CITY COUNCIL
AGENDA

Monday, October 16, 2023 at 1:00 PM
Council Chambers

Chair
Don Curnutt

Vice-Chair
Steve Newby
Committee
Doug Butler
Edward Haworth
Zachery Freilino

CITY OF LAS CRUCES

Utilities Center
680 N. Motel Blvd.
Board Room 225

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.

The following Agenda will be considered at a **Regular Meeting** of the Board of Commissioners of the City of Las Cruces Utilities (LCU) to be held **Thursday, October 26, 1:30 p.m.** at the **Utilities Center, located at 680 N. Motel Boulevard, in Board Room 225**.

CONSENT AGENDA

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

Page

1. OPENING CEREMONIES

1.1. Pledge of Allegiance - Councilor Abeyta.

1.2. Pets of the Week.

1.3. Jobs of the Week.

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

1.5. Sister Cities Presentation.

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 October 10, 2023 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

6.1. Regular City Council Meeting of September 5, 2023. 5 - 59
City Council - Sep 05 2023 - Minutes - Pdf

6.2. Work Session of September 11, 2023. 60 - 76
Work Session - Sep 11 2023 - Minutes - Pdf

6.3. Regular City Council Meeting of September 18, 2023. 77 - 92
City Council - Sep 18 2023 - Minutes - Pdf

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

7.1. RESOLUTION NO. 24-035: A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY. 93 - 102
Resolution No. 24-035 - Pdf

7.2. RESOLUTION NO. 24-036: A RESOLUTION TO ACCEPT THE REAUTHORIZED GRANT AGREEMENT SAP 23-H4099-GFR FROM THE STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT AND DESIGNATE THE AUTHORIZED SIGNER, OFFICIAL REPRESENTATIVES, AND DESIGNATED AGENT OF THIS AGREEMENT. 103 - 129
Resolution No. 24-036 - Pdf

7.3. RESOLUTION NO. 24-037: A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT). 130 - 197
Resolution No. 24-037 - Pdf

7.4. RESOLUTION NO. 24-038: A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF THE CONTRACT FOR OUTSIDE COUNSEL SERVICES WITH ROBLES, RAEL & ANAYA, P.C. TO $500,000 PLUS NEW MEXICO GROSS RECEIPTS TAX ANNUALLY (PROCUREMENT NO. 23-24-021). 198 - 202
Resolution No. 24-038 - Pdf

7.5. RESOLUTION NO. 24-039: A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 21-22-029 WITH GODFREY'S ASSOCIATES, INC. OF DALLAS, TEXAS TO ADD ADDITIONAL BUILDING, SPACE, AND BRANCH PLANNING TO THE PROJECT SCOPE; INCREASE THE CONTRACT AMOUNT BY $26,948.00, INCLUDING GROSS RECEIPTS TAX FOR THE ADDITIONAL SERVICES; AND TO EXTEND THE CONTRACT TERM THROUGH DECEMBER 31, 2024. 203 - 282
Resolution No. 24-039 - Pdf

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

8.1. RESOLUTION NO. 24-040: A RESOLUTION TO AWARD A PRICE AGREEMENT FOR ELECTRONIC FUEL CARD SERVICES TO WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, 283 - 308

ILLINOIS, IN AN AMOUNT NOT TO EXCEED $350,000.00 ANNUALLY, FOR A TERM TO COINCIDE WITH NEW MEXICO STATE PURCHASING DIVISION (NMSPD) PRICE AGREEMENT NO. 20-00000-22-00058, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

Resolution No. 24-040 - Pdf

8.2. RESOLUTION NO. 24-041: A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAS CRUCES (CITY) TO ACCEPT FIRST QUARTER BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023-24 BUDGET, AND THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP). 309 - 373

Resolution No. 24-041 - Pdf

8.3. RESOLUTION NO. 24-042: A RESOLUTION APPROVING A HOUSING TRUST FUND LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THOMAS DEVELOPMENT CO. AN IDAHO CORPORATION, AS DEVELOPER OF THE MULTI-FAMILY AFFORDABLE HOUSING PEDRENA APARTMENT COMPLEX AND AMEND THE CITY'S ADOPTED FY2024 BUDGET FOR $3,000,000. 374 - 448

Resolution No. 24-042 - Pdf

8.4. RESOLUTION NO. 24-043: A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK LOAN (CDBG) AGREEMENT AND A HOME INVESTMENT PARTNERSHIPS (HOME) RECOVERABLE LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THOMAS DEVELOPMENT CO., AN IDAHO CORPORATION, AS DEVELOPER OF THE MULTI-FAMILY AFFORDABLE HOUSING PEDRENA APARTMENT COMPLEX. 449 - 601

Resolution No. 24-043 - Pdf

8.5. RESOLUTION NO. 24-044: A RESOLUTION TO ADOPT A FEE STRUCTURE ASSOCIATED WITH MUNICIPAL COURT INDIGENT DEFENSE SERVICES. 602 - 606

Resolution No. 24-044 - 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. 24-006; 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 607 - 637

DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

Ordinance No. 3048 - Pdf

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT

MINUTES
City Council
Tuesday, September 5, 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 FLORES.

1.2 PETS OF THE WEEK.

No report.

1.3 JOBS OF THE WEEK.

No report.

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

None.

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

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Kathe Stark, Member of the Public said I am with Animal Advocates for Change. Unless you think I only come here to beat you up I want to extend kudos to Councilor Graham and Councilor Corran for taking in a mama cat and her newest litter of kittens

and getting them spayed, neutered, and vaccinated and finding homes for them. Thank you very much. My primary reason in coming today is I would like to respond to the comments Mr. Pili made at the end of the August 21st meeting about the letter that went to the veterinarians, and you stated that the purpose of the letter was to outreach to them and to find out if any of them would be interested in participating and what their capacity might be. However, if the intent is to determine capacity none of the questions that were asked in that letter are likely to yield you answers to capacity and you may have wanted to consider a question like, would you be willing to dedicate a full day or partial days and if so with what frequency and how many? Secondly, there is already a program to provide free and affordable spay and neuter services and that is the SNAP Program. Eight of our clinics and the ASCMV participate in that program, and we have asked that the city fund that program. Because the county provides funding eligible residents of the county can access free spay and neuter services, eligible city residents pay a $75 copay. I met with the SNAP Executive Director last week and asked her what is the status, what is the demand? She said the demand for services are up 45% over last year. People are trying to do the right thing. You might not be aware of how many city residents have benefited from this program despite no city funding. From January 1st to January 31st, 682 spay/neuter vouchers were used by residents and those residents paid copayments of $39,645. By comparison county residents use 415 vouchers. Of the 1097 surgeries that SNAP performed during this period, and 1062 of them were done by veterinarians not under the ASCMV, these were private veterinary clinics. They are very involved in spay and neuter. Third point, we obtained confirmation from two of our local veterinarians that have stated they can dedicate two or three days a month to spay and neuter and one additional veterinarian not affiliated with the clinic to participate. In addition we have been conducting research and outreach to the veterinary board, Heart New Mexico and 240 veterinarians across the state and the region and we have four additional veterinarians identified who confirmed an interest in coming to Las Cruces and helping us. We are also reaching out to a mobile clinic licensed in New Mexico that has been here before that does affordable and free spay and neuter with appropriate funding and we will keep you posted on that.

Jeri Wheelis, Member of the Public said I am with Animal Advocates for Change, and I am finishing up for Kathe. Our fourth point was a mission critical to high intensity spay/neuter is for the city and county to realize their job posting for the vacant veterinarian positions are one, not competitive, two, compensation levels fail to recognize our high kill environment and animal laws that do not demonstrate a commitment to change which does not make the positions attractive when veterinarians can go anywhere in the country. There are currently 10 vacant veterinarian positions in Las Cruces and El Paso Animal Services reports 30 vacancies. The full-time salaries at El Paso Animal Services is with a median of $165,706, Heart New Mexico which is in Los Lunas is posting for a full time vet for $150,000. By comparison, Las Cruces City job posting is for $70,000-$105,000 annually, far below what the other cities are offering. While we understand that there is a salary study pending that just serves to further delay the process when the compensation information is already available. Finally, we realize that of you are not familiar with the proposed ordinance and there appears to be a widespread misconception of requiring spay/neuter of companion animals. Requiring spay/neuter is one part of population control. The proposed language contains numerous

exceptions and alternatives including a phase in period with extensive public education and outreach to allow individuals to schedule surgeries.

Mayor Miyagishima said as a reminder we are going to have a Work Session on October 10th specifically to hear the proposal and hopefully gather consensus and move forward on some items.

Carolyn Truxell, Member of the Public said I am here to oppose the proposed construction of apartments at 2795 Roadrunner. It is very bad for traffic and pedestrians already. The neighborhood is highly opposed to it. It is very difficult to get in and out to Roadrunner from our neighborhood anyway and adding apartments there is just going to be horrible.

Daniel Bishop, Member of the Public said I live in that neighborhood and own a property there. At 2795 Roadrunner Parkway they plan on making a multifamily apartment unit in basically what would be a neighborhood of single-family homes and that would increase congestion from automobiles and pedestrian traffic and it would also increase the potentiality for more crime in those local neighborhoods, which we have already experienced some. I am opposed to any further multifamily units being developed there simply because of safety issues and it is just going to get worse.

Joyce Bishop, Member of the Public said I am here to oppose the building of the construction of an apartment house on 2795 Roadrunner Parkway. There has been a lot of accidents already at that corner. It involves children, it involves people and the cars, and we are going to have a lot of school children going back and forth for school and it is not safe there already. So, I just want see a disaster happening here and I would like to oppose that and have it on record.

Patricia Keever, Member of the Public said I live in the same neighborhood. We are all opposed to this in the neighborhood. Some of us could not be here today but there are more of us who are concerned. Camino Real School is across the street from these apartments would be and there is a lot of traffic there every day from the school and it is difficult for those children crossing in particularly for their parents who are dropping them off because they stop in the street right now to drop them off and it creates a traffic hazard already so with additional traffic it would really be a problem. We are concerned and we oppose.

Anna Rodriguez, Member of the Public said I am also from the same neighborhood, and I am opposed to the construction of the apartment buildings at 2795 Roadrunner Parkway for the same causes that my neighbors already said. My main concern is the safety and mainly the safety of the kids. The school as Pat already said is one block away from this corner and now days it is already very dangerous to cross anyway. It is a dangerous intersection. Adding apartment buildings there would be a safety concern.

Mayor Miyagishima said I guess I am just a little puzzled. We are not talking about the new apartments that are being constructed right now on Roadrunner Parkway? So, there are new apartments that are being built North of Veteran's Park. Then there is

the Children Youth and Families building and then there is another lot and then there is the Fire Station?

Anna Rodriguez said you keep going and there is Morning Star and there is the other lot. There is a church there and there is this school there.

Mayor Miyagishima asked what has brought this forward? I am not aware of any.

Anna Rodriguez said I received a letter in the mail saying that they are planning to construct there.

Mayor Miyagishima said let me do this. Let me get with Community Development and find out what it is about. I will communicate it with Councilor Flores, your representative and we will see. Depending on where it is at, that land has been zoned many years ago so I don't know which one it is. I am trying to figure out where exactly. Let me find out a little bit more.

Juan Garcia, Member of the Public said the Daily Wire reported on 1 September and I quote, "State Senators call on NMSU to prevent more emotional damage to the students after being triggered by Matt Walsh". The letter dated 11 August bringing the full weight from Senator Hamblen cosigned by Councilors Bencomo, Corran, Graham, Gandara, Senator Soules, Commissioner Reynolds and Schalijo and of course Representative Rubio was sent to the NMSU Board of Regents. The focus in my opinion is to attempt to silence the young students who brought in the speaker are using the "human rights act" to protect a specific group. The question is, where are the human rights or the rights to public safety for over 100+ small businesses that are part of the Las Cruces Hall of Shame and individual citizens like the lady brutally attacked on Valley. The signers of this letter quickly jumped to engage with NMSU to further squelched future speakers that they don't approve of. The signers want to know, "what can be done to protect the students from emotional and psychological damage?" My question is, why aren't these same signees when in my opinion are weak on crime asking fellow state officials or the Governor for an emergency session to protect citizens from becoming victims not only in Las Cruces but the warzone better known as Albuquerque. So what is the difference? In my opinion perhaps the effected students are part of a bigger voting block that many Hispanic small businesses don't belong to. Or maybe they have parents and supporters with larger checkbooks and deeper pockets, I don't know. Why don't the 100 small businesses, actually it is 100+ get as much attention by the same elected officials other than opportune photo ops during election season. So, the optics are terrible, the question still remains. Cuanto mas? And why do we pick and choose the areas that we choose to focus on and by we, I am talking about our elected officials. It would really be interesting to know what is driving that and what is the difference between this 100+ folks that have been victimized and the students at NMSU?

Steve Coletti, Member of the Public said I am a Las Cruces resident of 13 years and plant manager for the filling plant of Linde Gas and Equipment on Telshor. Our number one product is medical oxygen. The respirators you heard so much about during the pandemic are useless without oxygen to hook to them. We supply all of the

ambulance services and at one point or another during the crisis all of the hospitals in the counties of Grant, Luna, Sierra, Otero, Dona Ana, and El Paso. One of my responsibilities as plant manager is the security of my plant and that is why I am here today. Over the last four years my facility has been broken into five times. The same time most of you have been in office and according to your Police Department the time frame in which property crime has doubled. All of these break-ins were property crimes. Last January LCPD caught and arrested three of these thieves in the act. Here is where my frustration comes in. These individuals, all three vagrants, were released the next morning all on their own recognizance without consequences and there was even bond that incentivize them not to go out and commit more crimes including my own facility three weeks later. One of the officers responding the same time as the first although he was extremely professional it was obvious that he was as frustrated as I was. You spend a lot of time deflecting responsibility off of yourselves and pointing fingers at others saying that there is nothing you can do. It is time you took responsibility. First you can enact and enforce an anti-panhandling and anti-vagrancy laws. Sending a message that in order to be part of our community there are standards that must be met. These issues all fall under your jurisdiction in Municipal Court. Secondly for matters out of your control work with the DA. You are quick to blame him but interestingly enough we met with him about a month ago and he informed us that not a single one of you has ever met with him. How can you blame him without even having a conversation with him to coordinate efforts? You run the Police Department. Lastly, I am sure you are aware of this but for the benefit of those of you in the audience and may have slept through high school physics, America is not a Democracy we are a Republic as such we represent elected officials to do the business of governing. You are those officials and those representatives. If your hands are being tied by statutes coming out of the County or out of Santa Fe you should be fighting them to get those statutes changed. Please do what you are here to do and give the hard-working law-abiding citizens of Las Cruces a safe place to work and live that they deserve.

Lori English, Member of the Public said I live in Dona Ana County and in the city of Las Cruces. I am fully aware councilors of the fact on June 7th you made a decision to erect a memorial for a young lady in Veteran's Park. I honor that decision although I do not think it belongs where it is going to be but that is already a done deal but my complaint is first of all how the Veterans were handled on June 7th and treated by the city council. The only reason I even said anything about Mr. Mayor last city council meeting is because I know he voted with you to erect the monument even though he said after he was against it because he thought that you were setting a dangerous precedence. Where does the city council get off contacting a private individual who might or might not know me to get my personal information on my email, my address or my phone number? Second of all I think the council acted very, very badly in their decision to do this and I would like to read if I may an exert from what the city council regulations are. Public Hearing input, Section 2.10.5-051, it says the applicants or appellants shall have the right to speak first. The Chair will determine the length of time allowed for the presentation speakers representing other or pro con points of view will be allowed to follow. The Chair will determine how much time. Item 2. Council Members will not express their opinions during the public hearing portion of the meeting except to ask pertinent questions towards speaker or staff. I feel and I think comments by the council members are not appropriate until after the close of the

public hearing. Council members should refrain from arguing or debating with the public during public hearing and input and shall show respect for different points of input. Number one, you didn't respect our different point of input, and 2. we were constantly interrupted by councilors, and 3. a certain councilor even got in an argument with the Chair of the Veteran's Advisory Council. I am asking that this council meeting be reviewed and reposted and readded on the agenda.

Peter Goodman, Member of the Public said I sympathize thoroughly with what Mr. Coletti was saying but I think he is headed in the wrong direction as far a relief. Some of the things he was suggesting that you enact would have constitutional defects so that they would just immerse the city in litigation that it would spend money on and lose. I agree that it is a problem and needs to be addressed and with more imagination than what it has but the answer is not the District Attorney's Office. The District Attorney's Office in the words of a visiting judge from a year or so ago the situation has not improved. It is a dumpster fire. It is perhaps the worst organization, public organization in Southern New Mexico. It's unfortunate that whatever party you belong to but it is under staffed and it can't do the things it is supposed to do. That is why we are seeing a lot of dismissals on various cases because they can't get around getting the paperwork that they need to judges. So, I fear that they are not the answer.

Jennifer Kreie, Member of the Public said I am here to apologize. I did not know that you were having a Work Session about police transparency and use of force issues last week. I am very interested and concerned and I love the technology. I was able to hear Chief Story's presentation. Thankfully Reverend Wilkins and Peter Goodman were here to comment. I just wanted you to know I wasn't here, I missed it. I thought the presentations were good. The comments were good, so I appreciate your work. Thank you.

Sarah Smith, Member of the Public said recently Mayor Pro Tem Gandara, Councilors Bencomo, Graham, and Corran signed a letter urging the Interim President of New Mexico State University to limit free speech on campus. This was in response to Matt Walsh speaking at NMSU a few months ago. I understand that Matt's stance is controversial, to be clear I am not anti-gay or anti-trans. However, information about the potential harms of gender transition is important and people need to have access to this information even if it sometimes comes from a controversial source. The statewide organization that I help to lead the New Mexico Freedoms Alliance recently hosted a discussion with Laura Becker in Albuquerque. Laura underwent gender affirming care in the form testosterone and breast removal before realizing that it was all a huge mistake and that she was a woman not a man. Laura's past trauma and abuse had led her to suffer from a variety of mental health problems and these were not improved by gender affirmation. Her trans healthcare actually worsened her suicidal tendencies, and she cannot reverse what has been done to her. Even though she has detransitioned now she continues to grow facial hair. Her voice is permanently deepened, and she will never be able to breast feed her potential children. Whether you agree with Matt Welch's message or not is irrelevant. Opposing viewpoints are important. They allow us to weigh both sides of an issue and the right to do this is essential to a free society. Universities of all places should welcome the airing of opposing viewpoints and earnest discussion. The right to free speech is one

of our most important rights as protected by the United States Constitution and our State Constitution. This right allows us all to hear and to be heard regardless of who is in power at the time. Please uphold our rights to free speech as our elected representatives.

Dan Parrot, Member of the Public said I would like to speak on the past ordinance that was just passed seeking to protect the individuals' seeking assistance on public streets and the medians. I think this is a really good start for public safety and gives a tool to the Police Department to enforce safety issues on our public roadways here in Las
Cruces. There is an additional thing on Roadrunner Parkway that I would like to point out that is of equal importance to our children at two of the elementary schools, it is Camino Real near Morning Star Church and Desert Hills on the other end of Roadrunner. Until just recently Desert Hills had a severe problem with parents dropping off and picking up children. My main concern since I travel that roadway quite a bit in a day is one of the children running out into traffic and being seriously injured or possibly killed. I would like to request the council direct the road department or safety department to look at these areas or put up possibly not stopping or discharging or picking up of children and then there is an additional spot on Lohman at Si Senor Restaurant coming east bound where people turn in to pick up their orders that impede traffic flow several times a day cutting that roadway from a three lane roadway to two lanes.

William Beerman, Member of the Public said I noticed over the years that Las Cruces city government normally did not include salaries when it announced in news releases of the appointment of city officials so I did find it interesting when you reappointed the City Manager last week the city's news release pointed out that his salary was not changed. This raised a question. Why was the City Manager not given a raise? Is it because our City Manager already makes more than the Governor of New Mexico and more than the average of $149,000 for all the Governors in the United States? According to the Sun News the current Manager was hired with a contract of a base salary of $216,000 per year before benefits, a 19% jump of what the last permanent City Manager was paid. The city had budgeted $169,000 for the City Manager position including benefits but in the hiring contract it brought the total up to $279,000 which included the $216,000 salary and other benefits such as $500 a month vehicle allowance, health, dental, vision, and life insurance and a retirement plan and relocation assistance of up to $15,000. My intent is not to single out the City Manager, but his case provides an excellent example of the city council's cavalier largess in the way it spends other people's money. The city government in swallowing in millions of dollars from annual increases in revenue and influxes in federal tax money. Rather than cut the taxes and utility rates you impose on ordinary citizens you want to spend money on controversial ideas such as making a multimillion-dollar bus service free, paying guaranteed basic income to selected individuals and paying compensation to victims of crime which ironically you caused by defunding the police in the years before and after 2020. You even have opposed a new rider on our gas bills as part of a misguided crusade against natural gas. The citizens did not elect you to go on a spending spree for your ideological causes. I am sure many of us besides myself are upset at what you are doing.

4. ACCEPTANCE OF AGENDA

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to accept the agenda as presented.

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

5. CITY COUNCIL MINUTES

5.1 WORK SESSION OF JULY 24, 2023.

5.2 REGULAR MEETING OF AUGUST 7, 2023.

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

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

7.1 RESOLUTION NO. 24-024: A RESOLUTION AUTHORIZING AN INDEFINITE COST, INDEFINITE QUANTITY AGREEMENT FOR JANITORIAL SUPPLIES WITH SPECTRUM PAPER CO., INC., VIA EDUCATION SERVICE CENTER REGION 19 ALLIED STATES COOPERATIVE CONTRACT NO. 21-7392 (PROCUREMENT NO. 23-24-022).

Lisa Pardon, Buyer gave the overhead presentation.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 24-024.

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

7.2 RESOLUTION NO. 24-025: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023-2024 BUDGET, THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP), AND THE FY2024 VEHICLE ACQUISTION FUND (VAF).

Rocio Gamboa, Budget Analyst gave the overheard presentation.

Cynthia Campo, CIP Analyst continued the overhead presentation.

Councilor Flores asked item 6, Del Rey Boulevard signal improvements and the reason for request is budget to actuals, how is that funded?

Tony Trevino, Assistant Director of Public Works said the Del Rey Signal Project is actually an NMDOT State Grant. It is part of the Capital Outlay. That is a MAP grant actually. It is from the NMDOT, and it is state funded for the entire project. It is to reduce some of the single heads, some of the striping in that whole intersection of Del Rey and Bataan Memorial East and West.

Mayor Pro Tem Gandara asked the HAWK System on Picacho, can you say a little bit more about that?

Tony Trevino said the HAWK System on Picacho and Fourth is that we had to request an extension form the state due to some right-of-way issues trying to get some areas where we can put the post and signal. That is moving forward and hopefully we will get that in place and going here beginning of the winter or January/February of this year.

Mayor Pro Tem Gandara asked for the public can you speak to the HAWK System, what is it? What does it do? Why are we doing it there?

Tony Trevino said the HAWK System are similar to the ones that are on University Avenue. They are just not flashing lights that were there on Picacho. Fourth Street is where the school crossing guard stands where the students go from the Fourth Street, Sixth Street area south to the school. At that area that is also the detour for the GO Bond shell system. We had some obstructions trying to go across the railroad and the drainage area there, so we had to do a detour down Fourth Street in front of the school down Hadley. This allows us to provide additional protection for the bicyclist, pedestrians, and school children going north and south.

Mayor Pro Tem Gandara said I have a question on slide 12 and 13 on Apodaca Park and the restrooms of various parks, updates and renovations.

Cathy Mathews said the Apodaca Park Aquatic Playground Project is continuing at this moment. It has funding from the Land and Water Conservation Fund, the Outdoor Recreation Public Purpose's Grant through the Water Conservation Fund. It comes to us through the New Mexico State Parks Division and directly from the National Park Service. We have a grant from them and we have internal matching funds as well as state legislative grants funds matching that as well.

Mayor Pro Tem Gandara asked is that just for the aquatic portion of the playground? Is it also going to extend maybe a covering?

Cathy Mathews said we applied for the grant in 2018 and received notification that we received it in 2018 but we did not actually receive the grant until earlier in 2023. The funding is now in place with the grant, so we are beginning the process. The anticipated scope includes the demolition of the existing swimming pool, design and construction of a splash pad and an aquatic playground in its place and design and construction of a multipurpose trail in the park as part of what was outlined and conceived of in the Apodaca Blueprint, and so the project intends to accomplish all

those things. At this point in time of course during Covid before we actually received the grant our cost escalated significantly and so there is concern that the available budget currently is not sufficient to complete the entire scope. We have yet to begin design. As we continue through design, we will realize any kind of cost savings or value engineering that we can but the intention is to accomplish the entire scope to the extent that the budget allows and that includes demolition, construction of aquatic playground and multi-use path. For instance the multi-use path maybe won't be a pathed path but the scope includes a path and the intention is to include a path per instance.

Mayor Pro Tem Gandara asked around the restrooms at various parks, will that include an update or a renovation of that particular restroom for Apodaca Park?

Cathy Mathews said the portion of Apodaca Park Project includes an aquatic playground splash pad. New Mexico Environment Department requires a restroom to be built in construction with that kind of facility so there will be a restroom as part of that portion of the project. It won't be a renovation of the existing restrooms.

Mayor Pro Tem Gandara asked it will be an additional?

Cathy Matthews said there exist a swimming pool and a pool house both of those structures will be demolished. In their place in the intention is to build a splash pad with the required restroom.

Mayor Pro Tem Gandara asked there is an inoperable fountain there, what are we doing to get that up and running again? I know there is some issues there with connection and whatnot. Can you give us an idea of what that might look like, a time frame to get that connected and if not some sort of portable drinking station for those folks frequenting the park?

Cathy Mathews said that drinking fountain has an insufficient connection or not exactly legal connection from years back when it was installed. That drinking fountain cannot be in service. Our park staff is working on a solution with our facilities management staff since they manage the maintenance etcetera of our drinking fountains. I don't have a time frame at this point and time, but I can get that for you.

Mayor Pro Tem Gandara said I just feel that since people frequent it and they expect a water fountain to working. I was wondering if we can put something temporary out there. It is still warm out there for kids to be out there without a water fountain. I am thinking a temporary fountain, you see those in events and such and I am hoping we can really explore that.

Councilor Abeyta asked I also have a question on slide 13 with regards of the ball field and soccer renovations on what those renovations are going to be in particular with the soccer fields?

Cathy Mathews said prior to receiving the funding from the state legislative grant we sought the input of the soccer community who uses those fields and determined a

prioritized list of improvements to be made. So, among those improvements will be demolition of the press box that is on field one I believe. The structure is not used at this point in time. The funding will be used to make that area safe and remove that press box, new drinking fountains throughout the remainder of the soccer fields that are leased to the city, fencing improvements with increased numbers of gates so that there is better access to field rather than just a single location. Also included will be renovations to the restrooms and concessions area that building that is on Bruins Lane.

Councilor Abeyta asked with regards of the legislative funding, that specifically I believe that was a little over $900,000 I believe and that was designated for soccer in particular? When we talk about this type of fundings is there something separate for the baseball fields then or are we utilizing these same soccer funds for the baseball fields?

Cathy Mathews said this grant is being used at the High Noon Soccer Field only not baseball fields at this point.

Mayor Pro Tem Gandara asked there is some way finding signage in the area for the Arts and Cultural District and we have been waiting a long time for it too, can you give me an update?

Cathy Mathews said this particular item, it is park and trail way finding signage. It was a grant through the New Mexico Transportation and it allowed us to contract with the consultant and develop a plan for park and trail way finding so that for where it is exist this item is a carry over and the small amount of remaining funds so that we can have that document printed and bound available for our partners and ourselves to use and refer to as we move forward actually installing park and trail way finding.

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Approve Resolution No. 24-025.

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, and Councilor Becky Corran
ABSENT:	Councilor Yvonne Flores

7.3 RESOLUTION NO. 24-026: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023-2024 BUDGET.

Rocio Gamboa, Budget Analyst gave the overhead presentation.

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to Approve Resolution No. 24-026.

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

7.4 RESOLUTION NO. 24-027: 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.

Charlie Fierro, Budget Analyst gave the overhead presentation.

Councilor Flores asked on page for the allocate to provide senior funds, isn't that what we do anyway so is it an expansion of what we are doing now?

Carol Brey, Director Quality of Life said this is not an increase of our current program. It is a grant that we receive every year. The city does contribute close to $700,000 a year also to this program and the remaining more than $2 million that we dedicate to this program comes from some contributions from participants who pay a small amount for their meal. So, I would say roughly 2/3 of this entire program comes from this grant every year.

Councilor Flores said the reason I was asking is because the match is N/A, there is no match.

Carol Brey said yes, it does say no match but we do contribute in order to be able to. There are funds from the General Fund in this program so that we can meet the need and demand in our community.

Councilor Flores asked there is not match probably because the grantor didn't require it?

Carol Brey said correct. There is no match required but we do contribute.

Councilor Tessa Abeyta moved, seconded by Councilor Becky Corran, to Approve Resolution No. 24-027.

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

7.5 RESOLUTION NO. 24-028: A RESOLUTION APPEALING THE DENIAL BY THE PLANNING AND ZONING COMMISSION ON JUNE 27, 2023, FOR AN INFILL DEVELOPMENT PROCESS APPLICATION PROPOSING TWENTY (20) DWELLING UNITS ON A VACANT PARCEL LOCATED AT 725 MCCLURE ROAD. THE SUBJECT PROPERTY ENCOMPASSES 1.122 +

ACRES AND IS ZONED R-1A (SINGLE-FAMILY MEDIUM DENSITY). SUBMITTED BY MESILLA VALLEY PROPERTIES, LLC, PROPERTY OWNER (23ZO500047).

Mayor Miyagishima said before I begin there may be some of you that emailed council members, I know you emailed me, we are really not allowed to respond to you and I don't want you to think we are just ignoring you but we have to show that impartiality so I appreciate your understanding in that.

Adam Ochoa, Community Development said Adam Ochoa, Community Development for the record.

Christine Rivera, City Clerk said are you ready? Adam, do you swear and affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Adam Ochoa said I do.

Christine Rivera said thank you.

Adam Ochoa said my name is Adam Ochoa, Community Development for the record. Case we have here is an appeal to the Planning and Zoning decision of a denied proposed infill development process proposal for a property located at 725 McClure Road. First, I wanted to start kind of educating you a little bit with what exactly an infill development process proposal is. It's basically where an applicant who owns or is doing a project in what is the core of the city on a piece of property that is either undeveloped, under developed possibly, underutilized is another word that we use as well where they essentially work with staff kind of going back and forth as to what potentially can go on that property that wouldn't be allowed to go on that property by right with its existing zoning designation. That being said the infill development process, the goals for it is to develop active uses compatible with the surrounding area. That is one of the goals. To promote of economic development in the central part of the city, really and also just increase density in the center of the city and advocate the visions of Elevate Las Cruces. Some of those back and forth or that staff has with applicants is potential variances when it comes too density for instances or set back variances, possible special uses that could go on that property. Additional uses that wouldn't be allowed by right on the property like I said before. For instance, the property we are talking about today is zoned R-1a by right you are only allowed to have a single-family home and those items associated with a single family or just other things as well as subdividing could be part of this process, building permits, sign permits, etcetera when we are looking at an infill. Essentially what happens is staff goes back and forth with the applicant and then they do take this the Planning and Zoning Commission who have final decision on these infill development proposals and of course unless it is appealed to city council by either the applicant or affected people. Really what we are looking for when P&Z and when staff is looking at an infill development proposals we make sure that we foster the goals and policies and really what are the objectives of Elevate Las Cruces but additionally on top of that we also want to advance the purpose of our zoning code which is essentially, keep up with public safety, health, general welfare and just an orderly development in the infill area.

That being said we will go into the actual details of what is being proposed.

Currently the property like I stated before is zoned R-1a, single family medium density. It is roughly 1.112 acres in size and it is currently undeveloped or vacant. It is located in what is called the Suburban Place Type in Elevate Las Cruces and it is also what is considered Lot 1 of the October Sky Subdivision. The subdivision kind of subdivided an existing tract which created this lot and an additional tract that was created for a city project and sold to the city for a potential city project. Not muted, there we go. Subject property is underneath here. You can't really see it unfortunately, right off of McClure Road as you can see McClure is kind of like the connection between Valley and Alameda but that is the vacant piece of property right here. Maybe this will show a little bit too as well. As you can see the vast majority of the zoning of this area is R-1a single family zoning, vast majority that is being developed out here are single family site built homes essentially. Some multifamily, some zoning that is open areas that are like parks and so forth like that. I just wanted to show you just kind of how it is right here in this area of the city.

When the applicant went before staff and before Planning and Zoning Commission, they did request to allow for a 20-dwelling unit apartment complex on the property. Essentially it will be 4 buildings with 5 units each, townhome style development, 5 attached townhomes on each building. Those are essentially the variances if you will the special uses that were requested through the infill development proposal. They were, the developer did talk to staff, they were going to meet all other requirements for developing this property, all landscaping requirements, all drainage requirements, they will be required to retain all their post development runoff, parking requirements, set back requirements and height restrictions. They meet all those requirements with what they were being proposed to staff, to Planning and Zoning Commission, my apologies.

My screen when blank but there we go it is back. Here is kind of a layout, conceptual layout that the applicant submitted with the buildings kind of pushed back to the rear and the access points here off of McClure Road with the kind of looping parking and there is kind of a rendition of what each building would look like with the 5 townhomes attached to each other.

On June 27, 2023, the Planning and Zoning Commission did take this into consideration. The motion essentially failed/denied by a vote of 2-2. Two Commissioners were for it and two were against. We did have three Commissioners absent that day. The Commissioners that supported the proposed infill development or IDP, their findings were supported by Elevate Las Cruces Comprehensive Plan and provides that missing middle piece or middle type of housing in the area. The Commissioners against the proposed IDP saw an issue with additional increase in density, that it will significantly impact of the area, that it does not align with existing look or feel of the area, the land uses found in the area. Additionally, they do believe the existing infrastructure did not support the proposed density with this proposed IDP. With that the applicant did go ahead and appeal that decision of the Planning and Zoning Commission on July 12, 2023. The basis of appealing is that if density was an issue with this portion of land, he would have never sold the portion to the city.

On top of that they state that it is in a Suburban and Urban area where proposed densities are encouraged of what is being proposed. It supports Smart Growth with the range of housing in the area now and it is an area with various forms of transportation and supporting services. You can walk to bus stops, you can walk to schools potentially to the people who are living there. It is supported by various policies of Elevate Las Cruces.

I wanted to let you all know, Council know, wow I am sorry that we did get a wide variety, array and a lot of public input from the area. People who were supportive of the proposed IDP stated that there was a need for this type of housing in the area, that it aligns with Elevate Las Cruces and it will develop a vacant piece of property in the infill area of town which is what infill is really pushing for. People against stated that there would be excess traffic and noise other than what is already there, and McClure is not to city standards. It is only like a two-lane road right now, but it is the designated collector roadway, negative effects on policy, safety, and quality of life, it is out of character for the area, and it will impact already an existing flooding issues in the area and potential increase in crime as well.

With that, ladies and gentlemen your options are one to vote "yes" to approve, let me go through my notes and make sure I give you exactly what it is. I hate to misspeak on this.

Mayor Miyagishima said this is the one where Councilor Graham rightfully says.

Adam Ochoa said so that is exactly why I have to bring it up so we can clarify. So, one is to vote yes, this will approve the resolution and reverse the Planning and Zoning decision of denial. Two to vote no, this will deny the resolution and it will uphold the denial decision of the Planning and Zoning Commission. Three vote to amend, this could allow city council to modify the proposed infill developmet proposal, changing density, heights, whatever with those conditions if you will. Lastly to vote to table to postpone to direct staff or applicant accordingly. The appellant/applicant does have a presentation as well. That is the conclusion of my presentation and I stand for any questions.

Mayor Miyagishima said Councilor Bencomo, then Councilor Flores.

Councilor Bencomo said thanks Mayor and thank you so much for the presentation. You have probably given it many times at this point. Yes, okay I have several questions. So, I do just want to note, I was also going to add one layer about the beginning of this about people reaching out to me and they were like you are our representative and you have to answer, and I try to tell as many of you that because this is quasi-judicial that I am not able to. It would be Ex Parte communication and if I in the process before getting here today engaged in a conversation with you or the applicant in favor or against whatever I would have to recuse myself here today and I didn't want to do that. So just for folks out there, for folks listening that is why I was not engaging in your emails but I was not ignoring them I promise. I also want to note that it is interesting that you know at the beginning of the meeting that we had a public comment about something similar from our neighbors in a different area about not

wanting a mixed use apartment complex in their neighborhood so I just want to point out in the last four years that I have been here I have never once gotten a request for a multifamily housing where there was no opposition by community. Apartment complexes are always opposed by many folks and so I just want to note that is something really difficult to sit up here and often hear because we folks in our community don't want to see homelessness but people also don't want to see homes being built and multifamily housing and housing for renters and the missing middle and so it is just a really difficult position to be in often and so that is where I am coming from. I also want to note that infill development is so critical. It is so important. It is why we wanted to build two metropolitan redevelopment areas because we see what development and investment in communities that have long been neglected can do for that community and for our city overall. I really appreciate the folks who have come and want to develop an area that is very much needs it. Anyways, I do have some questions for you. Can you talk a little bit about the difference between infill development and other kind of development, traditional development? I don't know what to call it, the other development?

