Risk Insurance	347 days	Mon 3/13/23	Tue 7/9/24	$20,000.00
70		**Soundstages**	**505 days?**	**Mon 9/26/22**	**Wed 9/18/24**	**$4,743,605.00**
71		**Stage 1**	**367 days?**	**Mon 9/26/22**	**Fri 3/8/24**	**$4,323,605.00**
72		Remove and replace 9,000 SF of existing floor	30 days	Mon 9/26/22	Wed 4/12/23	$215,256.00
73		**Replace Roof & Walls**	**156 days**	**Mon 3/27/23**	**Mon 10/30/23**	**$2,303,249.00**
74		Add sub-framing as required	10 days	Thu 3/30/23	Wed 4/12/23	$0.00
75		Remove Sheeting	30 days	Mon 3/27/23	Fri 5/5/23	$0.00



Critical, Critical Split, Critical Progress, Task, Split
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Summary, Manual Summary, Project Summary, External Tasks, External Milestone
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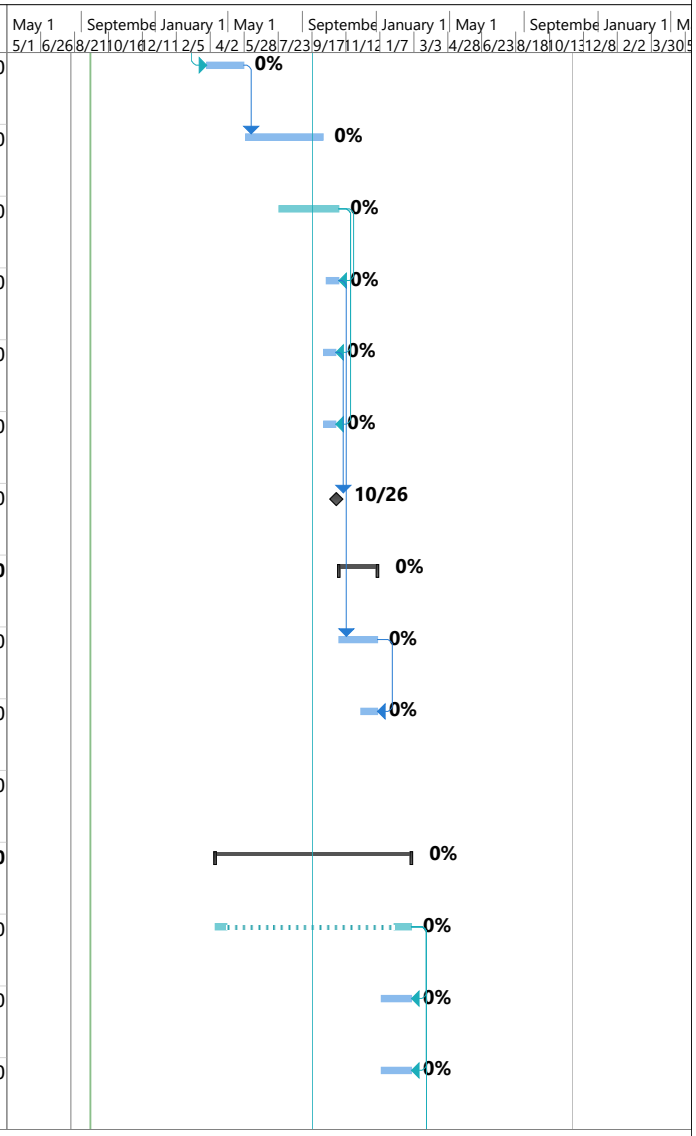
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
76		Modify Steel Structure (panel prep)	45 days	Mon 3/27/23	Fri 5/26/23	$0.00
77		Install 4 Kingspan Insulated panels	92 days	Tue 5/30/23	Wed 10/4/23	$0.00
78		Install 6 interior SIP panels	71 days	Mon 7/24/23	Mon 10/30/23	$0.00
79		Install Duct liner on roof and wall interior	15 days	Tue 10/10/23	Mon 10/30/23	$0.00
80		1 ea - 18' W x 12' H barn door	14 days	Fri 10/6/23	Wed 10/25/23	$0.00
81		3ea - Hollow metal man doors	14 days	Fri 10/6/23	Wed 10/25/23	$0.00
82		Stage 1 COA	1 day	Thu 10/26/23	Thu 10/26/23	$0.00
83		**Mechanical**	**46 days?**	**Tue 10/31/23**	**Tue 1/2/24**	**$624,000.00**
84		HVAC - 150 TNS heating and cooling	46 days	Tue 10/31/23	Tue 1/2/24	$624,000.00
85		Exhaust Fans	20 days	Wed 12/6/23	Tue 1/2/24	$0.00
86		Gas Line (Heating)				$0.00
87		**Electrical**	**232 days**	**Mon 4/10/23**	**Tue 2/27/24**	**$615,100.00**
88		750 KVA Transformer 900 amp, 480V 3P	36 days	Mon 4/10/23	Tue 2/27/24	$615,100.00
89		Main Panel	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
90		Bull Switches	36 days	Tue 1/9/24	Tue 2/27/24	$0.00



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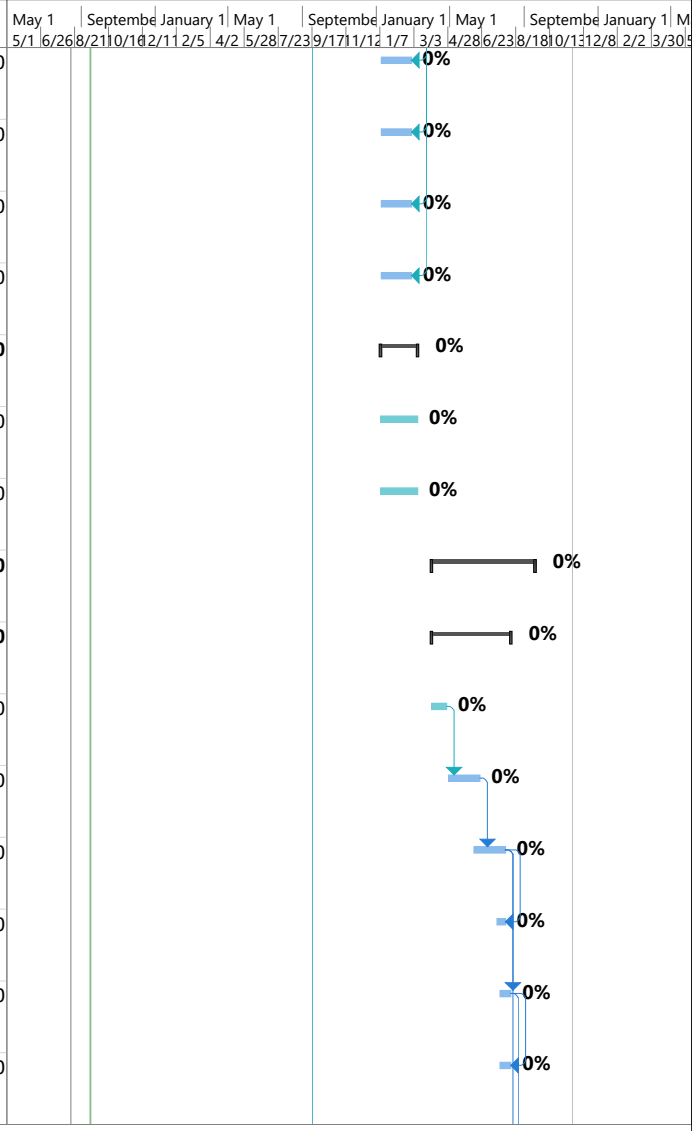
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
91		high bay lighting	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
92		emergency lighting	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
93		ingress/egress, exterior wall pack lighting	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
94		general purpose 120V outlets through out	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
95		**Plumbing**	**45 days**	**Mon 1/8/24**	**Fri 3/8/24**	**$566,000.00**
96		Install Waterline	45 days	Mon 1/8/24	Fri 3/8/24	$20,000.00
97		Fire Sprinkler system	45 days	Mon 1/8/24	Fri 3/8/24	$546,000.00
98		**Stage 2**	**123 days?**	**Mon 4/1/24**	**Wed 9/18/24**	**$420,000.00**
99		**Stage 2 Renovation**	**95 days**	**Mon 4/1/24**	**Fri 8/9/24**	**$420,000.00**
100		Remove Sheet Metal	19 days	Mon 4/1/24	Thu 4/25/24	$0.00
101		Install 4 Kingspan panels	38 days	Mon 4/29/24	Wed 6/19/24	$0.00
102		Install 6 SIP panels	38 days	Mon 6/10/24	Wed 7/31/24	$0.00
103		Install interior Duct liner	10 days	Thu 7/18/24	Wed 7/31/24	$0.00
104		1 ea - 16' W x 14' H Barn Door	14 days	Tue 7/23/24	Fri 8/9/24	$0.00
105		3ea - Hollow metal man doors	14 days	Tue 7/23/24	Fri 8/9/24	$0.00



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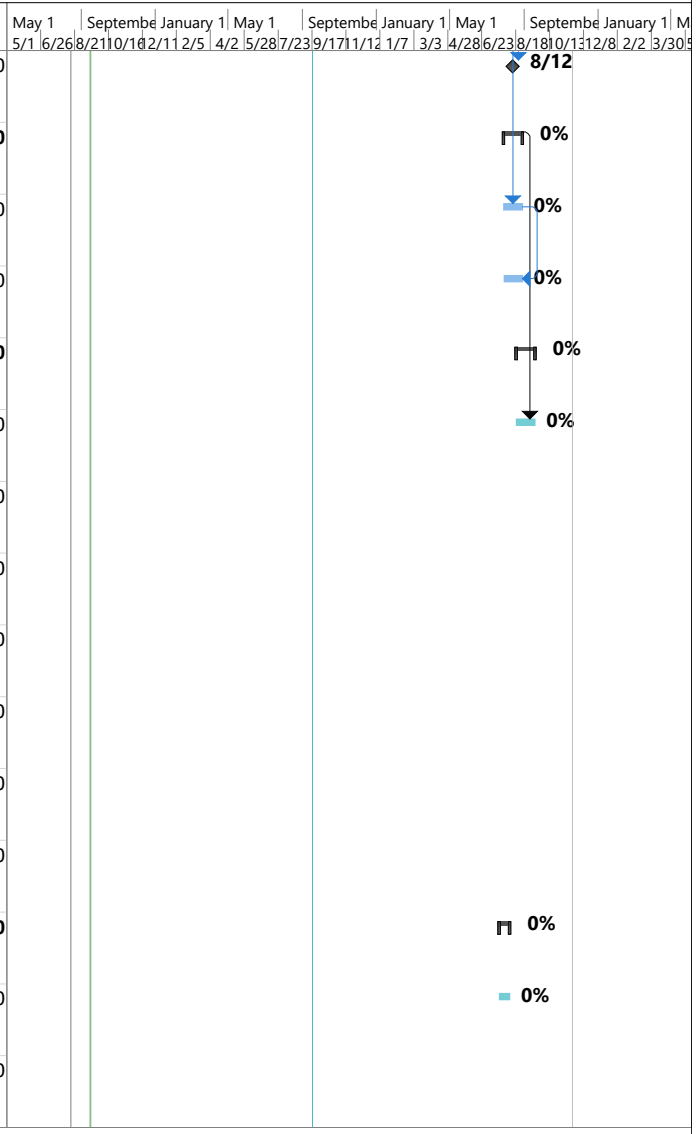
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
106		Stage 2 COA	1 day	Mon 8/12/24	Mon 8/12/24	$0.00
107		**Mechanical**	**23 days**	**Mon 7/29/24**	**Wed 8/28/24**	**$0.00**
108		HVAC - 20 TNS	23 days	Mon 7/29/24	Wed 8/28/24	$0.00
109		Exhaust fans	22 days	Tue 7/30/24	Wed 8/28/24	$0.00
110		**Electrical**	**23 days?**	**Mon 8/19/24**	**Wed 9/18/24**	**$0.00**
111		250 KVA Transformer	23 days	Mon 8/19/24	Wed 9/18/24	$0.00
112		Interior Main				$0.00
113		Bull Switches				$0.00
114		warehouse lighting				$0.00
115		emergency lighting ingress/ egress				$0.00
116		exterior wall pack lighting				$0.00
117		convenient outlets, 220V outlets				$0.00
118		**Plumbing**	**13 days?**	**Mon 7/22/24**	**Wed 8/7/24**	**$0.00**
119		Interior Water Lines/Sink	13 days	Mon 7/22/24	Wed 8/7/24	$0.00
120		Fire Sprinkler System				$0.00



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Critical Progress	Start-only	Baseline Milestone	Project Summary	Inactive Summary
Task	Finish-only	Milestone	External Tasks	Deadline
Split	Duration-only	Summary Progress	External Milestone	

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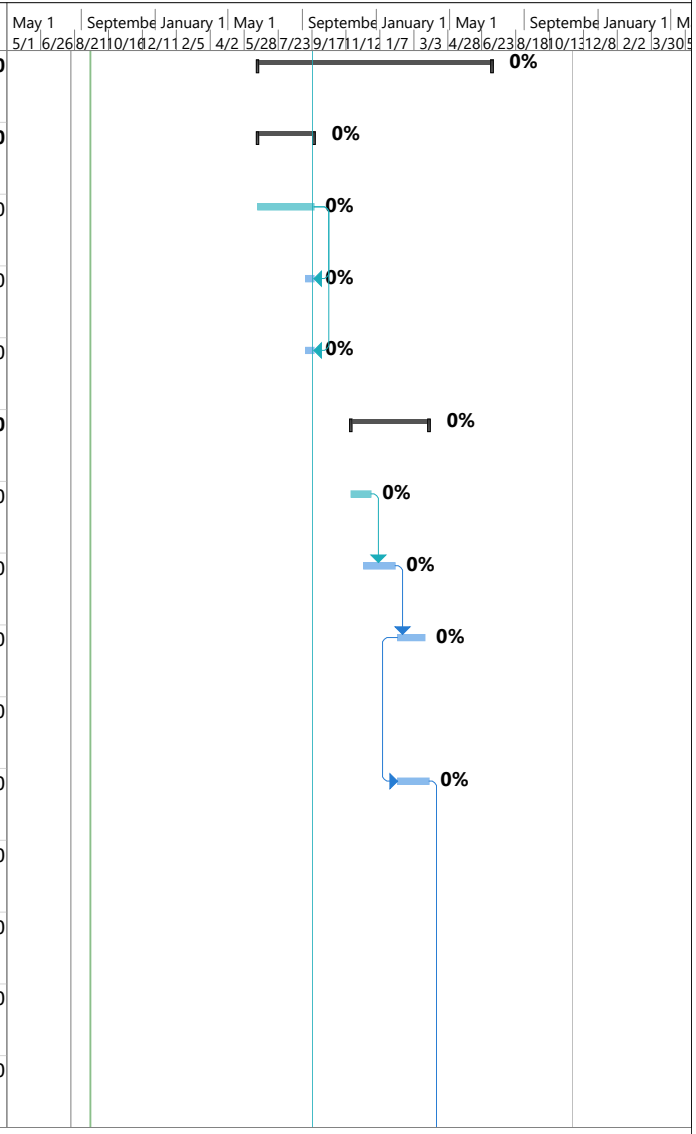
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
121		**Workshop A**	**277 days?**	**Mon 6/19/23**	**Tue 7/9/24**	**$1,846,000.00**
122		**2ea - Concrete Loading docks**	**67 days**	**Mon 6/19/23**	**Tue 9/19/23**	**$208,000.00**
123		concrete approach ramps	67 days	Mon 6/19/23	Tue 9/19/23	$208,000.00
124		hand railing	10 days	Wed 9/6/23	Tue 9/19/23	$0.00
125		dock levelers	10 days	Wed 9/6/23	Tue 9/19/23	$0.00
126		**Workshop A Renovation**	**93 days?**	**Mon 11/20/23**	**Wed 3/27/24**	**$1,638,000.00**
127		Remove existing roof and wall sheeting	25 days	Mon 11/20/23	Fri 12/22/23	$0.00
128		Modify Steel Structure (panel prep)	38 days	Mon 12/11/23	Wed 1/31/24	$0.00
129		Install PBR 26 ga roof sheets	33 days	Mon 2/5/24	Wed 3/20/24	$0.00
130		Install/replace sub-framing				$0.00
131		Install exterior OSB/SIP panels	38 days	Mon 2/5/24	Wed 3/27/24	$0.00
132		Install interior metal wall panels				$0.00
133		install under roof insulation				$0.00
134		Remove wood frame breezeway				$0.00
135		Add metal frame breezeway				$0.00



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136		3ea demising walls in the building				$0.00
137		10 ea Exterior man doors				$0.00
138		6 ea 12' x 1O' Overhead doors				$0.00
139		**Mechanical**	**36 days?**	**Mon 3/25/24**	**Mon 5/13/24**	**$0.00**
140		HVAC - 75 TNS	36 days	Mon 3/25/24	Mon 5/13/24	$0.00
141		Gas (Heating)				$0.00
142		**Electrical**	**36 days?**	**Mon 3/25/24**	**Mon 5/13/24**	**$0.00**
143		Transformer (TBD)	36 days	Mon 3/25/24	Mon 5/13/24	$0.00
144		Interior Electrical Panels				$0.00
145		220V convenience power				$0.00
146		Warehouse lighting				$0.00
147		Emergency lighting ingress/egress				$0.00
148		Exterior lighting				$0.00
149		**Plumbing**	**136 days**	**Mon 1/1/24**	**Mon 7/8/24**	**$0.00**
150		Restrooms	25 days	Mon 1/1/24	Fri 2/2/24	$0.00