Adam Ochoa said Councilor Bencomo, Mayor I guess the biggest difference between this one and let's take for instance the other apartment complex that was brought up during public comment, that area is already potentially zoned for possibly multifamily or they may have to do a zone change in order for it to allow for whatever it is that they are proposing on the property. The infill area kind of takes what that property might have to do like a zone change or whatever it is kind of a little bit for more fast track because we want to develop the infill area and with the infill area it will be a little different because you can request additional land uses and increase densities and increase heights potentially, encroachments into setbacks even, decrease in landscaping. So many different things can be requested through the IDP process itself just because staff or really Elevate Las Cruces is pushing for the development for the core of the city and instead of just the continued development of more green developing the inner part of city. That is kind of the difference between that and so because it is in the infill it has the liberties to ask for these additional variances and changes unlike somewhere else that it is zoned for multifamily and so they just follow standards essentially.

Councilor Bencomo asked so given all of these liberties then it is very case by case, the applications and they way they are reviewed and looked at by staff?

Adam Ochoa said Councilor Bencomo, Mayor that is correct. The staff looks at it not only from an infill that we want to encourage infill development and we want to follow our comprehensive plan as well. We also want to make sure we are kind of keeping an eye on the goals of what an infill should do but still take into consideration what is the surrounding area as well. So, it is kind of that, it is never you know. It is always going to be a different shape trying to go into that square peg. It's a circle, it's a diamond, it's different shapes trying to make something work so staff kind of works back and forth with the applicant to get these infill development proposals together and hopefully through the process faster than typical.

Councilor Bencomo asked is the applicant here today?

Adam Ochoa said I believe the appellant is here, yes ma'am.

Councilor Bencomo said I will have some questions but not yet. I will have some questions for you. So given what you just said about the environment, the context I think for me while I think it is incredible that folks are wanting to develop in this area I also want to note that I have concerns and given I think particularly what you mentioned earlier was what they are coming into. The lacking infrastructure that exists currently on McClure. I often talk about traffic calming matters and how we need to increase our budget, we need to increase the ways in which we do traffic calming because it is a very serious matter particularly all over the city but in my district. I am working with several neighborhoods who are experiencing fast traffic, irresponsible traffic, those kinds of things and McClure happens to be one of those areas so I also understand that McClure is by no means anywhere close to being a complete street and it is in fact very small driveway, very, very small and so I do just have questions and I think these may be for you for sure, but for Tony, and for even Chief Story just around the kinds of traffic calming programs that we currently have on McClure. What are you, Tony for you, actually both what are you, Chief Story and Tony what are you seeing in the last few years? What has been the work on McClure? Given I know we have received many complaints from folks who live there and around traffic calming matters? And the fact that it is not a complete street.

Tony Trevino, Assistant Director of Public Works said gotcha. Councilor Bencomo, Mayor, Tony Trevino for the record again. McClure has been on our radar for quite some time. Back in 2017, in 2017 we did have a traffic study done. That did show that there was speeding on the roadway. I think the 85th percentile was 35-38 miles per hour, however like what was said before do to the median right-of-way there as Mr. Ochoa said it a collector it should be an 85 foot right-a-way from property line to property line. We only have like 44-50 feet in some of the areas. Some sidewalks and no curb and gutter through there so for us to go over there and physically do some kind of improvements, some chicane, some speed tables it is really going to impact that neighborhood because of drainage. We already have a drainage issue so there really isn't enough room in that right-of-way to install the proper traffic calming infrastructure without having a negative impact on everything else. So, what we did back then is we installed some street traffic indicators. There is some, so about halfway through there is two speed way indicators both going east and west there as well as some stop signs there. So that was at that time with the limitations we had that is what we could do for the traffic calming. I believe and Chief Story can kind of address this but there has been communications with Sgt. Gonzales from our traffic section to PD for they are going to do their own traffic studies and then proceed with some enforcement. So Public Works and PD are already being proactive to this approach because it is limited as to what we can do there and we do realize there is a situation.

Councilor Bencomo said thank you. To the applicant, it's not that you would be causing an additional traffic matter is that you are already coming into it pretty serious traffic situation, like that already exists. Chief, I am wondering if you wanted to speak to this on McClure as well?

Jeremy Story, Interim Police Chief said I think this is the first time I had to use this. Jeremy Story, Interim Chief for the record. Mayor, Councilor Bencomo even when I was back in traffic in 2018/2019 McClure came up. We did a long-time study and enforcement project in 2019 that resulted in 215 citations even back then. The following year in 2020 we ran a 37-week project which was majority of the year. During that project, just for volumes I just picked the beginning month and the end month just in January in 2020 there was 23,929 vehicles that went through while we were doing that study and in September 24,871 for the month, so it is pretty consistent with that volume. We have a project that we started this year primarily enforcement, so I don't have the exact numbers per volume for this year but since 2019 we have issued 383 citations, 233 are for speeding in that area.

Councilor Bencomo said yes significant, thanks Chief I appreciate it. Yes, I did want to raise this because I have been talking a lot about traffic calming and how critical it is and while I really support and encourage and never want to turn away folks who are interested in infill development we also have to do it responsibly and given the issues that you have raised, both of you have raised I think that raises some flags for me particularly on the number 20. I really feel like that is too many for the lot and for the infrastructure, that is significantly lacking in the area. I did want to raise those couple of issues. I know that staff reading through the packet you are recommending 15 given the layers. Can you talk about that? That is sort of what I understood. Can you speak on that?

Adam Ochoa said sure Councilor Bencomo, Mayor essentially what staff was looking at with this proposal was how could we allow multifamily on this property with not as much impact if you will with the potential density and potential additional traffic and so on and so forth. So staff kind of looked at it incrementally, so we did an incremental move up if you will. In our current zoning code which is kind of what we use to guide infill under the current zoning designation R-1a they are allowed up to 8 dwelling units per acre. With that being said since it is still zoned in the family they would have to subdivide that lot in order to create those 8 dwellings units per acre with that being said the next step up staff is looking at it would basically the lower spectrum, the lowest on the spectrum of multifamily zoning which in our case our current zoning code is R-2, which is multi dwelling low density which allows up 15 dwelling units per acre. That is kind of what staff used kind of as a guiding force as to why 15 was brought up. Just because using our current code as a guide that is the next step up incrementally to allow for additional density.

Councilor Bencomo said yes, I appreciate your due diligence and not picking subjective numbers right and so to be very honest though I still feel like 15 is a lot given the, everything that we just talked about and so I do want to ask the applicant. I also did want to note just reading through P&Z minutes and some of the opposition you listed here, I really do just want to push back on some of the narratives around multifamily housing and these myths that we sort of talk about that it creates crime and I think even the developer talked about it is not a low income development. These things are deeply hurtful, and they are not just hurtful they lead to bad policy making and like I said we talk about wanting to see less homelessness but also not wanting to build more homes so I just want to encourage folks to understand the context of at

least where I am coming from and then to just push back on those damaging narratives that way too often are repeated. I just wanted to note that. I do have some questions for the applicant, is that okay Mayor?

Mayor Miyagishima said Councilor this is how I would like to conduct this is, after you get the initial questions done from Adam then I am going to have the applicant come and then I believe the residents have a presentation and then I will open it up the general residents if they are not part of that presentation. If you can wait until then that would be?

Councilor Bencomo said okay then I have one more question for Adam actually.

Mayor Miyagishima said sure.

Councilor Bencomo said I noticed that in the packet there was, the developer was talking about setbacks from McClure. I am wondering if, they were pretty significant. I am wondering if we can talk about that sort of being helpful to some of these issues and I just wondered about that.

Adam Ochoa said sure Councilor Bencomo, Mayor staff did see even though essentially it is only a two-story building how it could potentially by having those buildings closer to the street it can potentially kind of chicane, give the optical illusion that McClure is even less wide than it is now. So, by pushing back the buildings further then the street that kind of alleviate that a little bit not only that but potential people complaining about privacy so now your buildings are actually further away from the street and not closer to your house. The actual distance I am not exactly sure how far it is. The applicant could potentially answer that for you ma'am but that is how staff saw it with those buildings kind of being pushed back a little further from the street would allow for that, additionally would allow for if at any time possibly in the sometime future we did get something in order to get additional right-of-way to widen that street now we have areas to potentially do that open areas for the street to potentially be upgraded.

Councilor Bencomo said thank you, I just wanted to note that I appreciated that piece of development and then just before again opening up to the public I just want to note that these are very estimated numbers that we have a rental unit shortage in the city of 5,600. We have a significant housing crisis on our hands so wanting to work with developers especially those in infill but anywhere is critical for us so that we can at least start making a dent on that number. Thanks Mayor.

Mayor Miyagishima asked okay we also had Councilor Flores that had a question, or did you want to wait until after the applicant? Okay so let's go ahead and bring the applicant down if you would please and as you saw Adam, the City Clerk will have to have you sworn in.

Stephen Green said hello, Stephen Green, I am one of the designers on this project and I am.

Mayor Miyagishima asked your first name again?

Stephen Green said Stephen Green, Stephen is my first name.

Mayor Miyagishima said yes.

Christine Rivera said hi Steven. Do you swear and affirm that the testimony that you are about to give is the truth and nothing but the truth under penalty of law?

Stephen Green said I do.

Christine Rivera said thank you.

Stephen Green said thank you. So, just to kind of present again what we are trying to do is the 20 unit was where it kind of came from was because again Elevate gives you that range of 15-30. So, we were trying to not be greedy by going all the way up to the 30 but after talking with staff we felt that 20 was a halfway point. Also, kind of to go back in time here again a portion of this land was sold to City to help alleviate the flooding in the area which is a concern that is had the applicant not sold the land this would not be a discussion right now. They would have had the correct amount of land to get the densities they were after. So, I feel like that is tough but another thing was that I had some questions for the city as far as the widening of McClure. I believe there was a fund granted to them not to long ago to work on McClure and I have not seen anything of that yet. Have any of the people in the neighborhood decided to give up any of their area for a widening of the road because that has not been addressed either. I know that we have. We have also allowed to put in a bike lane. Other objects that would be important for that area I think if other people were to do the same and follow suit you might be able to accommodate a bike lane and other things going on that road so that is something just to consider also just kind of pointing those out. One last thing is I think traffic if I am correct on all the different approvals that went through in the preliminary thing did get a yes on approval on this. Did they look at the same packet we did? Right, because I believe that was already given as a yes. We looked at the packet. So did long-term planning so they had also looked at this and had already given an approval on it too so that is the only reason why it feels like we got all yeses except for one staff and they have given their reasons but scientifically they haven't proven anything to me yet. I would like to just see some background on that besides just no. That just doesn't seem right to me. Other than that, that is all I have to say about that. I will turn it over to the applicant themselves.

Mayor Miyagishima said how about if you want you can kind of show us what you are proposing. Why you like? How is it going flow? How is it compatible to the neighborhood?

Stephen Green said yes sir, you know one of the things we were trying to accomplish.

Mayor Miyagishima said you are welcome to pull the screen up.

Steven Green asked how do I do that exactly? Again, you can see kind of what was

here. He put the slide show together so it would probably be better if he kind of presented that.

James Vaccaro said sorry, good afternoon everyone, my name is James Vaquero on behalf of Mesilla Valley Properties.

Mayor Miyagishima said James the City Clerk is going to have to take your oath there.

Christine Rivera said do you swear and affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

James Vaccaro said I do.

Christine Rivera said thank you.

James Vaccaro said I apologize I actually did not have the site plan that was presented earlier by Adam but to give you an idea this is actually the property right here prior to it being demolished so currently and don't quote me on this but I believe there is three if not four dilapidated homes that are literally abandoned on this road. This was one of them. My boss who is also my father-in-law who owns this house has family in the area and he wants to invest in this area. That is the property as it stood. Here is the property now. That home is demolished. It burned down. It burned down by an unwelcomed occupant. I don't know how to describe that any better. Here is where we are at. We sold a portion to this land to the city. We subdivided and we wanted to invest in basically the flooding problem and we also had fully disclosed that we had intent to build on this land prior to subdividing. When we presented the plan it was going to be 20–30 unit apartment complex. So, the star on this site over here kind of just represents on the top portion here is us and the lower portion there is actually 1155 Miranda which is almost approximately 70,000 square foot of floor space of apartments. One of the denials in reasoning was ingress and egress because McClure is just too small. Miranda is in the exact same situation, and they are not having any problem. They have a full-length sidewalk end to end as where McClure does not. Also, I don't know if there has been a traffic study on it but they are not having an issue so I would strongly encourage Public Works to get involved to address the McClure issue but I don't know why that is on us as a developer. We are happy to help with that. We have allowed a bike path. We are absorbing and giving up our property for you to have more space because we also are concerned about the safety. The neighbors are concerned with safety. I will be honest with you if we get approved for 20 that is fantastic. If we get approved for 15 the first person I am going to talk to within the city is going to be Public Works because we are concerned over that street. We would love to see speed bumps, cross walks, widening of the sidewalks, I mean that street is a problem, but I don't feel that as though it is our problem. I feel like it is more.

So, moving on, just to give you a small timeline if I may. Basically, April 2020 the City of Las Cruces came to my boss and was interested in the land so he considered it and he actually sold 2.42 acres on March of 2021. He retained 1.12 acres of this land. When we met on January of 2022, Steve Green was present he is our designer, we

also met with at least a dozen people within Community Development and Planning and Zoning and essentially we all went over the plan and that is when it was brought to our attention that they would have liked to see the bike path extended so our setback further pushed away and we gave up our land. Nobody objected to the 30 units being built. Not one person. All the buildings were present, all the labeling, the quantity, the density, nobody said anything. Now all of a sudden, a purchase agreement occurred on April 21, 2022, and further down the line we actually fully sold. So, I attended the City Council meeting and actually one of the council members asked what was the owners intent for the remainder of the land, once again I fully addressed and was transparent that the intent is 28 to 30 townhome units. So, from the very beginning to today we have been very transparent that this was going to be an apartment complex or townhomes, I apologize. So today here we are, sold and subdivided and we are still fighting for what we feel is the best interest of the neighborhood. We are trying our best to just push the rumors aside. It has been pretty ridiculous actually some of the things we have heard and there is no reason to address that actually today. Mentioning this further is Elevate Las Cruces, Planning and Zoning was actually denying it, a couple of people were actually absent but a few that I just want to reiterate and actually just kind of ask Adam if he may. One would be the CP-9.2, Promote denser housing options in the urban neighborhood, downtown, town centers, neighborhood centers, and mixed-use corridors identified in the future development map. We rely on that. The minimum was 15 per acre all the way up to 30 per acre. We followed that entire comprehensive plan. Another one I felt worthy of noting was review and enhance infill policies to encourage more development and activity in the infill area. City Councilor Bencomo, you mentioned yourself that we have a shortage of housing without actually allowing these infills and these densities we are never going to get there. We can't just build everything on Sonoma Ranch. WE can't just say that everything is R-1 around it, let's just let it go down and never change. We did studies for traffic in 2017/2018, what have we done since? You can put up a couple of signs. You can hear the neighbors today. It didn't do anything for them. Another one is promote investment within older areas of the city for redevelopment. We are doing that exact thing. We want to redevelop the area. We want to bring attention to McClure. We want more sidewalks. We want a bike path. As a matter of fact, there is actually a EBD, EBID irrigation canal that has a bike path and walking path along the thing that connects to McClure. There is not even a sidewalk connecting to that. People cannot walk safely even get to that and that was funded by bond money, millions of dollars actually. I don't know the exact amount, I have it on a photo. Nonetheless though is we need to look at McClure more than just our apartment proposal here. You know I could go on about all these policies we follow in Elevate Las Cruces and I am not here to waste your time but I mean we have really done our best for the best interest of this community and we want to just get 20 out of this. We were very transparent the entire way. Other than that, that is about all I have for this presentation.

Mayor Miyagishima asked if I could, Adam can you pull up the diagram? You had four building with five units each. Are these three bedrooms? I mean are these two bedrooms, two bath? The parking spaces? Things of this nature. If you don't mind? Just some basics. I think you had kind of a diagram. So, they are going to be more pitched roofs? Are they all going to be connected together? Things of this nature.

Stephen Green said certainly sir. Some of the design features here you can see we have also taken into account two designated dumpsters locations as to help keep dumpster and trash on the property, so they are not worried about trash blowing around the neighborhood. But they are. There are four separate buildings. Five units each. You can see the doors, one, two, three, four, five. They will be kind of row style in each different one as to take up a lesser footprint. We are trying to minimize how large this looks. We want and we did push it back and that was a big consideration with the applicant when I was going through the design with them. I said I think it would be better if we pushed these to the rear to allow more green open space towards the street side so as though it did not look like we were looming over the street and creating that. We do meet all the parking calculations and traffic calculations for this and everything thing is a dual access, so there is in and out on both sides. Another thing to point out is that this is gated. So, the ins and outs of this is going to, you know waiting for the gate to open is going to help slow in and out traffic. It will slow down in traffic, but it also slows the out traffic. It also helps to add to the character of the building. I think having it gated in will keep a lot of the potential possibilities for destruction of the property down. They are having a little dog park area inside of it to allow for dog walking and stuff like that. Again, some barbequing areas up in the front where the green is. This isn't low income or meant to be looking like low income. This is meant to be a nice development area, a nicer looking thing for the area. We don't want it to look low income. That is what we are trying not to do.

Mayor Miyagishima asked so are they all two-bedroom, two bath?

Stephen Green said they will all be two-bedroom, two bath, yes Sir. Again, they are not age restrictive. They are not anything restrictive. So again, hopefully this will go to possibly maybe even some older people because there is an elderly center not right but down the road. Hopefully that will help with some of those people too possibly as well as families to Mayfield and other areas and there is schools in the district. Not to mention the revenue that this is going to generate in taxes versus what an empty piece of land or a single-family dwelling is. It actually does help to better the community in taxes also.

Mayor Miyagishima asked any other questions before? I have a few more, I don't want to. Go ahead Councilor Bencomo.

Councilor Bencomo said thank you. Just a couple more on specifics but I do want to ask you what low-income housing looks like but I am not going to. I just want to note that people who are low income also deserve good quality housing.

Stephen Green said absolutely.

Councilor Bencomo said thank you. Do you know about the average cost of a unit yet?

Stephen Green said well depending on the design of this and when it gets approved that how we will know. Obviously, the more units the lower the cost of the unit cost is but that would be something we have not done studies on yet until we get this

approved.

Councilor Bencomo asked you don't have an average?

Stephen Green said I think he actually has it.

Councilor Bencomo said yes, I am sorry I mean the rent to individuals.

James Vaccaro said approximately we are trying to make this the middle so not luxury but not low but to where it is just budget build. Ideally, we are looking at anywhere from $1200 to $1400. It really just depends on what is approved and where we stand on. It has been almost ongoing for several years now so cost have inflated so we can't really get it dialed in until we get approved to proceed and then we can get a better but $1200 to $1400 ideally.

Councilor Bencomo said okay thanks.

Mayor Miyagishima said I would be interested to know what it is costing you. If you want to share it that is fine.

James Vaccaro asked the cost of the entire construction?

Mayor Miyagishima said yes.

James Vaquero said currently we have some preliminary numbers that came in around $2.1 million for the entirety of the site.

Mayor Miyagishima asked total square footage for the whole project?

Steven Green said we have that on another sheet, and I am trying to remember.

Mayor Miyagishima asked how about the unit, 800 square feet, 1000 square feet?

Steven Green said they are about 800 square feet a unit so you're looking at so you are looking at about 2,000 a building.

Mayor Miyagishima said that is a good price to build it. Now these are all going to be single story?

Stephen Green said no these are two story.

Mayor Miyagishima said these are two story.

Stephen Green said yes, they are.

Mayor Miyagishima said okay. I wondered how you got so many units in because 1.1,

sounds like a lot of land but it's not that much.

Steven Green said no and again trying to keep that footprint down to fit the densities on it.

Councilor Bencomo said one more question for staff.

Mayor Miyagishima said sure.

Councilor Bencomo said maybe you might know as well. I am curious to know what the property the city purchased was for?

James Vaccaro said the city purchased 2.42 acres and they purchased it for approximately $140,000 I don't recall off the top of my head.

Councilor Bencomo said that is okay, thank you.

Mayor Miyagishima asked so are these going to be apartments or are you going to sell them as condominium units?

Stephen Green said they will be apartments.

Mayor Miyagishima asked is this in the flood zone?

Stephen Green said no, this is not in the flood zone.

Mayor Miyagishima said okay that is the only questions I got. Hold on. So, there in the middle I think I can see the ponding area?

Stephen Green said yes that is correct. That is actually going to be a green space. The ponding will be green like a lough in the area to hold water.

Mayor Miyagishima asked are those two squares is that for trash dumpster?

Stephen Green said dumpster receptacles, yes sir.

Mayor Miyagishima said yes Councilor Flores, you had a question. No this is not city.

Councilor Flores said so if I understood correctly, you are saying that the unit is anywhere from 800 square feet to 1000 square feet and they are going to go for over $1000 per unit. Is that what I understood?

James Vaccaro said that is correct yes.

Councilor Flores said wow. So, okay thank you.

Mayor Miyagishima said or stay so now we will go ahead and I understood. You are welcome to take your seat nearby in case there is any questions but now I am going to ask I believe the residents have a presentation. Is that right Adam, residents did they provide, I believe they provided some type of a presentation that they would like to make to council?

Adam Ochoa said Mr. Mayor it does not look like anything was uploaded. Staff did not receive any presentations from members of the public.

Mayor Miyagishima asked is there a spokesperson? Is there someone that was kind of loosely put in charge of the residents? If you would like to come forward. How many of you are here that would like to speak? Keep your hand up, one, two, three, four, five, six, seven, eight, nine, ten. Roughly ten of you. Okay so we will allow three minutes each so we will just start on my left and just come to the podium. Did you need everyone? They don't need to be sworn in? I didn't think so. Just come to the podium, state your name please and tell us why you are either for or against this proposal.

Councilor Graham asked Mayor can I chime in quickly?

Mayor Miyagishima said sure.

Councilor Graham said thank you. I recognize people who are about to speak. I recognize that part of best practices of public speaking is to try to make eye contact with everyone but if you can talk directly into the mic as much as possible because when eye contact is made it is appreciated but then I can't hear you that well. it's just me, I went to too many punk rock shows in my girl hood.

David Wheeler, Member of the Public said is that meant for me? Okay, I am sorry. David Wheeler I am the next-door neighbor on McClure Road. Do I need to swear in or something like that?

Mayor Miyagishima said no sir, you do not need to be sworn but if you would move the microphone directly and talk.

David Wheeler said how is that? Is that better? Hello. Sorry I have been to a lot of shows too. Here we are again. The concept.

Mayor Miyagishima said excuse me sir, can you state your name one more time please?

David Wheeler, said David Wheeler, 603 McClure Road right next door. I appreciate them wanting to do the most they can for their community and for their land and this and that. We have been there on that property for 97 years. Yes, it does flood by the way. Anyway, there is a flood basin, that is how it was built. Anyway, there is not room for sidewalks up and down McClure. You would have to take every one's front lawn out. We have gone over this when they put in the Benavidez Center. When we built all the homes up and down the S-curve there. This is as much as McClure could possibly

take in traffic. That's it, that is the limit until someone else bought some land and wants to build on it. I know these guys want their money. I would want my money too. I would want to build if that is what you do, fine. You have four big buildings there make them single family homes. Four big single-family homes. Why do you have to get 20 units out of that? You are going to build the same amount of building. The traffic on the street is ridiculous. Anyone who has gone to work in the morning or come home from school in the afternoon or if there is a game at the park or something like that you are backed up for hours. Fourth of July when they had them down there, for hours. Ask anyone who lives on that street they will tell you it's true. It is a bottleneck from Alameda all the way through to Valley and right next to that track is extremely tight. You can barely fit a car all the way across there. It's tight. It's old, it's an old street. It has been there for 100 years. You know I agree that people who are homeless deserve good housing, they do. Absolutely they do. I think there is plenty of room still left in the valley though to find it without trying to squeeze in a big apartment complex in the middle of an old neighborhood with old residents who don't want to get in wrecks just to go home. They are tired of it. They are tired of this man. Every ten years this happens. Let's build a new something on McClure. No, man. We have tried that. It doesn't work. It doesn't work. The neighborhood is not going to like it. It is going to cause a huge problem. The guy behind me is not going to have a driveway. He is going to have to buy land from me to get into his house. All these things. they can say it's not true but I don't care. I live there every day. They are going to build, they their 20 and get out. I got to live there every day, all of us do. So, I hope we can move this down the line or just make it four homes and we are done.

Mayor Miyagishima said if you all are going to speak if you can move forward that would be great so that you can get a little bit closer to the, there is plenty of seats up here.

Justin Nations, Member of the Public said hi Mayor and City Council my name is Justin and I am a property owner on McClure Road.

Mayor Miyagishima said excuse me, Justin I need you to state your last name please.

Justin Nations said Justin Nations, I am a property owner on McClure Road. This proposed development by Mesilla Valley Properties is going to have a negative impact on McClure Road more than one way. I have lived on McClure Road for more than seven years and both my neighbors have as well. One for 20 years and the other for 50 years. We have lived on this road, seen the rapidly increasing traffic, heard the constant noise and experienced crime the firsthand. Vehicles constantly racing up and down the street throughout the day not respecting the 25 mile per hour speed limit. The noise of both personal and business vehicles using the road to get to either Alameda or Valley using McClure has been a constant disturbance every day. The crime in this area has been on the rise. Throughout the years my 84-year-old neighbor has lost many expensive tools due to property crime. His truck was also stolen. I myself had lost a dog due to crime. So, the crime here is real. The development you are proposing will only make matters worse for all of us who live here. Also, what has not been mentioned is down McClure, I live across the street from this proposed development so we are going to see everything first hand and it is

going to cause a lot of problems for us and my neighbors and two doors down from our house which hasn't been mentioned there is a trailer park right on McClure Road that has over 35 trailers so mentioning about high density having a four unit of housing probably two people each that is about 80 people compared to and then add on the high density right across the street right there less than an eighth of a mile away is a trailer park of 35 and over of trailers, so that is also going to be an issue. Especially to those who live right next to the proposed development. This is a single-family house community, and it always has been, and it always should be. It was designed that way. The current homeowners in this neighborhood came here with the belief that the area would be zoned for single family dwellings. To deviate from that original design and intention would be an injustice to us all. Your proposed development would ruin our neighborhood and greatly decrease the quality of life to those who actually live on it. Thank you for your time.

Rayetta Kraft, Member of the Public said my name is Retta Kraft I live right off McClure. I wanted to kind of remind everybody it is a historic district. To put a development out there is so out place. It makes no sense. I still see the apartment complex next to Las Cruces Sun News. It is so out of place. this is beautifully Alameda Historic District. I don't know who came up with the idea to put the apartments up there, but it is totally out of place and the traffic is horrendous. I have lived there every day so I see the traffic up and down racing, same thing the other people are saying. What we are forgetting is Alameda, Hoagland, and McClure they are bombarded. Is that for me?

Mayor Miyagishima said sorry, I forgot to reset it.

Rayetta Kraft said they are bombarded with traffic. What we forget is the roads are buckling, crackling because so much traffic is going on there. Even Alameda is bombarded with traffic. It is like a freeway. Back to back to back cars. These are not roads made for this kind of traffic at all. We forget that. Legends West was built, and a lot of traffic is pushing through day in day out and on McClure there is no sidewalks, there is speeding and there is definitely flooding out there. I am asking you please consider it not going through with this development. It's out of place, it is a problem. It is going to be a problem. Thank you for your time.

Mayor Miyagishima asked before the next speaker, Adam real quick the developer would be required to put in sidewalks at least along their portion from one end to the other, is that correct?

Adam Ochoa said Mr. Mayor and council that is correct. When they do develop that property, they will have to provide some type of improvements to the existing right-of-way. Really depends also whatever the traffic engineering section when they do an actual review of what is being proposed to be developed and potential improvements to the road as well sir.

Mayor Miyagishima asked also out of curiosity you won't happen to know if there are or how many city streetlights there are if there are none in that area? They probably would at least need to put one I would think, I don't know.

Adam Ochoa said Mr. Mayor and council when staff went to go do a field visit we did not see any to be quite honest with you. If there are some they are pretty few and far between, Sir.

Mayor Miyagishima said yes ma'am, thank you for.

Mary Ames, Member of the Public said I am Mary Ames. Did you want me to swear to anything?

Mayor Miyagishima said no, no, no. We just need you to state your name please.

Mary Ames said Mary Ames.

Mayor Miyagishima said Mary Ames, okay.

Mary Ames said I started and continue a petition on change.org that I sent to every council member just so that you know last count 201 people signed in opposition to this. Now I do have questions. Actually, most of these go right to the developer. I want an estimated timeline for construction of all housing units, what type of construction equipment will be utilized, and how many pieces of equipment and the time duration that they will be on the road. What is their egress on that road? What promises were made to you from any and all city officials to allow this variance? How much money has exchanged hands? Who is funding the project including water, sewer, and electrical connection? How many people have you sued in the last four years and what were the outcomes? How have you worked with city engineers to mitigate traffic congestion on McClure, and I would like Mr. Green to answer who he is married to and what her job is? While representatives of this small family visits give answers I will be in the back with a letter to the State Attorney General collecting signatures from others who also want that office to have forensic accountants inspect the records of all allowed variances for the past five years and the officials who signed off and the developers who were involved in such projects. Thank you for your time. And by the way somebody posted on Facebook that section of McClure at night, no traffic lights.

Mayor Miyagishima said good, thank you for that. Okay next person.

Yolanda Knodle, Member of the Public said hello my name is Yolanda Knodle. I was hesitant about coming up here, but I live off of McClure. I have lived there for about 40 years, and I have seen traffic come and go. I am very involved with the Senior Programs there at Benavidez and I have been visiting with the people there and they are so delighted that they are going to build apartments there. The conversations that I have had with a lot of them they are excited that apartments are going to come up. It is better to have some apartments come up to house people then people on the street and stuff but I would have to say that it is a breath of fresh air from these gentlemen. I support it 100%.

Don Lappinga, Member of the Public said Mr. Mayor and council members I am Don Lappinga I guess I am the block captain and crime watch coordinator on McClure. I

live five houses down from Alameda, so I interact with the neighbors a lot and have heard the same concerns. I am going to be very brief. I just have a couple of comments to make. First of all, I think it was mentioned that McClure is not like the other street up where the apartments are. This is a throughfare. We are absorbing traffic from extensive development west of Valley and I ride the bike trail a lot and the expansion is incredible and our small little streets are absorbing that traffic so it is a different situation than what was described. The concern I have while obviously is traffic. We also have vacant properties on Kismet and McClure, 407 McClure which has been abandoned since I have lived there. I have lived there 7 years. We are wondering what is going to happen to that property? That property is two lots and then what we affectionally call McClure Ruins, right across the street from me has three lots and that has been abandoned for over 20 years. That is a real problem for us. So, if this variance is approved, I am wondering if it is going to open the flood gates for more multi housing down McClure toward us and Alameda. Thank you for your time.

Stacey Sloan, Member of the Public said hello my name is Stacey Sloan I live on Carlyle Drive, and I have a record request in with the city and I still haven't received those. I sent them on the day that the hearing sign was posted and they told me they have until September 7th to get those to me so I had emailed asking for a postponement on the decision but if they are not going to delay the decision today I would like to address a few concerns. Same thing traffic, parking, it is zoned R-1a which requires two spaces per unit so if you jump to an R-2, R-3 the parking then drops to 1.5 spaces per unit do to jumping into multifamily housing. From what we were told at the last hearing there will be parking for 30 but occupancy of up to 45. My question is, where will the visitor parking be? What happens if for some reason they do not have enough parking spaces for the renters? Where will the delivers, emergency services be able to park and access these units without creating a hazard on the street? There is no street parking on McClure and the closest street for overflow is Carlyle which is already far too congested and cannot handle the overflow parking. Not to mention the pedestrians that would then be crossing McClure to get to those units. McClure is such a narrow street. There are no turn lanes or anywhere for all the people that need to get into those units out of the traffic flow in a timely manner. We have also not received our records request regarding the traffic and drainage study, and I feel all this should be done prior to allowing development. We have no infrastructure on that side of McClure that this development is going on to handle pedestrian and bike traffic which is one of the big arguments that they used at the last hearing was that people would be walking and biking and not in their cars but anyone that knows McClure on that said knows that this is not the case and it is simply not safe. And they keep referencing Elevate Las Cruces and all these components but if you go to the Municipal Code Article I, and you read the staff finding which Councilor Bencomo you referenced. They have all the listings here of why they denied this, and it is congruent with those findings from this Municipal Code about the increase in danger of fire, public safety, it is not orderly and phased growth. All these different things that you guys have in the packet already, so I just really appreciate you guys for taking the time to look through everything and address all of our concerns. Thank you.

Leonis Wheeler, Member of the Public said oh this is high. My name is Leonis Wheeler.

Mayor Miyagishima asked I am sorry ma'am your first name again?

Leonis Wheeler said pardon me.

Mayor Miyagishima asked your first name again?

Leonis Wheeler said my father owned that property originally and he sold it. I don't see how putting an apartment thing like this will elevate Las Cruces. I think someone is trying to make a lot of money off of somebody and I don't know who, but I think it would be a shame to change wonderful one family street. Those places have been owned for years and years and years and someone is not honoring that. They would have to put in new sidewalks, do everything and I think it would be a shame to do this when there are so many places on Valley or other places where this could be built and not bother so many people and I can understand the people who are there worried about the traffic and all of that. I am too and I don't live there anymore but I grew up there. I remember how it used to be. Still is to a certain extent and if a place like this is built that is gone forever. I'm sorry, thank you.

George Pearson, Member of the Public said my name is George Pearson. Opposition seems to be focused on traffic on McClure Road. Criticism of this roadway design is valid. However, the problem exists now and the additional traffic from the 20 or so residents will not change the situation. With 20 units and two drivers per unit this will add about 80 trips per day. On my street I have about 1100 vehicles driving past my house every day. I would not notice an additional 80 vehicles driving by. The issues with McClure Road need to be addressed but separately from the proposed development. I often hear the need for housing in Las Cruces and this development would help with that need. Thank you.

Mayor Miyagishima said I think that is about 10 of you.

Steven Tashiro, Member of the Public said Steven Tashiro. I live on Linda Vista which is in the vicinity. The developer suggested that city officials led him on, and he had many meetings with them. I can't imagine that people in these meetings did not know that the property was zoned for residential use. So, I don't think the council should be influenced by the fact that city officials had discussions with the developer and even if they suggested to him that the zoning would be approved or that the zoning would be changed. That is not unless the city councilors actually spoke to the person and suggested that themselves. I don't think that the fact that they got that impression from city staff should have any bearing on the matter. I also don't so how a gated community will help the homeless directly at least. I don't see a gated community being rented by someone who is homeless. Thank you.

Councilor Flores asked Mr. Mayor, may I ask him a question?

Mayor Miyagishima asked you have question to ask this gentleman? Mr. Tashiro.

Councilor Flores said Steven, so you said that you mentioned city officials. The

elected people up here, we are the city officials, and you are saying that there were conversations?

Steven Tashiro said well I mean, he said he had conversations with city officials. Perhaps he meant staff.

Councilor Flores said I don't know what is meant by that or who said what but I just want to make it clear that I think that you meant city staff.

Steven Tashiro said that is what I meant.

Councilor Flores said okay and so I just want to make that clear to the public that none of us here has had. Well, I haven't actually taken a poll but we do not have those sorts of conversations with developers or anything like that. So, I just want to make that clear. It is now within our purview.

Steven Tashiro said it would be of interest to me of what the plans are to do with the adjacent lot that was purchased from the developer and the developer claimed that he wouldn't have sold it to the city if he expected the zoning not to be changed. Who negotiated the sale of that property and why did he have an impression that the zoning was no problem when he sold it?

Councilor Flores said okay thank you Steven and thank you Mr. Mayor.

Mayor Miyagishima said we will get to that after this lady, go ahead. I am interested in a couple of questions myself.

Linda Mattox, Member of the Public said can you hear me? My name is Linda Mattocks I live on Golden Drive. It is a cul-de-sac that is attached to Carlyle and Carlyle runs between McClure and Hoagland and the railroad tracks run parallel to Carlyle. I have lived there long enough that I remember when the fields on the other side of the railroad track were growing onions, chile, and cotton. So, our area has allowed development, has accepted and welcomed developers and met to add to our area and we benefited from that. I have also gone to meeting in the past at the Benavidez Center when we were talking to the developers that were developing on my opposite side of the railroad track where the roads could be built wider, where they could meet drainage standards and they worked out all those details with the city and it's great and they put in a traffic light at Valley. They also have a traffic light at Hoagland and Hoagland is very nice wide with appropriate sidewalks and can handle the traffic but what happens is that there is no lights on either of those streets, other than at Valley and the traffic is trying to like go into Alameda and everything backs up. So, people then do crossovers. Carlyle which is the crossover street now has had increased traffic and teenagers of course speeding and you can't control that, but the roads are you know better and so it is making it much more difficult for us in the middle to get out and use it. The biggest thing on McClure is the distance between the existing railroad tracks and the ditch banks and I have question about that because BLM manages that. The ditch bank that goes over the drainage is only so wide. You can't make that any wider. It is a two-car width. No sidewalks. Emergency vehicles,

that whole thing. Who is going to handle that? I don't know anything about how things are broken down but that I feel like needs to be addressed. That also has a rise to it so when its bad weather, sun set, kids on the side of the street, bicycles it just makes it very, very narrow. Okay I guess that is all the time I have but the housing, okay thank you.