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Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
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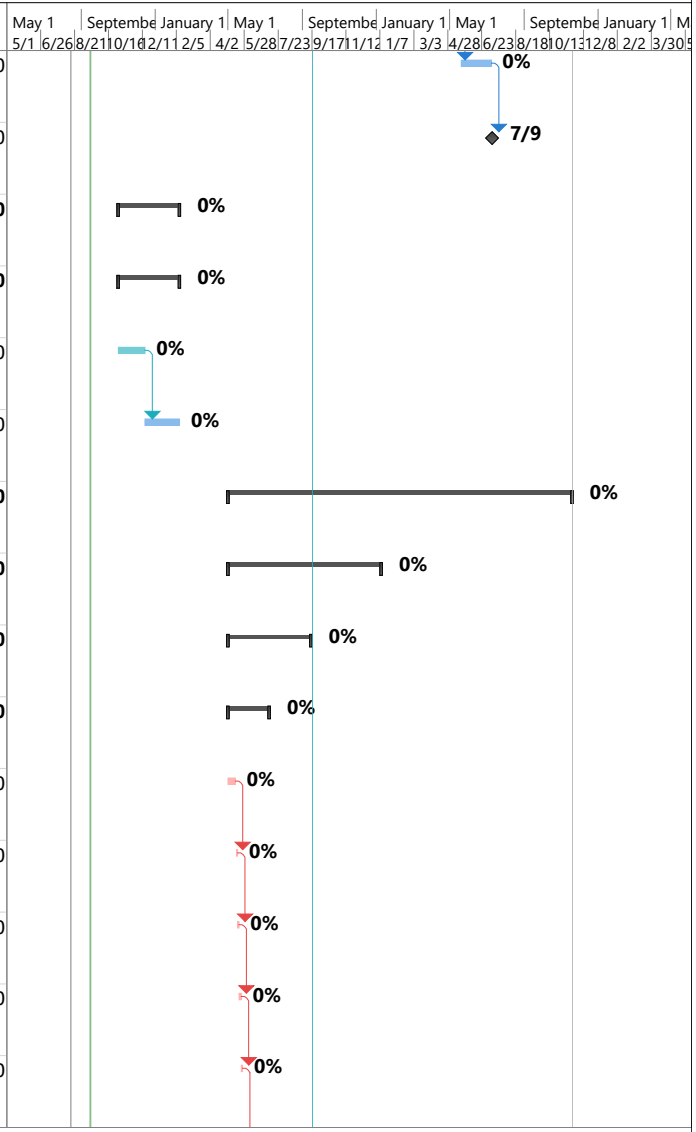
151		Fire sprinkler system	36 days	Mon 5/20/24	Mon 7/8/24	$0.00
152		Workshop A COA	1 day	Tue 7/9/24	Tue 7/9/24	$0.00
153		**Production Office Buildings**	**60 days**	**Tue 11/1/22**	**Thu 2/9/23**	**$91,750.00**
154		**POB 1**	**60 days**	**Tue 11/1/22**	**Thu 2/9/23**	**$91,750.00**
155		Exterior T.I. (TBD)	30 days	Tue 11/1/22	Wed 12/14/22	$45,875.00
156		Interior T.I. (TBD)	30 days	Thu 12/15/22	Thu 2/9/23	$45,875.00
157		**NEW CONSTRUCTION**	**406 days**	**Mon 5/1/23**	**Mon 11/18/24**	**$15,985,000.00**
158		**New Stages 3 & 4**	**181 days**	**Mon 5/1/23**	**Mon 1/8/24**	**$14,000,000.00**
159		**Stage Structural Assembly**	**99 days**	**Mon 5/1/23**	**Thu 9/14/23**	**$7,000,000.00**
160		**Stage 3 Structural Assembly**	**50 days**	**Mon 5/1/23**	**Fri 7/7/23**	**$3,500,000.00**
161		Base Plates	10 days	Mon 5/1/23	Fri 5/12/23	$0.00
162		Prep Modules 1-3	2 days	Mon 5/15/23	Tue 5/16/23	$0.00
163		Assembly Module 1	2 days	Wed 5/17/23	Thu 5/18/23	$0.00
164		Assembly Module 2	2 days	Fri 5/19/23	Mon 5/22/23	$0.00
165		Assembly Module 3	2 days	Tue 5/23/23	Wed 5/24/23	$0.00



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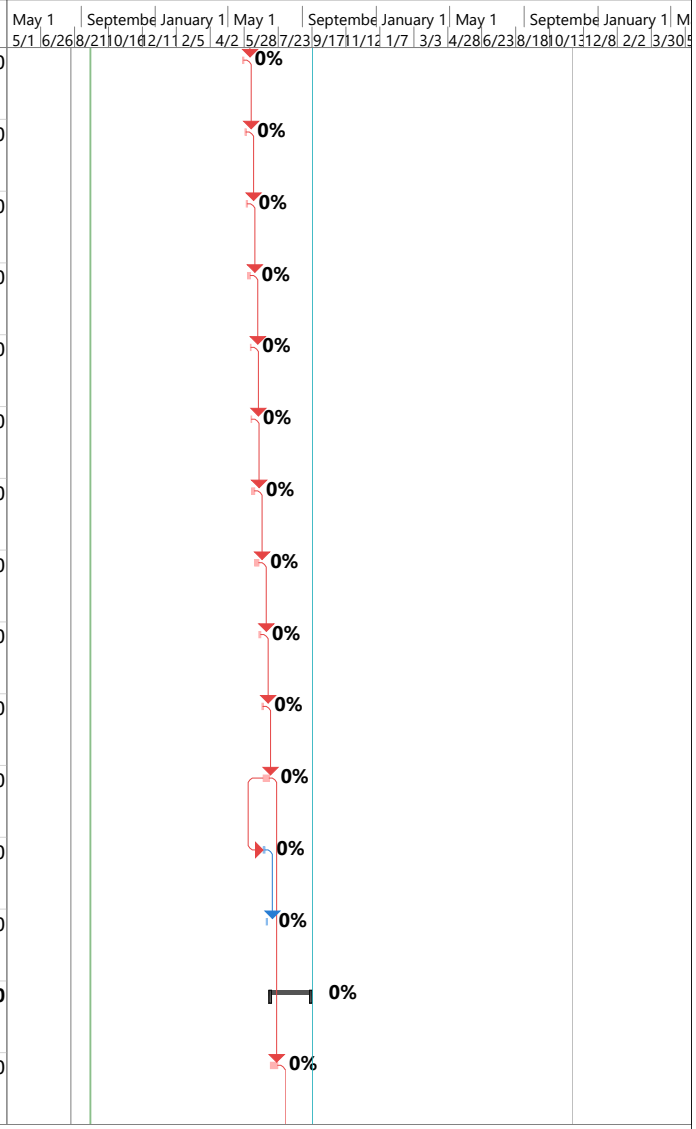
166		Prep Modules 4-5	2 days	Thu 5/25/23	Fri 5/26/23	$0.00
167		Assembly Module 4	2 days	Mon 5/29/23	Tue 5/30/23	$0.00
168		Assembly Module 5	2 days	Wed 5/31/23	Thu 6/1/23	$0.00
169		Assembly Single Frame	3 days	Fri 6/2/23	Tue 6/6/23	$0.00
170		Pulling Roof Module 1-5	1 day	Wed 6/7/23	Wed 6/7/23	$0.00
171		Stage 3 Module Lift	1 day	Thu 6/8/23	Thu 6/8/23	$0.00
172		Purlins, Cables, Braces	3 days	Fri 6/9/23	Tue 6/13/23	$0.00
173		Roof & Insulation & Tension Bars	5 days	Wed 6/14/23	Tue 6/20/23	$0.00
174		Gable End	3 days	Wed 6/21/23	Fri 6/23/23	$0.00
175		Gable Leg Sections	2 days	Mon 6/26/23	Tue 6/27/23	$0.00
176		Wall Panel Installation	8 days	Wed 6/28/23	Fri 7/7/23	$0.00
177		Corners & Gutters	3 days	Wed 6/28/23	Fri 6/30/23	$0.00
178		Weather Sealing	2 days	Mon 7/3/23	Tue 7/4/23	$0.00
179		**Stage 4 Structural Assembly**	**49 days**	**Mon 7/10/23**	**Thu 9/14/23**	**$3,500,000.00**
180		Base Plates	10 days	Mon 7/10/23	Fri 7/21/23	$0.00



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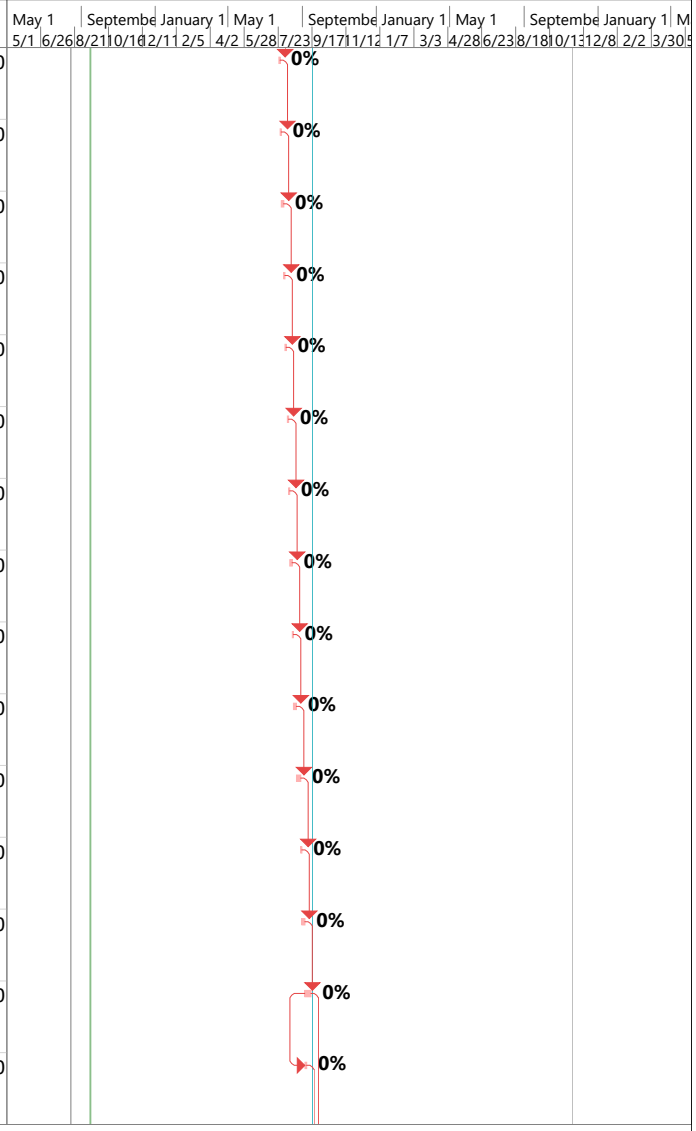
181		Prep modules 1-3	2 days	Mon 7/24/23	Tue 7/25/23	$0.00
182		Assembly Module 1	2 days	Wed 7/26/23	Thu 7/27/23	$0.00
183		Assembly Module 2	2 days	Fri 7/28/23	Mon 7/31/23	$0.00
184		Assembly Module 3	2 days	Tue 8/1/23	Wed 8/2/23	$0.00
185		Prep Modules 4-5	2 days	Thu 8/3/23	Fri 8/4/23	$0.00
186		Assembly Module 4	2 days	Mon 8/7/23	Tue 8/8/23	$0.00
187		Assembly module 5	2 days	Wed 8/9/23	Thu 8/10/23	$0.00
188		Pulling Roof Module 1-5	2 days	Fri 8/11/23	Mon 8/14/23	$0.00
189		Stage 4 Module Lift	2 days	Tue 8/15/23	Wed 8/16/23	$0.00
190		Purlins, Cables, Braces	3 days	Thu 8/17/23	Mon 8/21/23	$0.00
191		Roof Insulation & Tension Bars	5 days	Tue 8/22/23	Mon 8/28/23	$0.00
192		Gable Leg Sections	2 days	Tue 8/29/23	Wed 8/30/23	$0.00
193		Gable End	3 days	Thu 8/31/23	Mon 9/4/23	$0.00
194		Wall Panel Installation	8 days	Tue 9/5/23	Thu 9/14/23	$0.00
195		Corners & Gutters	3 days	Tue 9/5/23	Thu 9/7/23	$0.00



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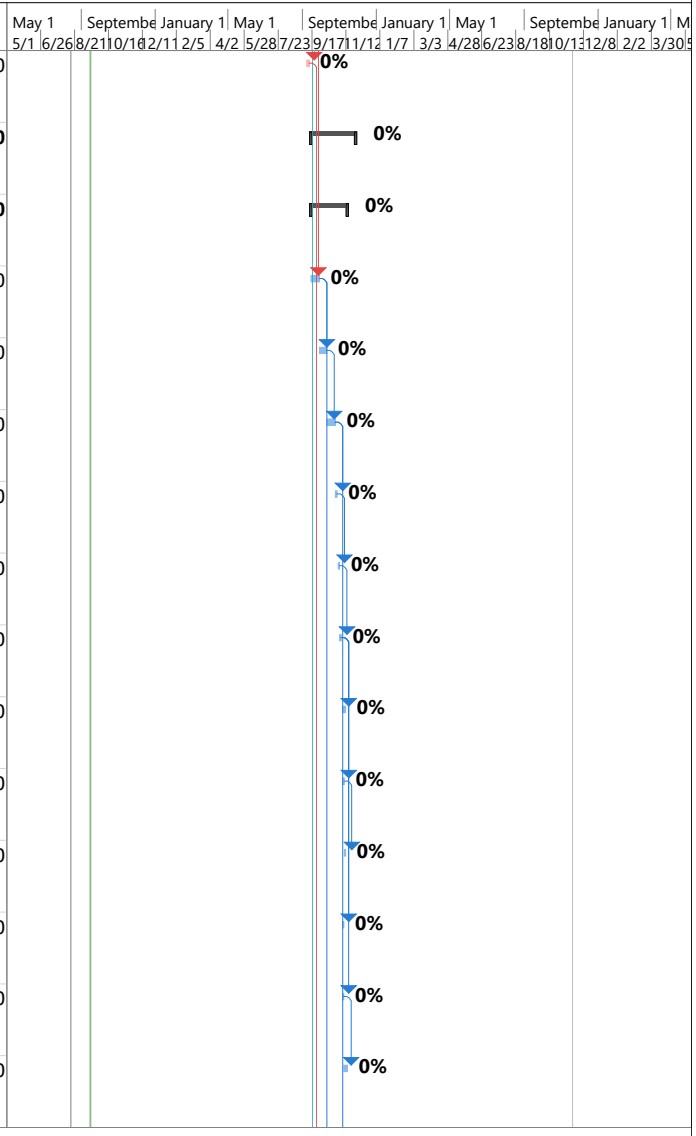
828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
196		Weather Sealing	2 days	Fri 9/8/23	Mon 9/11/23	$0.00
197		**Stage Interior**	**52 days**	**Fri 9/15/23**	**Mon 11/27/23**	**$3,500,000.00**
198		**Stage 3 Interior**	**42 days**	**Fri 9/15/23**	**Mon 11/13/23**	**$1,750,000.00**
199		Stage 3 Flooring	10 days	Fri 9/15/23	Thu 9/28/23	$0.00
200		Stage 3 Plywood	8 days	Fri 9/29/23	Tue 10/10/23	$0.00
201		Acoustic Wall Liner	10 days	Wed 10/11/23	Tue 10/24/23	$0.00
202		Staircases & Emergency Exit Ladders	3 days	Wed 10/25/23	Fri 10/27/23	$0.00
203		Rat Holes	2 days	Mon 10/30/23	Tue 10/31/23	$0.00
204		Elephant Door	3 days	Wed 11/1/23	Fri 11/3/23	$0.00
205		Airlock Vestibules	5 days	Mon 11/6/23	Fri 11/10/23	$0.00
206		Personnel Doors (Exterior)	3 days	Mon 11/6/23	Wed 11/8/23	$0.00
207		Cable Port Guillotines	2 days	Thu 11/9/23	Fri 11/10/23	$0.00
208		Elephant Door Balustrades	2 days	Mon 11/6/23	Tue 11/7/23	$0.00
209		Handrails	2 days	Mon 11/6/23	Tue 11/7/23	$0.00
210		Stage 3 Floor Painting	4 days	Wed 11/8/23	Mon 11/13/23	$0.00



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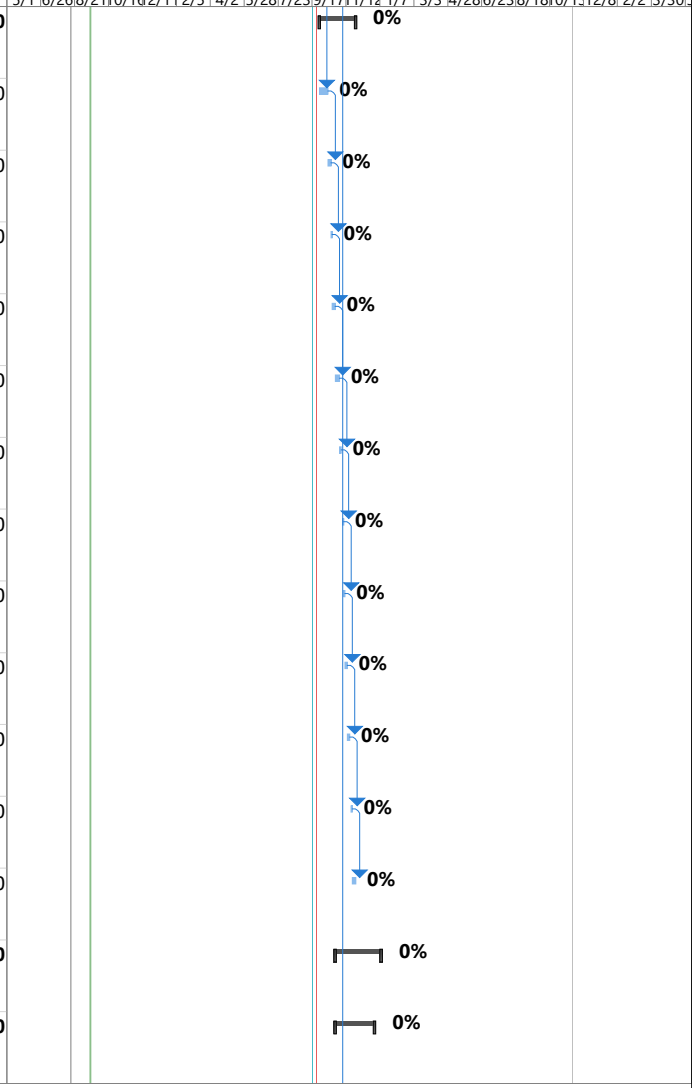
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
211		**Stage 4 Interior**	**42 days**	**Fri 9/29/23**	**Mon 11/27/23**	**$1,750,000.00**
212		Stage 4 Flooring	10 days	Fri 9/29/23	Thu 10/12/23	$0.00
213		Stage 4 Plywood	3 days	Fri 10/13/23	Tue 10/17/23	$0.00
214		Acoustic Wall Liner	2 days	Wed 10/18/23	Thu 10/19/23	$0.00
215		Staircases & Emergency Exit Ladders	3 days	Fri 10/20/23	Tue 10/24/23	$0.00
216		Rat Holes	5 days	Wed 10/25/23	Tue 10/31/23	$0.00
217		Elephant Door	3 days	Wed 11/1/23	Fri 11/3/23	$0.00
218		Airlock Vestibules	2 days	Mon 11/6/23	Tue 11/7/23	$0.00
219		Personnel Doors (Exterior)	2 days	Wed 11/8/23	Thu 11/9/23	$0.00
220		Cable Port Guillotines	2 days	Fri 11/10/23	Mon 11/13/23	$0.00
221		Elephant Door Balustrades	4 days	Tue 11/14/23	Fri 11/17/23	$0.00
222		Handrails	2 days	Mon 11/20/23	Tue 11/21/23	$0.00
223		Stage 4 Floor Painting	4 days	Wed 11/22/23	Mon 11/27/23	$0.00
224		**Stage Fit Out**	**54 days**	**Wed 10/25/23**	**Mon 1/8/24**	**$3,500,000.00**
225		**Stage 3 Fit Out**	**47 days**	**Wed 10/25/23**	**Thu 12/28/23**	**$1,750,000.00**



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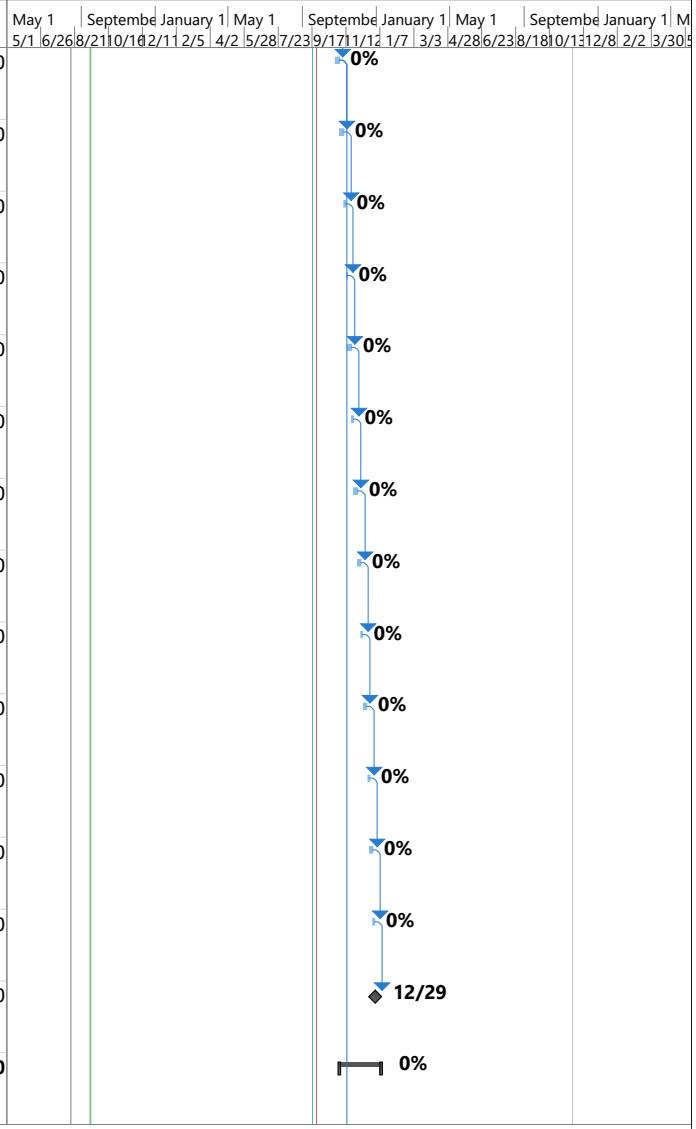
828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
226		House Lighting	5 days	Wed 10/25/23	Tue 10/31/23	$0.00
227		Bull Switches	5 days	Wed 11/1/23	Tue 11/7/23	$0.00
228		Heating Control	3 days	Wed 11/8/23	Fri 11/10/23	$0.00
229		Signage	1 day	Mon 11/13/23	Mon 11/13/23	$0.00
230		Electrical Infrastructure	5 days	Tue 11/14/23	Mon 11/20/23	$0.00
231		MV Cable Trench/Duct Installation	3 days	Tue 11/21/23	Thu 11/23/23	$0.00
232		Transformer Pad	5 days	Fri 11/24/23	Thu 11/30/23	$0.00
233		Transformer Installation	3 days	Fri 12/1/23	Tue 12/5/23	$0.00
234		MV Electrical Connection/Installation	3 days	Wed 12/6/23	Fri 12/8/23	$0.00
235		HVAC Installation	5 days	Mon 12/11/23	Fri 12/15/23	$0.00
236		Fire Detection System	3 days	Mon 12/18/23	Wed 12/20/23	$0.00
237		Red Light & Bell	3 days	Thu 12/21/23	Mon 12/25/23	$0.00
238		Mesh Installation	3 days	Tue 12/26/23	Thu 12/28/23	$0.00
239		Stage 3 COA	1 day	Fri 12/29/23	Fri 12/29/23	$0.00
240		**Stage 4 Fit Out**	**49 days**	**Wed 11/1/23**	**Mon 1/8/24**	**$1,750,000.00**



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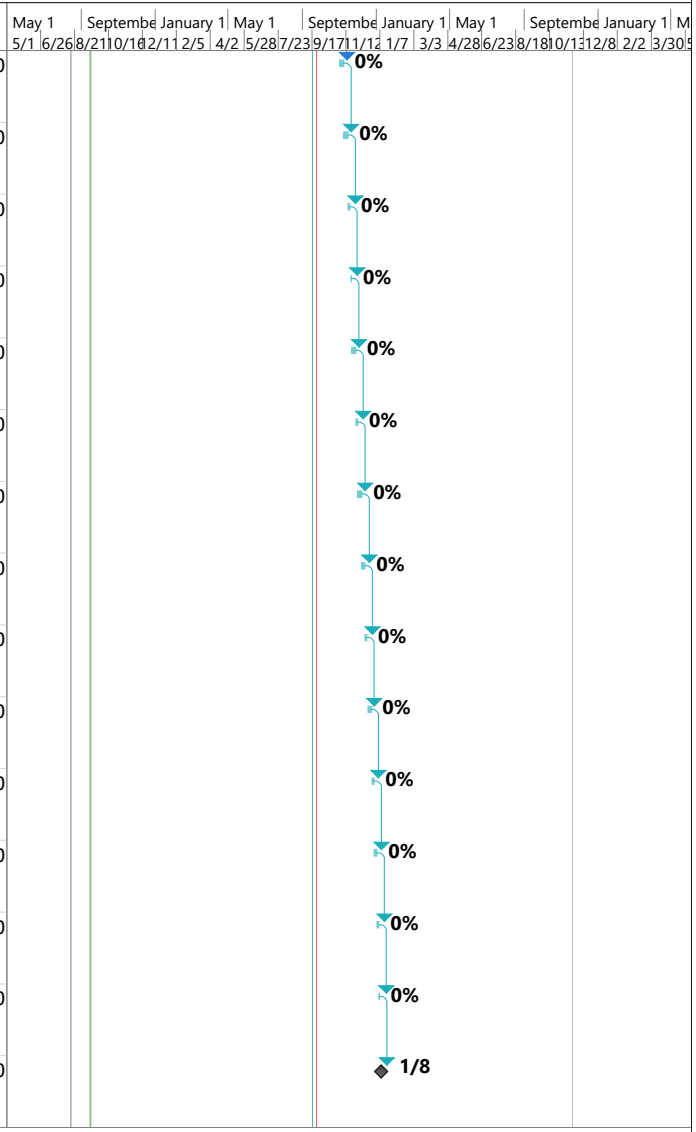
Split	Duration-only	Summary Progress	External Milestone	

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
241		House Lighting	5 days	Wed 11/1/23	Tue 11/7/23	$0.00
242		Bull Switches	5 days	Wed 11/8/23	Tue 11/14/23	$0.00
243		Heating Control	3 days	Wed 11/15/23	Fri 11/17/23	$0.00
244		Signage	1 day	Mon 11/20/23	Mon 11/20/23	$0.00
245		Electrical Infrastructure	5 days	Tue 11/21/23	Mon 11/27/23	$0.00
246		MV Cable Trench/Duct Installation	3 days	Tue 11/28/23	Thu 11/30/23	$0.00
247		Transformer Pad	5 days	Fri 12/1/23	Thu 12/7/23	$0.00
248		Transformer Installation	3 days	Fri 12/8/23	Tue 12/12/23	$0.00
249		MV Electrical Connection/Installation	3 days	Wed 12/13/23	Fri 12/15/23	$0.00
250		HVAC Installation	5 days	Mon 12/18/23	Fri 12/22/23	$0.00
251		Fire Detection System	3 days	Mon 12/25/23	Wed 12/27/23	$0.00
252		Red Light & Bell	3 days	Thu 12/28/23	Mon 1/1/24	$0.00
253		Mesh Installation	3 days	Tue 1/2/24	Thu 1/4/24	$0.00
254		Mesh Installation	1 day	Fri 1/5/24	Fri 1/5/24	$0.00
255		Stage 4 COA	1 day	Mon 1/8/24	Mon 1/8/24	$0.00



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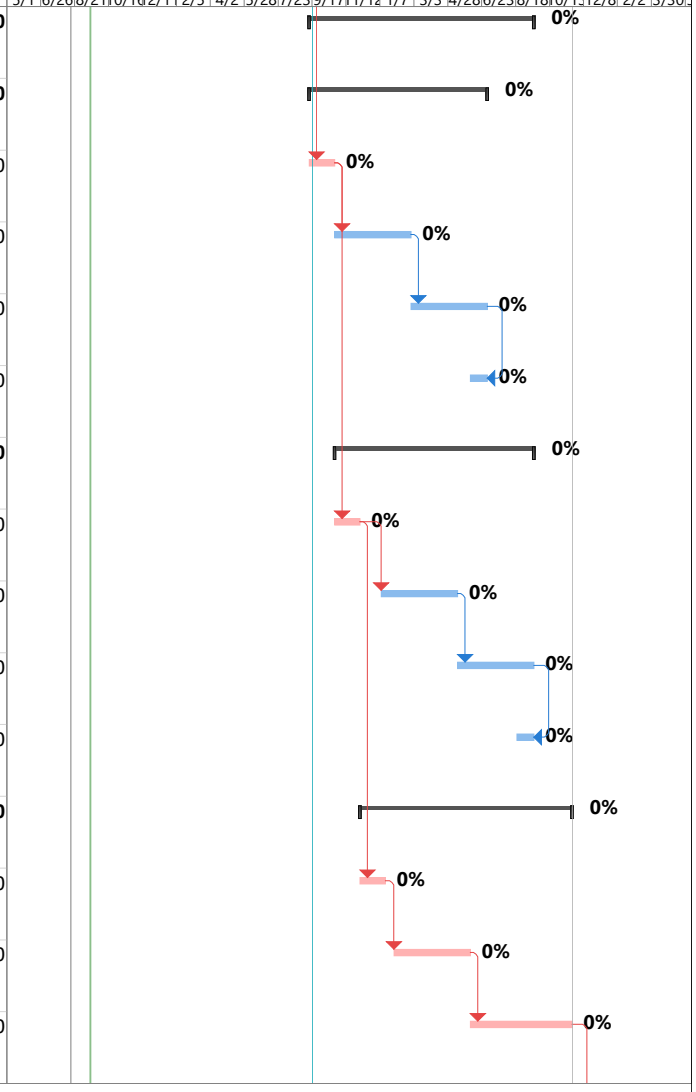
828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
256		**New Production Office Buildings 2 & 3**	**265 days**	**Tue 9/12/23**	**Mon 9/16/24**	**$1,280,000.00**
257		**POB 2**	**210 days**	**Tue 9/12/23**	**Mon 7/1/24**	**$640,000.00**
258		Floorplans (TBD)	30 days	Tue 9/12/23	Mon 10/23/23	$0.00
259		MEP (TBD)	90 days	Tue 10/24/23	Mon 2/26/24	$0.00
260		Construction (TBD)	90 days	Tue 2/27/24	Mon 7/1/24	$0.00
261		IT / Telco	20 days	Tue 6/4/24	Mon 7/1/24	$0.00
262		**POB 3**	**235 days**	**Tue 10/24/23**	**Mon 9/16/24**	**$640,000.00**
263		Floorplans (TBD)	30 days	Tue 10/24/23	Mon 12/4/23	$0.00
264		MEP (TBD)	90 days	Tue 1/9/24	Mon 5/13/24	$0.00
265		Construction (TBD)	90 days	Tue 5/14/24	Mon 9/16/24	$0.00
266		IT / Telco	20 days	Tue 8/20/24	Mon 9/16/24	$0.00
267		**New Creative Office Building**	**250 days**	**Tue 12/5/23**	**Mon 11/18/24**	**$640,000.00**
268		Floorplans (TBD)	30 days	Tue 12/5/23	Mon 1/15/24	$0.00
269		MEP (TBD)	90 days	Tue 1/30/24	Mon 6/3/24	$0.00
270		Construction (TBD)	120 days	Tue 6/4/24	Mon 11/18/24	$0.00



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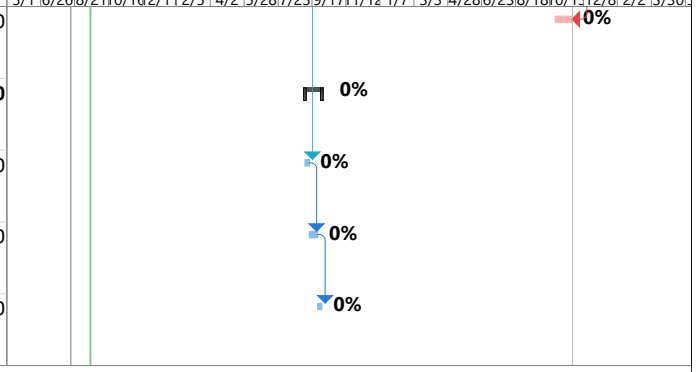
828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
271		IT / Telco	20 days	Tue 10/22/24	Mon 11/18/24	$0.00
272		**Guard Shacks**	**20 days**	**Tue 9/5/23**	**Mon 10/2/23**	**$65,000.00**
273		Floorplans	5 days	Tue 9/5/23	Mon 9/11/23	$0.00
274		MEP	10 days	Tue 9/12/23	Mon 9/25/23	$0.00
275		Construction	5 days	Tue 9/26/23	Mon 10/2/23	$65,000.00



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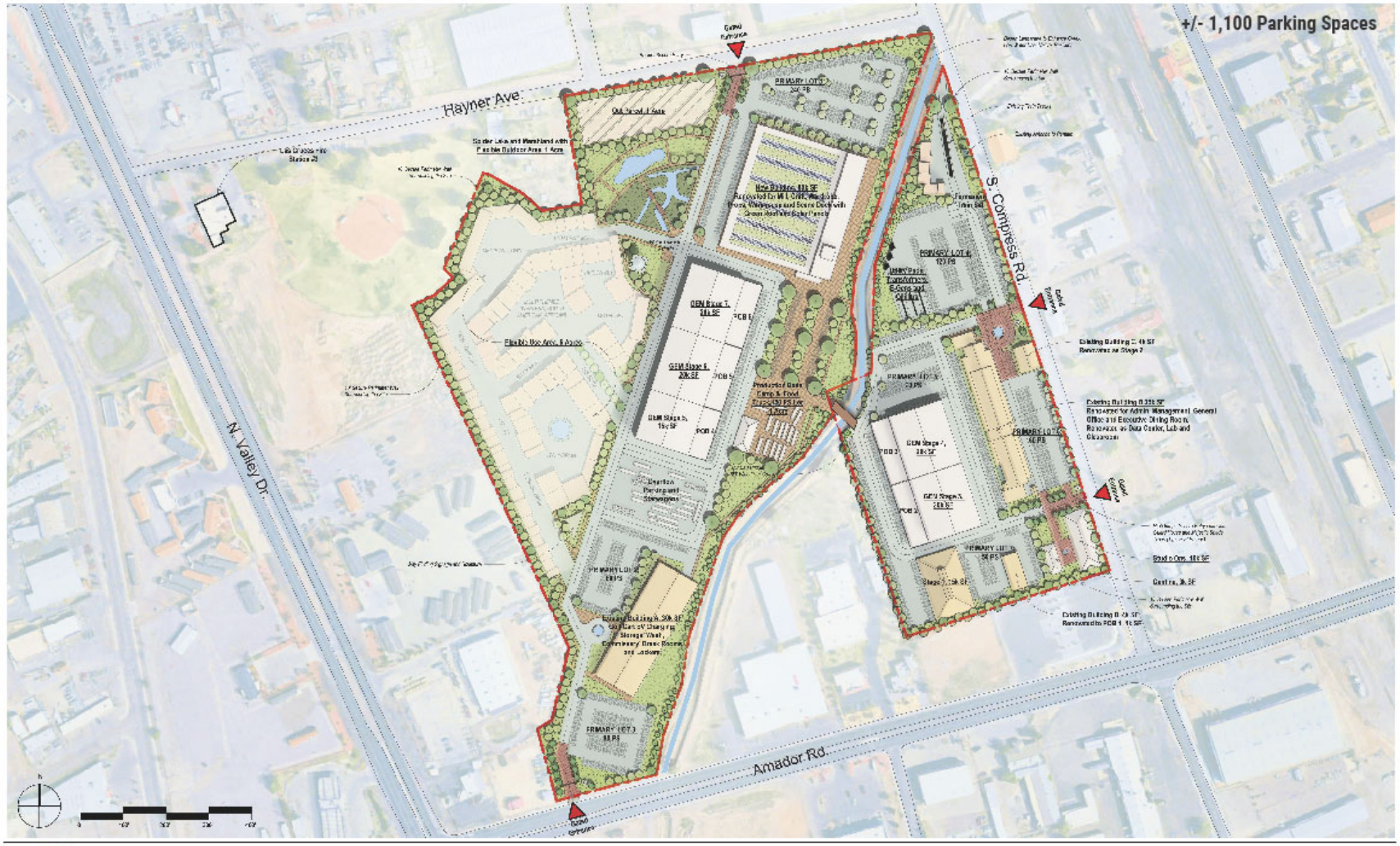
16 Conceptual Site Plans