Mayor Miyagishima said thank you. Okay, let me just ask you a couple of questions Adam. If you can answer them. If you could go back to the screen that shows. It showed the parcels, the various parcels where it was located. That one. So, are you aware of any property that the city purchased and if so, where would it have been?

Adam Ochoa said Mayor the property the applicant is referring to is this one right here. That property, essentially the property was this big. It was subdivided into two separate lots. One which he still owns and other lot that was sold to the city.

Mayor Miyagishima asked approximately when was that?

Adam Ochoa said about last year.

Mayor Miyagishima said let's see. Okay thank you for that. If you could just leave that up that would be great and this is really important here. We want to make sure that as was mentioned by Councilor Bencomo when this goes to an appeal Councilors cannot talk to a member of the applicant, email, anything. Is that correct? Did any of you have that or any conversations because you would have to be recused. Okay.

Councilor Gandara said Mayor I did. All I did, there were a couple of people I don't remember who they were, and I said I am unable to. I sit as a quasi.

Mayor Miyagishima said yes as long as you don't take a position on it.

Councilor Gandara said I don't take a position no but I wanted you to know that, yes.

Mayor Miyagishima said I wanted to the public to hear those two things. Okay so there is a couple of questions I think for the, well since you are up here real quick. Adam, okay you addressed the sidewalks. I think we can take a look at the traffic lights. So, the applicant would be required to provide a certain amount of right-of-way or is it already existing there, it just hasn't been utilized?

Adam Ochoa said Mayor when the subdivision was done, I believe some right-a-way was taken for potential widening of McClure but nothing minimal, well not minimal I want to take that word back, whatever requirements, whatever improvements that will be required to the property adjacent to the street there required by traffic engineering or engineering will have to be done with the development, sir.

Mayor Miyagishima said okay I don't know if it has been discussed but if this is going to be gated was the applicant were they planning on turning over all the infrastructure that they provide like the sewer system, the road throughout there. I guess what I am

trying to get at is if they don't turn it over to the city they are going to be responsible for the upkeep of it. I would presume that 99.9% of the people turn it over to the city for us to maintain.

Adam Ochoa said Mayor if it's in the right-of-way it is essentially ours so we would maintain it if you will. Anything that is on their property they would maintain.

Mayor Miyagishima said I am talking about when they build out the sewer system things of this nature, they have the option of giving it to the city. All of that infrastructure because if not if they have a problem at 3 o'clock in the morning they are going to have to fix it. Usually they turn around, turn over usually but that is kind of down the road. I wanted to if you would explain to the public, I know if it had been an actual ownership of gated property and they own the property but since this is an apartment can you explain how that would work as far as gated, a gated apartment that is still something there. It is still, police can still go in if they need to, public service.

Adam Ochoa said yes Mayor. So, essentially, they would work with the city, Utility Departments, El Paso Electric, and whoever it is who provide utilities to there. The extension of those lines and everything it would be up to the developer just like any apartment complex. Anything breaks or anything that needs to be fixed and it is the city's responsibility if there is meters, you name it the city would be responsible to take care of those. If it is just water lines breaking that is running from one apartment to another that would be on the developer to maintain that essentially.

Mayor Miyagishima said right. I guess what I am trying to say that they are required to build everything up to city standards. Like I said 99% of the time they are going to turn all that infrastructure over to the city. It has to be compatible with our system, our water lines, the fire hydrants I presume they have to build one or two fire hydrants in there.

Adam Ochoa said Mayor you are correct. Anything that gets built on the property will have to be made up to city standards. That is correct sir.

Mayor Miyagishima said okay, that is all the questions I have. Councilor Abeyta and then Councilor Bencomo.

Councilor Abeyta said thank you. I had a question based on what is in page 21 of our staff packets. I have a few issues about concerns about public safety. When I look in this what I see is it is different departments in kind of status of approval denial. What I see with fire is approved, city MPO approved, flood zone approved, traffic engineering approved, engineering reviewed but not required, utility engineering approved, long range planning approved, planning denied. Is there anything that I am missing here when I hear these comments about with the potential with the public safety that goes beyond the issues that residents have with the traffic?

Adam Ochoa said Councilor Abeyta, Mayor essentially it is kind of a conceptual review with this infill development proposal. They approve the concept of what is

being proposed with that being said though there is still additional reviews when the applicant comes in for construction that those sections will actually be able to review as well so that whatever is being built on there will it meet standards. If any improvements need to happen, they will take place at that time as well but in the beginning through the infill planning staff was against what is being proposed.

Councilor Abeyta asked anything that is remarked on with public safety is that conjecture instead of a solid item that we have listed in our packets?

Adam Ochoa said Councilor Abeyta, Mayor again being guided by what is the infill development proposal of the 2001 Zoning Code. Staff is looking at it kind of balancing it if you will. Like I said we do have goals and policies that kind of guide us through our 2001 Zoning Code and staff just felt that what was being proposed did not meet that.

Councilor Abeyta asked so there is nothing that says that there something that is not meeting any sort of safety standards?

Adam Ochoa said Councilor Abeyta, Mayor that is correct.

Councilor Abeyta said okay, thank you. Thank you, Mayor.

Mayor Miyagishima said okay we have Councilor, Mayor Pro Tem Gandara, Councilor Bencomo then Councilor Graham.

Councilor Gandara said thank you Mayor. Thank you, Adam. So, this is really tough because we are in desperate need of housing, all types. Our housing stock is very low but I am also concerned about the packet and kind of along the lines of what Council Abeyta having sort of Planning and Zoning, right denying it over those same issues that departments have approved. And some of the concerns that I have is around the streets and incomplete streets. I think I don't know if the public is aware that we have a Street Management Program. It is important to note that, and I know Tony you are here. Can you come up and explain that and what the score is specifically for McClure and what our plans are to improve that street and the cost? I know you have and we have been talking about it for some time. It is a problem area, and so I will stop there because you are at the mic.

Tony Trevino, Assistant Director Public Works, said good afternoon, Mayor, Mayor Pro Tem. That is a huge question but let me try eating it one bite at a time. Yes, we do have a pavement management system. What this is just for the public's information is we go throughout the city with a superhero scientific van that kind of goes and measures the quality of the roadway, the asphalt, the cracks, and everything. So, every roadway in the city is analyzed and measured. Based on this study every street in the city is ranked with the zero to 100 score. Right now, McClure does have a condition of green so it is not in the future needing any kind of maintenance. However, we have been looking at this area. Just to kind of go back to the property that was mentioned before it was Public Works that reached out to the owner to say can we purchase property to build a drainage pond. That is the main reason why we spoke.

The conversation was just for the drainage pond. That is the first thing. So, for us before we do any kind of maintenance there, we have to figure out the drainage. How are we going to do it? Dig the underground first. Public Works has already reached out to the consultant, has had a design study done, and we are looking at ways to see how we can plan this out. It is just not McClure. Its Carlyle, its every single road that is in that area. We are trying to see how we are going to attack this big endeavor feasible, reasonable, and how we can get this all thing accomplished. We just can't go and start doing improvements to the roadway and then eventually in a couple of years tear it down and then put in new utilities, new storm drains in there. So, we have to make sure that we attack this in the right way and in the best interest for all the residents.

Councilor Gandara said thanks Tony. Does the scoring also include the sidewalks?

Tony Trevino said this is just a pavement because there are no sidewalks. There are just some gaps in front of some houses that have sidewalks.

Councilor Gandara asked did you say you completed the drainage plan, the design at least study?

Tony Trevino said the drainage is about 80% complete. We did get it.

Councilor Gandara asked 80%?

Tony Trevino said yes ma'am. We did review it and gave some comments back to the consultant with kind of concerns with their design concepts and gave it back. We also asked them to look at the west half of McClure and the other side of the railroad tracks to see how that can be accommodated for a drainage system.

Councilor Gandara said that is problematic too. So, Tony how does this factor into or will it influence it positively/negatively with this particular potential project?

Tony Trevino said the project that is being spoke about today is an individual project. Any storm water that they create in addition to the historic flow must be contained on their site. We are just going to take in the historical flow that is just in that area so whether or not they design it now or five years down the road that flow of volume is not going to change into our pond. What would change it might be if they do any improvements in front or adjacent to their project they will have to bring that roadway segment up to standards so we might have some curb and gutter in a little bit of area and how are we going to control some of that runoff and drainage as it goes to the sides.

Councilor Gandara asked would that with exactly what you said how does that factor into what they are doing? If they are required to develop the sidewalk they would then be required to do drain and gutter work, no?

Tony Trevino said part of their segment yes, but it is only going to be in front of their property.

Councilor Gandara asked it's just that piece of it? So how much more feet or how long in miles are we talking? That whole McClure?

Tony Trevino said yes. So, Mayor Pro Tem with them just kind of going to the, its right here. Is there a better picture here? Not really. Right here, that is where any improvements will stop on the south side of McClure and that would be right adjacent to our property, but it is all this area over here and all up in here that we have to figure out how to take it. There is going to be some major storm drain improvements required from there, new utilities throughout.

Councilor Gandara asked so you can answer the streetlights, how many are on McClure?

Tony Trevino said I looked as soon as it was brought up, I looked at our map and I don't see any so whatever is required by design standard that would be required on there.

Councilor Gandara asked how many would you suggest or recommend?

Tony Trevino said I would probably say there would be about two or so on there for now maybe three depending on their lumens and the width of the roadway. We would do kind of a study of dividing flow, so everything is on computer.

Councilor Gandara asked what is your time estimate of completion of that study, that design study?

Tony Trevino said I hope to have the design done by October/November. That is just to kind of put in perspective that is the second study we have done in the city. The other one was off of Del Rey in the south fork of Moreno. Where we did a full study of improvements where we can see and sort of foresee and planning for the future for drainage improvements so this in conjunction with that. There is two in line so we kind of see so we can prioritize and move forward with that.

Councilor Gandara said thank you very much. My questions are to Mr. Ochoa around Planning and Zoning and the number of folks that were absent and is there internal or.

Mayor Miyagishima said excuse me Mayor Pro Tem. Tony don't leave yet I have a question to ask you.

Councilor Gandara said I noticed that we had three absent commissioners and there were four here. Is that a quorum?

Adam Ochoa said Mayor, Mayor Pro Tem yes ma'am. We had four members and that was enough for quorum to have the meeting that night.

Councilor Gandara asked and a tie?

Adam Ochoa said yes ma'am. Final vote was two to two. So essentially it failed.

Councilor Gandara said okay, okay. I am really concerned about the timing of this. I know that there is a number of folks that have requested certain things from this city related to the drainage study, the design. I just feel all of that factors into decisions for us and I can also understand the traffic particularly Chief Story speaking to the traffic and the examples that he gave and I think the latest was 2017 or is there something, 2020 I think? Yes, right Chief Story, 2020?

Chief Story said Mayor Pro Tem the numbers I gave were from 2020 and then we also had a study in project in 2019. So, 2019 and 2020 but the volume was from 2020.

Councilor Gandara said thank you, thank you for that. So, with all of that I am wondering if it is best that we table and wait for some of this other stuff to come in and really have an understanding about what, how this contributes right to help the various issues contribute to this project. I imagine. Hi Dr. Pitts.

Tim Pitts, Deputy Director Building Development said Mr. Mayor. Madam. Mayor Pro Tem I will go to Councilor Abeyta's comment as well. I just want to talk a little bit about what this project. What is before you and why a drainage study is not relevant. This drainage study will not come in before this decision needs to be rendered. They are not going to do their drainage study until they are approved to do the project. This is a planning project which is why planning is the one to make the recommendations. It's a project saying that it is the appropriate level of development for the area at this moment of time. So, that was the decision that the Planning and Zoning made. Adam made that comment at the very beginning. That was based on an incremental understanding of development that we could go. We could go one step further, but we did not feel it was staff's place to go any further than that. What your staff report says is that there are not, that the police, the fire, the traffic can make do. They will figure out how to do it if this is a by right development. The question is a planning question to you of whether this is the appropriate level of development in this location, and should we be making do or should we be fully prepared before we open this area up for further development or maybe we should never open this up for further development. But you know honestly that is a question we put before the Planning and Zoning Board, and they gave us an answer and now it has been appealed and is before you. That is not staff's place to make that decision. Our decision is does it meet code, does it not meet code?

Councilor Gandara asked did you not make a recommendation to them?

Tim Pitts said we did make a recommendation.

Councilor Gandara asked and what was that for the record?

Tim Pitts said denial.

Councilor Gandara said yes.

Tim Pitts said and it was a recommendation of denial because we through our professional opinion evaluated that no more than one increment higher of development would be appropriate for the neighborhood as it currently is developed. What they are asking for is two increments higher. That is your choice. If you guys think that is appropriate for this area that is, we will process their application, we will get their drainage studies and so on and our traffic analysis and they will have to do whatever they have to do to meet the traffic requirements. We will go through the fire requirements and so on. We make sure they are set, the people who live in those houses are safe, but it was a planning decision that we through our professional planning experience said that one level of density higher yes, two densities no that is too much.

Councilor Gandara asked so the one is the eight?

Tim Pitts said eight would be, eight would be not quite allowed by right. That would still require an infill development proposal approved by the Planning and Zoning Commission but 15 would be allowed if they went to an R-2 zoning and we would have recommended approval on an R-2 zoning and so we would recommend approval on 15 units. We would not recommend approval higher but honestly that is, we can make it all work because that is what we do. That is our job. We will make sure that the people that live there no matter what your decision is are living in a safe environment where.

Councilor Gandara said that's the point, right? Is doing it safely for everybody that lives in that area to include the new prospective individuals and right now you are feeling it is to much.

Tim Pitts said correct.

Councilor Gandara said okay. Thank you, Mayor.

Mayor Miyagishima asked where did Tony go? So, Tony just to clarify. Where it says on this map where it says, subject property. I guess this would be west of it, that entire block was purchased by the city most likely I am going to presume flood control monies?

Tony Trevino said Mayor, exactly correct.

Mayor Miyagishima said so for the members of the public so when the city, the city has different little pockets of money so when they use flood control money this is simply speculation it can't be used for development only for drainage or flood control. So, I remember gosh it had to have been in the early 2000's El Molino Drainage. When we did that there was a swath of residents who in the past had been paying flood insurance. Flood insurance is expensive. Sometimes as much as a house payment. They didn't have to pay it anymore because the city was able to build this type of a drainage to capture that water and take the residents out of a flood zone.

And since this is so close to the Benavidez Center that area does see a lot of flooding. I know I have been in that area to talk with residents about some of their concerns, but I just wanted to clarify because it was brought up. This land that was purchased is strictly for flood control and drainage and nothing else. I just wanted to be on the record. Thank you. Let's see we have Councilor Bencomo.

Councilor Bencomo said thanks Mayor. Thank you all. You can stay up there Tony. I have a couple of comments. You can sit also but I also have a couple of questions. Oh goodness this conversation on make do brought up a lot for me because I think we are desperate for housing, and we are so desperate and focused on developing in the infill and at what cost and to whom? And so, I am not comfortable with make do mentality personally and I am sorry Tony I know I am looking straight at you that is just where I look. Because I want to do development responsibly. I want to do development that is helpful to the issue, and I don't know that 20 does that. So, I just wanted to note that. That I don't want us to have we make do mentality. Fire will make do. PD will make do. I want us to have responsible planning and it is hard. It is hard to get developers to want to do work in infill and we, that is on us right? We have to build better waivers and impact and all of these things. that is on us, and we have to work on that and I hope that we get an opportunity to do that with the MRA. I also do want to note that I have been working with also the residents around Hoagland who gets backed up significantly much like someone was saying like on McClure. So, at like 3 to 5 p.m. you will have a row of cars. Significantly backed because it gets congested because of Alameda. I will note that we have been working with Public Works staff and addressing the issue on Hoagland and residents, I won't say residents, a resident has not been willing to cooperate with the city to alleviate some of those concerns and so I do hope that when we come to residents of McClure or Hoagland and we want to make street improvements and asking for folks to corporate that you are willing to corporate with us because it can't just both be this is terrible and it sucks but we are not willing to come to the table to do something about it right so that has been my frustration with trying to put a light at Hoagland and Alameda. That there has been a resident who has not been willing to come to the table for those discussions, so we do want to note that there is a lot more balance here and I wanted to lift that up. Additionally, I have been talking to City Manager Pili and several other folks and doing so much research around abandoned properties and really trying to lift up again our NAT, our Neighborhood Action Team Program that addresses abandoned properties. We really set the tone moving forward with the Skeletor Building downtown and talking about when people abandon their responsibility as somebody pointed out there are several abandoned properties on McClure and to me many of those properties are actually what is causing a community safety concern. Those abandoned properties cause public safety concerns. Those abandoned properties also hurt the property values of the surrounding neighborhood. So, for me I would rather see new development where these old abandoned properties are than either old abandoned properties or nothing at all. So, I do want to point out those things because there is just not McClure neighborhood, but the MacArthur neighborhood is experiencing it. Many historic neighborhoods are experiencing this and we are trying to target because they are posing a significant concern but I would much rather see development anyway. Let me get off my soapbox now. I just wanted to point those things out because it is not an easy decision and there is a lot of layers that go into this. Somebody, one of the constituents did bring up the overflow parking issue which

was pretty interesting, and I would like to learn more about it from the developer. Tony, so I didn't need you I don't think after all. Sorry. On the issue of overflow parking and the visitors parking, do you remember that question? Do you want me to?

Stephen Green said yes, I do remember it. So, one of the things is, you are allowed the minimum amount that is required for it. Any overflow parking could be done also in the interior along the curb edge everything inside that pond area, there is places to park along that. Can't block the designated fire lane that would be designated through further development. Again, some of these could be addressed through further development. Point being this is preplanning. We are trying to figure out if this is even going to be able to go through. Don't want to do condensive studies and spend money on something that would not get approved at the end of the day. These would be things that we could look at and probably help alleviate problems to that, yes. There is obviously more green space so we could put additional parking if that was a concern so.

Councilor Bencomo said as you have heard me say I am not currently comfortable at 20. Are you willing to go down?

Stephen Green said that is not my decision I will turn that over to them.

James Vaquero said hello, so the owner has actually declined that offer already once or multiple times actually. Originally again when we subdivided and sold that land the intent was 30. Multiple times that was disclosed and it could not have been more transparent. He is pretty firm at 20 because that was already the negotiated amount from what he wanted of 30. He has come down substantially so at this time I don't believe he would be willing to negotiate, 20 is pretty reasonable in his negotiations already.

Councilor Bencomo said okay and I just want to make stuff clear and also I see staff and I think you have been wanting to say something for a minute but I do just want to note that whatever conversations that were had are somewhat irrelevant here because the decision falls on seven people.

James Vaccaro said yeah, no so the conversations that actually took place are referencing one of the gentlemen in the neighborhood it sounded like he felt as so I had conversations with any of you or my boss or anybody in the development party on this side. We have never had any conversations with any of you here. The conversations that we had were strictly with Community Development and Planning and Zoning and that was just through conversations legally in their development building. It was an open public meeting frankly. That is the only conversations that have ever taken place.

Councilor Bencomo said okay thank you. I just felt it important to clarify that once again.

Mayor Miyagishima asked so you Cilicia, you wanted to say something?

Cilicia Villegas, Economic Development Coordinator said good afternoon, Mayor, City Council, I am Celicia Villegas with Economic Development. So, for the record I was the staffer negotiating the purchase of the land. The city purchased the land on behalf of Public Works for the ponding. So, this has been a long…
Mayor Miyagishima said just to be clear you are talking about the one for the drainage. Not the subject property.

Celicia Villegas said drainage, ponding only. So just to give you some brief background I have been dealing with the previous property owner and in the middle of negotiations they sold to the current property owner of that. So, negotiations started back in April of 2020 for this regarding the purchase for ponding. It was determined that the city would purchase only the portion of land needed for to address the drainage issues in the area and then almost a year later in February 2021 the first questions regarding the development on the remainder parcel was asked by the owner. He was wanting at that time to only put up some townhomes, so I inquired with city staff, forwarded an email to the owner from Community Development explaining that the property was zoned R-1a and that there was plenty of room to subdivide their remainder parcel if they wanted to put up townhomes because of this stating that the townhomes are an allowed use on individual lots. So, they would have to subdivide their parcels if they wanted town homes in there. The email also stated that however duplexes, triplexes, and quadplexes are not permitted. This was on February 26, 2021, via email. A few days later on March 1st the owner accepted the city's purchase offer via email with this knowledge. So, they sent a conceptual drawing showing their intentions and subdividing their remainder parcel into three lots with intentions of renovating the existing home on one and building townhomes on the other two lots. So, on 4/6 after negotiating and reviewing the purchase agreement, this was 2021 the owner signed and submitted the purchase agreement. The terms of the agreement did not include any matters involving the development of the remnant parcel and the owner was advised that development is a separate process through community development. Also, later on in July of 21 he also stated he wanted to put four to five units or maybe a fourplex and renovate the existing home. Staff did reply via email that as zoned only one dwelling is permitted per lot but there are some options to achieve a fourplex or similar. Those included a zone change or infill request. She later explained the process needed to do so and on July 30th the owner stated his plan to move forward with the infill process and CD directed us to that process. At this point I was less involved since the development process goes through Community Development. However, I did follow up to ensure that the purchase agreement was complete, the terms were complete such as the subdivision plat, and demo of the house since it got caught on fire. So, for the record city staff is not authorized to make any promises on zoning changes. Promising a zone change of a property in a specified manner in exchange for a parties' conveyance of property that is needed for public use would be considered illegal because such a promise would preempt the power of the zoning authority. That is an NMSA 3-21-6. I just wanted to make sure that we put that on the record for you. Thank you.

Mayor Miyagishima said thank you very much. Councilor Bencomo, did you still have anymore questions? No. Councilor Graham.

Councilor Graham said thank you Mayor. Thank you everyone. Quick question for

Adam, Tony, maybe just you Mayor. Whoever wants to take a swing. So, when we are talking about the developer's responsibility for road improvements in their little area, help me understand because what I am picturing is then this kind of improvement island. We have so one side of McClure is as it is now there is this little like sweet island of improvement and then the other side is just as it is now. Am I envisioning that incorrectly?

Mayor Miyagishima said I will let Adam jump on that but normally because there is already a city road I don't know what requirement the city is going to require. Now when there is new roads that are being developed and there has not been a road yet that is usually when city says you have to build half of the road then or half of the median, things of this nature.

Adam Ochoa said Councilor Graham, Mayor to answer that question there are sometimes some improvements will be required to any adjacent right-of-way to any type of development. Decel lanes, acceleration lanes, sidewalks, curb, gutter it depends on when they actually do a full-blown submittal for development we potentially ask for traffic engineering studies to be done. Possibly just to see what it is to see what they are proposing their final actual proposal. How their property is going to be built. What improvements the city will make them do in order to provide access or safe access to that property and you are correct in thinking it would just there in front of their property. It would not be across the street or down the street. It would just be what is in front of them.

Councilor Graham said okay. What are the, are there and if so, what are kind of the unique challenges I am sure we have found ourselves in these situations before. Maybe not so much in infill development but where you have, so you have a road, there is just one area of improvement and then if you have to bring everything else up to the standard of the improved area what are the unique challenges of that if any?

Adam Ochoa said I will leave that up to Public Works, they do it all the time.

Tony Trevino said Mayor, Councilor Graham you asked the question, right? So, we have come across this situation several times and we have either had the developer build the improvements because some of those improvements aren't just going to be adjacent to the property sometimes we have to go offsite to bring the utilities requirement. It depends on the demand they have. I don't know if the utilities cross the railroad and with the creating a loop so it just depends on the demand those structures are bringing in. Also, roadways sometimes we have had developers extend past the roadways and go to the nearest intersection and improve that if they are going to cause more concern there and more stress to the intersection to build a turning lane. So, when the study comes in that will determine what is going to be required to accommodate the safety for that area. But again, like you said here the constraints are there is no room to do anything especially to the east of here you got the drain, the lateral from EBID that has two headwall 20 feet of each other so they are going to. So, if that is the case the developer would be required to expand that crossing with EBID and provide the adequate roadway if some of that stuff is going to extend that far. So, it is just going to be dependent on the studies that come up for

this design.

Councilor Graham said thank you. That's all the questions, I promise you can sit down I won't call you back up. I just want to, most of what is in my mind and heart here. I like the sly get away of Tony. Most of what is in my mind and heart here has already been addressed by the great comments of my colleagues. I am kind of happy that P&Z split on this one too. I know that went to a denial, but it speaks to you know like Mayor Pro Tem said this is a really hard one. Infill development in general is hard because every neighborhood is unique, and every situation is going to be nuanced. It is never going to be easy to have something that is going to address what we need in the present and future and still honor what is there in the past and that's a really heavy decision to have to make. I also, so I went out and looked at this property twice. I rode out once on my bike so I could experience it like that and I drove out once. Well, I made my husband drive me over because he also drives a fire truck and I like to get his opinion on stuff like this and I was like okay how would you feel rolling up here on Truck 4 and Chief you will be happy to hear he said we make it work. You know and that is, they do. They make it work. Make do as Councilor Bencomo was saying. Also, it weighs heavy on me that my decisions make so many other people have to make it work. Have to make do. So, I'm saying a lot all just say that this is hard. I have put a lot of thought into it and I also want to appreciate everyone who turned out today to speak on both sides of the topic. That's it, thank you.

Mayor Miyagishima said okay, so let me just share with you my comments here as to why I will be supporting this and I am glad that you have this map here and I wrote down some comments and one was why can't you do more single family. So, where it says the subject property you see the boundaries about it, that is the property correct? So, if you go east of that you are going to see many houses there. The reason why it is really difficult to have a single-family home and many of them is because they would have to subdivide that big chunk of land here and they would have to install all types of infrastructure. So, the reason why the city developed the infill plan is because if we didn't the reason why District 5 and District 6 is just continuing to grow is because developers are out there doing that very thing that was probably done to this area 50-60 years ago and that is laying the infrastructure, taking that risk putting all these hookups so people can build single family homes. I think it was mentioned earlier that there were some houses that have not been kept up and for whatever reason they are abandoned and think about it. There, especially an investor they are going to say well why would I just build one house here when I can build it in a different place. Now that is why we did the infill was to help encourage and incentivize those. They waive the building fees, building permits, they waive certain things, they give variances to the department to encourage this. I don't think and this is the big one here though. I was trying to find a rental house on McClure so, let's just say hypothetically if there was a two bedroom two bath that was going for $800 a month and if these gentlemen can get $1,200, what that does is it shifts in my opinion it will shift maybe the rent to say maybe $1,000 and a home is worth, they look at it three ways. They look at it through construction, they look at it through the income that it generates, and they look at it as just the general area of what houses are going for. If them building this apartment complex increases if I had, I use to have a house on Palmer and I had one on Parker. I sold them. It was during Covid, I got a pretty good price but and what I am trying to say if it moves and increases my property well then, I

am kind of like well that is good. Plus, it builds and it provides housing for the residents and it is kind of newer. It helps bring up the area so I will be supporting it. So, Councilor Corran, I haven't heard from you.

Councilor Corran said thanks, sorry I just want to sort of to this bigger question I think you gave an interesting insight. I come from the land of single-family homes but I personally live on a street that is all townhomes right next to a large multi unit complex that includes folks with diverse incomes and I love my neighborhood so I could characterize this. I just want to make a different argument which is to the same point that you are making and that is I don't believe that single family homes are our future. I think that we need to have way fewer single family homes being built as a proportion of our relative housing inventory and someone alluded to homeless folks not living in a gated community but every person of the 5600 who need housing might need a different place to live in this neighborhood so multifamily units do provide for middle ground housing for people who can't afford necessarily to buy a home which is basically everyone of regular incomes in Las Cruces right now. No one can afford home. So, I just want to speak to generally my values which are toward multifamily homes so that they are more energy efficient. They provide a much more sort of open place for us to sort of build our future on and for me that is very persuasive so as in my backyard where I have a diversity of homes even though my district is many single-family homes I am just putting it out there that in this case I think the values that have been articulated by both sides are really important but I just want to add to that that I think multifamily homes really are our future. I hope that we can consider them very seriously and I urge folks to see that is a positive impact on their environment. It is a positive impact on our housing inventory and that is where I am coming from in this conversation so.

Mayor Miyagishima asked thank you. Any other comments from council before I turn it back to public, closing questions or comments from members of the public? Yes Sir, I need you to come forward please. I need you to come forward please.

Justin Nations said hi everybody, Justin Nations and I understand the reasoning for more public, multi housing families and I am all for that it is just for this particular neighborhood it would not be a good idea. And also, I wanted to urge the council to look into the matter of a possible conflict of interest in this matter. It has come to my attention that the Housing and Neighborhood Service Manager of Las Cruces who grants the permits to the development, Natalie Green.

Councilor Corran said sorry I am just going to interrupt you right now. Incorrect and you are disparaging City Staff, so I am going to ask you to just stop right there so.

Justin Nations said okay, thank you.

Mayor Miyagishima said to be, the permitting is actually the gentleman sitting here with the red tie and who held his hand up. He is in charge of issuing the permits. That is Larry Nichols, Director of Community Development. Okay, ma'am did you have? So, on the second round we just give like a minute.

Linda Maddox said thank you for allowing me, Linda Maddox Golden Drive. The development across from Benavides that has worked out nicely with our single-family zoning are like townhouses so they are two stories. Why couldn't townhouses be put in the same acreage that they are proposing the other separated slightly from each other and keep with the character of our neighborhood. And then the other thing is I know that directly across from the sign that is posted and where they want to build are homes that have the edge of their wall right next to the road, their property. I don't understand.

Mayor Miyagishima asked can you get a little bit closer to the mic?

Linda Mattox asked is my minute up?

Mayor Miyagishima said can you get a little bit closer to the mic.

Linda Mattox said yes, I am saying when I walk down McClure there is property that is right up to the edge of the road, so those people have purchased their homes, purchased their lot, and grandfathered in so how are you going to make a sidewalk? You know, I don't know how that is going to happen. One side of the road has property right up to the street and the new development side will have all the accommodations and all the accommodations may be from the ditch bank to the railroad but then you have got the other vacant lots on the other parts of McClure. There is just a lot to this, thanks.

Mayor Miyagishima said okay so that will conclude this, you got one minute ma'am. Is that okay?

Leonis Wheeler said Leonis Wheeler and I am sorry to do this, but you know I am speaking from my heart. This gentleman and the developer are speaking from their pocketbooks and I feel so sorry for the people along McClure who have had their houses there for years and everything and I agree with you that multiple housing is probably necessary but it doesn't have to be a huge development like this. Maybe a couple of places with two to three people but a huge one like this and I know I am speaking from my heart and not from my pocketbook because this just really bothers me that this seems to be what is driving some people and I am sorry I just don't agree with what they want to do and I don't see how that is going to help anything. I am sorry, thank you.

Mayor Miyagishima said thank you. So just out of curiosity Adam who owns the land east of the subject property? An individual, I guess?

Adam Ochoa said Mr. Mayor I believe they do sir.

Mayor Miyagishima said okay I was just curious. I was just thinking whoever owned that if they ever sold it, the same thing and who knows maybe by that time there might be some requirements for the road. As of now it is probably not that much but I have been on McClure and I know it is hectic at times especially during school but I think in the best interest of the area and for the needs of the residents and like I said I believe

that it is probably the best way to go is to approve this. I mean I will be supporting it. Alright so if there is nothing further.

Adam Ochoa said Mayor.

Mayor Miyagishima said yes.

Adam Ochoa said I am sorry if I could just clarify. Would you all like me to again given your options, again here so we can know how it is whatever you are going to vote so you know you are voting properly. So, you can vote yes, and this will approve the resolution and reverse the Planning and Zoning decision for denial. Subject property located at 725 McClure would be permitted to develop 20 dwelling units on the property. If you vote no this will deny the resolution and uphold the denial decision made by the Planning and Zoning Commission and the proposed development will not be allowed. Three, vote amend allows city council to modify the IDP in any way as seen appropriate by council. Four to table/postpone and direct staff and applicant accordingly. Thank you.

Mayor Miyagishima said thank you.

Councilor Flores asked may I ask a question?

Mayor Miyagishima said yes, Councilor.

Councilor Flores asked how, thank you Adam. Option number three, vote yes with conditions? What do we do? Oh yes but this is the condition. What we call that from our vote or?

Mayor Miyagishima said no, you would have to get an amendment for whatever condition you are talking about.

Councilor Flores said yes so it is not really an option to vote on.

Mayor Miyagishima said well it's an amendment.

Councilor Flores said you make an amendment, then we have to vote and we will be here till midnight. Thank you.

Mayor Miyagishima said Adam how many parking spaces ae there going to be if there is 20 units? Is it just going to just 30?

Adam Ochoa said Mayor conceptually it is going to be roughly to meet minimum standards it would be 30 sir.

Mayor Miyagishima asked plus there is going to be at least one handicap unit, one physically challenged unit?

Adam Ochoa said Mayor I believe by Building Code a minimum of two of those would be required. Yes sir. Building Code and Zoning Code, yes sir.

Mayor Miyagishima asked along with the handicap parking and van accessible as well?

Adam Ochoa said that is correct, yes sir.

Councilor Flores said Mr. Mayor I do have a comment. Thank you. My, this is my comment, my district is District 6. So, a lot of the developments there are pretty new but there is one and this is something I have discussed or talked with Chief, Fire Chief about there is Contera Arc. This was a discussion I was asking you about Chief Smith. Contera Arc is a street that goes like this, you turn left to get on to it, you turn right you are still on it, you turn right again you are still on it. It's called an arc but then you cross the street and it's also. That is the good part about that street, it is very confusing. That's the good part. The bad part is that it is very narrow, and I asked Chief Smith about that. When you have a narrow street like that can you fully access an emergency? So if we move forward with this going with the street improvements and getting the sidewalks and all of that, say it is fifty years from now, or forty years from now because that is how long it takes to get things done sometimes but irrespective of when that would happen what we have in that street, what your response was Chief that it became very difficult to get all the doors, every access to every emergency situation. That is what I understood and I remember walking those streets, I am not a street walker but I was walking those streets at midnight. No, I was doing some work door to door for lack of a better description, daytime and all of that and there were two cars on the street that I think that they were partially on the sidewalk, and I could barely get through driving. So those are the things that we have to think about and McClure right now is really incumbered as it is. So, thinking in the future which sometimes we fail to do I don't think it is very likely or very safe to approve this. I am torn. I think I am very torn. I appreciate the efforts of the builder and the owner of the property, but I have safety concerns at heart and I think that Councilor Graham's husband as Chief made, he said that yes we make do, we do the best that we can but it is not optimal and it could mean not being able to save someone's life. That is my piece thank you. Thank you, Mr. Mayor.

Mayor Miyagishima said alright well thank you with that we are going to go ahead and go for the vote, Christine. So again, yes approves the appeal and reverses the Planning and Zoning, no denies the appeal and upholds the Planning and Zoning.

Councilor Kasandra Gandara moved, seconded by Councilor Yvonne Flores, to Approve Resolution No. 24-028.

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

7.6 <u>COUNCIL BILL NO. 24-005; ORDINANCE NO. 3047</u>: AN ORDINANCE APPROVING A ZONE CHANGE FROM C-2 (COMMERCIAL MEDIUM

INTENSITY) AND R-3 (MULTI-DWELLING MEDIUM DENSITY) TO C-3 (COMMERCIAL HIGH INTENSITY) ON A PROPERTY ENCOMPASSING 2.29 ± ACRES. THE ZONE CHANGE REQUEST SEEKS TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 2001 LAS CRUCES MUNICIPAL CODE, AS AMENDED AND ALLOW FOR THE FUTURE DEVELOPMENT OF A COMMERCIAL BUSINESS. THE SUBJECT PROPERTY IS LOCATED AT 522 E IDAHO AVENUE.

Councilor Becki Graham moved, seconded by Councilor Kasandra Gandara, to table Ordinance No. 3047 to the October 2nd regular meeting.

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

8. BOARD APPOINTMENTS

8.1

None.

9. NOTICE OF PROPOSED ORDINANCE(S)

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

9.1

None.

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

10.1 MAYOR MIYAGISHIMA

I was able to go to Sister Cities in Nienburg, Germany. I had a great time. I ate a lot of food. I would like to go back again.

10.2 COUNCILOR GANDARA

Tough vote because I believe so much in affordable housing and we are really in desperate need to increase our stock.