CONCEPTUAL SITE PLAN



Online Land Planning

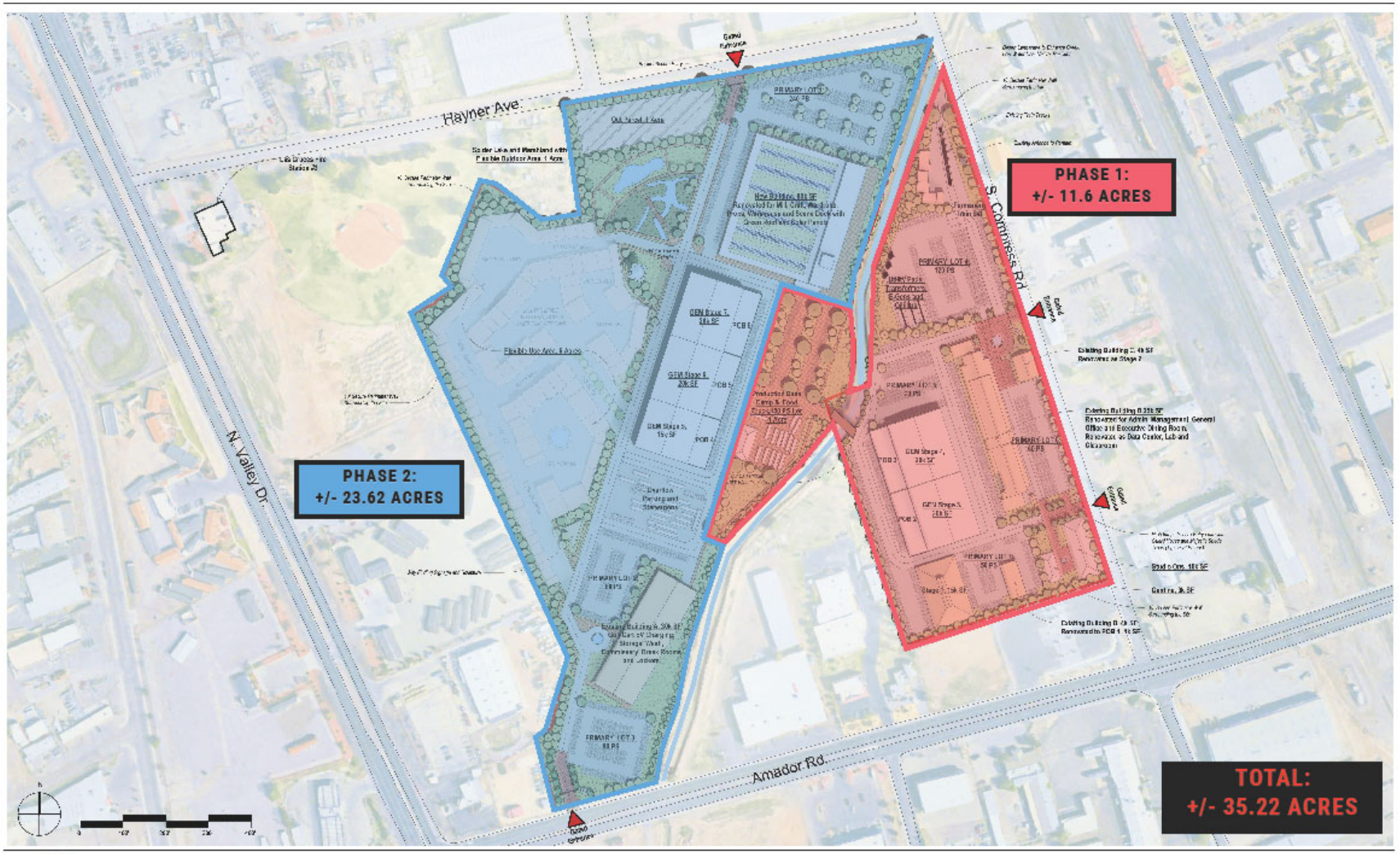
GIANT ENTERTAINMENT MANAGEMENT INC.

828 STUDIOS | LAS CRUCES, NEW MEXICO

SEPTEMBER 02 2022 2

CONCEPTUAL PERSPECTIVE

PHASING PLAN



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SEPTEMBER 02 2022 4

18 Construction Drawings

Placeholder pending architect agreement & scope.

Confirmation needed from GC re: 70 days ending 1/27/23 (Currently showning 70 days from 9/26/22 at a 5 day work week with two days off for Thanksgiving and two weeks off for Christmas/New Years)

19 Demo Permit

Confirm if demo permit can be obtained prior to completion of DD's.

25 Traffic Circulation Plan

CIRCULATION PLAN

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•

26 Permits

Permit cost based on Highland Enterprises summarized estimate and not yet broken out by category.

27 Grading Permit

All permits, starting with grading, reflected in a 30 day window after completion of CD's

82 Stage 1 COA
Stage 1 Certificate Of Occupancy placeholder pending confirmation.

88 750 KVA Transformer 900 amp, 480V 3P
Interior power distribution schedule currently reflected in Task #82 and not yet broken out individually.

106 Stage 2 COA
Stage 2 Certificate Of Occupancy placeholder pending confirmation

107 Mechanical
Stage 2 Mechanical assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".

110 Electrical
Stage 2 Electrical assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".

111 250 KVA Transformer
Interior electrical installation currently reflected in Task #100; not broken out by task numbers.

118 Plumbing
Stage 2 Plumbing assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".

120 Fire Sprinkler System
Stage 2 Fire Sprinkler System installation requirements TBD

126 Workshop A Renovation
WS-A Renovation cost includes subcategories (Task #122-#133)

139 Mechanical
Workshop A Mechanical assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"

142 Electrical
Workshop A Electrical assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"

143 Transformer (TBD)
Workshop interior electrical installation currently reflected in Task#131 and not broken out by task.

149 Plumbing
Workshop A Plumbing assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"

152 Workshop A COA
Workshop A COA placeholder pending confirmation

153 Production Office Buildings
POB 1 T.I.'s TBD

157 NEW CONSTRUCTION
All new construction tasks TBD pending design.

257 POB 2
POB cost and schedule placeholder pending design

262 POB 3
POB 3 cost and schedule placeholder pending design

272 Guard Shacks
Guard Shack schedule TBD

HIGHLAND ENTERPRISES, INC.

General Contractors • Lic. No. 4460 MARK HETTINGA , PRESIDENT
Labor Registration No. 0036820050601
P.O. BOX 2409 Las Cruces, NM 88004
Phone (575) 524-3551 Fax (575) 526-0835
Email – hei@highlandnm.com

Budgetary Estimate No. One Date Septembe 8, 2022

Project 828 Studios Renovations Location 111 S. Compress Rd Las Cruces, NM 88005

To: 828 Studios

Budgetary Estimate

This is a budgetary estimate and is preliminary in nature. This estimate represents our best estimation of the project based on our interpretation the Customer's ideas, commentsand available information. This is not a firm fixed price. A firm fixed price may be offered upon a fully developed set of plans that has been approved by the City of Las Cruces.

Scope of Work

This Scope of Work is limited to Phase 1 which pertains to the following:

- Removal of Trash and debris from 8 acre portion of site
- Removal of large piles of volcanic rock. Rock is to be placed on adjacent lot
- Removal of existing concrete structures
- Construction of Parking Lots and roadways as described
- Renovation of large and tall building to become Stage 1
- Renovation of long building to become Work Shop
- Renovation of metal building to become Stage 2
- Renovation of existing Administration building to become POB 1

Plan Development Requirements

- Architectural and Engineering fees for:

Demolition plans
Site Plan Floor Plans
Elevation Views
Structural Foundation plans
Structural Building Plans
Plumbing plans
HVAC plans
Electrical plans
Fire Protection plans

- Contractor Design/Build Fee
- Topographical Survey
- Geo Technical Study
- Storm Water Pollution Prevention Plan

General Requirements

- Bond (add 2% to estimate total if required)
- Building Permit fees
- Builder's Risk Insurance
- Temporary Facilities
- Temporary Utilities

Demolition / Site Clean Up

- Tree removal
- Removal of Existing stock piles of volcanic rock to Phase 2
- Removal of tires

- Removal of trash and debris
- Removal of RV trailer
- Removal of building contents Stage 1
- Removal of building contents Stage 2
- Removal of building contents Work Shop
- Clean and expose RR Tracks
- Demolition - Existing above grade concrete structures
- Demo Bagging equipment at Work Shop

Site Work

- Materials testing
- Access road to Stage 1 and Work Shop
- Construction of remaining site roadways (Phase 2)
- Asphalt Parking - Lot 4
- Asphalt Parking - Lot 5
- Asphalt Parking Work Shop
- Asphalt Parking - Lot 6
- Asphalt Parking - Stage 1 Lot
- Asphalt Parking - POB Lots 2&3
- Graveled area for Chiller, Satellite Dishes, Generators
- Cantina Slab
- Landscape Phase 1 (12,000 SF)
- Landscape Phase 2 (35,990 SF)
- Phase 1 - Underground Retention Ponds
- Phase 2 - Underground Retention Ponds

Renovation of Sound Stage 1

- Remove and replace 9,000 SF of existing floor
- Remove existing sheeting on roof and walls
- Add sub-framing as required to receive new exterior and interior panel products
- Replace exterior sheeting with 4" Kingspan Insulated panels
- Install 6" SIP panels, roof and walls, on interior of building
- Install Duct liner on roof and walls on interior of the building
- 1 ea - 18' wide by 12' tall, bi-parting, insulated door
- 3ea - Hollow metal man doors
- Plumbing - gas piping
- HVAC - 150 TNS heating and cooling, ventilation fans, gas
- Electrical - 750 KVA, 900 amp, 480V 3 phase service, distribution transformers and panel boards at 6 places around the building, high bay lighting, emergency lighting, ingress/egress, exterior wall pack lighting, general purpose 120V outlets through out
- Fire Sprinkler system

Renovate Work Shop - 350' x 72' x 12' Metal Building

- Remove existing roof and wall sheeting
- Install PBR 26 ga roof sheets
- Install/replace/repair sub-framing as required
- Install OSB/SIP panels at exterior walls
- Install metal wall panels on interior side of SIP panels
- Insulate roof with vinyl backed fiberglass insulation
- Remove existing wood framing structure (Breeze Way) and replace with metal building framing
- 3ea demising walls in the building
- 10 ea Exterior man doors
- 6 ea 12' x 10' Overhead doors
- 2ea - Construct Loading docks with concrete approach ramps, hand railing, dock levelers

- HVAC - 75 TNS
- Plumbing - Restrooms, gas
- Electrical - Distribution transformers and panel boards, warehouse lighting, emergency lighting ingress/ egress, exterior wall pack lighting, convenient outlets, 220V outlets
- Fire Sprinkler system

Renovate Stage 2 - 3,750 SF

- Remove existing roof and wall sheeting
- Replace exterior sheeting with 4'' Kingspan Insulated panels
- Install 6'' SIP panels, roof and walls, on interior of building
- Install Duct liner on roof and walls on interior of the building
- 1 ea - 16' wide by 14' tall, bi-parting, insulated door
- 3ea - Hollow metal man doors
- HVAC - 20 TNS, ventilation fans
- Electrical - Distribution transformers and panel boards, warehouse lighting, emergency lighting ingress/ egress, exterior wall pack lighting, convenient outlets, 220V outlets

Misc. Buildings

- Studio Ops Building (Generic SF Price $160.00/SF)
- Renovate POB 1 - make repairs and minor modifications (Generic SF Price $25.00/SF)
- Stages 3&4 POB 2 & 3 - ???
- 2 ea Pre-manufactured Guard House
- Proposed buildings at north end of RR tracks ???

Estimated Cost - Please Refer to Breakdown Sheet Attached

Exclusions / Assumptions:

- Assumes existing building foundations and slabs are suitable for intended purposes
- Assumes existing metal building frames, joist, rafters are structurally sufficient for intended use
- Excludes Development and Impact fees
- Excludes Traffic Studies
- Excludes Flood Plain Studies
- Excludes Site Survey (To be provided by Owner)
- Excludes Mobilization / Demobilization charges
- Excludes City induced improvements along Compress Rd. i.e. sidewalks, bike paths, traffic signage etc.
- Excludes underground unforeseen conditions - buried slabs, footings, basements, unknown utilities
- Excludes removal/abatement of any hazardous materials that may be found on site
- Excludes removal of existing utilities
- Excludes existing concrete slabs on site
- Excludes retaining walls near Workshop
- Excludes any utility extensions - Water, sewer, electrical, gas
- Excludes camera, surveillance systems, security systems, telephone systems, fiber optics
- Excludes repair or alteration of existing footings
- Excludes filling vent pipes with concrete

Respectfully submitted

HIGHLAND ENTERPRISES, INC.

By

September 8, 2022
Highland Enterprises, Inc.
hei@highlandnm.com

828 Studios
Budgetary Estimate 1

Phase 1 8 Acres	Qty	unit	Budget	Phase 1	Phase 2
PLAN DEVELOPMENT REQUIREMENTS					
Archictectural Fees			$ 515,000.00	$ 515,000.00	
Contractor Design/Build Fee	1		$ 125,000.00	$ 125,000.00	
Topo Survey	1		$ 9,100.00	$ 9,100.00	
Geo Tech Report	1		$ 8,000.00	$ 8,000.00	
Storm Water Pollution Prevention Plan	1		$ 7,000.00	$ 7,000.00	
GENERAL REQUIREMENTS					
Bond			???	???	
Building Permit	1		$ 103,500.00	$ 103,500.00	
Development/ Impact Fees	1		???	???	
Insurance Builder's Risk	1		$ 20,000.00	$ 20,000.00	
Temporary Facilities	1		$ 2,100.00	$ 2,100.00	
Temporary Utilities	1		$ 19,041.00	$ 19,041.00	
DEMOLITION /SITE CLEAN UP					
Tree Removal	22	EA	$ 52,096.00	$ 52,096.00	
Removal of volcanic rock to Phase 2	2,490	CY	$ 166,000.00	$ 166,000.00	
Tire Removal	1	LS	$ 1,500.00	$ 1,500.00	
Misc Trash	1	LS	$ 18,226.00	$ 18,226.00	
RV Trailer	1	LS	$ 2,700.00	$ 2,700.00	
Stage 1 Clean Out	1	LS	$ 8,650.00	$ 8,650.00	
Stage 2 Clean Out	1	LS	$ 37,100.00	$ 37,100.00	
Work Shop Clean Out	1	LS	$ 30,000.00	$ 30,000.00	
Clean Gravel at RR Tracks	1	LS	$ 22,601.00	$ 22,601.00	
Demo above grade concrete Structures	1	LS	$ 44,830.00	$ 44,830.00	
Demo Bagging Equipment	1	LS	$ 6,700.00	$ 6,700.00	
SITE WORK					
Materials Testing	1		$ 7,000.00	$ 7,000.00	
Site Security Systems	1		???	???	
Utility Extension Water	1		???	???	
Utility Extension Sewer	1		???	???	
Utility Extension Gas	1		???	???	
Utility Extension Electric	1		???	???	
Utility Extension Fiber Optic	1		???	???	
Site Rough Grading	???	CY	???	???	???
Access Road ST1 & Work Shop	3,460	SY	$ 304,790.00	$ 304,790.00	
Remaining Access Roads	47,144	SY	$ 203,000.00		$ 203,000.00
Asphalt paved Parking Lot Parking Lot - Lot 4	3,280	SY	$ 159,100.00		$ 159,100.00
Asphalt paved Parking Lot - Lot 5	3,155	SY	$ 167,015.00	$ 167,015.00	
Asphalt paved Parking Lot - Work Shop	1,694	SY	$ 93,144.00	$ 93,144.00	
Asphalt paved Parking Lot - Lot 6	3,280	SY	$ 172,715.00	$ 172,715.00	
Asphalt paved Parking Lot - Stage 1 Lot	1,509	SY	$ 83,328.00	$ 83,328.00	$ -
Asphalt Paved Parking Lot -POB Lots 2&3	2,162	SY	$ 119,900.00		$ 119,900.00
Graveled Lot for Chillers, Satellites, Generators	4,646	SY	$ 33,250.00		$ 33,250.00
Cantina Slab	950	SF	$ 7,200.00		$ 7,200.00
Landscape	47,990	SF	$ 249,548.00	$ 62,387.00	$ 187,161.00
Area Adjacent to East Side to Stage 3&4	6,746	SF	???		???
Phase 1 Underground Storm Retention	2	EA	$ 575,000.00	$ 575,000.00	
Phase 2 Underground Storm Retention	2	EA	$ 575,000.00		$ 575,000.00

September 8, 2022
Highland Enterprises, Inc.
hei@highlandnm.com

828 Studios
Budgetary Estimate 1

SOUND STAGE 1 RENOVATION					
Floor - Demo and Replace	9,000	SF	$ 215,256.00	$ 215,256.00	
Remove existing wall sheets, Replace with King Span Panels Install SIPS Panels Interior Walls and Roof Install Duct Liner	32,000	SF	$ 2,303,249.54	$ 2,303,249.54	
18' wide Bi-parting door	1	EA			
Holow Metal Man Doors	3	EA			
Plumbing	15,600	SF	$ 20,000.00	$ 20,000.00	
HVAC 150 TNS	15,600	SF	$ 624,000.00	$ 624,000.00	
Electrical 750 KVA, 900 amp, 3Ph Service	15,600	SF	$ 615,100.00	$ 615,100.00	
Fire Sprinkler System w/ booster pump	15,600	SF	$ 546,000.00	$ 546,000.00	

WORK SHOP RENOVATION					
Work Shop Bldg 350' x 72' x 12	25,200	SF	$ 1,638,000.00	$ 1,638,000.00	
Loading Dock	2	EA	$ 208,000.00	$ 208,000.00	
STAGE 2 RENOVATION					
Stage 2 Bldg 50'x75'x14'	3,750	SF	$ 420,000.00	$ 420,000.00	

MISC. BUILDINGS					
Studio Ops Bldg	4,000	SF	$ 640,000.00		$ 640,000.00
POB 1 Building Renovate	3,670	SF	$ 91,750.00	$ 91,750.00	
Stages 3,4 POB 2,3	62,962	SF	???		???
Guard Shacks	2	EA	$ 65,000.00	$ 65,000.00	
Proposed Train Set Buildings	4,901	SF	???		???
			Total Budget So Far	Phase 1	Phase 2 So Far
			$ 11,335,489.54	$ 9,410,878.54	$ 1,924,611.00

8.1875% NMGR Tax $ 770,515.68

$ 10,181,394.22 Phase 1 w/ tax

828 Productions Financial History Description

828 Productions, LLC is a start up with no prior financial data. The business plan and projections submitted in this application are the financial information that is currently available.

828 PRODUCTIONS

100 S. Church St.
Las Cruces,
NM 88001

LEDA Application

Job Creation Additional Information

The current LEDA Application for 828 Productions is pertaining only to the work being proposed for 828 Studios NM. Future expansions to 828 Productions will include the following areas:

- Film Financing
- Production Accounting
- Production Services
- Postproduction Services

Additional models are being developed for these business areas and will be included in any future LEDA funding applications.

828 Productions LLC				Number of Jobs Created				Payroll Calculations**		
Job Type/Dept and Title:		*Jobs Filled:	Estimated Pay Scale	At Start Up	Beginning of Year 2	Beginning of Year 3		Yr 1	Yr 2	Yr 3
Studio	Director, Studio Operations	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
Studio	Asst to Director of Studio Operations	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
Studio	Manger, Studio Operation	L	$ 70,000.00	1				$ 70,000.00	$ -	$ -
Studio	Manager, Accounting	L	$ 125,000.00	1				$ 125,000.00	$ -	$ -
Studio	Coordinator, Studio Facilities	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Studio Electrician	L	$ 100,000.00	1				$ 100,000.00	$ -	$ -
Studio	Studio Electrician	L	$ 100,000.00	1				$ 100,000.00	$ -	$ -
Studio	Maintenance Worker	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Maintenance Worker	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Stage Department Manager	L	$ 100,000.00	1				$ 100,000.00	$ -	$ -
Studio	Stage Manager	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Stage Hand	L	$ 50,000.00	1				$ 50,000.00	$ -	$ -
Studio	Stage Hand	L	$ 50,000.00		1			$ -	$ 50,000.00	$ -
Studio	Stage Hand	L	$ 50,000.00			1		$ -	$ -	$ 50,000.00
Studio	Catering Manager	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	UPM	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Set Designer	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Property Manager	L	$ 50,000.00	1				$ 50,000.00	$ -	$ -
Studio	Transporation and Logistics Manger	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Transporatation Asst	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Transporatation Asst	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Grip	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Grip	L	$ 60,000.00	0	1			$ -	$ 60,000.00	$ -
Studio	Lighting Foreman	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Mill Supervisor	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
Studio	Mill Assistant	L	$ 30,000.00	1				$ 30,000.00	$ -	$ -
Studio	Painter	L	$ 30,000.00	1				$ 30,000.00	$ -	$ -
Studio	Construction Grip	L	$ 45,000.00	1				$ 45,000.00	$ -	$ -
Studio	IT Support	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
Studio	Security Superisor	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
828 Productions	CEO	L	$ 300,000.00	1				$ 300,000.00	$ -	$ -
828 Productions	Project Coordinator	L	$ 50,000.00	1				$ 50,000.00	$ -	$ -
828 Productions	Project Manager	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -

828 Productions LLC				Number of Jobs Created				Payroll Calculations**		
Job Type/Dept and Title:		*Jobs Filled:	Estimated Pay Scale	At Start Up	Beginning of Year 2	Beginning of Year 3		Yr 1	Yr 2	Yr 3
828 Productions	Project Manager	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	EVP, Sales and Distribution	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
828 Productions	Asst to EVP Sales and Distribution	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	EVP, Physical Production	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
828 Productions	Asst to EVP Physical Production	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	Director, Creative Services? DM	L	$ 125,000.00	1				$ 125,000.00	$ -	$ -
828 Productions	Office Manager	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	Office Assistant	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
828 Productions	Director of Human Resources	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	EVP of Production Accounting	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
828 Productions	VP of Production Accounting	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	Production Accountant	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Productions	Production Accountant	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Productions	Production Accountant	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Productions	Production Accountant	L	$ 60,000.00		1			$ -	$ 60,000.00	$ -
828 Productions	Production Accountant	L	$ 60,000.00		1			$ -	$ 60,000.00	$ -
828 Productions	Production Accountant	L	$ 60,000.00			1		$ -	$ -	$ 60,000.00
828 Productions	Production Accouting Asst.	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
828 Productions	Legal Counsel	L	$ 300,000.00		1			$ -	$ 300,000.00	$ -
828 Productions	Paralegal	L	$ 100,000.00		1			$ -	$ 100,000.00	$ -
828 VFX Facility	VFX Producer	L	$ 200,000.00		1			$ -	$ 200,000.00	$ -
828 VFX Facility	VFX Supervisor	L	$ 150,000.00		1			$ -	$ 150,000.00	$ -
828 VFX Facility	VFX Controller	L	$ 150,000.00			1		$ -	$ -	$ 150,000.00
828 VFX Facility	Technical Director	L	$ 150,000.00		1			$ -	$ 150,000.00	$ -
828 VFX Facility	Lead Animator	L	$ 100,000.00		1			$ -	$ 100,000.00	$ -
828 VFX Facility	Animator	L	$ 100,000.00		1			$ -	$ 100,000.00	$ -
828 VFX Facility	Lighting and Renderting Lead	L	$ 90,000.00		1			$ -	$ 90,000.00	$ -
828 VFX Facility	VFX Assisstant	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
828 VFX Facility	VFX Assisstant	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
828 VFX Facility	Art Dept Assisstant	L	$ 40,000.00	1	0			$ 40,000.00	$ -	$ -
828 VFX Facility	Office Manager	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Post Production	VP Post Production	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
828 Post Production	Post Production Supervisor	L	$ 100,000.00	1				$ 100,000.00	$ -	$ -
828 Post Production	Post Production Supervisor	L	$ 100,000.00		1			$ -	$ 100,000.00	$ -
828 Post Production	Editor	L	$ 90,000.00	1				$ 90,000.00	$ -	$ -
828 Post Production	Editor	L	$ 90,000.00		1			$ -	$ 90,000.00	$ -
828 Post Production	Asst. Editor	L	$ 75,000.00		1			$ -	$ 75,000.00	$ -
828 Post Production	Asst. Editor	L	$ 75,000.00			1		$ -	$ -	$ 75,000.00
828 Post Production	Colorist	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Post Production	Colorist	L	$ 75,000.00		1			$ -	$ 75,000.00	$ -
828 Post Production	Sound Designer	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Post Production	Sound Designer	L	$ 75,000.00		1			$ -	$ 75,000.00	$ -
828 Post Production	Music Supervisor	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -

828 Productions LLC				Number of Jobs Created				Payroll Calculations**		
Job Type/Dept and Title:		*Jobs Filled:	Estimated Pay Scale	At Start Up	Beginning of Year 2	Beginning of Year 3		Yr 1	Yr 2	Yr 3
828 Post Production	Tech Support	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Post Production	Tech Support	L	$ 60,000.00		1			$ -	$ 60,000.00	$ -
828 Post Production	Facilities Manager	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Post Production	Office Manager	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
								$ 4,635,000.00	$ 2,295,000.00	$ 575,000.00
								Total Yr 1	**Total added yr 2**	**Total added yr 3**

Total Number of Jobs Created	62	28	10	=	100

Total Estimated Payroll At year 3	$	7,505,000.00
Average Payscale	$	75,050.00

* All hiring will be done locally, but may move to outside NM recruitment and new hires asked to move to Las Cruces if needed.

** Projections are based on 3 years per the requirments of the online application, but will be accomplished over a 5-7 year span as directed by NMEDD.

*NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AUTHORIZATION FOR EXAMINATION AND RELEASE OF INFORMATION

Todd Lundbohm hereby grants permission to the New Mexico Economic Development Department to conduct a review, full disclosure, and release of any and all information authorized pursuant to federal and state law. The purpose for obtaining and examining the information is to construct a record of the company's personal and professional history, including credit history, to ensure it meet the requirements that the New Mexico Economic Development Department has established for potential recipients of State funds. The company understands an investigation will be conducted by the New Mexico Economic Development Department, the New Mexico Department of Public Safety, or their contractors, and the results of the investigation will only be supplied to the New Mexico Economic Development Department.

Todd Lundbohm, hereby grants the New Mexico Economic Development Department permission to obtain any information in its background pertaining to any credit (to include obtaining a copy of a commercial credit report), education, bankruptcy, investigation, arrest and/or conviction of it or its principals in any criminal or civil matter. The company also authorizes an employee of the New Mexico Economic Development Department, as its authorized representative, to obtain from the New Mexico Taxation and Revenue Department and/or the Department of Workforce Solutions any tax information that is in any way related to a company Todd Lundbohm owns or has invested in. Todd Lundbohm, hereby directs you to release such information upon the request of this bearer. Todd Lundbohm, hereby releases you as a custodian of such records for any criminal justice, law enforcement or court agency, including its officers and employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, that may at any time result to the New Mexico Economic Development Department or the State of New Mexico because of compliance with this authorization and request to release information; or any attempt to comply with it.

1. The information reviewed, disclosed, and/or released may be used by the New Mexico Economic Development Department for any lawful purpose and/or to determine the company's suitability to receive funds from the State of New Mexico.
2. Todd Lundbohm hereby releases the providers and users of the information collected pursuant to this authorization from any liability under state or federal privacy laws and further release the New Mexico Economic Development Department, its contractors, agents, and/or employees from any liability which may be incurred as a result of the collection and use of information.

3. Todd Lundbohm, understands that it may revoke this authorization in writing at any time.

FULL NAME: Todd Lundbohm
SIGNATURE: [signature]

TITLE: CEO
COMPANY: 828 Productions llc

The above named certifies that they are authorized to commit to this release on behalf of the company identified.

Please provide below information if company is a sole proprietorship:

SSN: _____
DOB: _____

DATE: 9/29/2022

This Document is only valid if notarized

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

Scribed and sworn to me on this 29th day of September 2022 of San Diego County, ~~New Mexico~~ California

Signed [signature]

My Commission expires: 6-15-2023

Notary Public

GMN1 M.W. BOYD COMM. # 2293232 NOTARY PUBLIC - CALIFORNIA SAN DIEGO COUNTY My Commission Expires June 15, 2023 GMN1

100 S. Church St.
Las Cruces,
NM 88001

828 PRODUCTIONS

LEDA Application

NM Quarterly Wage Report

The current LEDA Application does not include a quarterly wage report due to 828 Productions being a start up company. Wage details will be provided with any future LEDA applications as the organization adds jobs.

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

Exhibit C – LEDA Application

Affirmation of officer of Company

Declaration of 828 Productions LLC **Officer**

I, Todd Lundbohm, declare as follows:

I am CEO for 828 Productions LLC and I have been employed in this capacity since 6/15/2020. Except where otherwise noted, I have personal knowledge of the facts set forth in this declaration.

Date: 9/24/2022

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:
Todd Lundbohm
89EB80C4B4E340D...

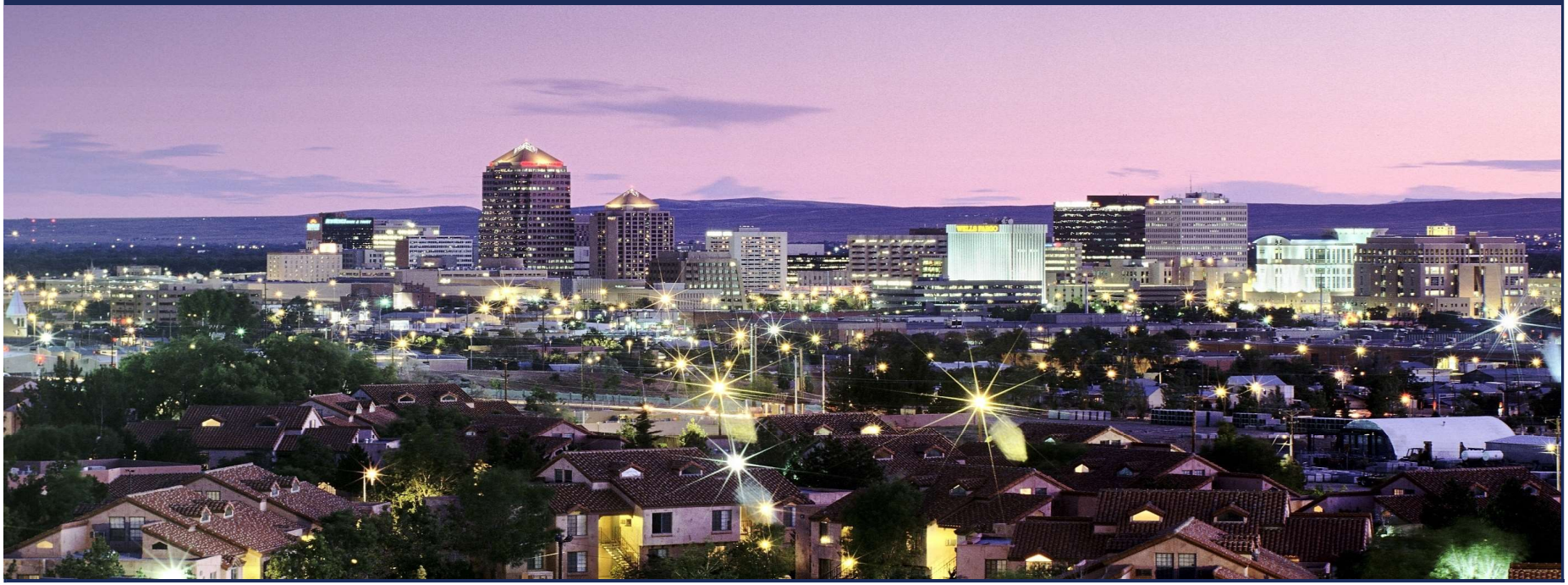
Name Todd Lundbohm
Job Title CEO
Name of Company 828 Productions LLC

EDD Economic Development Department

3/30/2022

FISCAL IMPACT ANALYSIS AND ECONOMIC IMPACT OF THE EXPANSION OF 828 PRODUCTIONS

Prepared by:
New Mexico Economic Development Department
Joseph Montoya Building
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505



Purpose and Limitations:

This report and analysis, provided by the New Mexico Economic Development Department, relies on prospective estimates of business activity. These estimates, which are provided by the company, may not be realized due to unforeseen events that are outside the control of the company and unknown to the New Mexico Economic Development Department.

The New Mexico Economic Development Department made reasonable efforts to ensure that the estimates provided by the company, are realistic estimates of future activity.

The model was created by the New Mexico Economic Development Economists and used assumptions to generate the final report. The report and analysis provided by the New Mexico Economic Development Department is not a guarantee that any of the estimates or results contained in this report will actually be achieved.

Introduction:

This report and analysis presents the results of an economic impact analysis performed using a model developed by the New Mexico Economic Development Department. The report estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA).

Most projects produce a growth in population and/or a growth in the workforce in a City, County and the State of New Mexico. All growth comes at a cost, the additional economic activity and population growth stimulated by the project will generate additional costs in terms of providing basic infrastructure (roads and utilities) and public services (including public safety and schools). For example, if the applicant hires employees from outside the State, County and City, those workers who end up relocating their residence to within one or all of those areas, the population for which the government must provide services also increases. The costs associated with the expansion are broken down into two categories: 1) New residents to the State, County and City. 2) New Mexican residents hired to work for the company. The analysis assumes that all workers will live in the area of the expansion.

Description of the Company:

0

Description of the Project:

828 Productions is looking to develop multiple stages and postproduction facilities in the Las Cruces area. This will be a combination of productions and permanent full-time positions dedicated to post and pre- production.

Total Impacts

Fiscal Impact of Existing and Expanded Operations Over the Next Ten Years

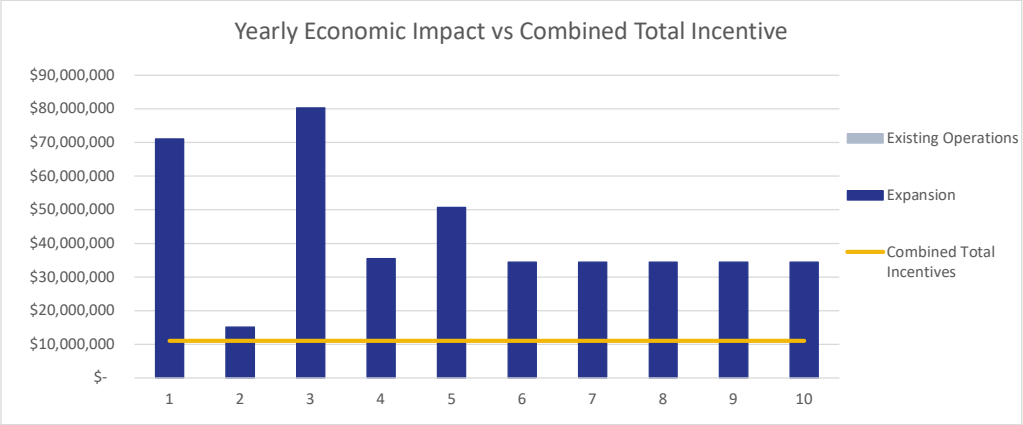
	Cumulative Net Benefits			
	Existing Operations	Expansion	Existing & Expanded Operations	Present Value of Net Benefits*
State of New Mexico	$ -	$ 18,050,424	$ 18,050,424	$ 15,061,099
County	$ -	$ 7,642,060	$ 7,642,060	$ 6,243,473
City	$ -	$ 10,567,772	$ 10,567,772	$ 8,899,565
School District	$ -	$ 4,202,609	$ 4,202,609	$ 3,306,051
Special Taxing District	$ -	$ 830,883	$ 830,883	$ 653,628
Total	**$ -**	**$ 41,293,749**	**$ 41,293,749**	**$ 34,163,816**

* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

** In the cumulative net benefits of the existing and expanded operations for the State of New Mexico, corporate income tax has been removed from the existing operations total to avoid double counting.