I wanted to make the announcement and remind folks that our Suicide Prevention Taskforce is putting on a Southwest Summit September 7th from 9-4 at the Convention Center. September 8th is a Youth Summit and the times have sort of changed given our work with Las Cruces Public Schools and the College and then Recovery Night Celebration, it will be our 7th one and will be at the Plaza and we did it a little different on the Saturday from 4-9.

I want to remind folks that on Wednesday we will be having our Health Policy Review Committee and we will be discussing Health Care in Las Cruces. It will be from 3-5 and it will be on the second-floor conference room.

10.3 COUNCILOR FLORES

Last week was the 60th Anniversary of the March on Washington and there was a lot of coverage on that and I have some wonderful notes. I just wanted to say that there was a Supreme Court decision that knocked down affirmative action. I don't know how that is going to affect the EEOC in terms of employment but at any rate this Civil Rights Act was passed in 1964, the affirmative action part was passed shortly after that. It is really unfortunate that our Supreme Court justices saw fit to by majority vote to close down affirmative action and I want to make clear that I worked when I was in law school in the admissions office during my second year of law school and reviewing certain applications and they had a student contingency. I was one of the students who weighed in on the applications that were submitted and this was at the University of California San Francisco School of Law. I looked at many applications and let me put it to you this way, there was a goal that you had to have a minimum of 25 blacks, 25 Latinos, 25 Asian, 25 Native Americans, and 25 women. This is a school of 1,500 students. When I came across an applicant that hit that mark, someone that had a 3.5 or a 3.8 and back then the scoring system was but if it was above the high percentile I would take those women out, I would take those blacks out, I would take those Latinos out, I would take out "the minorities" and just put them aside and then I would advocate for their being admitted because they should not be taking up the slots for the people who have had a difficult time in their undergraduate especially in their first two years coming from a very deprived area economically and socially. I remember the dean at the time, and he looked at me and said why would you want to do that, and I said because we would have more minorities in law school, that's why. And he said, it sounds like you are not affirmative action, no I said I am for affirmative for someone who had had a hard knocks life and it was a tough decision and it turns out that one of the fellows I advocated for ended up being dean of that school. Also I was heartbroken, it also encouraged a lot of people to had dared to apply to law school and there was nothing in the application that said are you seeking admission under the Affirmative Action Program but there were people when I interviewed them and I would always ask did it help to know that you would be considered under the Affirmative Action Program and they would say yes. These were people that really didn't have to be looked at in a special manner through that prism so it is really heartbreaking and the thing that is so heartbreaking is that you all know or should know how horrible everything has been with our presidential elections and all the stuff that is coming out about Clarence Thomas and I am not politicizing this I am just saying that it is really heartbreaking that he was a beneficiary of affirmative action.

10.4 COUNCILOR CORRAN

One thing that is coming up related to what we do often is next Monday at 1p.m. there will be NMDOT is having a vulnerable road users survey assessment Zoom and some of this is on social media so I hope that community members will participate because we do have as what was alluded to today many issue related to the safety of people other than cars on roads and that is what vulnerable road users are and just for the record you are vulnerable to being run over because we have a car centered culture that runs people over on bikes and pedestrians higher than any other state in the country.

We did not have a TSI meeting this morning but next month our TSI meeting will involve equity in pedestrian and cycling access and what that looks like in our communities. We will have a special guest Representative Rubio who worked on the State to improve outdoor equity and is thinking about these things really proactively. So that will be four weeks from today.

Thank you for holding it down last week. I watched the Work Session and I really appreciate Chief Story's presentation and ongoing pursuit of things like conversations about accreditation from CALEA and I do think that Jennifer Kreie who was here earlier that presents and comes and speaks to community inputs on policing and I think that we do room to improve our relations and our transparency when it comes to that and I really appreciate the efforts Chief Story in the events that you have already participated in. I am curious what the conversation is related to the Civilian Police Oversight Board, if that is still happening in Public Safety or what those conversations are so I look forward to hearing any updates on that.

The last thing that I wanted to talk about really quickly was related to the letter that was alluded to in the public comments. Just to allude to the conversation about Matt Walsh and folks suggesting some of us that signed on to this letter that we are taking an anti-free speech position and I think we are taking a proactive position and looking to NMSU and all us to think about how in an environment where trans folks in particular are victimized disproportionally all the time and increasingly. How are we contributing to that and how is NMSU specifically contributing to addressing that supporting the safety of LGBTQ trans in particular students on campus as well as faculty and staff? Just to put in another context while it might sound like, that event happened months ago that's not what our conversation will be like. We will hopefully have a great conversation about what NMSU is doing to proactively support those students, faculty, and staff who are in those positions and frankly being victimized by a rhetoric that calls further for harm to them so just to go back and mention it is not that we are against free speech we are just mitigating the consequences of the free speech and I hope that folks realize that free speech does have consequences in a range of ways.

10.5 COUNCILOR BENCOMO

Sort of going off on that a little bit on having consequences of what you say. I think it is really easy to come here every other Monday with your two to three minute speech written out that you know is filled with falsehoods and that is easy to do that. It is a lot harder to come here and want to engage in conversations around solutions and you know centering the dignity of people and all of those things. So, I just want to encourage people when they are writing that you can say what you like, you do but some of us sometimes will counter those things because coming here and saying in the last four years we have defunded the Police is just a huge bold face lie. That has not happened. I just want to push back around some of those things because again those things have consequences, and I would just so much rather folks came here in good faith to work on solutions but that is not the case. In the meantime all of us here are trying to work on solutions that have an impact on our community.

I really want to thank Chief Story and Sgt. Lazarin for inviting us to a Fair and

Impartial Policing Training a couple of weeks ago. I was really just impressed with Sgt. Lazarin and her facilitation skills. She provided a really great space for Councilor Abeyta, Graham and I to go through that training and really to experience that and Ifo as well came to that. We really got to experience how she trains her colleagues in the department. She said I am going to do it exactly how I do it with them and it was really wonderful to see the kind of vulnerable environment that she creates to talk about really hard things which is implicit bias and racism and how those things show up in our work. So, I just really want to appreciate Chief Story for opening up that space for us and if there is another opportunity, I am hoping the rest of my colleagues are able to do that as well.

Mayor Pro Tem and I got invited to a Restaurant Association Meeting last week that was really interesting. We had some conversations with some local restaurant owners around some of the things they are experiencing. One of the biggest things is workforce shortage and I wanted to bring that up hopefully Elizabeth and Chris are listening. Given that there was $1 million ARPA Funding that was came back to us because of very unfortunate bankruptcy, unrelated to the city of course. I think we have good opportunity to work with the folks who are, the business community who is experiencing workforce issues and provide apprenticeship programs. Actually one of them suggested really looking into programs that are helping people reenter society after being incarcerated and this restaurant owner talked about how they hire often for their kitchen staff for folks who are returning and so I think there is a lot of innovative ideas out there that we can be researching and thinking about how we can work with to improve workforce development in our community.

Last week I was invited by the Governor's staff to attend a housing summit that was held in Santa Fe with mostly housing providers. Folks who run shelters, folks that do housing work every single day and there was several folks from Las Cruces. I was invited to speak and I spoke alongside the City Manager/County Manager from Bernalillo and Mayor Webber from Santa Fe around the issues we are experiencing in Las Cruces and I just really centered on the context here and I really hope I can work with Natalie Green and my colleagues on the Housing PRC to do some strategy thinking with the providers locally. The Governor has a big plan. I have lots of thoughts about it but I know she will be going to the Legislature to ask for a significant amount of money to really invest in housing programing that is really rooted in getting people out of homelessness. I really want us to hold some sort of city community sponsored strategic session for folks specifically who do housing so we can prepare for the Legislative Session and really ask for what Las Cruces needs and deserves which is ensuring, people who are experiencing housing instability able to remain in their house, or rapidly able to move into new housing. So rapid rehousing funding and then permanent supportive funding and funding that includes behavioral health and substance abuse treatment centers. I was proud to go represent Las Cruces but to note that I think we have a significant opportunity right now with the historic revenues of the state and really go up there and say this is really what Las Cruces needs and this is how we will improve.

One more thing that I will be talking to Ifo about this but there was a big conversation at that summit with the intersection of criminal justice and homelessness and folks who are experiencing homelessness and both Albuquerque and Santa Fe,

Albuquerque much longer, Santa Fe just recently have what are called Outreach Courts or Homelessness Courts. Really allowing for alternative resolution in lieu of custody, fines, and fees for most misdemeanor charges and instead have mandate participants may engage in life skills activities, substance abuse group meetings, literacy classes, training, counseling and these kinds of things and it made feel like I would love to have a conversation. I really do think we are in a place Ifo to build something with Muni Court that specifically homes in on the folks that are stuck in this pathway and try to interrupt it as best we can.

10.6 COUNCILOR GRAHAM

Upcoming events, the formally Mayor's Bike Ride now the City Councilor's Bike Ride is happening on Saturday, September 16th. It starts at 10 a.m. and we are leaving from here at City Hall. Have a bike and a helmet come and join us.

I wanted to just say thank you to the people from City Manager's Office from Las Cruces Fire, and from Las Cruces Police who have stopped by to check out the improvements to boxing gym. These are these little items that I see on a slide for a budget adjustment today for PAL, that is our Police Athletic League. That is our boxing gym, and it sounds so simple. It is a budget adjustment for flooring and equipment, but it is a very different thing to come and see what that means for the participants who are there. Several of you have stopped by and I really appreciate that. Come out any evening Monday thru Friday we are there from 5:30 to 7.

10.7 COUNCILOR ABEYTA

This next week I will also be gone for council as I will in DC with our local Chamber of Commerce. We will be advocating on behalf of military affairs and then I will be layering it that on with items for the city so thank you Mr. Pili for working that in. Our last day we will be going over to US Chamber of Commerce and looking at some workshops on international trade, workforce training, and international policy which I think will be really relative to items that we can look down here to economic development.

I also want to thank Sgt. Lazarin and thank you Chief Story for allowing me to go to the Fair and Impartial Training. I also found it really powerful and informative, and it was a good perspective to have.

The last is my comments and it is very timely for what I think we have going on. I participated in the Municipal League Annual Conference this last week and our theme this year was civility and what does it mean to be civil in an increasingly hostile world. Across the nation and in our state we are seeing a larger number of individuals who come with really raised and charged emotions and we are seeing that from whether it is between councilors in some cities or whether it's with members of the public, how public engages with staff or how the councilors are engaging with public. All of these different types of things come together, and we are seeing this increase of incivility and really, it's unfortunate because a lot of times everybody wants what is best for their community and how we get there is sometimes the big question but when people come to the table with honesty and with integrity then that is where I think we can really work together. Councilor Bencomo you said it that when you hear about

individuals that come up with blatant mistruth and whether they have been educated and things like that it is very hard to make change and progress and that is where I think that if individuals who really do want to see change whether for whatever spectrum it is coming from, it they are really coming to the table with honesty and integrity I think we have a place to land. So that was a message and theme that we had. We had Speaker of the House Javier Martinez and Minority Leader Ryan Lane come together for a panel to talk about their workmanship and how they have actually developed a friendship and it is good to see how different parties and different individuals and ideals can come together. I think it is something to note and is definitely something I want to carry moving forward. Thank you to all the City Staff that attended.

Mayor Miyagishima said before I get to Ifo I am going to give accolades or kudos to Chief Smith. So, this Sunday about 7, I get a call from El Paso Judge Samaniego that an acquaintance with two young children are stuck somewhere in the Gila and apparently she had tried calling and an hour had passed and no response. So, I was able to call her and ask to send me a picture of where she is at, and she was stuck. I don't know where she was at. I asked Chief Smith if he could help out and he took it from there and he contacted, and I am sure he has his connections. Long story short they got them later that evening and they were rescued. For you it was another day at the office but it was a Sunday at 7 o'clock and a holiday at that and thank you very much for taking the time to do that Chief.

11. CITY MANAGER REPORT

11.1 IFO PILI

I just wanted to do a little background about the group that came responding to a letter that was sent out and I just want to let you know I appreciate Ikani and CD giving me some more background on that. It was a proposed project and according to our Municipal Code a project of this size requires early notice when there is an inquiry for a zone change. It is a potential 96-unit apartment complex. No formal applications have been submitted but as a part of our code we send out this early notice. That is what triggered this group and the developer apparently sent a letter letting them know and giving his contact information.

The only other thing is that Public Works has submitted this project just to notify you of our midway reconstruction next to Mesa Road. Reconstruction is a little bit more intrusive than all the other maintenance that goes on throughout the city but just to let you know that is a full reconstruction and that is going to last until February of next year.

12. ADJOURNMENT

12.1

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to Adjourn at 4:52 p.m.

RESULT:	**Carried**
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Tessa Abeyta

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

Mayor

City Clerk

MINUTES
Work Session
Monday, September 11, 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

Amy Defelix introduced Pets of the Week.

2. JOBS OF THE WEEK

2.1

Sarah Raney introduced Jobs of the Week.

3. AGENDA ITEM

3.1 OPIOID SETTLEMENT & CANNABIS REVENUE.

Barbara Bencomo, Chief Administrative Officer gave overhead presentation.

Luis Robles, Outside Counsel continued overhead presentation.

Interim Chief Jeremy Story, Las Cruces Police Department continued overhead presentation.

Chief Jason Smith, Las Cruces Fire Department continued presentation.

Kate Boulton, Vital Strategies Senior Legal Technical Advisor continued overhead presentation.

Jamie Michael, Director Dona Ana County Health and Human Services Department continued overhead presentation.

Barbara Bencomo continued overhead presentation.

Jessica Pena, Senior Management Analyst continued overhead presentation.

Councilor Gandara asked I have some questions about the Advisory Council and who else might sit on there? I still see some gaps as it relates to public safety, criminal justice. I think it very important to have someone sitting on that, that has that perspective moving forward. Is there any decisions or dialogue about that?

Barbara Bencomo said I would like to bring Jamie up to help comment. I know that when we indicated on the timeline with respect to the Advisory Council it is certainly in progress, because we are looking at where there might be some gaps. We noted there is one pending appointment that we have requested from DACC. There's been some input to have some youth represented as well. I think we are definitely open to what are the gaps we need to fill, we have ten to fifteen slots that we were looking for and I think we have ten filled currently right now, we definitely have some room. I will let Jamie add to that.

Jamie Michael said my thought process behind that was that most of the public safety folks are either county employees or city employees so we would include employees of both governments in the process as needed. I didn't want to fill the slots with detention center director, our fire chiefs, our police chief, or sheriff's department. Although because they are employees of the local government they will participate in the Advisory Council, but the members on the Council we're looking to the community outside government employees to fill those positions. I think the one area we may look at outside of that, but still connected to the public safety is the court system.

Councilor Gandara said exactly, I am thinking people that are working with folks particularly in the detention center or even outside like district court some of the programming individuals that I met at your opioid you know that date you had something at Farm and Ranch. I think that people I have never met have a lot of expertise in that. I would ask that we reach out and then make it open. Are you going to have chair, vice chair, secretary those kind of things with city and county providing technical assistance or how is that going to roll out?

Jamie Michael said at this point the county has an employee, a committee coordinator. That position is providing the administrative support and with funding from Vital Strategies we are going to be able to hire a coordinator. It will be an employee that provides the administrative support, kind of the backbone of the organization, for this Council. When we posed the question about chair and co-chairs to the council they decided not to set up a hierarchy within their membership that they would all be kind of equal members of the council. Because it's small enough there

really is no need to apply some of the Robert's Rules of Order to the group at this point. As we progress and they start dealing with complex issues they may change their mind. But they did decide to just keep everyone as a Council member, because we have employees doing the notifications, taking notes and all of the follow up. Again we tried to follow the make up or the recommended structure, so we were really looking for people with lived and living experience, public health professionals, people that work with youth, treatment providers, recovery and other social support service organizations and then other stakeholders that might be unique to our community. We don't want to over fill it with one sector or another especially some of our local providers because a year from now they may be receiving money and competing for some of the funds so we're trying to balance out the membership on the Advisory Council.

Councilor Gandara said I can appreciate that. So the county hired Vital Strategies so that would be a county function and how would the city provide input to the hiring of coordinators and such? I want to make sure that we're all aligned and that we get equal participation and feedback.

Jamie Michael said so the Vital Strategies is an independent non-profit that was funded by Bloomberg so they're using those funds to help hire this staff person. They're giving the county a grant for us to hire a fulltime coordinator and then my intent is that we'll post the position like we do every other county position, but I would ask Barbara to sit on the interview panel with me. This person's job would be to work with the Advisory Council with Crimson Research, with Vital Strategies and other technical support folks to work on the implementation plan. Then eventually maybe work on the Action Plan and the Operational Plan around whatever is funded.

Councilor Gandara said I know LC3 has done a tremendous amount of different research studies, needs assessments through community and it's somebody else at NMSU that's providing that type of direction. You mentioned duplication. I'm worried about that. There's already a group, a strong group that is already doing a lot of kind of work related to mental health. Maybe it's not specific to opioid use, so I want to make sure that there is a coordinated effort as you know with the wellness institute and the various collective groups that are out there working. I want to ask how is the city and county elected officials working to address policies, how all of us here have input on how to use that funding and I would recommend some sort of joint board of sorts or an opportunity to meet jointly to discuss this at earnest.

Barbara Bencomo said with respect to the needs assessment I just wanted to mention the discussion we've had to date is really focused on in part making sure we have an inventory of data assets that's going to feed this needs assessment and that includes the work being done by other entities. We've been able to provide data from our fire department and police department, but many of the other organizations and entities have also provided data that Crimson Research can then use in the needs assessment. We definitely want to instead of duplicating efforts make use of any research that has already been completed or any other data that is already existing in the community in order to inform that needs assessment. I just wanted to mention that.

Councilor Gandara said I think it important to fold in our cannabis industry in some way. It's an important sector that I think would be very useful to this group although different, I'm sure we're not thinking in those lines, but I also know through our Health Policy Review Committee spoke of opioid use, cannabis use, and just the number of things that are happening with our youth. I think they would be a great member to provide a lot of input to this group.

Councilor Bencomo said just wanted to lift up what Chief Smith said because I thought it was really powerful, about this being a trauma to our community and a trauma to first responders. I thought that was important. I have a couple of questions, from Kate Boulton if you don't mind. When you talked about principle number two you talked about removing policies that could be potential barriers. I wondered if you could give examples too if you had already identified some of those and if they're not local. If you have examples of what those have been?

Kate Boulton said I don't have specific local examples, but two I can offer just from my own experience, would be regulation of addiction providers that exceeds kind of what the federal floor is, around for instance treatment with methadone or buprenorphine the two are pretty gold standard medication for treatment of opioid use disorders. A state may have additional sort of licensure hurdles, clinical requirements imposed, not by a medical board. But by other kinds of entities that can impact access to care in a negative way. Another example that comes to mind is the ways that states and localities can inhibit the operation of harm reduction programs, and so that really varies dramatically from place to place, that could be anything on limits on operating hours and the need for multiple approvals from different layers of government or other entities, but it's part of a needs assessment or it can be a part of a needs assessment to sort of do that landscaping of the policy and environment both in terms of facilitators and barriers and identifying a plan at that level as well.

Councilor Bencomo said that is super helpful and I really do appreciate your presentation coming in with these kind of principles. Particularly number two and number four were really critical for me. Really glad this is sort of bare minimum we're saying this is the floor for what we need to achieving moving forward. I appreciate the key focus on some of these things like not adding barriers to harm reduction programs and as you said in principle two with a specific lens on racial equity and really equity in general to make sure we're impacting those who have disproportionally impacted by this. I did want to say thank you for specifically those two pieces that Vital Strategies is bringing in. I'm wondering if you started talking about within the council already around community outreach specifically for directly impacted families and how that would be prioritized and best achieved?

Barbara Bencomo said so much to discuss in that area we have just barely touched upon it, because initially just developing the council and making sure that we have the right folks coming forward and then working on the needs assessment. We have started to talk about all the different ways that we would like to conduct input and who we want to make sure we include and how we want to do it. It is so much to determine and that's definitely something the council and others will help to form and certainly

utilize the needs assessment as part of that formation. I think that you may have noticed on the timeline that the input overlaps with the development of recommendations because we are receiving input, we might be modifying it and we might be going back and forth with steps for a while and dig deeper some of the issues that we're seeing come forward. Input that would maybe cause us to pivot and how we're going out to the community to get the important information we need. I want to give Jamie the opportunity to respond as well.

Jamie Michael said a couple of examples of things that have been talked about and recommended by members of the Advisory Council are direct street outreach, key informant interviews and that might be where we talk to a group police officers, a group of EMT's, people in the jail or judges so those key informant interviews and street outreach are ways of really connecting with people who are most impacted and probably have the most to contribute to finding solutions and finding services that would be beneficial. In addition to surveys and focus groups, town halls and those types of traditional public input gathering.

Councilor Bencomo said I am glad that has already been a part of the conversation. There was this organizing principle that I learned while I was community organizing "The further you are from the issue the easier it is to philosophize about it": I mean this council is incredibly impressive and they're clearly focused with direct on the ground experience. It's just so critical to have those voices from people who have lost loved ones to opioid use and those kind of things. Sunland Park, are they a part of this project?

Jamie Michael said this effort, this great collaboration. Our county manager has reached out to their county manager in Sunland Park to see if they're interested as well and being part of the same planning effort we're not sure if they've already decided on how to spend their funds, but we should know, and again we should want somebody specifically on the Advisory Council that represents that community as well. More to come on that.

Councilor Bencomo said we are all border communities, but I think Sunland Park particularly would have a very interesting perspective, so I hope they do that. On page 50 you've sort of clarified it at the end for me. So the proposal on HB I forgot the number. This is the current proposal out there or did this passed already?

Barbara Bencomo said correct. This passed this legislative session, so this is the template or road map that the State is going to utilize HB527, setup the structure for the funds and then under the General Bill for Expenditures they actually outlined what they're going to spend things on for the coming year out of that 5 percent they're setting aside.

Councilor Bencomo asked this didn't mandate what municipalities do, right?

Barbara Bencomo said this is only for the State, that's correct.

Councilor Bencomo said I am just going to put my two cents out there anyways. I

don't love HB527. Has there been a formal signed agreement between the city and the county yet? Are we not doing that until we're starting to spend the money?

Barbara Bencomo said there has not been a formal signed agreement. At this point it's just a coordinated effort between the city and the county an agreement to take the same approach to utilize the same resources to inform the recommendations that will come to the two bodies. Again to avoid the duplication of effort, to make sure we're leveraging expenditures, etc. At this point there's not a plan for that, certainly as we go through the discernment process if that sounds like something we need to embark upon I don't think there would be any reason we would not go about doing that.

Councilor Bencomo said I really want to thank the members of the committee for volunteering to do this. It's not an easy task and I'm certainly not envious of you. We have our own little context here in Dona Ana County and in New Mexico and then much bigger context in this country where there is no access to affordable healthcare. There is no real systemic change around how we do opioid or enforcement or any of that and so I feel we are facing some pretty big policy monsters that are out of control. I really just want to uplift the work that you'll be doing here, and I know will have a huge impact on the families and first responders of our community.

Councilor Corran said thank to you Barbara, the team and council for really being willing to do this and bringing a thoughtful perspective the public health perspective which is really how I hope we can approach all of this. The policy question is one that I had, so I appreciate you talking about that. The last part that I just really want to sort of give input to or make the case on which I don't know if you're asking us to this, but I think Councilor Bencomo sort of alluded to it. In my mind I hope that we can make policies related to this and not a rainy-day fund. The rainy day is here we're in a deluge people are dying right now as a result of this. I really don't want us to do what the state is doing which is the bare minimum investment of this. I really hope we can front on this funding, because the reality is that seems kind of sad that directly affected families aren't going to get a piece of this right and to me that is part of the deep sadness. That this is payment for harm that people have already experienced and we're trying to translate that into preventive sort of future harms. To me the only way we can do that is to front load the spending in ways you all sort of elude to, so I'm just going to make that case now. That we consider only the options that make the most impact in the very shortest amount of time. If education and prevention is a big part of it the assumption is that will be an investment in that future. I ask us to invest in the people not the actual banks that would hold that money. That is the only thing that I sort of wanted to move us toward as we have this conversation and I hope we can take that approach going forward. I hope as policies come up that you all can be that conduit to see if there is anything even within our municipal sort of government structure, which is really a tiny part of this as Kate eluded to, it's really many state laws. But if there's anything related to any of the programs that we interface with that we can support or work through ordinances or other policies please I hope they will get on this as soon as possible.

Jamie Michael said I just wanted to add one thing to that, probably jumping the gun a little bit. But just as a good public health advocate one area locally where we could

use some help is the ability to distribute Narcan in the public schools to young people it's not allowed right now we been distributing Narcan in the community for about six years and we can educate about how to respond to an overdose. But most of the Narcan at public schools are locked in the nurse's office and that defeats the purpose of somebody being able to take home if they live in a home where there's a possibility of an overdose or if they're with their friends and they're the first responder. That is an example of either formal or informal policies that are a barrier to getting lifesaving medication out into the community. I just had to say that, thank you.

Councilor Flores said I have a lot of questions about the Advisory Council, and I don't know what the present composition is of the 10 people. I think 10 positions have already been filled and you said there would be between 10-15. Possibly there are 5 more positions and that you deliberately stayed away from say the fire chief or the police chief or maybe the sheriffs component. If you're going to have an Advisory Council right now we don't know who those people are necessarily, maybe you do but we don't. I didn't see for example Ned Rubin who happens to be here who's been very much involved with our Health PRC over the years. That's just an example. We don't have community people on there. I don't know maybe you do; I don't know who they are. It seems to me that these meetings will be held and I'm not sure how feasible it's going to be for everybody to join in whenever the meetings are held. I don't know where, when or what time. Is it going to be during the day, when all the employees are going to be working on this are going to be able to attend or is it going to be evening so they're putting in their overtime or whatever. Then I just think it is crucial to have someone from the fire department, police department, sheriff's office, people who are dealing with these issues all time. You had your reasons for doing that. It's just one of my concerns, but I have other concerns as well. You made it clear that it's only an advisory, I think one of my colleagues asked well if it's only advisory but who makes the final decision? Does the county make it? Do we make it? It begs the question who makes the final decision as to how funds are distributed?

Barbara Bencomo said the names of the Advisory Council members are here on the slide before you, with again we're taking suggestions with respect for additional folks who might serve on the council. That is one point. The meetings currently are scheduled are on a monthly basis, they are during the day. We have only had two meetings. That's not to say we might change those meetings. The participation at the meetings includes staff members in addition to the council members and so those participants might include as Jamie said earlier city and county staff with respect to public safety. As far as who makes the final decision this council is an advisory to both city council and the county commission. The outcome of the needs assessment and discussion, prioritization by the council is to provide a recommendation to the city council and the county commission to consider how to expend the funds. That will be coming forward to both the city council and the county commission in the spring.

Councilor Flores said Ms. Bencomo that is still a little disturbing to me, because so what are you going to do is going to be put on our agenda for x amount. Then it's going to be put on the county's agenda for their amount. Then what? There is no real joint decision there, so how is that going to work?

Barbara Bencomo said so we are receiving funds separately. The county receives their distribution, we receive our distribution. We can't make a decision for what the county will spend, they can't make a decision for what we will spend. But we certainly want to coordinate the expenditures so we don't duplicate effort and so we maximize the impact to our community. As to how that will happen eventually, it's possible that we could have a joint session of both the city and the county to determine what would be an expenditure by both bodies for example that is not in place at this point. But the final decision making are at the two government body levels the city council and the county commission presumably with coordinated recommendations for both from the Advisory Council.

Mayor Miyagishima said Councilor Flores I appreciate you bring this to the forefront. The city and the county at that time formed a Joint Powers Agreement called the South Central Solid Waste Authority for the purpose of engaging in and dealing with our solid waste, so that has worked out to be a good partnership. I think there might be something we want to consider; I don't know maybe South Central Mental Health Association that is something there that Mayor Pro Tem and I have discussed throughout the years, but the funding wasn't there. Barbara can you go back to a slide that talked about how much money was coming in all the way to 2060? What I was thinking I don't know if we can do this, and if we can't then maybe this will call for some state legislation. If we were to pool our money together and I was using $400,000 thousand a year as debt service to bond that so we can have immediate impact like what Councilor Corran was talking about. I figured about 12 to 14 million dollars, we know it's a stream of money that we're guaranteed or supposedly over so many years. If we could somehow bond that stream of income so we can have access to, what I thought 12 to 14 million, if we're going to get this much, we're talking a lot more, ok so I was being real conservative here. Then if we can form that Joint Powers Agreement now we can really make some impact and this is going to be, I was going to tell Ifo in 2013 the predecessor to this current governor she literally dismantled our mental health providers alleging all kinds of things and it turns out, they weren't doing what she was alleging. I remember some people telling me about 4 or 5 years later they said this is where the real impact is going to be and look at it now. If we can take this Joint Powers Agreement and this money we can help rebuild that system. That system was doing the best it can keeping the community together, then that governor destroyed it. It really messed things up. We're going to have deal with rebuilding the system. I think with this money if we parlay it just right and again I don't know if we can bond on it, but I don't see why we couldn't, it's this guaranteed stream of income and if we can use this for programs and the county puts theirs in and we put ours in, just like we did with South Central Solid Waste Authority which ironically at that time I want to say we put in a little bit more than the county did this way they're putting a little more. But this is a true partnership here we have three council members; 3 county commissioners and whether they want to hire whoever. I won't be around when you guys do this next year, just something to think about. I think that would be something we can have immediate impact especially if we can bond on this.

Councilor Bencomo said I think this raises important questions that I think we need to figure out. Certainly I think there is a question about ultimate decision making when it comes to the two different chambers having to make votes on things and I'm sure that or I least hope those are some considerations being taken by both you of a staff per

institution to be thinking about. I do just want to respectfully disagree with my colleague because I think this won't be easy. Just like attacking you know opioid use is not easy and none of those conversations are easy and ultimately there has been a Council selected of experts of people who understand this particular issue in and out. I mean we have great elected officials both on the county and the city side and we have varying expertise. Really one public health expert from both chambers, we have a couple of social workers but we all have very different expertise. If an advisory council made up of serious public health experts this could directly impact folks in the community on this issue and they're saying we have assessed all these things. This is how we would like the money to be spent in the next ten and next 15 years. Coming to us with these solutions and we as elected officials are saying, I don't know I have another idea. We're essentially telling experts we know better and while I think it's important to ask tough questions and that ultimately we are the ones liable and responsible and that we are included in the conversation when these challenges come up. I just want to note that the task at hand is not easy and will not be easy and I hope that as much as possible the politics of it all can be left out. What is at stake is people's lives.

Councilor Gandara said about three or four years ago we started talking about that behavioral health district. We brought all the mayors in to have the conversation about this with our public safety folks re-imagining what our behavioral health system is. I don't disagree and I would never tell the experts on this council differently. I think it's important, but I see, let's be frank I think in the past the city and the county at different times don't work well together and do a lot to keep each other in their silos. I think it's important, when I started 8 years ago I brought Jamie and others to talk about how do we re-examine how we deliver, just funding and can we come together to deliver funding together particularly from the City's Telshor Fund and the funding that you're using to distribute. We could never really move forward. This is a golden opportunity to do so. I think we need to trust each other and there needs to be a lot of work happening on those ends. I just want to make sure that the public per se really those most affected by this have the input as expeditiously as we can. I want us to be thoughtful and understand that this money it will go quickly, and I want to make sure that the research and the evaluation component is a piece of that and something I think we don't always do very well in doing because the public is going to hold us responsible, and accountable for the money and what that outcome was. Of course it has to be on prevention and intervention in my estimate. I worry about more specifically our youth literally our kids have a hold of this and there's been some overdoses happening in our middle schools and that's just the reality of it. Thank you for mentioning about our School Board, that's a policy that we probably should be speaking very much so with them to move the needle on that. I just want to make sure that Mayor I like the idea of bonding if we can do that and leveraging other funding like the Telshor Fund and what not really can benefit and sustain this overall. But if we think there's going to be some magical result in a year or two, three years it's not going to happen this is long term things particularly when you have chief saying the trauma that our community is experiencing. The trauma that our public safety individuals are experiencing particularly when I saw PBS documentary yesterday very specific to opioid use. It was very enlightening and one we should really be showing regularly. They spoke very clearly about how opioid, and fentanyl are just plaguing their community. Again I just want us to think very thoughtfully, bring everybody in and

use the sort of the community partners that aren't even listed here. I am thinking Café and Communities United, that know how to get people to the table, and they're trusted individuals. I just want to be clear with Councilor Bencomo I would never say no I don't think so. I work with all these people on a daily basis, and I would never say that about them. I want to make sure we're as inclusive as we can be and it's in the language people understand as well and if you have evening meetings that would be super helpful.

Ikani Taumoepeau, Assistant City Manager gave overhead presentation.

Larry Nichols Community Development Director continued overhead presentation.

Dr. Monica Torres, Economist continued overhead presentation.

Sergio Ruiz, Policy Analyst continued overhead presentation.

Ikani Taumoepeau continued overhead presentation.

Councilor Corran said I have a couple of quick questions. Some of the initial things that had been proposed as part of the hybrid approach were one-time expenses I think, and some were ongoing expenses. I am curious about whatever we might propose, like sort of commit to is that malleable in the future, can we shift. So that is just one question I am curious about if we can shift things in the future to less sort of long-term expenses if they're one-time expenditures.

Ikani Taumoepeau asked Larry can you bring up slide 34? It does show there is one inspector, education or equipment and training?

Chief Jason Smith said when fire was looking at the impact of providing prevention and business registrations inspections for the industry. We planned on needing one additional inspector and that really what we've seeing in time demand, and we will need ongoing to inspect these occupancies. As Larry had mentioned a lot of these are infill. Taking old buildings that maybe aren't necessarily for the purpose of retail or production and changing them into those areas. They take a little more detail as far as the review. Ongoing expense is salary and benefits for these positions, things like the vehicle or training those are maybe not only one-time, but mostly one-time capital investments for the position. They need a vehicle to drive in we purchase them a vehicle one might last 5-10 years and then we replace it.

Councilor Corran said I guess this is the secondary question I have to that. That would sort of change the amount of that would be hybridized in that. I was actually going to ask sort of a follow-up question about this hybrid model because I do think the Telshor Fund we fund a lot of excellent community projects that seem very parallel to the ones that Sergio highlighted from other cities. I believe that part of this legislation was really to address expungement of people who have outstanding records, which I think should be a very short-term need or opportunity. I would say folks if there were someone in the community working on expungement cases and I think there are tens of thousands of these in the state. Probably thousands in our city.

I would ask that we enable space because our Telshor Fund grant process wouldn't allow that because it not addressing any of the particularly key areas. So for possibly for a few years we include an expungement component in our hybrid funding model, that both supports fire departments and potentially the police department and offers a brief expungement grant funding to help folks process their paperwork who have outstanding charges that maybe are still presented and preventing them from experiencing the full part of the legalization that was intended. I think, so that would be my ask. Kind of legal assistance to make sure that those expungements actually happen, but that would be very short-term process. If we consider that, we potentially include that we divert from the Telshor Fund as part of a hybrid model.

Councilor Bencomo asked Ikani do you know of anybody who does that kind of work actually, I am very curious about that?

Ikani Taumoepeau said I do not. It is a great point. It is in the background at the state, in the background of why this was there and created. This was a tradeoff that was when it was approved to having that. Not that I am aware of, but I can definitely ask the network in the state to see what they find?

Councilor Bencomo said I think we should probably make a decision pretty quickly on this. There is no urgency necessarily but I'm assuming as staff that your planning on bringing it back to us for a formal resolution sometime in the future Ikani?

Ikani Taumoepeau said yes. We are just looking for direction, this is the type of direction, deliberation that we appreciate as staff. We can bring option as well. This is something even if it's some type of direction in three places we can bring options of three places where you want to go. We can look at expungement if there another Work Session you'd like we can always do that again. It's really no rush as you mentioned. We're really at the behest of council. We just want to make sure we're here and present for your actions.

Councilor Bencomo said ok. I would really second that Councilor Corran's what she just raised about expungement and the responsibility of the city and working with folks alongside of that and funding that. If you all can look into that and bring back some proposals that would be great. I think funding an additional inspector in the fire department and those additional one-time capital pieces, I think that's important and critical. I do think we should include that. Otherwise I'm really sort of to the idea that the more flexible this money can be the better. That's in the Telshor Fund and in the meantime we can think about very specific project like the one Councilor Corran brought up I would support that but otherwise for the public the Telshor Fund doesn't have its own revenue stream, correct? Yes, beside the investment council? It does not have a revenue stream consistently funding it?

Mayor Miyagishima said no it's just the income we get the interest off of the corpus.

Councilor Bencomo said it's not like any other funds, even like our housing trust fund that now sort of has a funding stream, which is the sale of property. The Telshor doesn't have that except for the investment piece. I think using the cannabis excise

tax to go into that would be a great addition to the Telshor Fund and increase our ability to support as many community members as possible. I'm in support of doing that and 'm in support of looking at the expungement piece.