Total Economic Impact

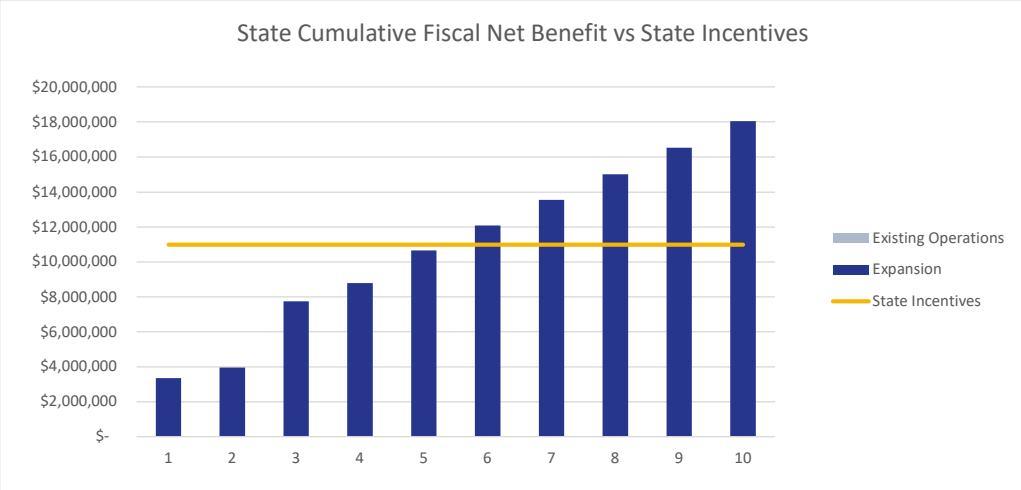
	Total
Estimated Economic Impact Over 10 Years:	$ 424,743,368
Combined Total Incentive Over 10 Years:	$ 10,994,818
Economic Impact Rate of Return:	3,763%



Workers and New Residents over 10 years

	Direct	Indirect and Induced
Number of Jobs Created:	335	177
Estimated Number of Construction Workers:	1002	
Estimated Number of New Residents to the State:	0	
Estimated Number of New Residents to the County:	0	
Estimated Number of New Residents to the City:	0	

State Impacts



Incentives

Total State Incentive:	$	10,994,818
State Incentive Per Job:	$	32,820

Combined Payback and Return

State Payback Period Combined:	5.24	Years
State Rate of Return Combined:	37%	

Expansion Only Payback and Return

State Payback Period Expansion:	5.24	Years
State Rate of Return Expansion:	37%	

State Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

State Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 3,348,162	$ -	$ 3,348,162	$ 3,348,162
2	$ 608,048	$ -	$ 608,048	$ 3,956,211
3	$ 3,791,510	$ -	$ 3,791,510	$ 7,747,721
4	$ 1,041,353	$ -	$ 1,041,353	$ 8,789,073
5	$ 1,861,537	$ -	$ 1,861,537	$ 10,650,611
6	$ 1,436,182	$ -	$ 1,436,182	$ 12,086,792
7	$ 1,457,746	$ -	$ 1,457,746	$ 13,544,538
8	$ 1,479,634	$ -	$ 1,479,634	$ 15,024,172
9	$ 1,501,851	$ -	$ 1,501,851	$ 16,526,023
10	$ 1,524,401	$ -	$ 1,524,401	$ 18,050,424

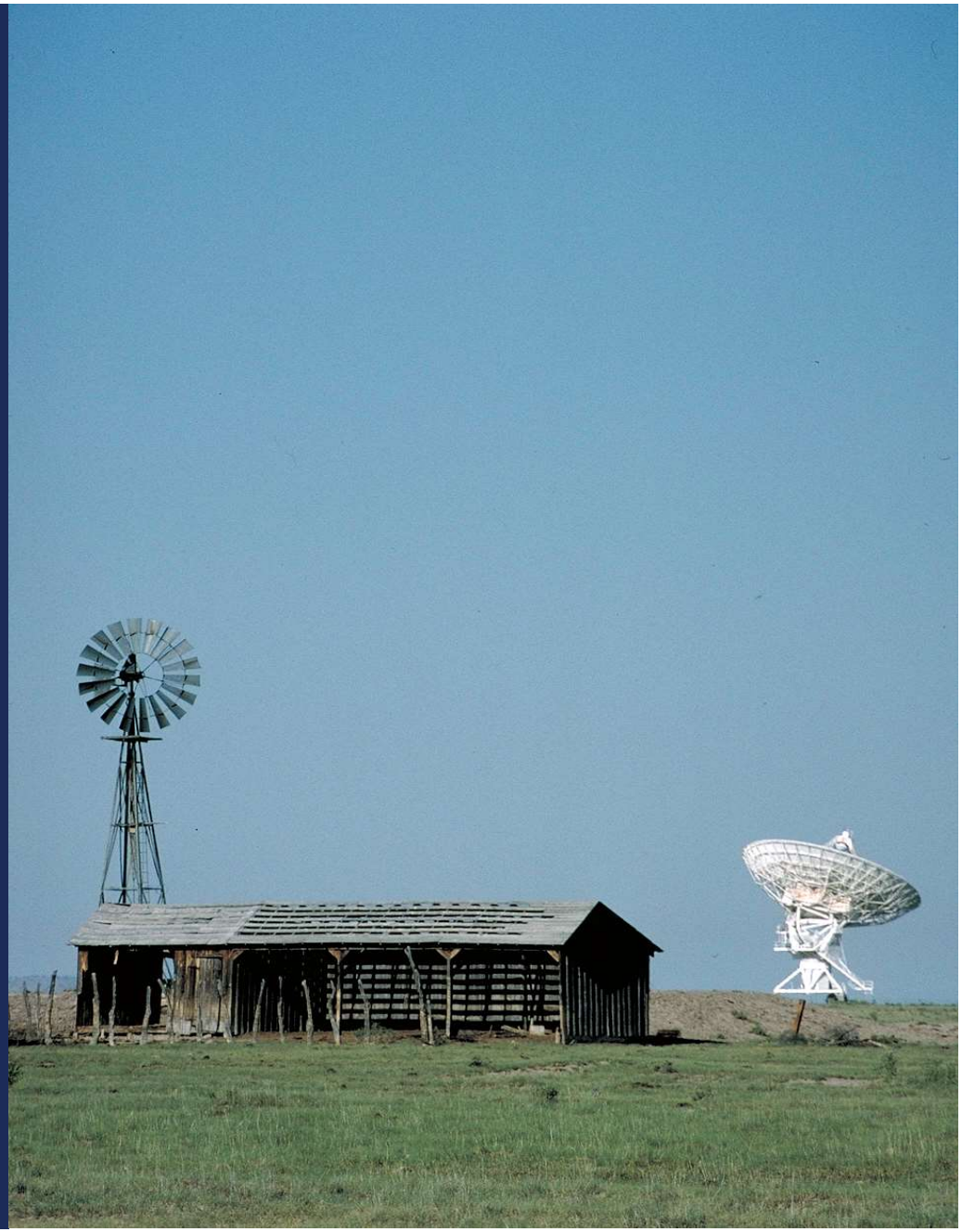
State Combined Net Benefits

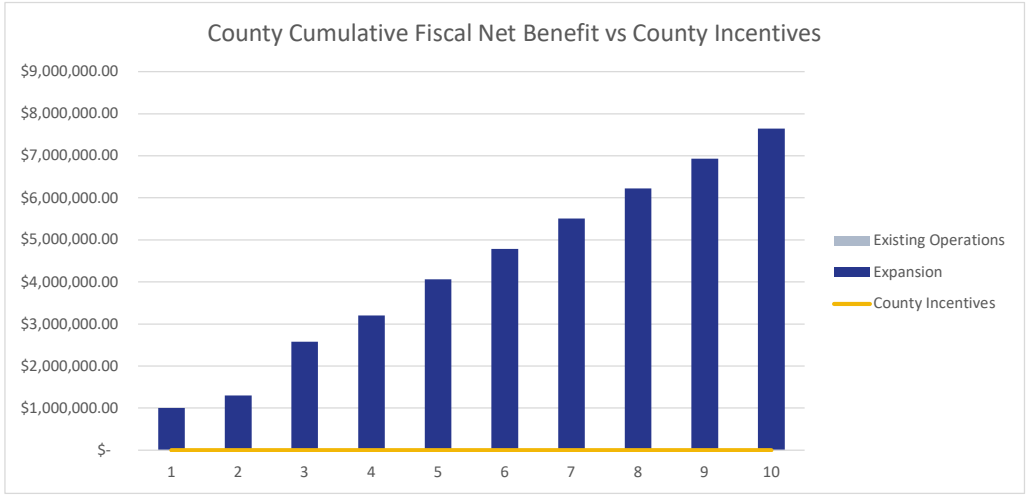
Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 3,348,162	$ -	$ 3,348,162	$ 3,348,162
2	$ 608,048	$ -	$ 608,048	$ 3,956,211
3	$ 3,791,510	$ -	$ 3,791,510	$ 7,747,721
4	$ 1,041,353	$ -	$ 1,041,353	$ 8,789,073
5	$ 1,861,537	$ -	$ 1,861,537	$ 10,650,611
6	$ 1,436,182	$ -	$ 1,436,182	$ 12,086,792
7	$ 1,457,746	$ -	$ 1,457,746	$ 13,544,538
8	$ 1,479,634	$ -	$ 1,479,634	$ 15,024,172
9	$ 1,501,851	$ -	$ 1,501,851	$ 16,526,023
10	$ 1,524,401	$ -	$ 1,524,401	$ 18,050,424

State Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	8,355,193
	Personal Income Taxes	$	9,695,231
	Corporate Income Taxes	$	-
	Misc. Taxes and Revenue	$	-
	Subtotal of Benefits	**$**	**18,050,424**
Costs			
	Costs	$	-
	Subtotal of Costs	**$**	**-**
Net Benefits			
	Net Benefits	**$**	**18,050,424**
	Present Value	**$**	**15,061,099**

County Impacts





Incentives

Total County Incentive:	$	-
County Incentive Per Job:	$	-

Combined Payback and Return

County Payback Period Combined:	-	Years
County Rate of Return Combined:	N/A	

Expansion Only Payback and Return

County Payback Period Expansion:	-	Years
County Rate of Return Expansion:	N/A	

County Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

County Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 1,000,293	$ -	$ 1,000,293	$ 1,000,293
2	$ 300,654	$ -	$ 300,654	$ 1,300,946
3	$ 1,280,261	$ -	$ 1,280,261	$ 2,581,207
4	$ 619,670	$ -	$ 619,670	$ 3,200,877
5	$ 860,723	$ -	$ 860,723	$ 4,061,600
6	$ 725,341	$ -	$ 725,341	$ 4,786,941
7	$ 720,495	$ -	$ 720,495	$ 5,507,436
8	$ 715,868	$ -	$ 715,868	$ 6,223,304
9	$ 711,465	$ -	$ 711,465	$ 6,934,769
10	$ 707,291	$ -	$ 707,291	$ 7,642,060

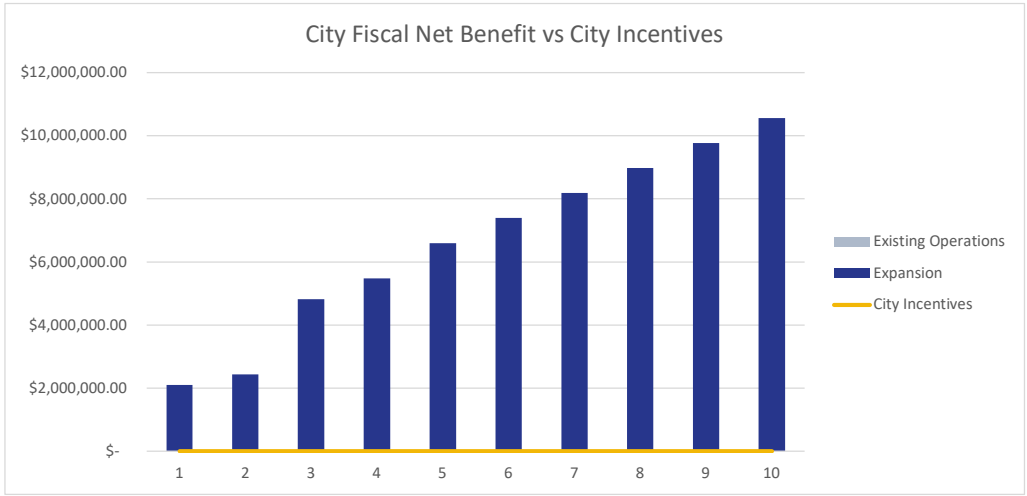
County Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 1,000,293	$ -	$ 1,000,293	$ 1,000,293
2	$ 300,654	$ -	$ 300,654	$ 1,300,946
3	$ 1,280,261	$ -	$ 1,280,261	$ 2,581,207
4	$ 619,670	$ -	$ 619,670	$ 3,200,877
5	$ 860,723	$ -	$ 860,723	$ 4,061,600
6	$ 725,341	$ -	$ 725,341	$ 4,786,941
7	$ 720,495	$ -	$ 720,495	$ 5,507,436
8	$ 715,868	$ -	$ 715,868	$ 6,223,304
9	$ 711,465	$ -	$ 711,465	$ 6,934,769
10	$ 707,291	$ -	$ 707,291	$ 7,642,060

County Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	2,677,947
	Misc. Taxes and Revenue	$	-
	Property Taxes	$	4,964,113
	Subtotal of Benefits	**$**	**7,642,060**
Costs			
	Costs	$	-
	Subtotal of Costs	**$**	**-**
Net Benefits			
	Net Benefits	**$**	**7,642,060**
	Present Value	**$**	**6,243,473**

City Impacts



Incentives

Total City Incentive:	$	-
City Incentive Per Job:	$	-

Combined Payback and Return

City Payback Period Combined:	-	Years
City Rate of Return Combined:	N/A	

Expansion Only Payback and Return

City Payback Period Expansion:	-	Years
City Rate of Return Expansion:	N/A	

City Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

City Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 2,101,596	$ -	$ 2,101,596	$ 2,101,596
2	$ 332,213	$ -	$ 332,213	$ 2,433,809
3	$ 2,389,140	$ -	$ 2,389,140	$ 4,822,949
4	$ 647,923	$ -	$ 647,923	$ 5,470,872
5	$ 1,124,271	$ -	$ 1,124,271	$ 6,595,143
6	$ 794,255	$ -	$ 794,255	$ 7,389,398
7	$ 794,166	$ -	$ 794,166	$ 8,183,565
8	$ 794,300	$ -	$ 794,300	$ 8,977,864
9	$ 794,659	$ -	$ 794,659	$ 9,772,523
10	$ 795,249	$ -	$ 795,249	$ 10,567,772

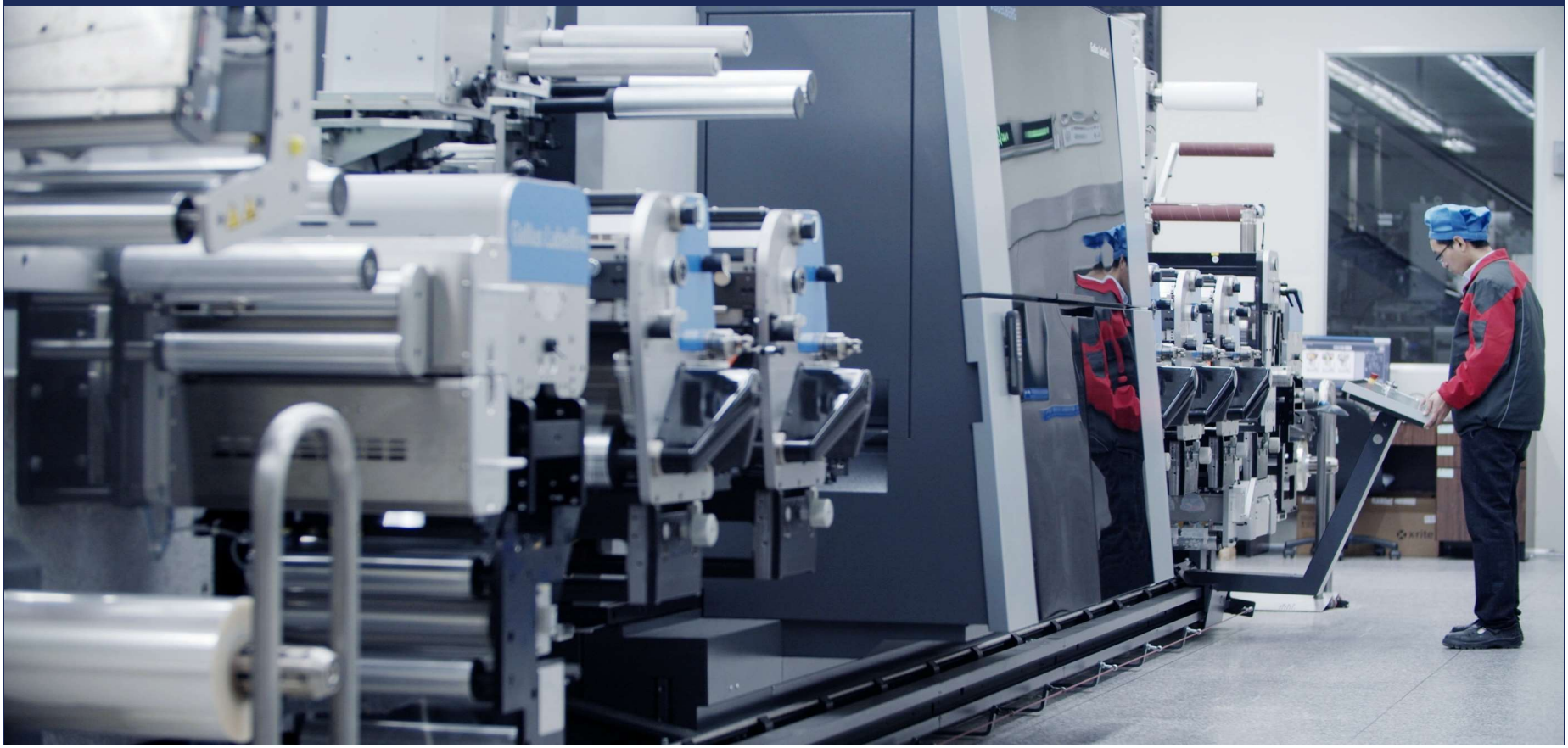
City Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 2,101,596	$ -	$ 2,101,596	$ 2,101,596
2	$ 332,213	$ -	$ 332,213	$ 2,433,809
3	$ 2,389,140	$ -	$ 2,389,140	$ 4,822,949
4	$ 647,923	$ -	$ 647,923	$ 5,470,872
5	$ 1,124,271	$ -	$ 1,124,271	$ 6,595,143
6	$ 794,255	$ -	$ 794,255	$ 7,389,398
7	$ 794,166	$ -	$ 794,166	$ 8,183,565
8	$ 794,300	$ -	$ 794,300	$ 8,977,864
9	$ 794,659	$ -	$ 794,659	$ 9,772,523
10	$ 795,249	$ -	$ 795,249	$ 10,567,772

City Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	6,775,205
	Misc. Taxes and Revenue	$	-
	Property Taxes	$	3,792,568
	Subtotal of Benefits	**$**	**10,567,772**
Costs			
	Costs	$	-
	Subtotal of Costs	**$**	**-**
Net Benefits			
	Net Benefits	**$**	**10,567,772**
	Present Value	**$**	**8,899,565**

Special Taxing District and Public Schools



Special Taxing District

Special Taxing District Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

Special District Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 40,673	$ -	$ 40,673	$ 40,673
2	$ 40,607	$ -	$ 40,607	$ 81,280
3	$ 80,554	$ -	$ 80,554	$ 161,834
4	$ 87,181	$ -	$ 87,181	$ 249,014
5	$ 99,835	$ -	$ 99,835	$ 348,849
6	$ 98,650	$ -	$ 98,650	$ 447,500
7	$ 97,497	$ -	$ 97,497	$ 544,996
8	$ 96,375	$ -	$ 96,375	$ 641,371
9	$ 95,285	$ -	$ 95,285	$ 736,656
10	$ 94,228	$ -	$ 94,228	$ 830,883

Special District Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 40,673	$ -	$ 40,673	$ 40,673
2	$ 40,607	$ -	$ 40,607	$ 81,280
3	$ 80,554	$ -	$ 80,554	$ 161,834
4	$ 87,181	$ -	$ 87,181	$ 249,014
5	$ 99,835	$ -	$ 99,835	$ 348,849
6	$ 98,650	$ -	$ 98,650	$ 447,500
7	$ 97,497	$ -	$ 97,497	$ 544,996
8	$ 96,375	$ -	$ 96,375	$ 641,371
9	$ 95,285	$ -	$ 95,285	$ 736,656
10	$ 94,228	$ -	$ 94,228	$ 830,883

Public Schools

Public Schools Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

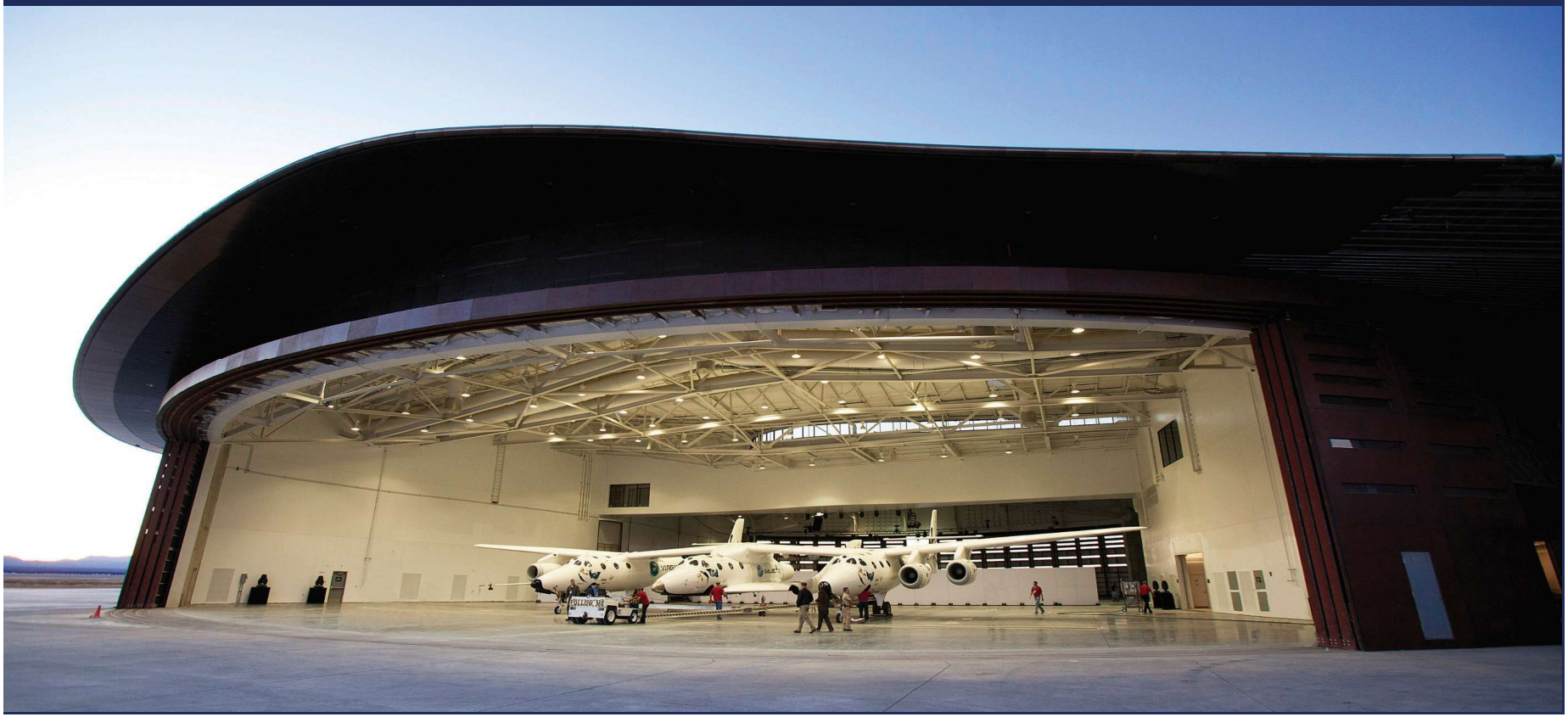
Public Schools Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 205,726	$ -	$ 205,726	$ 205,726
2	$ 205,389	$ -	$ 205,389	$ 411,115
3	$ 407,440	$ -	$ 407,440	$ 818,555
4	$ 440,960	$ -	$ 440,960	$ 1,259,515
5	$ 504,965	$ -	$ 504,965	$ 1,764,480
6	$ 498,973	$ -	$ 498,973	$ 2,263,453
7	$ 493,138	$ -	$ 493,138	$ 2,756,592
8	$ 487,463	$ -	$ 487,463	$ 3,244,054
9	$ 481,950	$ -	$ 481,950	$ 3,726,004
10	$ 476,604	$ -	$ 476,604	$ 4,202,609

Public Schools Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 205,726	$ -	$ 205,726	$ 205,726
2	$ 205,389	$ -	$ 205,389	$ 411,115
3	$ 407,440	$ -	$ 407,440	$ 818,555
4	$ 440,960	$ -	$ 440,960	$ 1,259,515
5	$ 504,965	$ -	$ 504,965	$ 1,764,480
6	$ 498,973	$ -	$ 498,973	$ 2,263,453
7	$ 493,138	$ -	$ 493,138	$ 2,756,592
8	$ 487,463	$ -	$ 487,463	$ 3,244,054
9	$ 481,950	$ -	$ 481,950	$ 3,726,004
10	$ 476,604	$ -	$ 476,604	$ 4,202,609

Property Tax Exemptions and Industrial Revenue Bonds



Property Tax Exemptions and Industrial Revenue Bonds

The City and/or the County is considering abating taxes on the Project's property. Below is a table that identifies the types of property that are under consideration for property tax abatement:

Land:	No
Building and Property Improvements:	No
Furniture, Fixtures and Equipment:	No

Property Tax Percentage Exemptions On Land and Building

County	City	Schools	Special Taxing District
0%	0%	0%	0%

Property Tax Percentage Exemptions On Furniture, Fixtures and Equipment

County	City	Schools	Special Taxing District
0%	0%	0%	0%

Value of Exemption Through 10 Years:	$ -	$ -	$ -	$ -
*Value of Payment in Lieu of Taxes Through 10 Years:	$ -	$ -	$ -	$ -

*The model assumes that the payment in lieu of taxes will be administered to the either the county or city, and the local government will disperse the amounts to the appropriate districts.

Percentage of Gross Receipt Taxes Foregone on Newly Purchased Furniture, Fixtures and Equipment Over 10 Years

Year	State	County	City
1	0%	0%	0%
2	0%	0%	0%
3	0%	0%	0%
4	0%	0%	0%
5	0%	0%	0%
6	0%	0%	0%
7	0%	0%	0%
8	0%	0%	0%
9	0%	0%	0%
10	0%	0%	0%
Value of Exemption Through 10 Years:	$ -	$ -	$ -

INTERGOVERNMENTAL AGREEMENT BETWEEN THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND THE CITY OF LAS CRUCES, NEW MEXICO

This Intergovernmental Agreement ("Agreement") is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department ("EDD") and The City of Las Cruces (the "City"), a political subdivision of the State of New Mexico, and collectively referred to as "the Parties" with reference to the following facts.

RECITALS:

WHEREAS, the legislature of the State of New Mexico appropriated funds to the Economic Development Department for economic development projects statewide pursuant to the Local Economic Development Act (the "Appropriation"); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-14 (2020) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts"; and

WHEREAS, the City has adopted LEDA by Ordinance No. 2873, which established the City of Las Cruces Economic Development Plan that promotes economic development within the City; and

WHEREAS, 828 Productions, LLC (hereinafter "Qualifying Entity") has entered into a Local Economic Development Project Participation Agreement (hereinafter "PPA") with the City. A copy of the City's Ordinance and PPA are attached hereto and incorporated herein; and

WHEREAS, pursuant to the terms of that PPA, the Qualifying Entity will remodel/refurbish and occupy the production facility at 300 S. Compress Road in Las Cruces, New Mexico (the "Project") and will employ at least 335 full-time persons by December 31, 2029; and

WHEREAS, EDD and the City desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

SECTION 1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to define the responsibilities of the City and EDD for the oversight and administration of up to $3,000,000 of the Appropriation for the Project. It is the intent of the parties that the City will receive an amount up to three million dollars ($3,000,000) to implement the Project. The Parties agree that any and all State funds received will be accounted for by the City as the fiscal agent for EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

SECTION 2. SCOPE OF WORK:

The City will act as fiscal agent for up to $3,000,000 of the Appropriations for the Project. Pursuant to Section 5-10-3(D) of LEDA, EDD will transfer up to $3,000,000 to the City for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it will employ at least 335 full-time employees at the facility by December 31, 2029.

All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the City agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA shall require the City to apply the applicable Clawback as provided for by the PPA. In the event that the Qualifying Entity does not remit to the City the monies owned as provided for by the PPA then such violation will require that the City foreclose on the security interest after any cure period granted to the Qualifying Entity. Any monies

recovered by the City as a result of payment made by the Qualifying Entity from the application of the applicable Clawbacks shall be returned to EDD within 30 calendar days. Any foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the City contemporaneously with the execution of the PPA a form of security acceptable to all parties, which will be incorporated into this Agreement (the "Security").

SECTION 3. CITY RESPONSIBILITIES:

The City shall:

A. Pay the costs and expenses incurred for the Project from the Appropriation;

B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the City as the result of enforcing the provisions of the PPA shall be returned to EDD;

C. The City shall notify EDD in writing of any failure to meet requirements (default) of the PPA by the Qualifying Entity within 15 business days of learning of the event of default;

D. Serve as Fiscal Agent for the funds transferred to it under this Agreement;

E. Distribute the funds transferred to the City by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement;

F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the City Council accepting the Project as qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the City and the Qualifying Entity, a fully executed copy of the Security, and copies of invoices and other documentation as required by EDD within the time required;

G. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds as described herein; and

H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary.

SECTION 4. CITY CERTIFICATIONS:

As Fiscal Agent, the City hereby assures and certifies that:

A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of the Appropriation;

B. It has the legal authority to receive and expend the Appropriation;

C. It will enforce the provisions of Ordinance No. 2873 and the City's Economic Development Plan;

D. It has exercised due diligence in confirming that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;

E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation City receives from the Qualifying Entity;

F. It has entered into a PPA with the Qualifying Entity and has obtained from the NM EDD all financial documentation necessary to protect the City's and State's investments in the Project;

G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;

H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;

I. No member, officer or employee of the City or its designees or agents, no member of the governing body of the locality of which the Project is situated, and no other public official that exercises any functions or

responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

J. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause."

SECTION 5. EDD RESPONSIBILITIES:

EDD shall:

A. Transfer to the City for costs and expenses incurred for the Project an amount not to exceed three million dollars ($3,000,000). The funds shall be used only for the purpose stated in this Agreement;

B. Monitor job creation by the Qualifying Entity and report the number of jobs created to the City each quarter up to December 31, 2030.

C. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and

D. Reimburse the City for any costs associated with litigation to enforce the terms of the Security and the Clawback provisions.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on January 31, 2031 or when all of the obligations of the PPA have been fulfilled.

SECTION 7. LIABILITY:

No Party shall be responsible for liability incurred as a result of the other Party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The City and EDD may agree to reimburse one another under these liability provisions, subject to sufficient

appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the Party responsible for payment.

SECTION 8. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS

A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.

B. The City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.

C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by the City, the City shall return said funds to EDD for disposition in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:

The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 10. REPORTS:

The Qualifying Entity shall submit quarterly reports regarding employment to the EDD during the life of this Agreement and EDD shall share those reports and any other information obtained respecting job retention and creation attributable to the State appropriation with the City. The City shall coordinate with EDD to conduct an annual performance review of the Project.

SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

Finance Development Team Leader
NM Economic Development Department
Joseph Montoya Building
1100 St. Francis Drive
PO Box 20003
Santa Fe, New Mexico 87504

To the CITY:

City Manager
The City of Las Cruces
700 S Main Street
P O Box 20000
Las Cruces, NM 88004

SECTION 12. AMENDMENTS:

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 13. GOVERNING LAW/VENUE:

This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

THE CITY OF LAS CRUCES, NEW MEXICO

By: _____

Name: Ifo Pili

Title: City Manager

Date: _____

APPROVED AS TO FORM

By: _____

The City of Las Cruces Attorney

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Alicia J. Keyes
Cabinet Secretary

Date: _____

APPROVED AS TO FORM

By: _____

Jesika Ulibarri
General Counsel

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on _____, 2023 by and between **CITY OF LAS CRUCES, NEW MEXICO** (the "City"), a political subdivision of the State of New Mexico (the "State"), and **828 Productions, LLC** (the "Company").

Recitals.

A. Article 9, Section 14 of the New Mexico Constitution provides counties the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.

B. Pursuant to City of Las Cruces Ordinance No. 2873 (the "Las Cruces Local Economic Development Plan"), adopted on September 17, 2018, the City established the City of Las Cruces Economic Development Plan (the "Plan") as the City's economic development plan as required by Section 5-10-6, NMSA 1978.

C. As provided in the Las Cruces Local Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City serve as local government conduit for an appropriation of up to $3,000,000 from the Legislature of the State of New Mexico (the "**State Contribution**") and also provide up to $897,596 in Capital Outlay funds (the "**City Contribution**") toward the Company's development of a production facility at 106 S. Miranda Street in the City of Las Cruces, New Mexico (the "Project"). The company will construct and occupy the facility and will employ a minimum of 100 full-time persons by December 31, 2029.

D. The City has adopted Ordinance No. 2873 ("Local Economic Development Act") and Resolution No. 19-050 ("Local Economic Development Plan" finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Agreement as meeting the requirements of the Act.

1. **Goals and Objectives.** The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.

2. Substantive Contribution from the Company.

a. **Facility.** The Company will establish a production facility at 106 S. Miranda Street and other suitable locations within the City of Las Cruces, New Mexico (the “Facility”).

b. **Investment.** The Company (or one of its subsidiaries, affiliates, investment partners or other related entities) will make capital investments in the Project and costs associated therewith (including, for the acquisition of land, building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of approximately $75,000,000 by December 31, 2031 (the "Project Contribution").

c. **Production Spend Investment.** The Company (or one of its subsidiaries, affiliates, investment partners or other related entities) will spend $350 million on productions by December 31, 2032.

d. **Job Creation.** The Company will directly employ a target of 100 full-time employees at the facility by December 31, 2029 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. Full–time employees do not include agency, sub-contracted, temporary employees or independent contractors.

e. **Sustainability.** Although the Company intends to have a long-term presence in the City, for purposes of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until December 31, 2032.

3. The State Contribution

a. The City anticipates that the State Contribution will be delivered by the State to the City for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of this document and the intergovernmental agreement between the State and the City, after which time the City will request transfer of the State Contribution. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. The City will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement executed between the City and the State. The City will disburse the State Contribution to the Company as reimbursement for LEDA Eligible Expenditures subject to the Company’s satisfaction of the conditions set forth herein. Disbursements shall be paid on a reimbursement basis and the Company shall first incur the LEDA Eligible Expenditures and then submit requests for reimbursement to the City. For purposes of this

Agreement, "**LEDA Eligible Expenditures**" shall mean: expenditures including, but not limited to, land, building and infrastructure, including permanently installed and situated physical assets and the design, labor and permitting required to put them in place. Examples include: foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.

b. The State's contribution is composed of a LEDA award of $3,000,000 for use by the Company for such purposes as set forth in NMSA 1978, § 5-10-3(E), the application of the Company and the agreements entered into between the parties. The Company shall also instruct the contracted construction companies to use the correct **New Mexico Taxation and Revenue Department Location Code of 07-105 for the City of Las Cruces**.

4. The City Contribution.

a. The City will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. The City will contribute up to $897,596 in Capital Outlay funds. The City will comply with the Local Economic Development Act ("LEDA") with respect to the acceptance and disbursement of the State and Local Contributions. As required by the LEDA Ordinance and the Act, City will deposit the State Contribution into a clearly identified separate account.

b. The State Contribution will be disbursed to the Company through the City for reimbursement of LEDA Eligible Expenditures.