Councilor Gandara said thank you Councilor Corran for bringing this up. I think it gets lost in it and I think that was really one of main reasons why we did what we did from a state's perspective and something we shouldn't lose sight of. I'm thinking legal aid or partner at ACLU maybe they have some ideas or some suggestions about how or if there is even a program that exists to do this. Also if you recall three of my colleagues through the Health Policy Review Committee met specific to the cannabis and youth and use related to density. One of the things that schools brought up was the use of not just cannabis and that wasn't the issue it was tobacco and vaping. Vaping and how rampant it's running in the schools. I would like to see some moneys going to prevention and intervention more specifically to our community and the schools projects. I think that's really where we should focus a lot of our attention is increasing the number of schools that can become community in schools. I'm not sure if we've identified additional funding for the budget cycle that we're in I don't believe so, I know we have 50 thousand I thought that we had identified in the past year, I would assume is for this fiscal year. I would really like to see that and more specifically around prevention and intervention. Funding doesn't necessarily go into the research and evaluation. What slide specific to Economic Development was asking for a portion and what specifically?

Ikani Taumoepeau said there's not a dollar amount it's, more bullet points. If you go to slide 36 if Chris or Irene could speak to it.

Irene Parra, Workforce Administrator said when we had first presented some areas we were thinking about in terms of potential growth and supporting the business community these are some of the things we talked about. Conducting a marketing analysis, we're identifying the needs, trends, barriers, and opportunities for growth. This past May our business development team conducted a survey of our cannabis businesses here in the City of Las Cruces. Of the 62 licensed we had about 31 reply, which is a pretty good initial turn around for the assessment. They were asked questions ranging from the support they received from the city to issues with their employment and training. Initially businesses have said they've been pleased with the support they received from the city. About 68 percent of the businesses expressed an interest in hiring additional staff, and about 48 percent expressed a need for additional training, some areas they mentioned specifically included customer service, product knowledge, bud tending, point of sale training, as well as robbery and loss prevention. We're starting to get an idea of where those needs are for those businesses, but something also to take into consideration with this new industry comes new occupation, so you got things like master and junior growers, extraction technicians, you have bud tenders. With the new occupations there's going to be some specialized training that they're going to require. Looking at what other areas are doing for their training, there about 3 schools within the state of New Mexico that are actually providing cannabis specific training. They are all right now currently in northern New Mexico. We are hoping to work with our local educational partners to start to develop some of those trainings down here. Some of the areas they're looking at are agriculture and horticulture specifically to cannabis, the business of cannabis so just

running a business and what that entails in the terms of the laws and regulations, risk management, scale, operations, as well as health and medicine so if your specializing in medicinal there's certain areas within your business that should be taken into consideration in terms of best practices as well as compliance and risk management. Those are some of the general areas of programs and certificate programs that are being developed within the state of New Mexico that we hope to establish here in this particular area. We really hope to serve as the bridge between the educational institutions and the businesses, to really try and tailor those programs to best suit our businesses here in the City of Las Cruces. But we are also considering retail LEDA and Chris Faivre will speak on that specifically.

Chris Faivre, Deputy Director Economic Development said just a couple of other things in Economic Development that we've been discussing, recently we updated our LEDA plan to include the ability to do retail LEDA. A portion of this fund could be set aside to do specific retail LEDA for the cannabis industry. I wouldn't be doing my job if I didn't get up here and make a plug for putting money towards the local MRA's that we're working on too, so those are all within the infill area and could use money to jump start some of those programs as well.

Councilor Gandara asked so have you come up with a dollar amount?

Chris Faivre said specifically no, but we could add it to the list of recommendations and look and see what would be an adequate amount for doing stuff specifically to cannabis.

Councilor Gandara said I like that Chris and Irene I think that it would be helpful. I recall that from past presentations if I remember correctly there was still a gap in the lab. I think people had to take their product up to get tested if you will. Do we have a lab here specifically?

Chris Faivre said no not as of yet, we spoke to someone with industry knowledge about that last week. It's still a need, but it is a pretty expensive operation to set up. I think that is probably the main hurdle at this point in time. It's something we're keeping our eyes peeled for and hope that it comes our way as well.

Councilor Gandara asked what is the cost?

Chris Faivre said I don't know specifically. I know the equipment is very expensive and I think that is one of the main hurdles is the cost of the equipment to set up the lab. We can certainly try and get more information for that as well.

Councilor Gandara said I would love to get additional information. I think that would be helpful, would LEDA be something that this particular area benefit from?

Chris Faivre said maybe LEDA yes I know there was some discussion for the retail LEDA, maybe not but I think initially there was a LEDA project to do a lab in Southern New Mexico.

Mayor Miyagishima said awhile back in our Finance Committee, we had a little presentation and I thought that we had discussed about bringing to Council we would at the very least keep the cannabis money separate in a different fund and also that there was some suggestion that we discussed, and I was just wondering if they had given those ideas, suggestions we came up with, Leeann I was just wondering if you happen to have some of those old notes from the previous meeting, when we discussed what we might consider doing with the cannabis money?

Leeann DeMouche, Finance Director said I can go back and look at the minutes cause you know we do keep minutes. However I do want to point out that we do keep an object code that is just for cannabis so at any time we can go in there and know exactly how much revenue is coming. It may not be in a special revenue fund it's going straight into the General Fund but is accessible at any time. I will grab those notes and pass them on to Ikani.

Mayor Miyagishimasaid if I remember correctly I thought a lot of that was going to substance abuse, but if the council moves forward with what was discussed previous that might not be as important.

Councilor Flores asked you say that the funds that come in go to the General Fund?

Leeann DeMouche said yes they are going into the General Fund.

Councilor Flore said then we are required to do that? Could it be designated as a certain fund?

Leeann DeMouche said this excise tax that comes in is an excise tax on the cannabis it's unrestricted so that is why it is going into the General Fund. That means it can pretty much be used for anything. Just like Chief Smith was talking about having a fire fighter going in and needing the extra funds to do the reviewing for permits and so that funding is going into the General Fund that could pay for that fire staff. So right now that is where they're going into. If council decides they want to designate the cannabis excise tax for something they want to attach to either an ordinance or resolution then that funding could become a special revenue. We can do that through a resolution or ordinance. I can look into that and talk with our auditor and also to check on the language of that.

Councilor Flores said then we would know exactly what we have. Because all of the funds are actually growing presumably.

Leeann DeMouche said yes they are growing. That is one of the things we in finance will look into and let you know, will get with Mr. Pili and also with Miss Bencomo and look at the language to see if we can bring that to Council as a special revenue along with hopefully at the same time even showing what you would like to expend it towards as well too.

Ifo Pili, City Manager said I just want to clarify as Leeann mentioned she is correct it's going into the General Fund. I want to make sure everyone knows that it is in its own

line item, and that we have a full accounting as she stated. The whole goal for our discussion really is to get feedback and identify which area, if it's going to Telshor then we have that fund obviously setup. If we have a specific purpose I would like to identify that before we do a special revenue, so that special revenue can be identified in as we do that with resolutions. When we bring that forward we have something that it's going to when we identify the special revenue fund. It has to be identified for a specific purpose and I think that we're discussing that now. But at this point we do have a separate accounting for it.

Mayor Miyagishima said any moneys that the city has whether in General Fund or the Telshor Fund earns some interest. Some more, some a little bit. We have no money just sitting there under the mattress and just not getting any interest.

Councilor Flores said Mr. Pili so you're saying that, if we were just to identify and separate that money and just have that growth identified well we don't really need to isolate that income from cannabis sales. I think what Ikani presented was the revenue that it brought in? But we don't know how much it has grown, do we have that information?

Leeann DeMouche said we can find that information out for you, the City Treasurer could extrapolate that and give you that number.

Councilor Flores said and the other thing I'm thinking perhaps maybe we can get it in an aggressive fund and try that out, not aggressive but one that has been proven to be aggressive and true. Not just speculative.

Leeann DeMouche said we've hired a vendor from RPC to look at the risk factors of how you would like to use the Telshor Fund and how you want to invest it, what kind of risk taker you are. I know his first name is Mike, he will be here October 25 to present his findings on that. So it may be also something with this particular fund for cannabis that you might just want to maybe include or use part of that to see how you as a council would like to invest those funds. He is going to look at how you would like to invest but it could apply to any of the funds.
Councilor Flores said if we were to isolate it have its own little fund then we could use those funds for different purposes.

Leeann DeMouche said currently the cannabis excise tax has no restriction, it's un-restricted you can use it for anything.

Councilor Bencomo said could somebody go back to the graph where it showed the revenues 2022 and 2023. Are these not the numbers that have been coming into us?

Leeann DeMouche said I can confirm that it is exactly what we've collected through the excise tax. Just like Mr. Taumoepeau mentioned earlier they are lagged just like our GRT a 2-month lag.

Councilor Bencomo said Leeann you just said something about, that we could get you those numbers. Are those not these numbers?

Leeann DeMouche said I think what Councilor Flores was referring to was the additional that could be the investment that we make using these funds.

Councilor Bencomo said I just want to point out that it's not a whole lot of money, for me I think what I would rather do instead of diluting it to where it makes very little impact and ensure we're using it in a way that makes the most impact. Kind of like the conversation we had with ARPA and that we didn't want to do $11 million in tiny little grants that wouldn't go very far but bigger grants that could push programs further. I don't want to slice it up in all these tiny ways that it ends up not making a real impact on anybody. It could make a big impact on the Telshor Fund certainly or it can make a big impact on operational cost or like racial justice efforts. I will say that Chris really peaked my interest when you talked about, like putting some gas behind the MRA's and what that could look like at the beginning. If Economic Development has thought that through I would like to hear what that is? If not then I would love it if you all could think it through and then bring that back to us because I actually find that really interesting.

Chris Faivre said we don't have any exact numbers, but we can certainly work on stuff like that because we have been kind of playing around with some of this just on separate issues for sure.

Councilor Bencomo said I don't want it to be these five different things. I think it should be what can make the biggest impact now and then of course a few years down the line if we think we need to re-access. The MRA's will only need to kick started once. I feel like that's a consideration.

Elizabeth Teeters, Economic Development Director said we're planning on with the MRA's applying for the tax increment, but we will need that kick start. Any funds we can put directly into the areas to help get projects going would help bring in the tax to give us the increment.
Councilor Bencomo said I would have to say anecdotally that El Paseo, South Salano, West Picacho have seen a ton of those retail that Chief was talking about in terms of taking over old, abandoned buildings that's specific to cannabis has even when I think about West Picacho even the MRA line I can think of several cannabis retailers that exist in there, and El Paseo as well. I feel like this would be really directly correlated as well. My interest was really peaked by that so I would love to see more information and we shouldn't splice this 10 million ways, so it doesn't make an impact.

4. ADJOURNMENT

4.1

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Adjourn at 3:45 p.m.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Johana Bencomo
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, September 18, 2023 @ 1:00 PM
City Council Chambers, City Hall

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

ABSENT: Mayor Ken Miyagishima

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR GANDARA.

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.

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

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

Mayor Pro Tem Gandara presented Ashleigh Curry with a proclamation for International Walk to School Days.

Councilor Flores presented Jasmine Herrera and Jonette Harkley with a proclamation for the Support and the Extension and Expansion of the Radiation Exposure Compensation Act.

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

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Yoli Diaz, Member of the Public said my name is Yoli Diaz with CARE. I want to present a scenario. I have been experiencing some hardships including my television going out. My income is limited. You see my life opportunities they did not provide me to go to college, get a degree, get a great job and my employer isn't able to provide benefits including health insurance. My income is considered low income and I fit in with about 20% of my community. I want to by a television, and I go to Best Buy in Las Cruces. I find the television I like. it's a inch TCL. It's on sale for $249.99, discounted from the regular price of $299.99. I am happy. It's a smart TV. I go to the counter and pay. I see you at the counter and you chose to by their best television that cost $5,999.99. I am thinking, wow good for you. I don't pay $249.99 because I have to pay more because sales tax. Cashier tells me that my total is $270.46. I hear the cashier say to you it will be $6,491.24 sir will this be cash or charge? I know Best Buy lies within the city limits of Las Cruces and the location code of Taxation Code would be Las Cruces 07-105 and the tax rate is 8.1875. I paid a tax that I know will be passed on to the New Mexico Taxation and Revenue Department and will come back to the City of Las Cruces and when I make purchases in the county that comes back to Dona Ana County so both can provide services that benefit the public. I pay taxes and you pay taxes. I leave Best Buy and I get in my car and my phone is ringing. I see that it is my doctor with what could be a dreaded call. He tells me, "Your test results are in, you have cancer. I have referred you to an oncologist at Memorial Medical Cancer Center. I called them to schedule you an appointment as soon as possible but was told they could not give you an appointment because you don't have health insurance coverage". What do I do? Where do I turn? Although the only insurance that I qualify for will give me a 75% reduction and I won't have to pay $1,610.00 but I would pay a monthly premium of $403.00 plus out of pocket cost. I simply can't afford it. Can I be without food, not pay my rent, not pay my utilities or car payment? Oh, and I was counted in a census just like you when our state receives $8,692 a year for me, and you and all the residents counted. Since the 70's I have contributed to our economy, pay taxes to our city, county, and state. Healthcare is human need, a life is a life. Does my life not matter? Do I not deserve healthcare protection of my life and safety? Why have I been denied an appointment at our city/county leased hospital?

Richard Farr, Member of the Public said I am here out of response to KRWG news article that popped up on my cellphone the other day disturbing an otherwise quiet afternoon. The title of the news article was, Las Cruces Roles Out the First Publicly Funded Basic Income Program. I was shocked and dismayed, as I read further the intent is to pay $500 per month for 18 months to a number of recipients. Basically, we are paying $9,000 of other people's money to a certain selected recipient. There is no requirement for any work. No expectation at all in return. There is 150 families that are supposed to participate in this and that works out to $1,350,000 of taxpayer money for basically what is a social experiment. Now, Ms. Bencomo, I had an email dialogue with you many months ago and I will have to say that I appreciate your response because frankly I did not expect one. You stated your position clearly and this was before the last election and again I appreciated that, and I express my appreciation to you. In the interim I was hoping that clear heads would prevail, and this scheme would die a natural death and obviously I was wrong. I am wondering how these recipients of public largess to be identified? What are the criteria? Who determines those criteria? How will these results be meaningfully analyzed, interpreted, and reported if

at all? The scheme is basically fiscally irresponsible. It is clearly unsustainable, and I would say it is even immoral. It is an insult to me, as a taxpayer. It is to every other taxpayer in this room and beyond and I will also argue that it is an insult to the intended recipients because in return to some other people's money they will be giving up a little bit more of their dignity.

Patricia Jimenez, Member of the Public said I am the owner of the Little Shop on Main. I have been a victim of ongoing crime and violence since March of 23 and I have voiced my concerns to public officials, politicians, and advocates. I have numerous police reports with the Las Cruces Police Department. Furthermore, cases and trials were dismissed by the city judges and the DA. I have called 911 numerous times and either the police showed up late or never showed up at all. Numerous times they would give me blank cards with no case numbers, after I demanded that they give me one they would say, what is the point? One incident I was revictimized by an officer bullied and interrogated. He was reported along with another to Internal Affairs and the case was closed with no explanation. There has been at least 30 plus incidents at my store including theft, vandalism, stalking, harassment and I currently have a 5-year order of protection from a stalker. I am demanding that there be a thorough investigation of the Las Cruces Police Department regarding possible corruption, intimidation, bullying, harassment, tampering with cases, including factual errors, omissions, conclusionary statements, possible felony cases being manipulated being downgraded to misdemeanors, providing little if any body camera footage when we requested, willful negligence and not providing service and protection to the community needed during 911 calls. Kasandra, you come to my store with your husband Bill Soules, Legislative Senator of New Mexico again after the airing of my situation on the news, you offered to help but denied any knowledge of my incidents over the past 7 months although you were clearly made aware of my situation as a victim and ignored it. You told me twice at my store that it is not my fault however the welfare of the community in District 1 is your responsibility and you are accountable. You insulted me and asked why in a condescending and an insensitive manner as to why I didn't contact you and disregarded my wellbeing. You made it personal, and you threw it in my face that you bought furniture in my store giving me the inclination that you would retaliate and never shop with me again if I didn't remain silent. Although I made it clear I did not want to talk to you, you kept pressuring me to meet with you again before the public City Hall meeting. I am demanding that there be a thorough investigation of the entire city council regarding misconduct, intimidation, retaliation, manipulation, and willful negligence. It is critical that the City of Las Cruces provide acceptable full security protection for the downtown businesses effective immediately in addition restitution of damages and lost income must be provided to affected business owners who lost significant income and continue to lose it as a result under your watch. You had the power to do something, and you did nothing. Our tax dollars pay your salary. If nothing is done this will be escalated to state and federal agencies including the media for further investigation. We have a civil right to be protected and we have human right in our community as civilians and business owners, change starts now.

Kelly Suntimer, Member of the Public said I am a business owner downtown. My husband and I moved here from St. Louis about two years ago and in the last month I would say I have either witnessed or experienced crime in my little area. My neighbor

whose building is attached to mine, her business had a brick thrown through the window. I had to call the police last Wednesday because of a very violent altercation outside my door with seven very large men. It was extremely scary, and it was scary for all our customers that were there. Now we have spent a lot of money to open a business here and we are really concerned about the amount of crime. I had a woman come into my shop last week she was a representative for you Ms. Mayor Pro Tem and I think she is working on your campaign, and I thought it was a great time for me to share a concern could you please ask her what is she going to do about crime. The response I got is well there is crime everywhere. Crime is bad everywhere. So, I told her I was a schoolteacher in St. Louis, we had middle school and high school students that had drug addiction problems, school phobia, violent behaviors, and mental illness. We were tasked with helping these kids overcome their addictions, helping their parents help the kids helping them get an education and get a diploma and helping them deal with their mental illness. If I were to say to a parent or to my boss there is drug abuse everywhere, a lot of kids don't graduate from high school, mental illness is a problem I would have lost my job and I didn't do it so I didn't lose my job, I did it because the task that I was given was very important. So as a business owner I have a question for every one of you. As a person representing this city what advice would you give someone wanting to open a business down here knowing that I have to have bars in my windows, I have to have security system, I have to walk over people sleeping on the sidewalk in front of my shop and hope that my customers will do that as well and I have to hope that people don't stop coming downtown because of the amount of violence.

Debbie Bond, Member of the Public said I am a vendor at the Farmer's Market, and I have been there for many, many years. I am here to talk about our concerns as a vendor of the homeless but also to back the downtown businesspeople also. We get down there at 6 o'clock in the morning and we see the homeless and the vandalism that is going on. I can remember back when the downtown was like a ghost town other than when we use to show up on Saturdays. I am very proud that we have downtown businesspeople now. It looks wonderful. Violence and the homeless is a really big problem downtown. I would hope that someday we can get some police presence down there. We all look after each other down there but it gets pretty scary. I had my life threatened by a man who was begging for money from our customers, and I just asked him very nicely to move on. We were told we could do that. I was a block captain at that time, and I wore a badge with my name on it and he addressed me by name and if I called for help he would come back and kill me. It is a situation downtown to protect even when the city is holding a big event which we do a lot. The parking lots aren't safe, and I would just like for you to consider what can be done for the safety of the people in the downtown area.

Juan Garcia, Member of the Public said I am a firm believer in supporting those in our community in need like those requiring catastrophic healthcare. Reported on KRWG our council approved, "guaranteed basic income, which provides unconditional and unrestricted payments to help individuals with their basic needs". In essence our council delved out taxpayer funds with no accountability. Basic needs could be satisfied at Fiesta Foods or it could be satisfied at the local pot shop or liquor store. We won't know. Our council can show the same generosity with our personal funds by standing in front of Albertsons giving out $300 personal checks with no accountability

to anyone that asks and when their personal savings is depleted, they get a personal loan and start again. I would like to thank KFOX for the recent interviews dealing with crime affecting the community. Albuquerque Journal editorial on Sunday, city council members have sponsored a resolution. The focus of this resolution is on enhancing Albuquerque's efforts to address crime. Key areas of focus including drug and mental health issues, restructuring pretrial detention, securing funds for the warrant program for next five years and supporting law enforcement. This sentiment is echoed by the Albuquerque Police Department indicating the urgency of holding criminals accountable. You just heard numerous victims that have come here and spoken and they have done this for the last year. It is time that you do something to hold these criminals accountable and I continue with a quote, "there is a consensus that the present conditions which prevent families from feeling secure during outdoor activities are unacceptable". Does this sound familiar in Las Cruces? You just heard a couple of individuals tell you that. We have asked numerous times for the council to request our state law makers to take action. Like those councilors in Albuquerque. In the meantime, the forgotten victims listed on the Las Cruces Hall of Shame who don't fit the category of "most vulnerable" in our population are ignored. Albuquerque Journal 17th of September last year 10 bills addressing crime were presented but either didn't make it into committee or died in committee, the democratic committee opposed these bills. We are proposing the following that the Mayor send a letter to State Senator Representatives and come to these chambers and present tangible solutions to address crime.

William Beerman, Member of the Public said on September 5th after I left your meeting Councilor Bencomo said my comment about city council defunding the police was a "bold face lie" but what I said is true. In a letter from about early 2021, the Las Cruces Police Officers Association told you that the last several years they have seen steady decline in staffing levels which has culminated in an all-time low of 140 officers on duty even though the department is authorized for 202 officers. The letter said, "this leaves the community largely unpatrolled and unprotected and is extremely hazardous to officers". The letter stated the percentage of the budget allocated for public safety was down 5% from fiscal year 2021. The letter said, "Potential recruits quickly leave the LCPD recruiting table when they learn how far behind LCPD has fallen in comparison to just about every other agency". The city is simply not competitive. So much for the letter. I have here a position control count from the adopted FY22 Budget. It shows Police Department positions were reduced form 329 in fiscal 2018 to 318 in the adopted 2022 budget, a reduction of 11 positions. This is while a total number of city employees went up by 82 to a total of 1,833 which is about 10 times the number of sworn police. The budget is not the same as what actually happens, budgeting positions does not mean actually filling them. Officials claim they increased the budget in terms of money, that doesn't mean they actually spent the money. At one council meeting I heard a reference to five million dollars in unspent salary accounts. Finally, Councilor Bencomo is on video displaying a bar graph at a council meeting on April 26th, 2021, the chart was entitled, Where Our Money Goes. Noting that the bar for the Police Department was the highest she commented, "and you know for the Police Department to have such a disproportionate chunk of the budget to me feels like we need to do some serious reflection on the creation of this budget". Since then, defunding of the police has become politically toxic in elections so Las Cruces is doing an about face and sending out news releases touting about

how you are doing new hiring of police but the damage has already been done as crime is raging here.

Lori English, Member of the Public said for over 20 years I have tried to get the city councilors from both sides of the aisle to respond to the lousy conditions of Stewards Avenue between Calle Pastoria and Midway up on the East Mesa to physically see the situation of that street. I had two previous councilors from my district come out and physically see the condition, no action was taken. I invited Councilor Corran to come out via email and never got a response, but I got a response saying well she thinks the schedule according to the Streets Department that it is scheduled for 2024. First of all, right now Midway Boulevard which is a street that is in the same area is less heavily used then Stewards by almost 2/3 the amount of traffic and it is being totally resurfaced. A street the length of about five blocks. That is not used that often and the trucks that are being used to carry out the asphalt from the debris are the heavy, heavy asphalt and concrete trucks that are not only making a mud bog of Gasline Road, but they are destroying and tearing up Stewards Street again with no compensation and no consideration. Lesser used streets in the city are being resurfaced almost every month Stewards has remained as it is for the 23 years that I have lived here. In fact, their potholes are filling the potholes and now those heavy trucks are creating nothing but a massive pothole. The entire street should be resurfaced. We need all city councilors to deal more with infrastructure, crime, vandalism, and animal welfare then disrespecting Veterans and changing street names. Get out in your communities and put together some decent plans. Don't go out there just a couple of months before the campaign and before the election. Still, you owe an apology to the city, the Veterans of the city, and the county and the state of New Mexico for your bad treatment and dishonor and disrespect concerning the Veteran's Park episode.

Charles Winder, Member of the Public said I have got something that is a dear issue to all of us and should be. It is a unifying issue not a divisive one unlike so many things you are presented with. This week just started yesterday is Constitution Week. We are talking about US Constitution, of course and people don't really know that piece of information, but it is public law. To commemorate the September 17th, 1787, signing of the Constitution of the United States Congress has designated September 17th of each year as Constitution Day and September 17th-23rd of each year is Constitution Week. In 2004, Public Law 100-447 Section 111 was passed requiring the following: that each educational institution that receives federal funds for fiscal year shall hold an education program on the United States Constitution on September 17th each year for the students it serves in the educational institution. Furthermore, it says, "each federal agency or department shall provide educational training materials concerning the United States Constitution to each employee on September 17th of each year". I have no hesitation. I am a very proud American. I am proud that we live in this exceptional country where we can have these discussions and debates but unfortunately, we are losing so much of this. Why? Because we don't study our constitution. Article 6 of that booklet there tells you that is a supreme law of the land and its being violated constantly every day.

Troy Stegner, Member of the Public said I noticed something when I walked in here today. I did not have to move a sleeping vagrant from in front of the door to get inside,

I did not have to step over human excrement to get inside, I was not sexually or physically assaulted to get inside this council chamber. So how can you guys sit up there and tell me that you know what we are going through downtown when these are almost daily occurrences with us. The definition of insanity is doing the same thing over and over and expecting a different result. Well, I am going to tell all of you people here that if you keep voting for the same people and expect change that is insane.

4. READ CLOSED MEETING STATEMENT

4.1 READ SEPTEMBER 11, 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 Tom Reynolds v. the City of Las Cruces, CIV-23-00022 GJF/KRS, which is closed pursuant to NMSA 1978, Section 10-15-1H(7).

5. ACCEPTANCE OF AGENDA

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to accept the agenda as presented.

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

6. CITY COUNCIL MINUTES

6.1 WORK SESSION OF AUGUST 14, 2023.

6.2 REGULAR CITY COUNCIL MEETING OF AUGUST 21, 2023.

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

7.1 RESOLUTION NO. 24-029: A RESOLUTION TO APPROVE THE SUBMISSION OF A GRANT APPLICATION TO THE NEW MEXICO FINANCE AUTHORITY (NMFA), WATER TRUST BOARD (WTB), FOR THE FISCAL YEAR 2024, FOR THE DESIGN AND REHABILITATION OF THE TELSHOR WATER STORAGE TANK IN THE AMOUNT OF $3,000,000, REQUIRING A CITY MATCH RANGE BETWEEN 10% - 40% (MIN $300,000 - MAX $1,200,000).

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

8.1 RESOLUTION NO. 24-030: A RESOLUTION APPROVING THE ANNUAL RENEWAL OF THE MICROSOFT ENTERPRISE AGREEMENT FROM CDW-G OF CHICAGO, ILLINOIS, VIA COOPERATIVE EDUCATIONAL SERVICES (CES) CONTRACT NO. 2022-01-AG01-ALL, FOR AN INDEFINITE COST, INDEFINITE QUANTITY, SUBJECT TO ANNUAL RENEWALS AND

APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 23-24-034).

Alicia Hernandez, Purchasing Manager gave the overhead presentation.

Councilor Flores asked why would we enter into an agreement for an indefinite cost?

Alicia Hernandez said we have done that before. We don't know how many licenses we will need in the future going forward.

Councilor Flores said indefinite quantities, indefinite cost, subject to annual renewals. So, being subject to annual renewals, does that mean we would review the costs and then? If were to vote yes on this, this resolution will be subject to, I would expect there would be strict scrutiny as far as reviewing the terms and prices and all of that.

Alicia Hernandez said we do review the terms and the contract that we are going to use it expires in 2026. So, at that time we would have to either procure another contract or take one of our own.

Councilor Flores asked so what happens if the cost becomes exorbitant and if we know of another vendor that would be a better price for the same product?

Ifo Pili, City Manager said these particular licenses, we don't know so we have to enter into a contract however there is an appropriation throughout the budget process that these amounts are set, and we can't go above and beyond that unless we bring it forward. So, there is a certain amount for these licenses, but this is the contract that is needed in order for us to receive them. If your concern is the blank check that cap is at the budget appropriation for these licenses.

Councilor Flores asked is that in the contract and the agreement with the vendor?

Ifo Pili said I would have to look at the contract.

Councilor Flores asked would it be subject to what our appropriations are? Do they understand that?

Ifo Pili said yes, we don't have to purchase a certain amount. We determine how many licenses we are going to need. Again, it is determined by our budget sets that cap. So, if we are going beyond our budget line item, we certainly have to come back for an amendment for that.

Councilor Flores asked so does the vendor understand that? Say for the example we went bankrupt, would we still be bound by the terms of this contract?

Ifo Pili said I would have to look at the contract. I am sure we wouldn't be bound.

Rob Del Plain, Director Information Technology said if there were a particular situation like this that the city went bankrupt at the next year Microsoft understands we wouldn't

be able to get approval for that purchasing in which case we would not have purchase it.

Councilor Flores asked the agreement isn't binding?

Rob Del Plain said over the course of several years not only for this particular course year. I don't remember the exact wording but when you have multiple years where you are saying you are going to purchase something and I don't remember the exact term, there is a term, but we don't have to continue to purchase that.

Alicia Hernandez said no the city can opt out every year. We are going to pay the first year and if we don't have enough budget next year, we choose a different route. Ultimately the city's purchasing section works with the end user for the best cost for the best item that we need.

Mayor Pro Tem Gandara said it does give me pause to say that indefinite with no criteria. The resolution doesn't state at all the amounts of what it is for. In the event if it is you know additional amounts then we would come back to council and so this is like the second or third time it has come like this with that kind of language and it does give me pause and I am hopeful that staff as they are developing these resolutions that they state the amounts and even if there is in the event if it exceeds an amount that it would be brought back because we don't know what is happening in procurement or whatever but this is probably the third time that I read something like that and I want to have more information but there isn't information. Now I am looking through all the things that you are sending right and there are several attachments there and you are reading hundreds of pages of documents. It just makes it really difficult. So, in the future if you could add something like that, I think it would satisfy me.

Lori English, Member of the Public said it has been my experience as a previous business owner in other states that if it is not stated clearly, if the work indefinite, or future shows up we are not to accept that word. Indefinite means infinity. They are giving us their word that we have the right to do this, and we have the right to do that. If it is not expressly written in the document, it will not hold up in court. I don't care what court it is. Whether they go bankrupt or whether we go bankrupt the bottom line is we are still responsible if we accept the word indefinite.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Resolution No. 24-030.

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

8.2 <u>RESOLUTION NO. 24-031</u>: A RESOLUTION APPROVING A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND STONE MASTERS, LLC AND APM, LLC FOR PURCHASE OF TWO

PARCELS OF LAND TOTALING ONE (1) ACRE LOCATED AT 915 W AMADOR AND 921 W. AMADOR FOR THE PURCHASE PRICE OF FOUR HUNDRED THIRTY-FIVE THOUSAND DOLLARS ($435,000) IN ACCORDANCE WITH PROVISIONS OF LCMC 1997, SECTION 2-1312 AND AMEND THE CITY'S ADOPTED FY2024 BUDGET.

Natalie Green, Housing and Neighborhood Services Manager gave the overhead presentation.

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to Approve Resolution No. 24-031.

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

8.3 RESOLUTION NO. 24-032: A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND CASA DE PEREGRINOS (CDP) FOR THE MESILLA VALLEY COMMUNITY OF HOPE (MVCH) CAMPUS SOLAR POWER PROJECT.

Raymond Burchfield, Housing and Neighborhood Services Program Specialist gave the overhead presentation.

Councilor Tessa Abeyta moved, seconded by Councilor Becky Corran, to Approve Resolution No. 24-032.

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

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

None.

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 MAYOR PRO TEM GANDARA

I will say that I enjoyed being part of the City Council Ride and I will leave it at that and let Councilor Graham give her input related to that. It is really amazing what our town has to offer with public art and the uniqueness of each neighborhood, so it was really appreciative, and I thank Chief Story and Officer Klimeck for monitoring traffic. It made me feel very safe and so I appreciate that. We have some work to do in our streets particularly I think in the inner city. It is something that we continue to look at with our Public Works and Pavement Management Program. I am appreciative of that program but trying to meet the needs and the demand of the city makes it difficult. I will have a conversation with you Ifo about some areas that need some attention in District 1 and others. We kind of stayed in that area and I appreciate the opportunity.

I do want to address the issues that were brought to our attention about GBI. I believe whole heartedly in this program and there is an opportunity to seek funding additional funding, through a Mayor's GBI Taskforce or board nationally that I think is great opportunity. The money is funneled through Community Foundation and several of our nonprofits are working through the variety of issues. I do want to say that there was a pilot project in Hatch that just yielded great outcomes and if we are serious about reducing poverty this is one way to do it. Is this the only way? Absolutely not. But it is one of the ways and I stand by my vote and as a matter of fact Friday evening we get to view a screening related to family prosperity and I invite the public to that screening. It will be showing at the Farm and Ranch, and I believe at 6 p.m. and I am looking forward to hearing more about the programing nationally for it is doing particularly for people and lifting them up and out of poverty.

11.2 COUNCILOR FLORES

First of all, the funds that are being used for that GBI and it is temporary, I think it is limited to 18 months from the ARPA money, the money that was issued to cities to use at their discretion so long as it fell within certain parameters and guidelines. I personally am against guaranteed basic income. It was tried in Fresno, California and it wasn't successful. In fact, the mayor was booted out and was not reelected. This is an 18-month project and I doubt very much it will be refunded because I don't think we are going to see outcomes in18 months.

I was able to attend the Fire Fighters graduation a week ago last Friday and it was absolutely wonderful, and I think it is the first time I have attended, and it was just amazing to see the training they get, how rigorous it is and different fire fighters were singled out. They were distinguished in their accomplishments, but it was very nice.

We already presented the proclamation to the Downwinders. A lot of people were talking about how awesome the movie Oppenheimer was but what they failed to talk about was how the first bomb landed here, not very far from us and there is about 150-mile radius and my family lived in this part of the world, less than 150 miles from here. It was a testing ground for what followed in August 5, 1945, when Hiroshima and Nagasaki were bombed and those cities were obliterated and then it took several years for things to start growing again and sadly the government failed to make any kind of reparations, the whole project, the Manhattan Project took place in Los Alamos really they just went over there and took over that part. Why they selected New Mexico I don't know. All I know is that New Mexico was left out of RECA, Radiation Exposure Act. People will never get their health back, people continue to die as a

result of that radiation and I think that like in my family it was like he died of cancer, oh cancer I guess it runs in the family. Cancer isn't hereditary.

Three or four years ago, 2019 the City of Las Cruces worked together with Las Cruces Public Schools and the League of Women Voters of Southern New Mexico to present a Know Your Government Day. That was wonderful, Mayor Pro Tem and I participated in that and there was supposed to be a follow up, this was February of 2019, we were supposed to follow up the following year and the students who were selected were from all the high schools here in Las Cruces. It was for students who would be selected by their teachers and with of course the parents' permission. So, we were going to track the students and then whatever those students are seniors at NMSU. That is the information we got from LCPS. We met a week ago and we met to reinstate this and our community outreach person I don't even know if that is her, Catrina Godinez participated and so we are on the road to get that done. It takes several months so we will have it in February and with Mayor Pro Tem giving the welcoming speech with the students she encouraged them to go on and because we have LCPS involved they didn't track the students but they have kept in touch with some of the students and that is how we know that some of them are at NMSU but Mayor Pro Tem shared that her children were graduates of the LCPS schools and then went on to say that her son served in the military in the navy and her daughter was in med school and now she is actually done with med school.

11.3 COUNCILOR CORRAN

I think I just sort of wanted to, if this is part of the conversation to go back to GBI and really throw my support behind something that has been demonstrated in countless peer review research studies and that it shows that it improves public health, reduces poverty as poverty is a policy choice I think that we can choose differently and I really appreciate that NMSU's Crimson Research will be evaluating this and community organizations that are really trusted in our community and there will be a strong evaluation to show what the outcomes are to the folks in our community. I am really excited about that project and I am happy to say so and I appreciated Councilor Bencomo's thoughtful interview.

I just want to give a few notes about related upcoming things related to the ASCMV, the Work Session this Wednesday afternoon at 3 p.m. at the County Commission Chambers is addressing the joint powers agreement and the conversation about that that some folks who are interested in animal related things might want to participate in and again that is at the County Commission Chambers from 3-5 and then we also have a schedule change. I don't know if we have it in our Outlook calendars yet, but on October 2nd the Work Session that was supposed to be for animal related issues the following week has been rescheduled. The Mayor rescheduled for the morning of October 2nd so that will be our Work Session on animal related issues.

I really enjoyed the bike ride. Thanks to Chief Story for keeping us safe and thanks to Velocruces to support us and really show and teach us a lot of things about our bike related infrastructure here in the city so I really appreciate all that Velo does. George Pearson in particular in terms of advocacy for safe streets so thank you George and Chief Story and Officer Klimeck for keeping us safe.