5. Disbursement of City and State Contributions

a. State and City contributions shall be deposited into separate accounts for this project and disbursed through the City.

b. **Conditions to Disbursement; Performance Milestones.** The State Contribution will be disbursed in four (4) separate allotments. The City Contribution will be disbursed in six (6) separate allotments. Each disbursement will be conditioned on (i) the Company's having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) where applicable, the Company meeting minimum employment targets and being in compliance with job reporting requirements; and (iii) the Company's satisfaction of the performance milestones set forth below (the "Disbursement Performance Milestones") for each allotment prior to the disbursement:

State of New Mexico LEDA Disbursement Schedule		
Tranche	*Amount of State Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$1,000,000	Obtain a certificate of occupancy, incur LEDA eligible expenses, and current with all reporting
2	$1,000,000	Hire 30 new employees for a total employment of 30 and maintain for two quarterly reporting periods, incur LEDA eligible expenses and current with all reporting
3	$500,000	Maintain a minimum of 35 employees for two quarterly reporting periods and have at least $100,000,000 in film production spend and current with all reporting
4	$500,000	Hire 40 additional new employees for a total employment of 70 employees and maintain for two quarterly reporting periods, incur LEDA eligible expenses and current with all reporting

City of Las Cruces LEDA Disbursement Schedule		
Tranche	*Amount of Local Contribution Available for Disbursement/Tranche*	*Release of Lien Performance Milestone*
1	$304,790	Access road to Stage 1 and Work Shop
2	$96,144	Surface Parking Workshop
3	$83,328	Surface Parking – Stage 1 Lot
4	$119,900	Surface Parking – POB Lots 2&3
5	$159,100	Surface Parking – Lot 6
6*	$134,334	Surface Parking – Lot 5
*Will not reimburse for entire cost		

6. **Disbursement Requests.** From time to time, after the Company has satisfied the conditions for disbursement set forth herein, the Company may submit to the City and the New Mexico Economic Development Department ("EDD") a written request for disbursement of the State Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) documentation of current employment level in New Mexico pursuant to Section 10c below. The Company will not submit a Disbursement Request for less than $50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution or City Contribution then available to the Company at any time. The City may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.

7. **Review.** EDD will review the Disbursement Request to assure the charges submitted are LEDA Eligible Expenditures. The EDD's review and approval or objection shall not be unreasonably withheld and shall occur within 30 calendar days of receipt of the Disbursement Request. The City will disburse to the Company the full amount requested in the Disbursement Request no later than 30 calendar days after EDD's approval of the Disbursement Request.

8. **No Offset of City costs.** The City may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.

9. **Security.** As security for the faithful performance and payment of Company's obligations under this Agreement, prior to the Company's receipt of any part of the State Contribution or City Contribution, Company shall furnish the City with a Letter of Credit or some alternative form of security in a form mutually acceptable to the parties (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be $3,897,596. The Company shall be permitted to obtain incremental increases in the Security in the amount of each Disbursement Request and shall not be required to secure the Maximum Obligation before a disbursement will be made. No State Contribution will be transferred to the City until Security in the amount of the State Contribution is accepted.

   a. The City may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) calendar days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.
   b. Provided that the Company has not been required to pay any Clawback, the Security will terminate on January 31, 2033, unless earlier released in accordance with this Agreement.
   c. If the State or the City reduce the amount of LEDA Funds and/or forgivable lien that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds and/or forgivable lien available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds and/or forgivable lien actually received by the Company.
   d. A mortgage agreement/municipal lien document shall be recorded in Dona Ana County in the amount of the City Contribution. Partial lien releases shall be recorded upon performance of the set performance milestones.

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

set forth herein.

Facility Closure Clawback.
Full closure of the facility will result in a clawback based on the number of years the Q/E has operated under this agreement as per the following table:

2023	100%
2024	100%
2025	100%
2026	100%
2027	90%
2028	80%
2029	70%
2030	60%
2031	50%
2032	40%

a. For purposes of this Agreement, a failure to produce product for a period of 90 calendar days or more, after initial startup (initial startup will be considered the date of the first production run or within 180 days of receipt of certificate of occupancy, whichever comes first) or failure to occupy the Facility shall be considered a cessation of operations; provided however cessations for reasonable periods for the repair or replacement of facilities damaged or destroyed, cessations resulting from labor disputes, strikes, riots or acts of God, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 10a. If the Company ceases operations for any of the causes set forth in this Section 10a, the Company shall submit a plan for resolving such cessation of operations within 30 calendar days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the City within 10 calendar days.

b. **Performance Clawback.** It is the Company's intent to create, hire and maintain the number of jobs set forth in the table below under the column captioned "Cumulative Fulltime Target Job Number" on the Job Determination Dates set forth below. If the Company does not meet or exceed the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Determination Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty (as defined below) to the City which will be applied in the percentage set forth in the table below in addition the company is agreeing to generate a minimum of $350 million in production those clawback penalties are also described below:

	Job Creation and Production Spend Commitment and Schedule				
Year	*Cumulative Full Time Job Creation Target*	*Minimum Job Number*	*Job Determination Period*		*Clawback %*
1	10	9	Ordinance Date	12/31/23	100%
10	10+90 = 100	90	1/1/32	12/31/32	30%
b Additional Notes: Only New Mexico based employees count towards job creation target.					
^ Clawback calculator attached for illustrative purposes.					

Year	Cumulative Spend Target	Minimum Spend	Spend Determination Period		Clawback %
5	$55,000,000	$50,000,000	Ordinance Date	12/31/2027	100%
10	$350,000,000	$315,000,000	1 /1/32	12/31/2032	50%
Clawback percentage is calculated on the shortfall quotient times the amount of LEDA received by the company time the percentage of clawback, example illustrated below					
Year 10 production spend by the company $290,000,000 LEDA received $3,897,000 $315,000,000 - $290,000,000 = $25,000,000 $25,000,000/$315,000,000 = 7.94% 7.94% X $3,897,000 = $309,285.71 $309,285.71 X 50% = $154,642.86					

For the purposes of this Section:

The "**Clawback Penalty**" is a penalty that the Company will be required to pay the City upon the Company's failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State Contribution paid to the Company as of that time. For purposes of this subsection, the "**Percentage Hiring Shortfall**" shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date. See Attachment 1 hereto for examples of job Clawback Calculations

"**Cure Period**" is the period of 180 calendar days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if the Company meets the Minimum Job Number at any time during the Cure Period as validated

by the job reporting requirements set forth herein, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

In the event that there are shortfalls on both jobs and spend requirements the respective clawback penalties will be combined to determine the total clawback required.

The parties hereto recognize certain economic factors generally described as "Business Climate Changes" are beyond the control of any of the parties and may affect the ability of the Company to strictly adhere to the job creation numbers and schedule set forth herein. "Business Climate Changes" means substantial changes, beyond the control of the Company within the industry in which the Company operates, that causes a significant decrease in the Company's ability to perform pursuant to the requirements of this agreement with the City. The Company may request specific modifications to the job creation schedule in writing within ten calendar days of learning of the existence of the "Business Climate Change." Such notification shall include the details of the business climate change, the effect thereon on the Company, and the modification of this agreement the Company requests. If the City and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified by ordinance.

c. **Job Reporting.** The Company shall submit quarterly employment reports documenting its quarterly filing of the Department of Workforce Solutions' (DWS) Employment and Wage Detail Reporting as submitted to DWS in the form and manner required by EDD and the City beginning with the January 31, 2023 and continuing every April 30, July 31 and October 31 thereafter until the completion of this agreement. The State will provide copies of all such reports to the City or the State may request a copy of the Company's quarterly employment reports at any time while this Agreement is in effect and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the City and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without up-to-date quarterly job reporting as set forth herein.

    1. The Company shall complete an annual economic impact data sheet (EIA) provided by the State of New Mexico Economic Development department not late than February 28 of each year beginning in 2024. This will reflect actual economic activity and hiring of the Q/E for the preceding calendar year. Failure to complete EIA data sheet by April 15th of any calendar year Q/E shall be subject to a 10% clawback of all

funds received.

d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

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

12. Annual Performance Review. To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City or EDD staff beginning on June 30, 2023 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

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

13. Termination. This Agreement shall terminate at the close of business on January 31, 2033 or when otherwise terminated by ordinance.

14. Request for early release of security. If the Company achieves and then sustains the Minimum Job Number of 100 permanent, full-time employees for six (6) consecutive months prior to December 31, 2030 and has made in excess of three hundred and fifty million dollars ($350,000,000) in production spend the Company may request release of the Security and termination of the agreement. Said request shall be made to the City in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. In no event shall the security be released until the Company has furnished contemporaneous job reporting documentation and completed the corresponding Annual Performance Review. A request for release of the Security may not be submitted prior to December 31, 2030. Upon receipt of such a request the New Mexico Economic

Development Department will work with the Company to gather sufficient documentation of the economic activity directly created by the Company during the period of this agreement and complete an economic impact analysis report. If said report verifies that the State of New Mexico has received direct tax revenues from the activity of the company said request shall be granted.

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

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

17. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

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

19. **Notice.**

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

The initial notice addresses for the parties are as follows:

If to the City:
City of Las Cruces
Attention: Economic Development
P O Box 20000
Las Cruces, New Mexico 88004

If to the Company:
828 Productions, LLC
100 S. Church Street
Las Cruces, NM 88001

Effective Date: _____

Attachment:

1. Example of Clawback Calculations

SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

CITY OF LAS CRUCES, NEW MEXICO

By _____

Name Ifo Pili

Title City Manager

828 Productions, LLC

By _____

Name: _____

Title: _____

Attachment 1
Example of Clawback Calculations

Clawback Calculations

Clawback Formula = (Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed)

Job Creation % Shortfall = (1 - (actual jobs / cumulative hiring target))*100%

Example - 1 100%		End of year 1, inclusive of cure period
Actual Employees	(a)	41
Cumulative Hiring Target	(b)	42
Job Creation % Shortfall =	(c) = 1-(a/b)	2.38%
LEDA Dollars Distributed	(d)	$ 150,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	$ 3,571.43

Example - 2 100%		End of year 2, inclusive of cure period
Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = 1-(a/b)	1.72%
LEDA Dollars Distributed	(d)	$ 200,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	$ 3,448.28

Example - 3 75%		End of year 3, inclusive of cure period
Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = 1-(a/b)	1.72%
LEDA Dollars Distributed	(d)	$ 200,000.00
Clawback %	(e)	75%
Penalty	(f) = c*d*e	$ 2,586.21

CITY OF LAS CRUCES

MEMORANDUM

To: Ifo Pili, City Manager

From: Leeann DeMouche, Financial Services Director **Initials:**

Date: November 22, 2023 **File #:** F-24-078

Subject: City Manager Presentation to Council of Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A Pricing Certificate

The Financial Services Department requests the presentation of the attached Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A Pricing Certificate as a City Manager item at the November 4, 2023, City Council Meeting. This presentation fulfills the requirement to disclose the final terms of the bonds as per the delegation clause in Ordinance No. 3048 adopted by City Council on November 6, 2023, and Section 6-14-10.2, NMSA 1978.

Enclosures/Attachments: Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, 2023A Pricing Certificate; Information for presentation to Council

cc: Erika Jaquez, Treasurer **Initials:** EJ

cc: Barbara Bencomo, Chief Administrative Officer **Initials:**

$5,580,000
CITY OF LAS CRUCES, NEW MEXICO
SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A
(PPRF-6329)

PRICING CERTIFICATE

The undersigned is the duly qualified City Financial Services Director the City of Las Cruces, New Mexico (the "City") and is executing this Pricing Certificate pursuant to Ordinance No. 3048 (the "Ordinance") adopted by the City Council (the "Council") on November 6, 2023, and the Supplemental Public Securities Act, Section 6-14-8 through 6-14-12, NMSA 1978. All terms not defined herein shall have the meanings given them in the Ordinance.

WHEREAS on November 6, 2023, the Council adopted the Ordinance authorizing the issuance and sale of the Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A (the "Bonds") in a principal amount not to exceed $5,600,000 for the purpose of (1) equipping fire stations and acquiring fire trucks (including, but not limited to, fire engines and other fire and emergency vehicles) and fire equipment for the City Fire Department and (2) the paying Expenses related to the issuance of the Series 2023A Bonds (collectively, the "2023A Improvement Project"); and

WHEREAS, pursuant to Section 6-14-10.2 NMSA 1978 and the Ordinance, the Council delegated authority to the City Manager and the City Financial Services Director to determine the final terms of the Bonds, including the maturity dates, principal amounts, prices, redemption features and other features of the Bonds, subject to the parameters of the Ordinance to be established in this Pricing Certificate supplementing the provisions of the Ordinance; and

WHEREAS, the City through its Financial Advisor provided notice of the proposed Pricing Date for the Bonds acceptable to the New Mexico Finance Authority; and

WHEREAS, the City accepts the New Mexico Finance Authority's offer for the purchase of the Bonds pursuant to the pricing of the Bonds as set forth in this Pricing Certificate and in the Bond Purchase Agreement dated the date hereof between the City and the New Mexico Finance Authority (the "Bond Purchase Agreement") submitted to the City on this date in accordance with the Ordinance; and

WHEREAS, the undersigned has determined that it is in the best interest of the City to proceed with the sale of the Bonds pursuant to the Ordinance, the Bond Purchase Agreement and this Pricing Certificate.

NOW THEREFORE, the undersigned hereby certifies as follows:

1. Private Placement of the Bonds; Approval of Bond Purchase Agreement. The Bonds shall be sold in a private placement to the New Mexico Finance Authority (the "Finance Authority") pursuant to the Bond Purchase Agreement which is hereby approved and is in substantially the form approved by the Council pursuant to the Ordinance. The Bonds shall be sold to the Finance Authority at a purchase price of $5,580,000, which equals the par amount of the Bonds as set forth in the Bond Purchase Agreement. The sale price is within the parameters authorized by Ordinance.

2. Details of the Bonds. The Bonds shall be issued in the aggregate principal amount of $5,580,000 which is less than the maximum par amount of Bonds authorized by the Ordinance of $5,600,000. The Bonds are secured by a subordinate lien, but not an exclusive subordinate lien, on and are payable solely from the Pledged Revenues and will be used for the 2023A Improvement Project. The Bonds will be dated their date of their issuance and delivery to the Finance Authority, will bear interest from the date of delivery at the rates described below, payable semiannually on June 1st and December 1st of each year until maturity, commencing June 1, 2024, and shall mature on June 1st in each of the designated amounts and years as set forth below:

Maturity Date June 1	Amount	Interest Rate
2024	$ 725,000	3.270%
2025	1,310,000	3.170%
2026	1,350,000	3.060%
2027	1,395,000	3.010%
2028	105,000	2.980%
2029	105,000	3.010%
2030	105,000	3.040%
2031	105,000	3.060%
2032	105,000	3.090%
2033	105,000	3.130%
2034	105,000	3.350%
2035	65,000	3.570%

The final maturity of the Bonds is June 1, 2035 which is prior to the maximum final maturity established in the Ordinance of 15 years from the date of issuance (or June 1, 2038).

3. Optional Redemption. The Bonds maturing on and after June 1, 2034 shall be subject to optional redemption in whole or in part by the City on any date on or after December 15, 2033.

4. Net Effective Interest Rate. The net effective interest rate on the Bonds is 3.105363%, which is less than 12% as required by the Ordinance.

5. Finance Authority's Discount. The purchaser's discount charged by the Finance Authority is 0% which is less than 1% of the aggregate principal amount of the Bonds as required by the Ordinance.

6. Sources and Uses of Funds. The proceeds of the Bonds shall be applied to the Project as follows:

Sources:	
Principal Amount of the Bonds	$5,580,000.00
Total Sources:	$5,580,000.00
Uses:	
Series 2023A Acquisition Fund (including costs of issuance of $74,000)	$5,580,000.00
Total Uses:	$5,580,000.00

7. Notice to NMFA of Issuance of Additional Parity Obligations and Parity Subordinate Obligations. Pursuant to Section 25(B) of the Ordinance, for so long as the Finance Authority is the holder of the Bonds, the City shall notify the Finance Authority (i) within 30 days of the release of the City's audit by the State of New Mexico Auditor, if the Pledged State Shared Gross Receipts Tax Revenues for any Fiscal Year are less than 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Obligations and the Parity Subordinate Obligations and (ii) of the approval by the City of the issuance of any Parity Obligations or Parity Subordinate Obligations upon the City's approval of the issuance of such Parity Obligations or Parity Subordinate Obligations (collectively, the "Notice Requirements"). Posting of an Official Statement for such additional Parity Obligations or Parity Subordinate Obligations or a material event notice on the Electronic Municipal Marketplace Access (EMMA) regarding the issuance of such additional Parity Obligations or Parity Subordinate Obligations shall constitute compliance with notice of the approval of the issuance of additional Parity Obligations or Parity Subordinate Obligations provision in (ii) of this paragraph. The obligations of the City under the Notice Requirements are for the benefit of the Finance Authority as the purchaser of the Bonds. Specific performance by court order to compel the City to comply with its obligations under the Notice Requirements shall be the exclusive remedy available to the Finance Authority or any other Owner. The City's breach of its obligations under the Notice Requirements will not be considered an "event of default" under the Ordinance, and none of the rights and remedies provided by the Ordinance will be available to the Finance Authority or other Owners with respect to such a breach.

8. Terms of Bonds within Parameters of Ordinance. It is hereby found and determined that the foregoing terms established for the Bonds are in conformity with the parameters and limitations contained in the Ordinance.

9. Approval of Documents. The form, terms and provisions of the Bond Purchase Agreement is in all respects approved, authorized and confirmed and is consistent with the parameters set forth in the Ordinance.

10. Presentation of Pricing Certificate. Pursuant to the Supplemental Public Securities Act, the City Financial Services Director shall present this Pricing Certificate to the Council in a timely manner, before or after the execution and delivery of the Bonds, at a regularly scheduled public meeting of the Council.

[*Remainder of Page Intentionally Left Blank*]

WITNESS my hand this 21st day of November, 2023.

CITY OF LAS CRUCES, NEW MEXICO

By: Leeann DeMouche
Leeann DeMouche, City Financial Services Director