11.4 COUNCILOR BENCOMO

Former Mayor Michael Tubbs of Stockton, California is now serving as the Specialist Advisor for Economic Mobility to the Governor of California, so I say feel forward. I also wanted to read this article that was just recently in Politico just a couple of weeks ago. That reads, “The child poverty rate more than doubled in 2022 as Covid era programs expired erasing major economic gains for the poorest Americans”. Much like the child tax credit that put unrestricted cash in the pockets of many families in the United States and there is this great quote that says, “poverty is a policy choice”, and I couldn’t agree more. A couple of hundred folks in Congress chose not to reinstate this Child Tax Credit and then the child poverty rate doubled. So, it is absolutely a choice that we have these high poverty rates across the country but certainly in Las Cruces and working towards building something bold and innovated that clearly works. I am proud to support that. You don’t have to agree with it. It’s interesting because I think even at the federal level when we are talking about people particularly poor people we are always like where is the money going to come from but when we are talking about funding military spending, when we are talking about funding, I don’t know things like the Border Patrol that is never a question of oh I wonder where the money is coming from. Last year Chief Dominguez brought us budget that said we need 18 new vehicles and none of us asked, where is the money coming from. It is really interesting to me always when we pose those questions about who we want to invest in and what we want to invest in and when it comes to poor folks it is always like where is the money going to come from when clearly these programs work so I highly encourage you to read this incredible Politico article. Where at the very end it says we now have half of Americans who do not have $500 in savings, and I think that is pretty tragic.

I want to invite folks to attend our Housing PRC meeting on Wednesday atf2 p.m. on the second floor of City Hall. Also, the 11-year anniversary of the Griggs/Walnut Superfund Site. If you have not been to their open house to see how that facility is working to improve the water in that area. You really should. That is this Thursday from 10-1, it’s an open house and you can drop in whenever you would like but I highly encourage that folks attend that.

11.5 COUNCILOR GRAHAM

Just a couple of shoutouts. I am going to be the fourth person to say that the City Council Bike Ride was great. Thanks to Velocruces, Officer Klimeck, to Chief Story who did all of the protecting and self-powered pedaling and I also want to mention on a bike frame that was at least one but possibly two sizes too small.

Thank you to Patrick Peck, Executive Director of Southwestern Central Solid Waste Authority who forwarded an email chain about some really great community efforts to clean up I guess this last weekend was National Clean Up Day which I was not aware of so it was good to learn that. So many thanks to the Campeon Family and the Stafford’s and I am sure there were other neighbors who I am sure didn’t get mentioned who went out the Sierra Vista Trail around Vado and picked up among other easier wrangled garbage, 48 tires, including some I am looking at the photos which I would think of as cross fit tires because they are up to my chest if you stand them up and you would flip them for cross fit. Also of course SCSWA is such a great

partner in these efforts as well because a lot of the time these people are reluctant to pick up things that big because it could be really costly to dispose of them once you have cleaned them up and SCSWA is waiving all of the fees for disposal so that is another big help.

Finally, to Adrienne Widmer and her incredible team at Utilities, thank you so much for addressing the water pressure issue that has been ongoing at Lowell Road for technical things I couldn't possibly understand. I am going to make sure that I am going to forward this thank you email Adrienne that I got that I don't deserve but if you will pass it along to your appropriate team members. Thank you so much for your customer service, for you and your team's Carino. I always appreciate you.

11.6 COUNCILOR ABEYTA

First off just a message for our Quality of Life Meeting. We will not be meeting this month but we will next month where we will be reviewing the Library's Master Plan. It just isn't quite ready so we will be meeting next month.

As all of you know I just came back from Washington DC where I was with the Local Chamber of Commerce where we go to do advocacy on behalf of Veteran's Programs and Affairs especially for WSMR and a little bit for Fort Bliss. We also visited the US Chamber of Commerce and got to hear a little bit about the developments that they are trying to do within the Southern Region and looking at nearshoring. One of the most interesting things though that I think I was able to view was we attended the Veteran's Business Outreach Center where we got to learn about some different programs which we have already applied a bit here in our community. Everything from Boots to Business, which is to help Veterans that are just exiting out of the service set up their small business. We also have different programs for empowering Veteran entrepreneurship. There seems to be a little bit of a difference between the entrepreneurship that we see across the nation versus what we have in our community we were reported that in other places entrepreneurship is usually done by the sixty plus crowd whereas here we see a different demographic that are the ones that are trying to open up new businesses so it was very interesting to look at. There is also programs that are starting to reach out to the spouses of Veterans to make sure it is easier to get either certified or licensed in different states which is really helpful especially if they have a teaching certifications or other types of technical expertise. Those are needed areas in many different fields here in our community. There was I believe going to be I believe in 2020 a symposium about Veteran's outreach and were going to host it here in Las Cruces but then with everything with Covid it was delayed. Now it looks like we are trying to bring that back here again and make sure that we can get that full symposium here and then reach out to the individuals in WSMR and the Southwest Region.

I wanted to say that I have a little girl that does the walk to school every week. Which she is very excited about. She has a little neighborhood set of friends and they all walk together every day but on Wednesdays and Fridays they do a different route to do the walk to school. They love it. It is very fun. It is all the things that the little ones were saying today about that it gets them together, it gets community, it gets them out and walking and they just have a blast plus sometimes they get little charms they can hang off their backpacks and they certainly love that too. It is a wonderful program

and I am happy to see it in schools throughout the city.

12. CITY MANAGER REPORT

12.1 IFO PILI

I just want to remind everyone about our townhall meeting with LCPD tomorrow at 5:30 p.m. it is part of the quarterly meetings they have and also Wednesday it is also Bridging the Badge meeting that will be via Zoom. The link will be on Facebook and again just more engagement and outreach. I appreciate LCPD organizing these events and more opportunity to interact with the public. Speaking of which I just want to share some thoughts regarding downtown as it relates to crime and you know council and just for the public's sake, we do have out of all the areas in the city we do have hired security guards because of the TIDD that allows us to do that. Not only do we have patrol there we have community outreach there. We have our Lt. Wiitala who is the community liaison that goes there for meetings. There is typically someone at the Farmer's Market. We have a lot of police presence there. I think Economic Development is looking at our downtown, 20-32 new downtown security cameras but there is a security service in addition to our patrolling that is down there from 10 p.m. to 7 a.m. every night. We do know that since we implemented that crime has gone down especially during that time so there is a lot of efforts being done all over the city but specifically to downtown because of that TIDD we have a little bit of leverage there. I just wanted to make that known. Of course, there are some other issues that we are dealing with city wide regarding crime, working with the Municipal Court also with the Magistrate Court and of course the DA and there is more info to come. Chief Story, him and I will maybe present something further with what has been done. I know that you all have been making efforts in that way to get with our court system and our DA to get these things addressed. I just wanted to make known specifically in the downtown there is actually extra patrol there more then we have in any other part of the city because of the TIDD.

Another thing with Economic Development they wanted me to remind everyone of the Catastrophic Business Assistance Program. It is available through, $150,000 of Junior Money Funds provided by Senator Hamblen. We have given out our first four grants in the amount of $42,342. Two AC replacements, over $2000 in equipment stolen and a multiday shut down due to waterline issues. These funds are recommended to those businesses for replacement cost, for loss in revenue, and loss of wages.

Mayor Pro Tem Gandara said thank you Ifo for mentioning about the downtown. I think it is important we have had numerous efforts and I know you and have spoke as late as Friday about some other things that I have requested. Bringing back the large camera, maybe foot patrol. I know that with talking Chris Faivre there is the suggestion and recommendation of offering security during the day where there seems to be some issues during the day. I have received numerous calls and emails about a big brawl that happened at Klein Park over the weekend on Sunday. I am not sure Chief Story if you were aware of that. I am sure there is a number of things that are happening city wide, but I will be forwarding that information. I am wondering if we need to move into looking at security for our parks. Not only that I am hearing that at Apodaca Park and all over city so it's an issue and I think people are really concerned

about that. I know that we mentioned about working with our District Attorney and our court system where Ifo and I are looking at a resolution specifically to bring back to council related to our Municipal Code and how maybe we can have some teeth in some of these misdemeanors, possibly felonies and I know that he is having that conversation specifically with Ms. Samples so thank you Ifo, I appreciate that.

13. ADJOURNMENT

13.1

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to Adjourned at 2:47 p.m.

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

Mayor

City Clerk

24-035

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:**	October 16, 2023
Drafter:	Erika Jaquez	**Department:**	Financial Services
Program:	Treasury	**Line of Business:**	Revenue Management

Title: **A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.**

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

PURPOSE(S) OF ACTION:
Approve financial assistance application.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City Charter authorizes City Council to borrow funds. The New Mexico Finance Authority (NMFA) has instituted a program for financing public projects which can lead to lower interest costs. As part of the program, City Council is required by NMFA to authorize the submission of the application.

The proposed action will allow the City to submit the application for financing of Fire Department heavy equipment to include various fire engines, ambulances, squads and trucks. The revenue pledged to finance the project would come from a subordinate lien on the City's state-shared gross receipts tax distribution.

SUPPORT INFORMATION:
ATTACHMENT "A" NMFA Public Project Revolving Fund Infrastructure Application Draft

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 allow City staff to submit the funding application to NMFA.
2. Vote "No"; this will deny City staff the opportunity to submit the funding application to NMFA and realize an interest savings opportunity by using this funding mechanism.
3. Vote to "Amend"; this could require City staff to explore other financing options not currently recommended by the City's financial advisor.
4. Vote to "Table"; this could delay the financing opportunity and increase the projected cost of the project.

RESOLUTION 24-035

A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.

The City Council is informed that:

WHEREAS, the City of Las Cruces, New Mexico ("Governmental Unit") is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"), and the City Council ("Governing Body") is authorized to borrow funds and/or issue bonds for financing of public projects or for refinancing of outstanding bonds for benefit of the Governmental Unit; and

WHEREAS, the New Mexico Finance Authority ("Finance Authority") has instituted a program for financing of projects from the public project revolving fund created under the Act and has developed an application procedure whereby the Governing Body may submit an application ("Application") for financial assistance from the Finance Authority for public projects; and

WHEREAS, the Governing Body has undertaken a plan to enter into a loan agreement for the acquisition of fire equipment and the equipping of fire stations and to pay the costs of issuance ("Project"); and

WHEREAS, the application prescribed by the Finance Authority has been completed and this resolution ratifying and approving submission of the completed Application to the Authority for its consideration and review is required as part of the Application; and

WHEREAS, the Governing Body desires to consider for adoption of an ordinance authorizing the execution and delivery of a loan agreement to provide funds for the Project.

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

(I)

THAT all action (not consistent with the provision hereof) heretofore taken by the Governing Body and the officers and employees thereof directed toward the Application and the Project, be and the same is hereby ratified, approved, and confirmed.

(II)

THAT the completed Application submitted to the Finance Authority, be and the same is hereby ratified, approved, and confirmed.

(III)

THAT the submittal of the completed Application to the Finance Authority for its review is hereby ratified and approved. Officers and employees of the Governmental Unit are further authorized to take such other action as may be requested by the Finance Authority in its consideration and review of the Application and to further proceed with arrangements for financing and undertaking the Project.

(IV)

THAT all acts and resolutions in conflict with this resolution are hereby rescinded, annulled, and repealed.

(V)

THAT this resolution shall take effect immediately upon its adoption.

(VI)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

ATTACHMENT "A"

NMFA Use Only:	
App. #:	-PP
FA assigned:	
Legislative Authorization	

NEW MEXICO FINANCE AUTHORITY

PUBLIC PROJECT REVOLVING FUND INFRASTRUCTURE APPLICATION

I. GENERAL INFORMATION

A. APPLICANT/ENTITY

				Application Date:	09/08/2023
Applicant/Entity:	City of Las Cruces				
Address:	700 N. Main Las Cruces, New Mexico 88001				
County	Dona Ana			**Census Tract:**	
Federal Employer Identification Number (EIN) as issued by the IRS:					
Legislative District:	**Senate:**			**House:**	
Phone: 575-541-2084	**Fax:**		**Email Address:**	ejaquez@las-cruces.org	
Individual Completing Application:	Kaeley Weimerskirch				
Address:	6301 Uptown Blvd. NE Suite 110 Albuquerque NM 87110				
Phone: 505-872-5996	**Fax:** 505-872-5979		**Email Address:**	Kaeley.weimerskirch@rbccm.com	

B. CONSULTING PROFESSIONALS (Bond/Legal Counsel, Architect, Engineer, etc.), if available:

Firm:	RBC Capital Markets			
Contact:	Erik Harrigan			
Address:	6301 Uptown Blvd. NE Suite 110 Albuquerque NM 87110			
Phone: 505-872-5992	**Fax:** 505-872-5979	**Email Address:**	Erik.harrigan@rbccm.com	

B. BOND COUNSEL PRIMARY CONTACT PERSON:

Name:	Katherine McKinney				
Contact:	Modrall Law Firm				
Address:	500 4th St. NW, Ste. 1000, Albuquerque, NM 87102				
Phone:	505.848.1814	**Fax:**	505.848.9710	**Email Address:**	kmc@modrall.com

II. PROJECT SUMMARY

A. Project Description. Complete the following information, using additional paper if necessary. Include any additional documents that may be useful in reviewing this project, i.e. architectural designs, feasibility studies, business plan, etc.

1. Description of the project. Purchase of Fire Equipment

2. Proposed Project Start Date: December 2023 Proposed Project Completion Date: December 2024

When do you need NMFA funds available? December 2023

3. How will the ongoing maintenance, operation, and replacement of this project be funded?

By the City

4. Provide a detailed drawdown schedule for project payments. The schedule may reflect monthly or quarterly payments.

B. Total Project Cost & Sources of Funds Detail.

Construction Activities	**NMFA Funds Requested**	**Other Public Funds***	**Private Funds**	**Total**
Planning and Design	**$**	**$**	**$**	**$**
Construction	**$5,500,000**	**$**	**$**	**$5,500,000**
Equipment	**$**	**$**	**$**	**$**
Infrastructure Activities				
Facility Acquisition	**$**	**$**	**$**	**$**

Land Acquisition	**$**	**$**	**$**	**$**
Utilities (Electric, Gas, Water, etc.)	**$**	**$**	**$**	**$**
Engineering and Architectural	**$**	**$**	**$**	**$**
Contingencies	**$**	**$**	**$**	**$**
Costs of Issuance	**$80,000**	**$**	**$**	**$80,000**
Deposit to Refunding Fund		**$**	**$**	**$**
Total Cost:	**$5,580,000**	**$**	**$**	**$5,580,000**

*Specify any other public funds, and amounts and terms of these funds, i.e. FmHA, CDBG, EPA, etc.

Source	**Amount**	**Terms / # of Years**
	$	
	$	
	$	
Total:$	**$**	

Attach a letter verifying that each non-NMFA funding source has been approved, or is in the process of being approved for this project. Explain any exceptions.

C. Will this project require right-of –way acquisition? Yes☐ No☒

If yes, specify any right-of-way needs, and whether acquisition may or may not delay beginning of project.

D. Who will hold title to the land where the project is to be located? City of Las Cruces

If this is land owned by the Bureau of Land Management, State Land Office, or Tribal Land, please attach lease agreements. (If there is no clear title, attach an explanation of ownership arrangements).

E. Does this project require a Joint Powers Agreement (JPA)? Yes☐ No☒

If yes, provide a copy of (attach) the JPA, which should include a list of the current membership

III. **FINANCING**

A. 1. Specify the revenue to be pledged as security for the NMFA loan (a revenue source must be pledged for this type of project).

☐ Municipal Local Option GRT – please specify: _____

☐ County Option GRT – please specify: _____

☐ Other Tax-Based Revenue: _____

☒ State-Shared GRT (Subordinate Lien)

☐ Law Enforcement Funds
☐ Fire Protection Funds
☐ Net System Revenues: _____
☐ Other Revenue: _____

2. Is there an alternative revenue source available to pledge to pay debt service in the event that the primary pledged revenue is unavailable or insufficient? Yes ☐ No ☒ If yes, specify:

3. Preferred financing term: 15 years

B. Is any debt being repaid from the revenue source(s) referenced in A (1)? Yes ☒ No ☐

If yes, provide bond or loan documents and payment schedule for any existing debt service being paid from the same revenues that would be used to repay a NMFA loan.

IV. READINESS TO PROCEED ITEMS

A. The following items must accompany this application in order for this application to be considered complete:

☐ Equipment cost breakdown (if applicable)
☐ Three most recently completed fiscal year audit reports
☐ Current unaudited financials
☐ Current fiscal year budget
☐ Verification of ownership of land where project will be located
☐ Documentation that each non-NMFA project funding source has been approved, or is in the process of being approved (if applicable)
☐ Joint Powers Agreement (if applicable)

B. In addition, complete the following information, using additional paper as necessary. **These items will be required prior to disbursement of NMFA proceeds:**

☐ Provide a detailed drawdown schedule for project payments
☐ Final technical information for the project, stamped and approved by a registered engineer
☐ Cost breakdown of the project, certifiable by either an engineer or architect
☐ Area map, site map, and floor map (if applicable)
☐ Verification of ownership of land where project will be located
☐ Documentation that each Non-NMFA project funding source has been approved, or is in the process of being approved (if applicable)
☐ Documentation showing status of right-of-way acquisition (if applicable)
☐ Explanation of land ownership arrangements (if applicable)

☐ List all required permits and licenses necessary to complete this project. Detail the status of each item, a plan of action, and time frame for completing incomplete permits and licenses. Also provide a copy of all permits and licenses.

☐ Is there litigation pending which would have a bearing on this project or applicant? Yes ☐ No ☐
If yes, provide a complete summary of all circumstances relating to such litigation.

☐ Indicate the regular meeting dates for your authorizing body: _____

V.CERTIFICATION

I certify that:

We have the authority to request and incur the debt described in this application and, upon award, will enter into a contract for the repayment of any NMFA loans and/or bonds.

We will comply with all applicable state and federal regulations and requirements.

To the best of my knowledge all information contained in this application is valid and accurate and the submission of this application has been authorized by the governing body of the undersigned jurisdiction.

Signature: _____ **Title:** _____
(highest elected official)

Jurisdiction: _____

Print Name: _____ **Date:** _____

Signature: _____ **Date:** _____

Finance Officer/Director: _____

24-036

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:**	October 16, 2023
Drafter:	Crystal Silva	**Department:**	Financial Services
Program:	Grants Administration Program	**Line of Business:**	Fiscal Management

Title:	**A RESOLUTION TO ACCEPT THE REAUTHORIZED GRANT AGREEMENT SAP 23-H4099-GFR FROM THE STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT AND DESIGNATE THE AUTHORIZED SIGNER, OFFICIAL REPRESENTATIVES, AND DESIGNATED AGENT OF THIS AGREEMENT.**

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

PURPOSE(S) OF ACTION:

To accept a reauthorized grant agreement and designate authorized signers.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City.

The City of Las Cruces was granted the following reauthorization from the State of New Mexico Environment Department during the 2023 Legislative Session:

Appropriation# SAP 23-H4099-GFR for the Las Cruces Septic Systems Replacement and Improvements which is a reauthorization of Appropriation# 19-D2457 and has been reauthorized to expand the purpose to plan, design, and construct phase 2 and 3 septic systems replacements and improvements in Las Cruces, Dona Ana County and may include improvements to related infrastructure and utilities. The time of expenditure is extended through fiscal year 2025.

The City Manager or successor is authorized to sign the agreement for this project. Utilities Department Director or Financial Services Director or successors are the official representatives authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements. The Budget and Grant Administrator or successor is the Budget and Formulation Management (BFM) contact who is designated to update the DFA database quarterly.

SUPPORT INFORMATION:

ATTACHMENT "A" GrantAgreement_SAP 23-H4099-GFR_08-30-2023 (1) (1)

PLAN(S):

None, Elevate Las Cruces

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the New Mexico Environment Department, 2023 reauthorized grant agreement 23-H4099-GFR and designate authorized signers.
2. Vote "No"; this will deny the New Mexico Environment Department, 2023 reauthorized grant agreement 23-H4099-GFR and result in a loss of funds.
3. Vote to "Amend"; this will require further direction from staff.
4. Vote to "Table"; this will result in a loss of funds needed to complete City projects.

RESOLUTION 24-036

A RESOLUTION TO ACCEPT THE REAUTHORIZED GRANT AGREEMENT SAP 23-H4099-GFR FROM THE STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT AND DESIGNATE THE AUTHORIZED SIGNER, OFFICIAL REPRESENTATIVES, AND DESIGNATED AGENT OF THIS AGREEMENT.

The City Council is informed that:

WHEREAS, the City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City; and

WHEREAS, a reauthorization was submitted and approved during the 2023 Legislative Session on the 2019 appropriation 19-D2457 to expand the purpose and extend the time of expenditure. Appropriation SAP 23-H4099-GFR reflects this change.

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

(I)

THAT The City Manager or successor is authorized to sign the agreement for this project.

(II)

THAT Utilities Department Director, Financial Services Director or successors are the official representatives authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements.

(III)

THAT The Budget and Grant Administrator or successor is the Budget and Formulation Management (BFM) contact who is designated to update the DFA database quarterly.

(IV)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

STATE OF NEW MEXICO
DEPARTMENT OF ENVIRONMENT
FUND 93100 CAPITAL APPROPRIATION PROJECT
***23*19 LAS CRUCES SEPTIC SYSTEMS REPLACEMENT AND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL**
SAP 23-H4099-GFR

THIS AGREEMENT between the New Mexico Environment Department hereinafter called the "Department" or NMED, and City of Las Cruces, hereinafter called the "Grantee" becomes effective on the date signed by the NMED.

RECITALS

WHEREAS, in the Laws of 2023, Chapter 203, Section 101, Subsection , 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, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

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:

SAP 23-H4099-GFR $662,046.42 APPROPRIATION REVERSION DATE: June 30, 2025

Laws of 2023, Chapter 203, Section 101, Subsection , Six Hundred Sixty Two Thousand Forty Six Dollars And Forty Two Cents, ($662,046.42), for:

The department of environment project in Subsection 30 of Section 26 of Chapter 277 of Laws 2019 to plan, design and construct phase 2 and 3 septic systems replacements and improvements in Las Cruces in Dona Ana county may include improvements to related infrastructure and utilities. The time of expenditure is extended through fiscal year 2025.

The Grantee's total reimbursements shall not exceed Six Hundred Sixty Two Thousand Forty Six Dollars And Forty Two Cents, $662,046.42 (the "Appropriation Amount") minus the allocation for Art in Public Places

("AIPP amount")[1], if applicable, No Dollars, $0.00, which equals Six Hundred Sixty Two Thousand Forty Six Dollars And Forty Two Cents, $662,046.42 (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 Special Conditions Attachment may set forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If the Special Conditions Attachment imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of the Attachment 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[2] 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:

[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.

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.

For all matters related to this Agreement, the Grantee designates their official representative(s) or successor, in their Signatory Resolution, as required in Article X. B. (v). The official representative will be the contact and signatory for all disbursements and Notices of Obligation.

If applicable, the Grantee designates an Alternative Fiscal Agent in the Signatory Resolution as required in Article X. B. (v), and in the Alternative

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

NMED Program Administrator
Name: Bertha Aragon
Email: bertha.aragon@env.nm.gov
Telephone: 505-670-3615

NMED Project Manager
Name: Steven Deal
Email: steven.deal@env.nm.gov
Telephone: 505-670-2926

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 ~~a~~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 Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The 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 Las Cruces or the New Mexico Environment Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the 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 New Mexico Environment Department Grant Agreement. Should the NMED early terminate the grant agreement, the 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 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.

Authorization Page
*23*19 LAS CRUCES SEPTIC SYSTEMS REPLACEMENT AND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL SAP 23-H4099-GFR

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)

_____
Date

New Mexico Environment Department

_____
Judith L. Kahl, P.E., Bureau Chief, NMED Construction Programs Bureau
Signed pursuant to the March 24, 2023 Secretary of Environment Delegation Order

SAMPLE

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I.	**Grantee Information**			**II.**	**Payment Computation**	
	(Make sure information is complete & accurate)			A.	Payment Request No.	
A.	Grantee:			B.	Grant Amount:	
B.	Address:			C.	AIPP Amount *(If Applicable)*:	
	(Complete Mailing, including Suite, if applicable)			D.	Funds Requested to Date:	
				E.	Amount Requested this Payment:	
				F.	Reversion Amount (I*f Applicable*):	
	City	State	Zip	G.	Grant Balance:	
C.	Phone No:			H.	☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)	
D.	Grant No:			I.	☐ Final Request for Payment (*if Applicable*)	
E.	Project Title:					
F.	Grant Expiration Date:					

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

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
SAMPLE EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____,_____]
FROM: Grantee: [_____]
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: [_____]

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.

New Mexico Environment Department (NMED)
Capital Appropriations Certification Document
Article IX. A. (ii) and (iii)
Project *23*19 LAS CRUCES SEPTIC SYSTEMS REPLACEMENT AND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL SAP 23-H4099-GFR
Grantee Las Cruces
Payment Request No_____

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

Official Representative, Signed Name, Printed Name, Date

TECHNICAL REQUIREMENTS
NEW MEXICO ENVIRONMENT DEPARTMENT
CAPITAL OUTLAY

ARTICLE 1 REVIEW

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

A. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee and related to the project, for review and, if appropriate, approval. Only approved eligible expenditures incurred **after** the effective date of the Grant Agreement shall be reimbursed or paid from these funds.

B. If these grant funds are to be used for engineering and/or other professional services, the hiring process for engineering services and/or other professional services must be performed in compliance with the New Mexico Procurement Code [Sections 13-1-21 et seq. NMSA 1978]. If engineering fees exceed $60,000, excluding gross receipt taxes, the Grantee is required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the Request for Proposals (RFP) package. (PTAB: phone (505) 888-6161 and e-mail ptab@acecnm.org.)

C. If these grant funds are used for engineering and/or other professional services, the Grantee must submit a copy of any executed engineering agreement and/or other professional services contract so a notice of obligation can be prepared and issued. If the Grantee's staff will be used to prepare the design, a letter certifying that must be submitted to NMED for the project record. The grantee has the option of using the NMED engineering agreement. In any case all engineering agreements must include the non-appropriation and termination clauses required by DFA in all agreements funded by capital outlay.

D. A preliminary engineering report (PER), technical memorandum, or study by a registered New Mexico Professional Engineer may be required.

E. If the grant funds are to be used for engineering design or for construction, the Grantee must submit all plans, specifications, bid documents, and engineer's construction cost estimate, for the project (prepared and sealed by a licensed and registered New Mexico Professional Engineer) to NMED **before** the project is advertised for construction bids, along with a letter **from the Grantee** stating that they have reviewed and accepted the plans and specifications. If required, the Grantee must also submit the plans and specifications to the appropriate regulatory agency for review and approval and provide a copy of the approval letter from the regulatory agency. Upon receipt of these documents the NMED will issue a letter confirming receipt of the required documents and informing the Grantee to proceed with advertising the project for construction bids.

F. A site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.

G. If grant funds are to be used for the purchase or acquisition of real property as a part of this project and within the project period, the Grantee will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser selected through applicable procurement procedures.

H. The Grantee will submit the proof of advertisement, recommendation of award, bid tabulation, complete bid submittal of the selected contractor, any addenda issued, and funding analysis listing all funds that will pay for construction to NMED prior to award of the construction contract, along with a letter from the Grantee stating they concur with the recommendation of award to the selected contractor and price and confirming that the Grantee has sufficient funds for construction.

I. The Grantee will submit the notice of the award, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to proceed to NMED. NMED will prepare and issue the notice of obligation for the construction cost making the grant funds available for reimbursement of construction costs. The selected contractor will be required to post a performance and payment bond in accordance with requirements of Section 13-4-18 NMSA 1978.

J. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.

K. All daily construction inspection reports shall be made available to the NMED upon request.

L. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.

M. If applicable, the Grantee (or the system owner) will employ qualified utility operators and will comply with all provisions of the New Mexico Utility Operators Certification Act, Section 61-33-1 et seq. NMSA 1978.

N. NMED will reimburse the grantee its actual costs when NMED determines, in its sole discretion, that expenditures were appropriate under the terms of the Agreement and that the expenditures were properly documented.

ARTICLE 2 NMED OVERSIGHT

NMED inspection, review and oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the

owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

ARTICLE 3 CLOSEOUT

A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.

B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.

C. If the grant funds are used for construction, final payment will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:

i. A certificate of substantial completion including punch list items.

ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.

iii. A written consent of the surety, if any, to final payment.

iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.

v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.

vi. Certification letter of project acceptance by the Grantee and the Grantee’s project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.

vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.

Rev. May 2023

NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU

NMED DISBURSEMENT REQUEST

SPECIAL APPROPRIATIONS PROGRAM (SAP)

A. NAME OF ENTITY

B. PROJECT NUMBER

C. DISBURSEMENT REQUEST NUMBER

D. GRANT AMOUNT

	PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees								
Other Professional								
Service Fees								
Inspection Fees								
Property Acquisition								
Construction Cost								
Planning Cost								
Equipment								
Other Costs (specify)								
Contingencies								
TOTAL								

Article IX.A. (iii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.

Article IX. A. (ii). By checking this box you are certifying that the vendors associated with this request have been paid.

Certification: Under penalty of law, I certify that all the above expenditures are true and correct and are for appropriate purposes in accordance with the terms and conditions of the pertinent Loan/Grant Agreement; that all of the above expenses are properly documented, and are actual invoices; that payment has not been received; 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.

Signature of Official Representative:	Typed or Printed Name:	Phone:	Date:	
X				
Signature of Fiscal Agent if appliable:	Typed or Printed Name:	Phone:	Date:	
X				

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S)

Resolution Number

Whereas, the **Board of Directors / Council / Commission** of **Community / Utility** of **County Name** County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as **Project Number SAP** _____

NOW THEREFORE, BE IT RESOLVED by the named applicant that:

(**Name**), **Mayor/ Chairperson / Director / Officer**, or successor is authorized to sign the Grant Agreement for this project, and

(Authorized Officer Name), (Authorized Officer Title), (may have more than one) or successor is the OFFICAL REPRESENTATIVE(S) who is authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements (Disbursements and Notice of Obligations (NOO)) and to act as the project contact, and

(Designated Agent or Employee Name), (Title), or successor is the Budget and Formulation Management (BFM) contact who is designated to update the DFA database quarterly per Article VIII. A. of the Intergovernmental Grant Agreement.

If a Fiscal Agent is required:
(Fiscal Agent Representative Name and Title) or successor, is the FISCAL AGENT and is authorized to sign Disbursement.

PASSED, APPROVED, AND ADOPTED: _____.

Name, Mayor / Chairperson / Director / Officer, Title, Community / Utility

_____ _____

(Signature) **Date**

(SEAL)

ATTEST:

_____

(Municipal Clerk)

Name of Grantee: City of Las Cruces **Project Number:** SAP 23-H4099-GFR

Authorized to Sign the Agreement	
Name	Ifo Pili
Title	City Manager
Signature	
Address	700 N. Main Street Las Cruces, NM 88001
Email	grants@lascruces.gov
Phone	575-541-2270
Official Representatives authorized to sign Disbursement Requests and All Other Documents	
Name	Leeann DeMouche
Title	Financial Services Director
Signature	
Address	700 N. Main Street Las Cruces, NM 88001
Email	ldemouche@lascruces.gov
Phone	575-541-2080
Alternate Official Representative; To sign Disbursement Requests and All Other Documents, Requirement and Act as the Project Contact	
Name	Adrienne Widmer
Title	Director of Utilities
Signature	
Address	680 N. Motel Blvd
Email	awidmer@lascruces.gov
Phone	575-528-3524
Designated Agent or Employee that will update DFA Database Quarterly	
Name	Jacqueline Rubalcava
Title	Budget and Grant Administrator
Signature	
Address	700 N. Main Street Las Cruces, NM 88001
Email	jrubalcava@lascruces.gov
Phone	575-541-2188
If required, Fiscal Agent approved to sign Disbursement Requests	
Name	
Title	
Signature	
Address	
Email	
Phone	

24-037

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:**	October 16, 2023
Drafter:	Crystal Silva	**Department:**	Financial Services
Program:	Fiscal Management	**Line of Business:**	Grants Administration Program

Title:	**A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).**

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

PURPOSE(S) OF ACTION:

To accept multiple 2023 Legislative Capital Appropriation Agreements.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City.

The City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session:

Appropriation# 23-H3322 in the amount of $560,000 to plan, design, construct, and improve runways, including crack seal, surface seal, pavement pulverizing and overlay processes at the Las Cruces International Airport in Las Cruces, Dona Ana County.

Appropriation# 23-H3323 in the amount of $595,000 to acquire rights of way and to plan, design, construct and install street improvements, including pavement replacement, curb and gutter, sidewalks, accessibility and code compliance, drainage, street lights, signage, striping and related infrastructure and utilities, within the Lift Up area boundaries in Las Cruces in Dona Ana County.

Appropriation# 23-H3324 in the amount of $250,000 to acquire rights of way and to plan, design, construct, and install improvements to the intersection of Telshor Boulevard and Spruce Avenue, including associated infrastructure and utilities in Las Cruces, Dona Ana County.

Appropriation# 23-H3325 in the amount of $520,000 to acquire rights of way and to plan, design, construct and improve University Avenue and connecting streets, including lighting, landscaping, wayfinding, bicycle and pedestrian improvements, accessibility and code compliance, transit stops and shelters and associated infrastructure, in Las Cruces in Dona Ana County.

These capital appropriations have a reversion date of June 30, 2027.

The State of NM Department of Transportation requires that all grant agreements or amended grant agreements being submitted for funding include a resolution approved by the City Council, making NMDOT projects a priority for the City.

SUPPORT INFORMATION:

ATTACHMENT "A" CLC 23-H3322 Agreement
ATTACHMENT "B" CLC - 23-H3323 Agreement
ATTACHMENT "C" CLC - 23-H3324 Agreement
ATTACHMENT "D" CLC - 23-H3325 Agreement

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 NMDOT Legislative Capital Appropriation funding for 23-H3322, 23-H3323, 23-H3324 and 23-H3325.
2. Vote "No"; this will deny NMDOT funding and result in a loss of funds.
3. Vote to "Amend"; this will require further direction from staff.
4. Vote to "Table"; this will result in a loss of funds needed to complete city projects.

RESOLUTION 24-037

A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).

The City Council is informed that:

WHEREAS, the City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City; and

WHEREAS, the City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session: 23-H3322, 23-H3323, 23-H3324 and 23-H3325; and

WHEREAS, these NMDOT Capital Appropriations have a reversion date of June 30, 2027; and

WHEREAS, the State of NM Department of Transportation requires an approved resolution for all grant agreements or amended grant agreements being submitted for funding.

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

(I)

THAT the City accepts the awards in the NMDOT agreements 23-H3322, 23-H3323, 23-H3324 and 23-H3325 from the 2023 Legislative Session Capital Outlay Appropriations for the City and they are hereby approved and have priority standing.

(II)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

Contract Number: _____
Vendor Number: 0000054342
Control Number: C1233322

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Las Cruces, hereinafter called the "Grantee". This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, in the Laws of 2023, HB505, Chapter 199, Section 33, Subsection 56, 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 the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

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:

DFA Appropriation ID H3322 NMDOT Control Number C1233322 **$560,000**
APPROPRIATION REVERSION DATE: 6/30/2027
Laws of 2023, Chapter 199, Section 33, Subsection 56, Five Hundred Sixty Thousand Dollars and No Cents ($560,000), to plan, design, construct and improve runways, including crack seal, surface seal, pavement pulverizing and overlay processes, at the Las Cruces international airport in Las Cruces in Dona Ana county.

The Grantee's total reimbursements shall not exceed Five Hundred Sixty Thousand Dollars and No Cents $560,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[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.

applicable, Zero Dollars and No Cents ($ 0.00), which equals Five Hundred Sixty Thousand Dollars and No Cents (**$560,000**) (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 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[2] 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.

[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.

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: Amy Bassford
Title: Grants and Contracts Manager
Address: P.O. Box 20000, Las Cruces, New Mexico 88004
Email: abassford@las-cruces.org
Telephone: 575-541-2281

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: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Capital Outlay District Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@dot.nm.gov
Telephone: 575-640-2779

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 6/30/2027 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. 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 ~~a~~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 Transportation 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 Department of Transportation Grant Agreement. Should the Department of Transportation 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

_____
Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

_____
Date

DEPARTMENT OF TRANSPORTATION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:
Christine Schwamberger
593C7CA1DD434D1...
By: Aaron Frankland or Designee

Its: Deputy General Counsel

8/28/2023
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. Phone No:

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

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____,_____]
FROM: Grantee: [_____]
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: [_____]

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.

NMDOT ATTACHEMNT A

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Contract Number: _____
Vendor Number: 0000054342
Control Number: C1233323

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Las Cruces, hereinafter called the "Grantee". This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, in the Laws of 2023, HB505, Chapter 199, Section 33, Subsection 57, 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 the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

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:

DFA Appropriation ID H3323 NMDOT Control Number C1233323 **$595,000**
APPROPRIATION REVERSION DATE: 6/30/2027
Laws of 2023, Chapter 199, Section 33, Subsection 57, Five Hundred Ninety Five Thousand Dollars and No Cents ($595,000), to acquire rights of way and to plan, design, construct and install street improvements, including pavement replacement, curb and gutter, sidewalks, accessibility and code compliance, drainage, street lights, signage, striping and related infrastructure and utilities, within the Lift Up area boundaries in Las Cruces in Dona Ana county;.

The Grantee's total reimbursements shall not exceed Five Hundred Ninety Five Thousand Dollars and No Cents $595,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP

amount")[1], if applicable, Zero Dollars and No Cents ($ 0.00), which equals Five Hundred Ninety Five Thousand Dollars and No Cents (**$595,000**) (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 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[2] 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:

[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.

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: Amy Bassford
Title: Grants and Contracts Manager
Address: P.O. Box 20000, Las Cruces, New Mexico 88004
Email: abassford@las-cruces.org
Telephone: 575-541-2281

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: Cynthia Alamillo
Title: Interim Grant Manager
Address: 700 N. Main St Las Cruces, Nm 88001
Email: grants@lascruces.gov
Telephone: 575-541-2430

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Capital Outlay District Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@dot.nm.gov
Telephone: 575-640-2779

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 6/30/2027 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. 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 Transportation 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 Department of Transportation Grant Agreement. Should the Department of Transportation 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)

_____
Date

DEPARTMENT OF TRANSPORTATION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:
Christine Schwamberger
_____
By: Aaron Frankland or Designee

Its: Deputy General Counsel

9/20/2023
_____
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. Phone No: _____

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

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____,_____]
FROM: Grantee: [_____]
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: [_____]

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.

NMDOT ATTACHEMNT A

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

Contract Number: _____
Vendor Number: 0000054342
Control Number: C1233324

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Las Cruces, hereinafter called the "Grantee". This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, in the Laws of 2023, HB505, Chapter 199, Section 33, Subsection 58, 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 the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

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:

DFA Appropriation ID H3324 NMDOT Control Number C1233324 **$250,000**
APPROPRIATION REVERSION DATE: 6/30/2027
Laws of 2023, Chapter 199, Section 33, Subsection 58, Two Hundred Fifty Thousand Dollars and No Cents ($250,000), to acquire rights of way and to plan, design, construct and install improvements to the intersection of Telshor boulevard and Spruce avenue, including associated infrastructure and utilities, in Las Cruces in Dona Ana county.

The Grantee's total reimbursements shall not exceed Two Hundred Fifty Thousand Dollars and No Cents $250,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[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.

applicable, Zero Dollars and No Cents ($ 0.00), which equals Two Hundred Fifty Thousand Dollars and No Cents (**$250,000**) (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 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[2] 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.

[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.

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: Amy Bassford
Title: Grants and Contracts Manager
Address: P.O. Box 20000, Las Cruces, New Mexico 88004
Email: abassford@las-cruces.org
Telephone: 575-541-2281

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: Cynthia Alamillo
Title: Interim Grant Manager
Address: 700 N. Main St, Las Cruces, NM 88001
Email: calamillo@lascruces.gov
Telephone: 575-541-2430

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Capital Outlay District Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@dot.nm.gov
Telephone: 575-640-2779

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 6/30/2027 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. 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 Transportation 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 Department of Transportation Grant Agreement. Should the Department of Transportation 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)

9/12/23
Date

DEPARTMENT OF TRANSPORTATION

By:

Its: Cabinet Secretary or Designee

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:
Christine Schwamberger
593C7CA1DD434D1...
By: Aaron Frankland or Designee

Its: Deputy General Counsel

8/28/2023
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. Phone No: _____

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

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____]
FROM: Grantee: [_____]
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: [_____]

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.

NMDOT ATTACHEMNT A

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

ATTACHMENT "D"

Contract Number: _____
Vendor Number: 0000054342
Control Number: C1233325

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Las Cruces, hereinafter called the "Grantee". This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, in the Laws of 2023, HB505, Chapter 199, Section 33, Subsection 59, 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 the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

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:

DFA Appropriation ID H3325 NMDOT Control Number C1233325 **$520,000**
APPROPRIATION REVERSION DATE: 6/30/2027
Laws of 2023, Chapter 199, Section 33, Subsection 59, Five Hundred Twenty Thousand Dollars and No Cents ($520,000), to acquire rights of way and to plan, design, construct and improve University avenue and connecting streets, including lighting, landscaping, wayfinding, bicycle and pedestrian improvements, accessibility and code compliance, transit stops and shelters and associated infrastructure, in Las Cruces in Dona Ana county;.

The Grantee's total reimbursements shall not exceed Five Hundred Twenty Thousand Dollars and No Cents $520,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero Dollars and No Cents ($ 0.00), which equals Five Hundred Twenty Thousand Dollars and No Cents (**$520,000**) (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 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[2] 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

[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.

(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: Amy Bassford
Title: Grants and Contracts Manager
Address: P.O. Box 20000, Las Cruces, New Mexico 88004
Email: abassford@las-cruces.org
Telephone: 575-541-2281

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: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Capital Outlay District Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@dot.nm.gov
Telephone: 575-640-2779

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 6/30/2027 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. 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 ~~a~~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 Transportation 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 Department of Transportation Grant Agreement. Should the Department of Transportation 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

_____
Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

_____
Date

DEPARTMENT OF TRANSPORTATION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:
Christine Schwamberger
593C7CA1DD434D1...

By: Aaron Frankland or Designee

Its: Deputy General Counsel

9/20/2023
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. Phone No:

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

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____,_____]
FROM: Grantee: [_____]
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: [_____]

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.

NMDOT ATTACHEMNT A

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

24-038

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:**	October 16, 2023
Drafter:	Donny Prosise	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF THE CONTRACT FOR OUTSIDE COUNSEL SERVICES WITH ROBLES, RAEL & ANAYA, P.C. TO $500,000 PLUS NEW MEXICO GROSS RECEIPTS TAX ANNUALLY (PROCUREMENT NO. 23-24-021).**

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

PURPOSE(S) OF ACTION:
To authorize an increase in the annual not-to-exceed amount for a contract for outside counsel services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City's Legal Department has contracted with Robles, Rael & Anaya, P.C. for outside counsel services. Services of attorneys are exempt from competitive bidding as outlined in the City's procurement code, Las Cruces Municipal Code chapter 24-4. The anticipated amount for outside counsel services for fiscal year 2024 and later years exceeds the City Council approval threshold of $100,000. The Legal Department is requesting authorization to amend contract no. 23-24-021 from an amount not to exceed $99,999 plus New Mexico Gross Receipts Tax, to an amount not to exceed $500,000 plus New Mexico Gross Receipts Tax annually, as outlined in Exhibit "A".

SUPPORT INFORMATION:
Exhibit "A" - 23-24-021 Legal Svcs - Robles - Amendment 1

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:
BUDGETED AMOUNT: 1,293,909 **AVAILABLE AMOUNT:** 520,410 **EXPENDITURE AMOUNT:**

500,000

Funding Source(s):
60331004-721030

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes": this will approve the Resolution authorizing the increase in the annual not-to-exceed amount of the contract with Robles, Rael & Anaya, P.C. for outside counsel services from $99,999 to $500,000 plus tax annually.
2. Vote "No": this will not approve the Resolution and City Council will need to provide staff with alternative direction.
3. Vote to "Amend": this could modify the Resolution based on direction from City Council to staff.
4. Vote to "Table": this will delay the increase in the annual not-to-exceed amount of the contract with Robles, Rael & Anaya, P.C., which will impact Legal Department operations, and City Council will need to provide alternative direction to staff.

RESOLUTION 24-038

A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF THE CONTRACT FOR OUTSIDE COUNSEL SERVICES WITH ROBLES, RAEL & ANAYA, P.C. TO $500,000 PLUS NEW MEXICO GROSS RECEIPTS TAX ANNUALLY (PROCUREMENT NO. 23-24-021).

The City Council is informed that:

WHEREAS, the City's Legal Department has contracted with Robles, Rael & Anaya, P.C. for outside counsel services; and

WHEREAS, services of attorneys are exempt from competitive bidding as outlined in the City's procurement code, Las Cruces Municipal Code chapter 24-4; and

WHEREAS, the anticipated amount for outside counsel services for fiscal year 2024 and later years exceeds the City Council approval threshold of $100,000; and

WHEREAS, the Legal Department is requesting authorization to amend contract no. 23-24-021 from an annual amount not to exceed $99,999 plus New Mexico Gross Receipts Tax, to an amount not to exceed $500,000 plus New Mexico Gross Receipts Tax annually, as outlined in Exhibit "A".

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

(I)

THAT the amendment to the professional services agreement with Robles, Rael & Anaya, P.C. to an amount not to exceed $500,000 plus New Mexico Gross Receipts Tax annually, as outlined 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 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

EXHIBIT "A"

CITY OF LAS CRUCES

AMENDMENT NO. 1

23-24-021 LEGAL SERVICES – OUTSIDE COUNSEL

This amendment, made this _____ day of September, 2023 by and between the CITY OF LAS CRUCES and Robles, Rael & Anaya, P.C. of Albuquerque, NM.

W I T N E S S E T H

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated July 1, 2023, the parties hereby agree as set forth below:

The following provisions are added:

1. Section 4. COMPENSATION is modified to an annual amount not to exceed $500,000, plus applicable taxes.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated July 1, 2023 between the parties is hereby ratified and confirmed.

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

ROBLES, RAEL & ANAYA, P.C.

BY: _____
Luis Robles
President

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

_____ 8/31/23
City Attorney

Revised: May 2023

24-039

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:**	October 16, 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 21-22-029 WITH GODFREY'S ASSOCIATES, INC. OF DALLAS, TEXAS TO ADD ADDITIONAL BUILDING, SPACE, AND BRANCH PLANNING TO THE PROJECT SCOPE; INCREASE THE CONTRACT AMOUNT BY $26,948.00, INCLUDING GROSS RECEIPTS TAX FOR THE ADDITIONAL SERVICES; AND TO EXTEND THE CONTRACT TERM THROUGH DECEMBER 31, 2024.**

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

PURPOSE(S) OF ACTION:

To authorize a contract amendment.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces Public Library required proposals for the preparation of a library master plan and feasibility study. On February 24, 2022, the City of Las Cruces advertised Request for Proposals for Procurement No. 21-22-029. The Purchasing program received three (3) proposals that were evaluated and scored by the Selection Advisory Committee (SAC) on April 13, 2022. The SAC recommendation was to award to Godfrey's Associates, Inc. of Dallas, Texas.

The City and Godfrey's Associates, Inc. entered into a professional services agreement on May 24, 2022. As part of this agreement, Godfrey's Associates, Inc. was to work closely with City staff, community stakeholders, and the existing City strategic and comprehensive plans to develop and create a master plan for the library system as outlined in the agreement's (Attachment "A") scope of services.

As Godfrey's Associates, Inc. was performing the contracted services, the Las Cruces Public Library identified additional essential projects that would propel the master plan into action. The additional projects would be performed concurrently with the original master plan scope. Godfrey's Associates, Inc. has submitted a cost breakdown for the additional services, in the amount of $26,948.00 including New Mexico gross receipts tax, attached hereto as Exhibit "A". Las Cruces Public Library staff are requesting that the term of the agreement be extended through December 31, 2024, to allow completion of the project, and to amend to contract total to $111,934.00.

SUPPORT INFORMATION:

Exhibit "A" 21-22-029 - TBML Master Plan Amendment 1
Attachment "A" - 21-22-029 TBML Master Plan PSA

PLAN(S):
Elevate Las Cruces

COMMITTEE/BOARD REVIEW:
Library Board

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
$50,000.00	$50,000.00	$26,948.00

Funding Source(s):
Library Support Services Sjoquist Trust - 70254013-721080-11996

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

Does this action align with Elevate Las Cruces?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this will approve the Resolution authorizing the amendment to the Thomas Branigan Memorial Library Master Plan & Branch Feasibility Study professional service agreement, adding additional building, space, and branch planning in the amount of $26,948.00, and extending the term of the agreement through December 31, 2024.
2. Vote "No"; this will not approve the Resolution, nor the amendment, and potentially impede successful completion of the project.
3. Vote to "Amend"; this could modify the Resolution, and City Council will need to provide alternative direction to City staff.
4. Vote to "Table"; this could delay authorizing the Resolution and the amendment to the agreement.

RESOLUTION 24-039

A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 21-22-029 WITH GODFREY'S ASSOCIATES, INC. OF DALLAS, TEXAS TO ADD ADDITIONAL BUILDING, SPACE, AND BRANCH PLANNING TO THE PROJECT SCOPE; INCREASE THE CONTRACT AMOUNT BY $26,948.00, INCLUDING GROSS RECEIPTS TAX FOR THE ADDITIONAL SERVICES; AND TO EXTEND THE CONTRACT TERM THROUGH DECEMBER 31, 2024.

The City Council is informed that:

WHEREAS, the Las Cruces Public Library requested proposals for a library master plan and feasibility study; and

WHEREAS, on May 24, 2022, the City of Las Cruces entered into Professional Service Agreement No. 21-22-029 with Godfrey's Associates, Inc. of Dallas, Texas for the Thomas Branigan Master Plan & Branch Feasibility Study; and

WHEREAS, the Las Cruces Public Library identified additional essential projects that would expand the lifelong learning and literacy resources to the diverse community of the City of Las Cruces and rural areas immediately surrounding the city.

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

(I)

THAT the Resolution authorizing an amendment to the 21-22-029 Thomas Branigan Master Plan & Branch Feasibility Study Professional Services Agreement 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 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

Exhibit "A"

CITY OF LAS CRUCES

AMENDMENT NO. 1

RFP 21-22-029 Thomas Branigan Memorial Library Master Plan & Feasibility Study

This amendment made this _____ day of October, 2023 by and between the CITY OF LAS CRUCES and Godfrey's Associates, Inc. of Dallas, Texas.

W I T N E S S E T H

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated May 24, 2022, the parties hereby agree as set forth below:

The following provisions are added:

1. Section 2. SCOPE OF SERVICES is amended to include additional building, space, and branch planning as outlined in the estimate attached hereto as Attachment "A" and made part of this agreement.
2. Section 4. COMPENSATION is amended to add $26,948.00 for a total amount of $111,934.00 to include the additional services, including New Mexico Gross Receipts Tax.
3. Section 6. TERM AND SCHEDULE is amended for a term through December 31, 2024.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated May 24, 2022 between the parties is hereby ratified and confirmed.

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

GODFREY'S ASSOCIATES, INC.

BY: _____
Richard L. Waters
President

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

9/20/23
City Attorney

Revised: May 2023

Attachment A

Ginger Barela

From: Sarah Booth
Sent: Friday, September 15, 2023 2:21 PM
To: Ginger Barela
Cc: Carol Brey
Subject: FW: Las Cruces Public Libraries - Proposed Additional Service Fees & Expenses

Ginger,
Here is the breakdown of the additional project costs.
Thanks
Sarah

Sarah Booth
Deputy Director/Quality of Life/Las Cruces Public Libraries
Direct: 575-528-4017 sbooth@lascruces.gov
CITY OF LAS CRUCES

From: Brad Waters <bradwaters@sbcglobal.net>
Sent: Wednesday, May 24, 2023 7:57 PM
To: Sarah Booth <sbooth@las-cruces.org>
Cc: Carol Brey <cbrey@las-cruces.org>; Rebecca Slaughter <rslaughter@las-cruces.org>
Subject: Las Cruces Public Libraries - Proposed Additional Service Fees & Expenses

Sarah:

Below is a summary of our proposed fees & expenses for the additional services you have requested. Please let me know if you have any questions, concerns, or comments.

Las Cruces Public Libraries
Travel & Printing Expenses for Additional Services – Charrette & Space Programming

airfare	$1,050
lodging	1,890
rent car	1,530
meals	728
mileage to/from airport	129
airport parking	221
printing allowance	400
Total	$5,948

Charrette Trip: $3,581

Extended Trip for Space Programming: $2,367

Summary of Additional Services Fees & Expenses

service	*fees*	*expenses*	*totals*
Branigan Charrette	$4,000	$3,581	$7,581
Branigan Space Programming	9,500	2,367	11,867

Branch Space Programming	7,500*	0**	7,500*
Grand Totals	$21,000	$5,948	$26,948

**Discounts are possible for programming efforts prosecuted simultaneously – worst case scenario presented here.*

***Included in Branigan Space Programming expenses.*

for Godfrey's Associates, Inc.

Brad Waters
PROVIDENCE *Architecture, Inc.*
(469) 987-5725 (mobile)
bradwaters@sbcglobal.net (e-mail)

In this Proposal, Godfrey's describes our approach to the unique challenges and opportunities available in the process of programming library space in new buildings and renovated/expanded facilities – while building upon the Library Master Plan's significance to the community.

Godfrey's Project Methodology

Our methodology identifies all major tasks and issues affecting the development of a comprehensive Library Space Program that codifies your specifications for design of a new (or reimagined) Library. The programming process will identify, confirm, and prioritize your project goals – making many important decisions that set the direction for the new Library on the correct course to achieve those goals. The resulting Space Program document will also incorporate the City of Las Cruces' goals for the project, for consideration by the Design Architect.

Scope of Work. Our proposed method is a logical sequence of tasks that will result in a detailed, well-organized set of deliverables and a realistic schedule for completing each task. The programming process will follow a set of Scope of Work tasks, organized into four sequential Phases, as follows:

1 ***Orientation & Organization Phase:*** Post-Master Plan, review relevant updates to library documents such as the most current strategic planning and budgets, Collection Development Plan, Technology Plan, relevant Library Board meeting minutes; and City documents such as the Capital Improvements Plan, the City's Comprehensive Plan and/or neighborhood master planning. Meet with the Library and City staff to verify this detailed work plan, consisting of a scope of services and project timeline.

2 ***Input Phase:*** Confer with Library staff, Library Board, Library Foundation, and City Officials regarding needed programs, services, and space needs for each new Library. Evaluate input from residents by conducting focus groups and key constituent interviews.

3 ***Synthesis Phase:*** Translate input into a functional Library Space Program, to include new Library space needs and cost estimates for such spaces.

4 ***Documentation Phase:*** Provide an electronic copy of the final report and present a formal summary presentation of report findings and recommendations to the Library Board. The report will be in 8.5 x 11 format to allow for quality color printing.

Sequential Task List. Below, we list all proposed Tasks to complete each Phase, followed by our ideal Project Schedule, found at the end of this Proposal. A schedule of proposed fees is presented separately.

1. Orientation & Organization Phase: Establish a project foundation.

Task 1: Project Orientation. In a project kick-off meeting, review the project process, proposed schedule, work plan, and any outstanding contractual issues.

Task 2: Planning Standards Review. Submit preliminary space standards for the new Library for your review and approval.

Task 3: Vision of Project Purpose. Identify and prioritize City goals and objectives for the project to define the purpose of the new Library. We believe that gathering information on community needs and desires must be substantially complete prior to finalizing goals for the project.

Task 4: Data Request & Review. Submit a data acquisition packet to Library for information not already provided and not readily available online.

2. Input Phase: Establish customer-driven program & service priorities.

Task 5: Library Stakeholder Workshop. Meet with Library staff and stakeholders to explain the information Godfrey's will need concerning design criteria for the new Library, discuss forums for gathering community input, and brainstorm ideas for services and programs.

Task 6: City Staff Workshop. Meet with City staff responsible for building operations and maintenance to gather information about design criteria and performance of the City's preferred infrastructure systems for the new Library.

Task 7: Facilitate Community Input Forums. Gather community and stakeholder input through 12 stakeholder interviews and five focus groups

to define the role of the new Library in serving those who live and work in close proximity, and the community at-large.

Task 8: Community Input Report. Develop a preliminary report summarizing the community engagement process and findings.

3. Synthesis Phase: Translate programs & services into space needs.

Task 9: Establish Space Allocations. List all potential assignable spaces to comprise the new Library, with the net floor area for each. See an outline of the content a typical assignable space on page 14.

Task 10: Develop Space Requirements. On a space-by-space basis, define finishes, electrical, data requirements, etc. for all assignable spaces and list the equipment and furniture required in each space.

Task 11: Establish Preliminary Infrastructure Concepts. Define building-wide interior finishes, mechanical, electrical, plumbing, data, and audio-visual equipment systems to support the spaces of the new Library.

Task 12: Develop Design Considerations. Define the City's goals for the overriding interior and exterior design of the new Library, to be considered by the Design Architect. Describe all pertinent issues such as parking, exterior, plumbing, mechanical, electrical, security, etc.

Task 13: Develop Space Adjacencies. Prepare spatial organization diagrams representing each assignable space on each floor of the new Library to test horizontal and vertical adjacencies.

Task 14: Develop Probable Project Capital Costs. Tabulate square footages and cost per square foot for construction, and actual quantities for all other project expenses, based on Tasks 9 through 13.

Task 15: Develop 5-Year Operational Costs. Forecast costs for all budget categories required to operate the new Library upon opening and for five years after opening.

Task 16: Produce a Project Schedule. Identify potential phasing of the work to complete the project, based on timing of available funds and migrating from one location to another, as applicable.

Task 17: Review the Draft Library Space Program. Develop a preliminary draft of the Library Space Program for review by Library and City staff.

4. Documentation Phase: Package recommendations into concise tools.

Task 18: Produce the Program Document. Produce a final Library Space Program, for consideration and approval by the Library Board.

Task 19: Produce a Program Presentation. Produce a summary Library Space Program PowerPoint presentation with recommendations, including quality images of similar new Library projects, approved by the Library Board. Present the report to the Library and Foundation Boards.

Work Plan Highlights. On the pages that follow, Godfrey's provides highlights of the Phases and select Tasks in more detail.

1. Orientation & Organization Phase

Post-Master Plan, Godfrey's wants to become even better-acquainted with the Library. We intend to gain additional understanding through a review of relevant documents described below, and via meetings with Library and City staff. We believe it is important that all parties "be on the same page" as this important project gets underway.

Task 1: Project Orientation

Godfrey's will meet with City staff and Library to review our Work Plan. We will verify any portions of the Work Plan that will require assistance by Library staff.

Project Organization Meeting. Our first step will be to meet with the Sarah Booth and staff, get acquainted, review our proposal, discuss the final project Work Plan, discuss our remaining data collection needs, and identify the best times for meetings and site visits. We propose to establish and/or finalize:

- Lines of communication and reporting hierarchies.
- Policies and procedures for meetings, site visits, etc.
- Project goals, objectives, and strategies.
- Scope of work, project Work Plan, and deliverables.
- Project schedule.

The primary goal of this Task will be to set expectations for all parties for the course of the Space Programming project.

Interim Project Deliverables. Godfrey's will submit Draft Reports at the completion of each Task, summarizing our findings and conclusions. We will generate interim reports as a portion of the work effort for each Task, rather than waiting until the end of the project. Each deliverable will be concise, supported by appendices as needed, sent electronically to Sarah Booth for distribution. After a two-week review period, we will make needed changes and revised documents will be resubmitted.

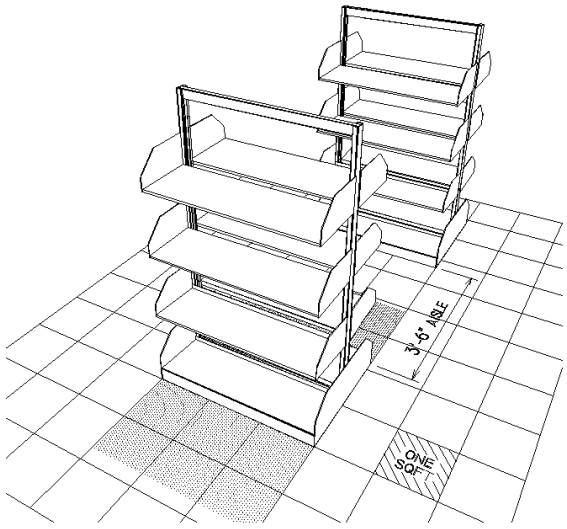
Interim Draft Reports, submitted periodically as the programming process unfolds, facilitate the review process by delivering data in timely, easily digestible portions. This approach will allow the Library and the Board to stay current with project progress, while minimizing the amount of data to be reviewed at any one time.

Task 2: Planning Standards Review

Godfrey's has developed a set of space standards for libraries of all types, based on three-dimensional characteristics of a modern library. We base these space planning guidelines on our work with hundreds of library clients over our history throughout the U.S. and abroad, updating them as trends and technological developments demand. Our space standards are predicated on providing ADA-compliant, user-friendly spaces, adaptable to future change. Dimensionally tested for real world conditions, the resulting square footage is more accurate than traditional rule-of-thumb measures.

Modern Library Space Standards. Space standards are typically expressed in the two-dimensional terms of square footage, which is often adequate. Libraries, however, are unique in that collection capacity is based on a three-dimensional density equation that factors in shelving height and aisle width. It has been our experience that our space standards, when applied correctly, result in an adequate size for libraries accommodating the wide variety of functions – and their furniture, equipment, and staff support spaces.

One example of Godfrey's three-dimensional Library Space Standards, calculating shelving capacity per material format, based on shelving height & aisle spacing



Double Face 60"H Shelving Unit
SDF602636-42
17 square feet per unit

media type	total volumes	volumes/ square foot
Reference/Non-Fiction	144	8
Fiction/Young Adult	288	17
Easy/Picture Books	576	34

Godfrey's will present our facility planning guidelines and space standards for the new Library during our first site visit, then submit them for Library review and approval.

Task 3: Vision of Project Purpose

Godfrey's will lead a brainstorming session with Library staff, Library Board members, the Foundation, and City staff – to begin the dialogue about the ideal Library. The intent is to begin to craft a Vision for a new Library, identifying innovative, creative solutions that could assist in the realization of a world-class project that meets community needs. This session is as much about informing the Consultants as it is conveying information to stakeholders. It is a continuation of a community conversation about the new Library.

Godfrey's will lead this "what if" session. In addition to traditional library services, some of the attributes, features, and elements that the Library and the City may want to consider for this project might include:

- *Will the new Library be accessible to public transportation?* Being near mass transit means the new Library is accessible to more

residents, tourists, and visitors. *Do we include space to accommodate bicycles and bicyclists? What should be the Library's approach to accommodating the homeless?*

- *The building as canvas for public art?* Multi-purpose gallery spaces for art exhibits and performances could host live programs such as string quartets, voice recitals, dance, and theatre – both in interior and exterior spaces.
- *Does Library wish to showcase particular Library spaces or functions, potentially hosting fundraising events in such space(s)?* Potential exists to use such spaces to raise funds – or rent them to generate revenue. Rental fees for an evening at the rooftop Winter Garden of downtown Chicago's Harold Washington Library is over $5,000 for non-profits, $7,500 for corporate use.

Godfrey's strongly recommends planning every new library for future expansion. Square footage built for future growth could be assigned to business, retail, or restaurant uses in the interim. Including space for ancillary businesses uses, i.e. coffee shops, does not by itself guarantee business success. Godfrey's has consulted on a number of public library examples, mostly successful: St. Paul, Broward County, Brooklyn, and Boise. Should Library consider building shell/ lease space for near-term revenue generation and long-term library expansion?

To close, we will ask the question posed by the Library Board: *What role should the City play in ensuring residents have a vibrant Library?*

Task 4: Data Request & Review

At project outset, Godfrey's will gather information to develop comprehensive design criteria for the new Library. We will download Library Board Meeting Minutes, Library Director's Reports, and Newsletters – finding each useful in conveying information about the Library. Examples of relevant data we might still seek could include:

- Current Technology Plan and status of the Library's long-range planning, technology planning, and any other relevant documents.
- Current Library floor plans/furniture layouts.

We will review Library and City web sites for as much information as we can find and request a set of the remaining data prior to our initial site visit. Analysis of this data will allow us to consider factors as they impact the delivery of library services, use of technology, space requirements, and facility configuration.

2. Input Phase

Godfrey's believes that every step in any library planning process is a ***public relations opportunity.*** To achieve consensus, every step must be perceived by the public and staff as being fair and balanced. Working with the Library, we will develop a process for executing this important component of the project. We will begin with two orientation workshops.

Task 5: Library Stakeholder Workshop

Godfrey's proposes to assemble interested members of the Library staff and Library and Foundation Boards, to discuss the input the public input process. We will explain the information we would like to collect regarding design criteria for the new Library. We will provide an overview of work completed to-date and outline our strategy for promoting the new Library project through the planning process.

Task 6: City Staff Workshop

All too often, the people tasked with the responsibility for operating and maintaining buildings have no say in their planning and design. Godfrey's proposes to meet with City Public Works staff responsible for building operations and maintenance, in order to gather information about design criteria and performance of the City's preferred infrastructure systems for the new Library. This meeting will document the City's architectural/ engineering design preferences and/or exclusions. We propose the City include Information Technology, Community Development, and the Economic Development Departments in this workshop as well.

Within the context of current operating practices, we will discuss building maintenance and infrastructure, space needs, technology requirements, and ideal adjacencies, in an effort to inform a comprehensive view of the requirements for the design of the new Library.

Task 7: Facilitate Community Input Forums

Giving the community the opportunity to collaborate on the design of the new Library is an invaluable step to engendering broad-based support for and usage of the Library system. City staff has already made a significant investment in library service to the community, with more to follow. The best protection of that investment is for the citizenry to use the Library well – and often. So, learning from the community what kind of Library the people want is imperative to that success.

Community & Stakeholder Input. Godfrey's propose soliciting input through up to 12 stakeholder interviews and six public focus group discussions. We will use these opportunities to convey strategies for promoting the Library in general, and the new Library project in particular. We will also facilitate focus groups with Library administrative staff, Library line staff, the Library Board, the Friends of the Library, and the Library Foundation (five in-house groups total). Similarly, we will hold interviews with City Officials and/or community representatives to gather viewpoints on constituent needs.

Determining Target Groups. It has been Godfrey's experience that customer input targeted to a specific service or space typically yields fruitful ideas, i.e. a Teen Council could be convened to brainstorm ideas for a new Teen Tech/Homework Center. Involving customers in the planning of a new Library fosters ownership of the space and pride in the building. Getting young people to buy-in to the Library creates library customers for life.

Stakeholder Interviews. In each on-site interview with stakeholders, we will gauge their perception of the issues affecting the Library. As a part of this interview process, we will ask them to identify the most important roles and services for the Library. We will discuss space needs and adjacencies, technology requirements, etc. as appropriate.

Follow-Up Forum. Once the Draft Report is vetted by Library staff at the end of Phase 3, Godfrey's proposes to invite all staff, focus group, and stakeholder interview participants to a presentation of the Draft findings and recommendations. The intent of this forum is manifold: to gain additional feedback; as a courtesy to the participants who become invested in the process; and as always – to promote the new Library while building momentum for the project.

Task 8: Community Input Report

Godfrey's will close out the Input Phase with a Draft Report for all interested parties. We will evaluate all input from residents regarding programs, services, and spaces needed in a new Library. Notes from the various meetings will reflect what was said, not who said what. We will summarize our understanding of Library customer opinions for your review prior to incorporation as a chapter in the Final Report. Input on desired programs and services will be documented for cross-referencing against existing service offerings during the Synthesis Phase.

3. Synthesis Phase

Once goals and objectives have been established and prioritized in Phase 2, Godfrey's will consider viable service responses to achieve those goals. By this juncture of the project, we will know community needs and will have documented several service responses. We will have identified local and national building code requirements. Our inside-out space programming process will yield a fully functional, user-friendly, and fully accessible library without trying to dictate aesthetic issues to the Design Architect.

Godfrey's will translate community input into a functional Library Space Program, including square footage requirements for all necessary spaces and estimates of all project costs including construction, furnishings, equipment, opening day collections, design fees, etc.

Library Space Programming. Job one of a good Library Space Program is to convey the decisions that the client wants the Design Architect to implement into the design of a new building. Therefore, good programming sets the direction for the project design from the outset, making as many decisions as possible without inhibiting the creativity of the designer. And the most important decision to convey to the Design

Architect is that the new Library must be efficient to operate in every sense – in staffing, energy consumption, maintenance, and most importantly – for customer convenience.

Not limited to a list of spaces, a good Library Space Program should be a performance specification for the design of a significant work of architecture – inspiring those who avail themselves of the opportunities within and around the new Library.

Task 9: Establish Space Allocations

Godfrey's will identify and list all ***Assignable Spaces*** for the new Library – spaces assigned to a discrete library function. Spaces will be assigned to functions such as the Children's Area or Staff Workroom, as opposed to non-public space that supports the overall building, such as a mechanical equipment room or restroom. For each Assignable Space, we will begin to tabulate the net assignable square footage and the total gross square footages required, without difference as to whether space will be housed in new or existing construction.

Potential Service Response Examples. Early childhood education, job training, and small business support might be high service priorities for the community per the public input process. The design of a new Library can greatly enhance how these services are delivered.

The Library may wish to consider the Children's Area as two distinct areas: early childhood and grade school, scaled to kid sizes of each group, sharing a Customer Service Point and adjacent Staff Workroom. Indeed, service to all youth in the community should get equal attention, with spaces geared to all age transitions up to adulthood – infants, toddlers, pre-school, elementary school, tweens, and teens. Godfrey's sees a trend in public libraries toward increased specialization in Youth Services, which can be strengthened through proper planning of space and furniture.

Business support can employ partnerships to help Library instruct and mentor emerging entrepreneurs and companies. Such support can start early in life by providing access to makerspaces for youth and adult library customers – a trend in the private sector as well as public libraries.

Space & Technologies for Content Creation. Makerspaces have become popular for good reason. Using a 3-D printer at the Johnson County Kansas Library (a Godfrey's client), a teenager designed and made a working prosthetic hand for his eight-year old friend. Whether it's for manufacturing, or a place where the "empire of one" start-up business can create intellectual property, the new Library can grow the local economy by supporting ingenious Las Cruces residents.

For example, Godfrey's space plan for the Fort Worth Central Library used a television studio abandoned by the City's Cable channel as part of a new space for Teens. The converted studio can be used for video production, musical recording using professional-grade software – and even as a black box theater for small dramatic performances.

Space Needs. Using the space standards Godfrey's has developed for every piece of library furniture, shelving unit, seating type, and support component, we build the space needs for the new Library shelf-by-shelf, space-by-space, need-by-need. For the new Library, we will aggregate the square footage total to meet community and staff needs.

Task 10: Develop Space Requirements

Developing the requirements for the various spaces in the Library can be summarized by a simple theoretical equation:

Programs & services provided + number & type of occupants + furniture & equipment + infrastructure = square feet + adjacency requirements.

Quantifying Square Footage. As the first step in quantifying space needs, a detailed description of each assignable space will be drafted. The ***Assignable Spaces*** section of the Library Space Program will describe each space in detail, discussing general planning principles as well as special interior requirements, including:

- A description of the function of the space, and its desired adjacencies.
- Occupancy level, in terms of number of persons, the age range of persons, and peak periods of use.
- Square footage requirements for each component of the space.

- Listing of furniture and equipment, described in both narrative and tabular form, including:
  - Shelving, filing, and other storage needs.
  - Seating capacity and/or work surface requirements, by type.
  - Staff service points and workstations.
  - Computers, printers, and other peripherals.
  - All other miscellaneous furniture and equipment supporting the function.
- Listing of infrastructure requirements, described in narrative form, including but not limited to:
  - Acoustics.
  - Heating, ventilation, and air conditioning (HVAC).
  - Plumbing.
  - Lighting and power.
  - Life safety systems.
  - Data and telecommunications.
  - Security and automation.
  - Other technology applications.
  - Particular operations and maintenance issues for that space.

Occupancy. The number of occupants in each space could have a profound impact on the building code requirements in each space, and when aggregated building-wide. Egress requirements, the number of plumbing fixtures required, and HVAC design criteria are all affected by occupancy of the various spaces.

Furniture & Equipment. The library furniture and equipment (F&E) market is relatively small and specialized, understanding that furnishings should be scaled to various age groups and durable – built to last because of the extended usage beyond typical office furniture. After all, public libraries can be open almost twice as many hours per week as are offices. And quantifying F&E will inform a more accurate cost estimate.

Incorporating task lighting into reader tables, staff workstations, and shelving is both user-friendly and energy-efficient. And the lighting moves with the furniture. When task lighting is wired and circuited properly, staff can turn it on and off with ease every morning and evening with the flip of a few centralized switches that operate banks of lights.

Merchandising the Collections. Libraries compete for the time of their customers and potential customers. That competition frequently takes place with the collection of library materials. Retailers go to significant expense to create attention-getting displays of their goods, with the goal of influencing customer purchasing habits. Libraries should, can, and do adopt similar strategies to attract its customers to browsing, then borrowing its materials. Merchandising is important – and it takes space.

Task 11: Establish Preliminary Infrastructure Concepts

This Task involves overlaying building-wide infrastructure systems with each of the Assignable Spaces – as a cross-check to ensure the proper infrastructure will be incorporated into the project, and that each space is properly supported. The ability of both infrastructure and spaces to adapt to future change will be imperative in these decisions. Godfrey's will propose infrastructure for the new Library, from the basics of mechanical and electrical system to the integration of any number of library and building technologies.

Inclusion of Technology. Deploying a full range of automation technology can greatly increase staff efficiency in the Library, and it all starts with RFID. Automated materials handling systems (AMHS) rely on RFID tags in each collection item to check in materials automatically when placed through a return chute, then sort items by type, unit, and/or floor, and direct them to mobile book bins without being touched by human hands. At its basic level, RFID supports customer self-service, while providing better inventory control for library collections.

Similarly, automated storage and retrieval systems (ASRS) use high-density storage and robotics to deliver an item to the check-out desk while saving significant square footage. The new Library is a great opportunity to invest in such technology using capital dollars, in order to ***save significant operational costs.***

State of the Market Technology. We believe in leveraging tried-and-true market technology – not bleeding-edge, or even cutting-edge technology – to make operations more efficient in a new Library. Such opportunities include clever deployment of RFID, AMHS, ASRS – and smart technology that integrates audio-visual, security, and infrastructure system controls in a user-friendly manner.

More and more, we are an entertainment-oriented society. Library customers are introduced to computer and audio-visual technology at home and work, and they expect as much or more when they come to the Library. The new Library should plan for and implement a robust, manageable, and cost effective technology infrastructure, weaving its way throughout the building, accessible to all age groups, and adaptable to future change.

Touch screen monitors throughout the Library can give customers instant access to the web – like a big wall-mounted smart phone, but easier to see and navigate. Audio-visual equipment must be compatible with the many different uses. It must be able to respond to different users recognizing that, over time, a variety of hands will be operating the equipment and there will be a host of room setups that need to be accommodated. A goal for the project could be to creatively weave the Library's virtual presence into the physical space.

By the conclusion of Task 11, Godfrey's will identify all potential systems required to support all library and facility functions. This Task involves developing as much detail as prudent on the preferred building infrastructure – both internally to the building and the exterior envelope. And with more detail comes increased accuracy of cost – lending more certainty to the capital cost estimate for the project.

Task 12: Develop Design Considerations

The Assignable Spaces section will be augmented by two sections focusing on building-wide design criteria, categorized as Interior Considerations and Exterior Considerations, which include building-wide issues of infrastructure, building envelope, aesthetics, architectural finishes, etc.

Interior Considerations Examples. Design is a deductive process, eliminating potential alternatives in order to focus on resources that best meet your requirements. The new Library should "live" for 50 years or more, so it needs to be built to last. This goal translates into better building systems, materials, and finishes – or more in capital expenditures than for a "disposable" building. However, investment in more durable materials and more energy-efficient systems translates into lower operations and maintenance costs, repaying the capital investment over time.

Net-Zero Energy Consumption. After staffing, the best way to lessen operational costs is through energy-efficiency – not just marginally improving what you have now but moving a building design toward achieving net-zero consumption. By definition, achieving net-zero requires use of on-site energy generation – to-date, most likely requiring solar panels. Geo-thermal energy is omni-present six feet below ground. Ice-based thermal energy storage systems may become more prevalent as they become more economical. Simple building features such as super insulation and double-skin building envelopes can help achieve net-zero energy consumption, while setting an example for the greater community. If a building design functions properly and is easy and economical to operate and maintain, why not make it less costly to operate?

Exterior Considerations Examples. Incorporating sustainable design and green technologies for building infrastructure can reduce operational costs, such as photovoltaic solar panels to generate electricity or harvesting rainwater for irrigation and/or grey water sanitary sewer systems. Passive solar design techniques should be prioritized, as they can save on both operations and maintenance. Fixed devices such as exterior sunshades can block the heat gain from direct summer sun, while reflecting daylight into the building to reduce electricity consumption for light fixtures. A triple-pane glass curtain wall can provide excellent views into and out of the new Library without sacrificing thermal insulation value or allowing ultra-violet light intrusion. Godfrey's will propose sensible

alternatives to all exterior and interior infrastructure systems for City and Library consideration before narrowing the options for inclusion into the Draft Library Space Program.

Using the new building to teach its users and visitors about sustainable design and green technologies can be an added value. The design for the new Library could create new civic spaces which could be used for events sponsored by Library, such as a concert, a performance of Phantom of the Opera, art exhibitions, even outdoor lectures by famous persons.

External adjacencies to other amenities such as civic spaces, businesses, and residential uses could benefit the new Library, as well as allow the Library to benefit them. Businesses and residences adjacent to the new Library could potentially provide a "built-in" customer base. Still, the Library would need to offer these potential customers something(s) attractive.

Task 13: Develop Space Adjacencies

Internal adjacencies will influence the ability of staff to supervise the space. Godfrey's proposes to evaluate alternative spatial relationships in order to test optimum adjacencies through the use of scaled diagrams. Ultimately, this process delineates potential building configurations i.e. typical floor plate size(s), number of floors required to house the required square footage – all impacting total project costs – and staffing costs.

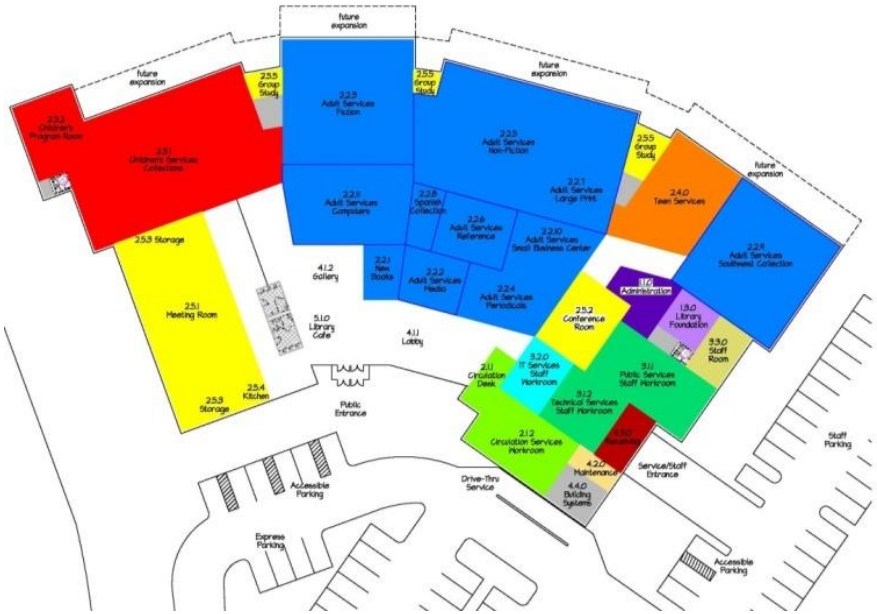
Blocking & Stacking Diagrams. Godfrey's will develop simple two- or three-dimensional (3-D) block diagrams showing horizontal (same floor) and vertical stacking (floor-by-floor) spatial relationships to test adjacencies, distribution of service points, staff sightlines, span of control, etc. An example of this type of color-coded blocking diagram is present at right. Regardless of location, the size of the Library parcel of land will have an important influence on the new Library design and number of floors – and hence the ongoing cost to operate.

Space blocking diagram for a new library (at right) on site number 17, One of the potential sites evaluated as home for a consolidated Fellin Library, Octavia Fellin Public Library, Gallup, New Mexico.

Task 14: Develop Probable Project Capital Costs

Godfrey's regularly monitors library construction costs nationwide as a tool to help establish a turn-key project budget that meets the programmatic needs of the new Library. The amount of square footage is the primary determinant of construction cost, and hence, total project cost. The next most impactful cost contributors are quality of construction and inflationary pressures due to the amount of time it takes to complete the project.

According to Library Journal, December 2015, the national average for total project costs of newly constructed libraries was $412.85 per square foot – an all-inclusive project cost, not including land acquisition and site development costs. By 2022, that number increased to $685.51 per square foot.



Develop Capital Costs for the Project. Godfrey's will provide firm cost recommendations. For purposes of comparing competing alternatives, we will estimate capital cost for the new Library to include:

- Demolition, if required.
- Renovation and/or new construction – separated into the two phases of new building shell and core and interior tenant improvements.
- Furniture, fixtures, and equipment – refurbished and/or new – quantified accurately.
- Technology, A/V and security systems equipment and infrastructure.
- Contractor general conditions, overhead, and profit.
- Fees, including Design Consultants and Construction Management.
- Owner costs, potentially including moving costs, temporary rent, opening day collections, permits, testing, project administration, etc.
- Design and construction contingencies.
- Escalation to the mid-point of anticipated construction.

If budget becomes an issue, Godfrey's can offer a variety of cost-saving measures that do not sacrifice durability or quality of construction.

Task 15: Develop 5-Year Operational Costs

Capital debt can eventually be retired. Operational costs are on-going. Godfrey's cannot overemphasize that care must be taken in planning and designing any new public library to be operationally efficient, especially from a staffing perspective. Your recent budgets indicate you spend over 70% of the total on personnel salaries and benefits – roughly in line with the national average for public libraries.

Develop Operating Costs for the Project. In order to be in line with current Library and City fiscal practices, Godfrey's will use your established budget categories and terminology for future budget projections. For evaluation purposes, Godfrey's will forecast operational budget estimates for the first five years of facility operation, including:

- Personnel, including full-time and part-time salaries/wages, work benefits, and staff training and development costs.
- Collection development and maintenance, subscriptions, supplies, etc.
- Information technology, including licenses, hardware replacement, software, etc.
- Building utilities, housekeeping, maintenance, and security labor costs.

Before we finalize our projected capital and operational budgets, Godfrey's will review each of them with City and Library staff, to insure our recommendations comply with local funding realities.

Task 16: Produce a Project Schedule

Time is money, so Godfrey's will identify a milestone schedule for the phasing of the design and construction work required to complete the project, based on timing of available funds and/or coordinated with migrating from the current location to the new Library.

Task 17: Review the Draft Library Space Program

Godfrey's will deliver a compiled draft Library Space Program, so that we can review a working copy with Library and City staff while we are on-site. This draft will document all space requirements and interior and exterior design issues to be considered during the Design Phase, both in narrative and graphic form.

4. Documentation Phase

At this point of the project, most decisions will have been made, so the primary effort will be in documenting the process, findings, resulting recommendations, and stakeholder feedback.

Final Project Deliverables. Based on Godfrey's extensive experience in programming public libraries, we are confident that our approach and methodology will yield a well-organized set of deliverables, including:

- Library Space Program document – a performance specification for the design of the new Library, vetted by City and Library staff – and addressing the needs of the community.
- PowerPoint Presentation, to be presented to the Library Board and City Council, as well as for use by Library in promoting the project.

Godfrey's will provide the required printed and electronic copies of the final report and present a formal summary of report recommendations to the Library Board.

Task 18: Produce the Library Space Program Document

A detailed Library Space Program is required by any competent Design Architect to begin basic design services for your project. A Library Space Program should define the ultimate and ideal space needs of the new Library for several years to come. Godfrey's believes it is important to define all issues in detail at this early juncture of the project. More detail gives Library staff more to react to, sets the proper direction for the design, yields more accurate square footage and cost figures, and provides the designer(s) with the information they need to follow that direction. In short, the Library Space Program will be a recipe for the design of the new Library with all of the ingredients measured out, not merely a list of spaces and square footages. The resulting new Library will be able to evolve, with the notion of what a 21st Century library should serve all residents in its service area.

A Library Space Program should combine the quantification of seating, collections, square footage, etcetera with a description of infrastructure elements – both building-wide and on a space-by-space basis – including future growth. We believe our format is more comprehensive and user-friendly than most Library Space Programs, having been the basis for design of more than 50 libraries nationwide and abroad. Godfrey's will produce a written Library Space Program document that will serve as a statement of design intent for the project, to include:

- ***Statistical Summary*****,** including a tabulation of the proposed building's capacities for collections and seating, public computers, staff workstations, net floor area/square footages for all net assignable spaces and gross square footages– by floor and building-wide.
- ***Interior & Exterior Considerations,*** including a description of parking, civil, exterior, plumbing, mechanical, electrical, security components, etc.
- ***Assignable Spaces*****,** a tabulation of net floor area/square footages for all assignable spaces and gross square footages for new construction and/or renovation – including finishes, electrical, data requirements, a list of computers, audio-visual equipment, and furniture, etc. for all assignable spaces.
- ***Statement of Probable Project Costs*** will tabulate square footages and cost per square foot for all new construction and all other project costs, including parking and site development.
- ***Project Schedule*** with major milestones identified to complete the project, including potential phasing of the work, timing of funds needed, moving schedule, building commissioning, and grand opening celebration. The Schedule presented on the following page is similar to the type of schedule we will produce for the new Library project.

Task 19: Produce a Program Presentation

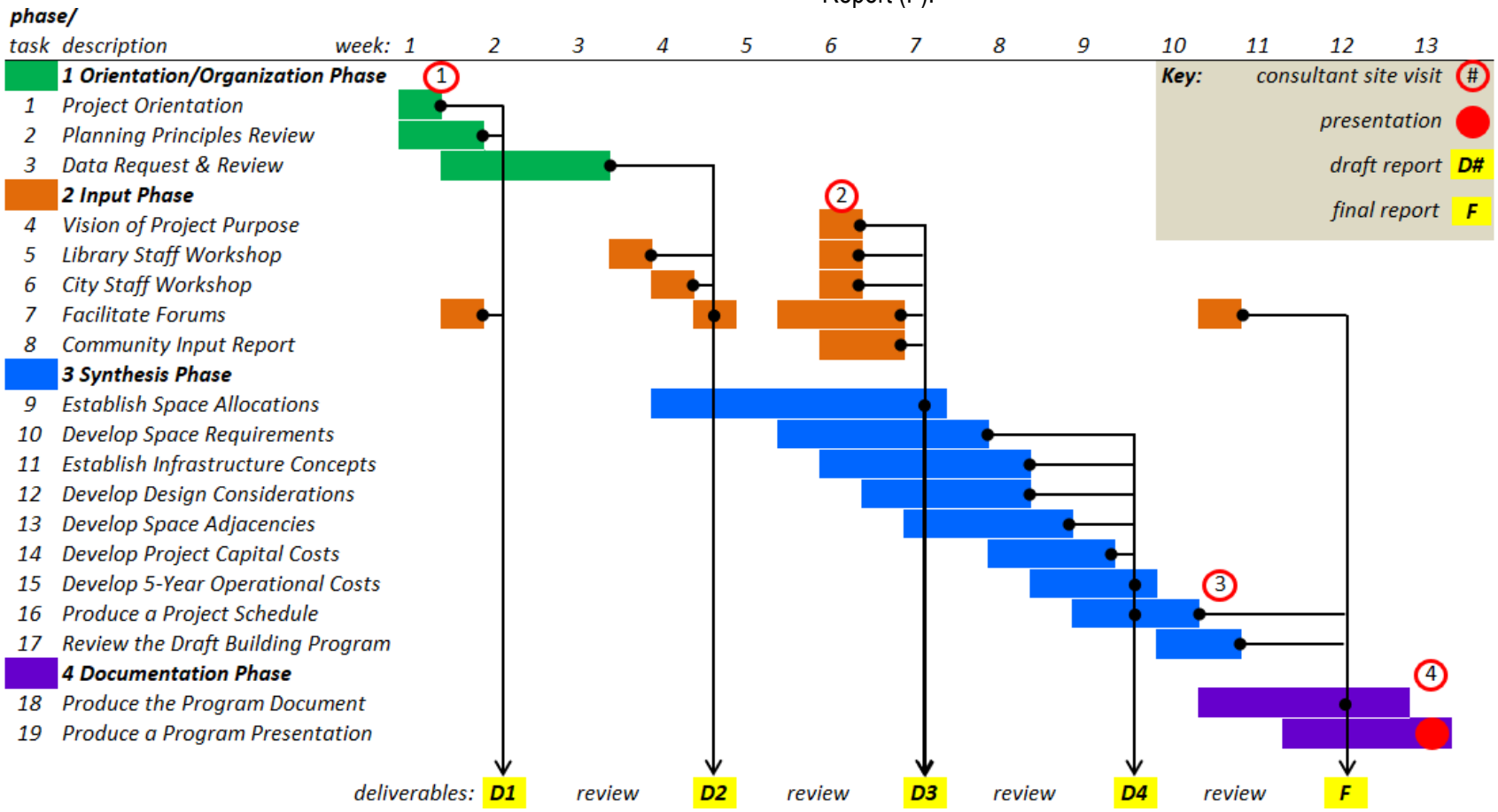
PowerPoint Presentation. Godfrey's will create and deliver a summary presentation to the Board. In addition to providing a verbal and graphic summary of the written building program document, the presentation will include quality images of similar new Library projects built in other states or countries, whether they were a previous Godfrey's project or not.

Detailed Project Schedule

Once a Notice to Proceed has been given, Godfrey's believes that three months is a realistic goal for completing all programming tasks, based on the methodology we have proposed.

Below, we delineate the graphic timeline required to complete our proposed Task List, showing milestones for site visits one through four, as well as task durations, meetings, and presentations. Please note the color coded bars represent the Phases, summarized as follows:

- Green task bars represent the Orientation/Organization Phase.
- Orange bars indicate Tasks to be completed in the Input Phase.
- Blue task bars represent Tasks of the Synthesis Phase.
- Purple bars represent Documentation Phase Tasks.
- Numbered red circles indicate the proposed Consultant site visits.
- Solid red circles designate presentations coinciding with site visits.
- The yellow rectangles represent Draft Reports (D#) that will combine to comprise the Library Space Program document, and the Final Report (F).



In this Proposal, Godfrey's Associates Library Planners & Consultants describes our approach to the challenges of programming library space in renovated/expanded facilities without determining a potential solution(s) for the best reuse of existing resources.

Analysis of Library Facilities

As a portion of the Master Plan scope of work, Godfrey's was tasked with analyzing gaps in the City's current and projected library system square footage when compared with standards and with comparable cities. Our Peer Analysis of 16 library systems found their amount of library space per capita ranged from 0.31 to 1.23 square feet, with Las Cruces at 0.41 – all as of fiscal year 2019.

The U.S. Census estimate of Las Cruces population as of July of 2021 was 112,914. Your current library space needs per industry standards for that population would be:

- A minimum of 67,748 square feet at 0.6 square feet per capita (a commonly held minimum by multiple states).
- Or 90,331 square feet at 0.8 square feet per capita.
- Ideally, 112,914 square feet at 1.0 square feet per capita (adopted by multiple states as their standard).

Given the current size of your Library System is reported to be 45,676 square feet, there is a significant shortfall (22,000 to 67,000 square feet) that will only grow with the population if no new library space comes on line in Las Cruces.

Clearly there is a need for additional public library facilities in Las Cruces, with location(s) to be determined. Given the investment that city residents have made in the Thomas Branigan Memorial Library over the years, it is only prudent to establish the best reuse potential for the Branigan building before quantifying the exact need for additional library space for the Las Cruces public library system.

Establishing Space Needs. Godfrey's highly recommends using the Space Programming process we have proposed for both new construction projects as well as renovation/expansion projects – because it is highly effective in making informed early decisions in the overall design process – ultimately saving time and money by setting the proper direction for the project from the outset. For new construction projects, the library design should be based on such a Library Space Program, so the Design Architect can ***design to the program.***

Sometimes with renovation/expansion projects, constraints are placed upon the design by the existing site and building that might limit the possibilities of space allocation. In some cases, it is warranted to examine the capacity of an existing structure to accommodate library functions as part of the space programming process through a conceptual design exercise, i.e. ***program to a design.*** In these situations, the conceptual design process can illuminate unforeseen issues, making the space programming process more accurate by determining how to best use existing space, thereby possibly reducing the need for expansion.

Week One: On-Site Design Charrette

If the City is interested in an intense conceptual design/space planning process of two weeks, Godfrey's would facilitate an on-site design workshop – or "charrette" – held in a Branigan Library meeting room over three to four consecutive days. There, Library staff, City staff, and the public can participate in the planning process, while understanding the decisions and trade-offs it takes to get to a feasible result – because after all, it is your Library. This approach draws upon the input of all interested parties at their convenience, allowing everyone to be involved in setting a direction for the future use of the Branigan Library. At the end of the process, we will have built a consensus concerning the optimum redesigned Branigan Library.

Being on-site allows us to test all of the possibilities that could define the design criteria established in the Library Space Program, to investigate building conditions first-hand, and to show stakeholders and Library staff how proposed concepts can be cost-effectively achieved.

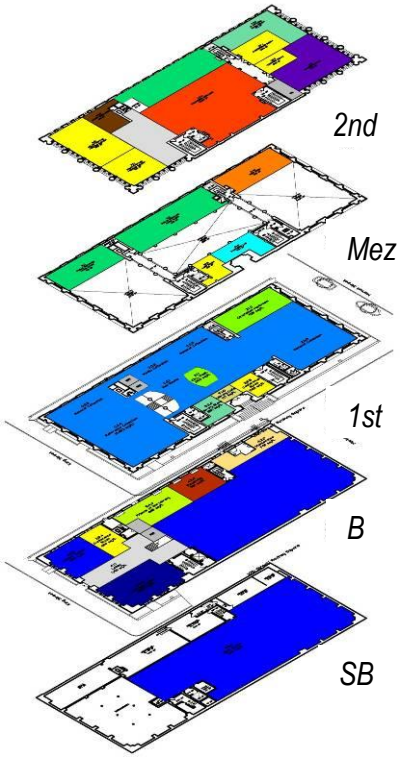
The Design Charrette. For many projects such as yours, we propose an on-site design charrette to make timely progress in determining reuse potential of existing space and the extent of expansion needed, if any. Godfrey's uses the charrette process to make timely progress in a Conceptual Design phase. Being on-site allows us to "test" all of the possibilities against the space needs established by the Library Space Library Space Program, and to investigate first-hand how proposed moves on the existing site can be cost-effectively achieved.

On-Site Preparation of Facility Design Alternatives. Our team will begin the charrette by listing the range of possible alternatives for spatial organization held viable. Next, with the help of the Library staff and Board, we will brainstorm various conceptual approaches to configuration of space utilization within the envelope of the new Library. After brainstorming, we prepare at least three alternative concepts, exploring spatial and functional relationships, sightlines between service points, future expansion, and cost impact issues. Through the use of spatial blocking diagrams, we will explore the best fit for each component of the Library, in terms of space needs, technology requirements, adjacencies to other functions, staff supervision, etc.

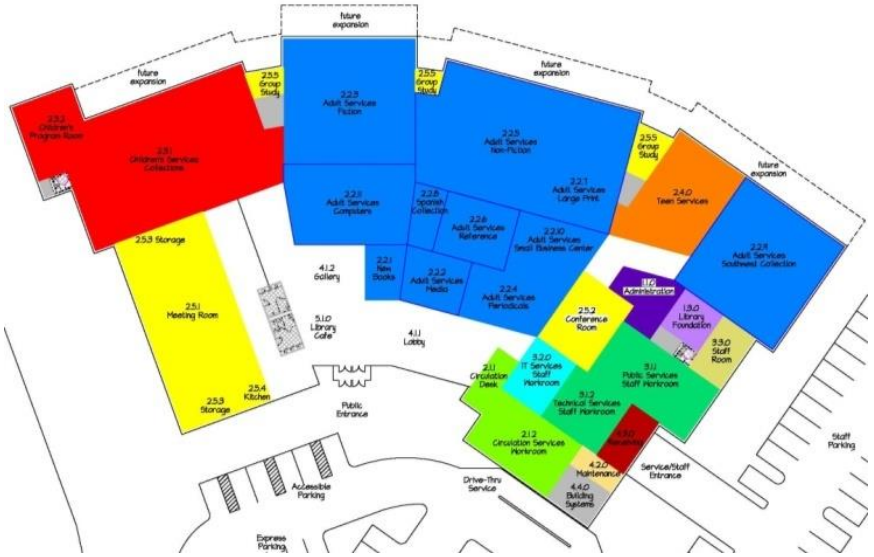
By preparing at least three concepts for you to analyze and discuss, you can be assured that all viable avenues for Library design will be explored. By this juncture of the project, we will better understand the needed space requirements, infrastructure constraints, and building codes – all necessary to properly suggest placement of spaces within the existing Branigan Memorial Library envelope or in expansion. Each alternative concept will be delineated in the form of a color-coded block space diagram similar to examples from previous projects at right.

Each alternative will consider foot traffic, collection flow, placement of customer service points, and staff sight lines and supervision needs – ***as staffing efficiency is paramount in public library space planning.*** We will evaluate all viable concepts and reach consensus on the option or hybrid of options with which to proceed to the next step of planning, i.e. the floor plan/furniture layouts of the preferred alternative.

Spatial relationship diagram (right) depicting how blocks of space on each floor stack up, Wilmington Public Library, Wilmington, Delaware



Space planning diagram for a new library on new site number 17 (below), Octavia Fellin Public Library, Gallup, New Mexico.



Week Two: Developing the Primary Alternative

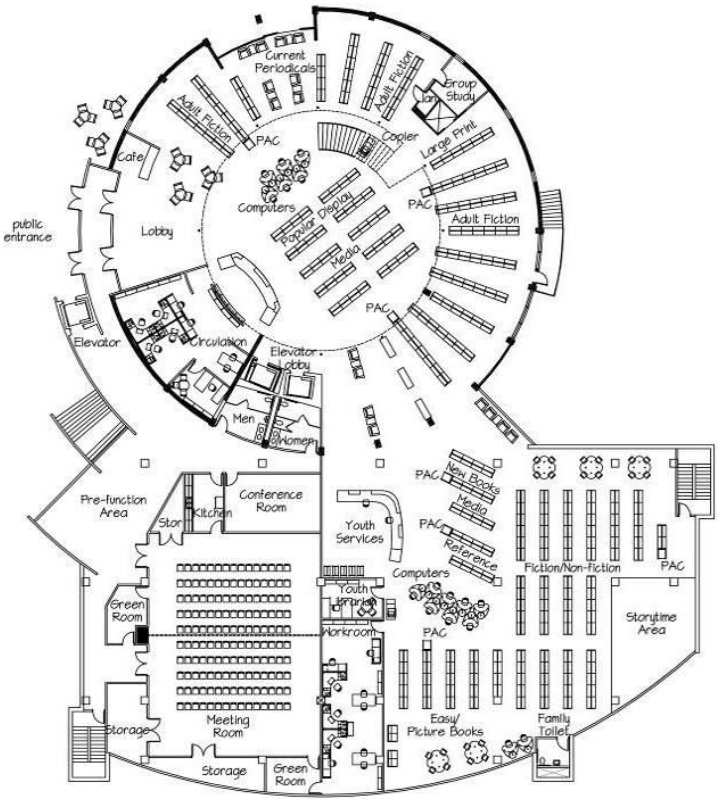
Once we have determined the best locations for all major elements of the Library, we will focus on the interior and exterior space planning. After the on-site charrette, we will return to our office and use our CAD software to prepare scaled floor plan/furniture layouts of the primary alternative, illustrating capacities of each major space. Because functional capacity of a library is directly related to the building's ability to accommodate shelving, seating, and staff, we will show furniture on each floor plan. A primary goal will be to create staff-efficient, user-friendly methods to house the Library's collections. These furniture layouts also allow us to coordinate the design with building infrastructure components of power and data cabling, fenestration and lighting, plumbing, column spacing, etc. All infrastructure requirements will be accounted for in a preliminary cost estimate, prepared as the primary alternative comes into focus. We will verify accessibility and building code requirements to ensure compliance.

These conceptual floor plans will show each row of shelving, every table and chair, each service desk, and staff and public computer workstations. By the end of week two, we will present these drawings to the Library staff, Board, and stakeholders for their review and comment.

Beneficial byproducts of our charrette process are visual aid materials that can be used to promote the project in particular, and the Library system in general. We will produce images that citizens and donors can get excited about – depicting ideas they can rally their support behind.

Godfrey's is proposing this methodology for design to provide Las Cruces with the ability to have significant input in setting design direction through the exploration of a number of alternative concepts – prepared during the on-site design charrette. Our experience has taught us that the number of opportunities to improve library service is limited, so care must be taken in choosing the correct path for the design of new facilities.

Building Consensus. Our team believes the design charrette process works so well because it allows all decision-makers to understand the inter-related aspects of major elements, such as library operational practices, optimum facility conditions, building code requirements, budget, and funding realities – and how they impact each other. The design charrette provides an ideal environment for librarians, library customers, city administrators, and designers to understand alternative solutions and their effect. In simple terms, the charrette helps participants with different points of view understand each other. And it increases the likelihood that everyone "buys in" to the chosen alternative. At the end of the process, we will have built a consensus concerning the best option for the future of the Branigan Library, and how it informs the Space Program. The charrette will test Branigan's ability to accommodate a Modern Library.



Conceptual ground floor plan/furniture layout for renovation & expansion of the Butt-Holdsworth Memorial Library Kerrville, Texas

Library Design That Is Efficient to Operate

Godfrey's is frequently hired to address mistakes made in the planning and design of public library buildings by Architects who have placed architectural expression ahead of staffing efficiency – including firms that have designed a number of libraries.

The Modern Library

The evolution that public libraries have experienced since the advent of the personal computer started gradually but has been profound. Most library facilities in use today were not designed to accommodate modern library needs. As a taxpayer-supported public institution coupled with this shortcoming, buildings housing public libraries are expected to fulfill a lifespan of 50 years or more – and commonly do so. In a land of making do with what we have, library lifespan is a particularly thorny issue. In an era of needing to do more with less, library buildings need to continually overcome limitations that a facility can place upon service delivery, while remaining financially sustainable.

Modern Library Baseline. A Modern Library requires energy-efficient environmental systems that provide user comfort. So, as important as energy savings is, a good library must welcome its customers to come in and stay. Therefore, accessibility is critical in making a library user-friendly for all people. Adequate amounts of space, that can serve multiple uses on any given day, is the hallmark of the Modern Library. Special-use spaces that sit dark the majority of the day are no longer affordable. Adaptable space, supported by flexible, moveable furnishings, can help the Library embrace the innovation and curiosity of its customers – both daily and over time. Adaptability also allows the Library to partner with various symbiotic entities as needs arise and wane.

The Public Libraries of Today. Libraries have become the 'Third Place' for people – neither work nor home, yet open to all, and provides a safe and comfortable place for life-long learning by community residents. To fulfill this role, libraries must do two things simultaneously: 1) they must break new ground and appeal to new audiences – while 2) maintaining their traditional roles and constituencies. Libraries must be an appealing alternative to shopping or staying at home and surfing the web. Libraries must offer comfort, convenience, conversation, and community.

Along these lines, a reimagined Branigan Library can be an outstanding example of forward-thinking library design and operation. Understanding the library in the context of the larger city means there may be chances to leverage opportunities unique to Las Cruces – including partnerships with local institutions, employers, and industries.

The reimagined Branigan Library's lifespan should exceed 50 years. Because quality is the best economy, the key to the new Library's longevity will hinge on meeting these goals:

- Library building structure, envelope, and infrastructure that are adaptable to future change and planned for expansion.
- Building infrastructure and materials that are durable and promote energy efficiency, with the ability to host millions of building users over time.
- A design that is easy to supervise and as barrier-free as is possible within the project budget.

Key to these considerations is the ability to support adaptability through the multiple use of spaces.

Adaptability: Planning for the Future

In order to extend the life of the Branigan Library and limit the staffing costs long-term, an open floor plan is key in supporting adaptability.

Adaptable versus Flexible Architecture. It is Godfrey's stated philosophy that a Modern Library must be able to physically evolve with library customer attitudes and needs. Simply put, buildings need to physically adapt to change, not only to accommodate functionality, but to extend their useful lifetimes. We define flexibility as being able to move from one configuration to another, then back again – certainly advantageous for library functionality. But we believe flexibility exists "just in case" we need to accommodate a different configuration. Adaptability exists "just in time" to meet needed change. True adaptability means more permanence in change than does flexibility. In our opinion, both are

needed but adaptability is mandatory in Modern Library design, and is supported by these characteristics:

- Large, open spaces with minimal partitions and few columns.
- Partitions made of glass where visibility and/or acoustical privacy is required.
- Doors deployed only where needed for security or weatherization.
- Minimal built-in cabinetry or walled-off storage spaces.
- Multi-use spaces – multiple functions accommodated in a single space.
- Availability of technology, distributed in an easily adaptable fashion.
- Easily accessible infrastructure, relying on significant automation where applicable.
- And library policies that discourage storing items in the library "just in case they are needed someday."

When cleverly deployed, these characteristics comprise a building that intends to be a literal example of "less is more". Fewer walls translate into enhanced visibility for customers and staff. Glass partitions provide literal and figurative transparency. Simply put, less construction is more adaptable because there is less that needs to be adapted. This concept embodies the essence of sustainable design.

Access to Infrastructure Distribution Systems. One key to providing adaptable space is ease of access to infrastructure – electrical, data, lighting, HVAC, plumbing, etc. Easy access also supports timely maintenance. Godfrey's suggests you consider limiting the amount of wall and ceiling construction and exploring innovative techniques to define space while employing creative means of acoustical treatment. Such means should result in fewer barriers to users, as well as fewer barriers to infrastructure distribution and maintenance.

Interior Building Zones. Successful space planning of a public library distinguishes between two distinct zones: the Public Service Zone and the Staff Work Zone. This distinction should not diminish the fact that Library staff primarily do their work in the public service areas. Staff still needs "back-of-house" work areas that are secure, efficiently organized, and out of public view.

Supervision with Minimum Staff. The building and furnishing layouts must be planned so visual control of public areas is accomplished with minimum number of staff. Special attention should be given to visual control of entrances to spaces, exits, and entrances to public restrooms.

Barrier-Free Design. The public library came into existence to provide all people open access to knowledge. So it is only fitting that a public library be free of physical and psychological barriers to the use of the building and the valuable resources inside. The Americans with Disabilities Act (ADA) mandates minimum specifications to design for accessibility on any building for use by the public.

Walls & Partitions: To support adaptability for future change of interior spaces in the Library, minimize the number of fixed walls and partitions should be minimized. For partitioning that is necessary for security and/or acoustical separation, frameless glass assemblies should be considered.

Doors. The building design should minimize the number of doors, especially for public use. Doors to the Staff Work Zone could be secured with card access. Secure, hands-free access between Customer Services Desks and Staff Workrooms should be investigated.

Wayfinding, Signage & Graphics. Signage should help orient and guide people to all areas within the building with limited need for staff clarification. The language should be bilingual, plain, and easy to understand. A Wayfinding Designer typically organizes signage – and the information conveyed – into three basic categories:

- ***Direction information*** to guide and direct people along routes to their destinations.
- ***Identification information*** to label destinations so people recognize them when they have arrived.
- ***Instruction information*** to inform people about rules, restrictions, special conditions, and procedures.

Attachment "A"

21-22-029
TBML Master Plan &
Branch Feasibility Study

City of Las Cruces®

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 24th day of May, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Godfrey's Associates, Inc., of 6333 E. Mockingbird Lane, Suite 1474-840, Dallas, TX 75214-2692, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION
Develop a master plan for Thomas Branigan Memorial Library and perform a feasibility study for a potential library branch.

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.21-22-029, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS
The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION
The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount not to exceed $84,986.00, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices monthly. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

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

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

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of one year.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit A.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

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

8. CHANGES AND EXTRA SERVICES BY THE CITY

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

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

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

10. DELAYS

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

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

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

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

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

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. General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, and personal and advertising injury.
   c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.

d. Coverage must be primary and non-contributory.
e. Coverage must be per project or per location.
f. Coverage must be on an occurrence form.
g. Subrogation must be waived.

2. Commercial Auto Liability
   a. $1,000,000 per occurrence
   b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers Compensation and Employers Liability
   a. Statutory Limits
   b. Employer liability – $1,000,000 each accident, $1,000,000 each employee by disease, $1,000,000 policy limit
   c. Subrogation must be waived.
4. Professional Liability: $1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement 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, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY,

at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY:	City of Las Cruces PO Box 20000 Las Cruces, NM 88004 ATTENTION: Margaret Neill
With Copies to:	City Attorney Purchasing Manager
TO CONTRACTOR:	Godfrey's Associates, Inc. 6333 E. Mockingbird Lane, Suite 1474-840 Dallas, TX 75214-2692 ATTENTION: Richard L. Waters

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.

24. SEVERABILITY

The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST

CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of

such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

GODFREY'S & ASSOCIATES, INC.

BY: Richard L. Waters

Richard L. Waters
President

5-9-22
Date

CITY OF LAS CRUCES

BY:

Alfredo R. Pacheco
Interim Purchasing Manager

05/11/22
Date

APPROVED AS TO FORM

City Attorney 05.24.2022

Revised: January 2022

21-22-029
TBML Master Plan &
Branch Feasibility Study

EXHIBIT A

City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

RFP COMPLIANCE DECLARATION

RFP TITLE:	**Thomas Branigan Memorial Library Master Plan and Branch Feasibility Study**
RFP NO.:	**21-22-029**
DUE DATE/TIME:	**February 24, 2022 / 4:00 p.m.**

In compliance with the requirements of this RFP, I, the undersigned, offer and agree to furnish any or all materials and/or services to the City of Las Cruces within the time agreed.

I further certify that this company has not been debarred, suspended, or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549 Debarment and Suspension as described in the Federal Rules and Regulations.

Receipt of Addenda Nos.: 0 is hereby acknowledged (where none received, place a zero in this space)

Company Name and Address:

Godfrey's Associates, Inc.

6333 E. Mockingbird Lane, suite 1474-840

Dallas, Texas 75214-2692

Rich L. Waters
Authorized Signature

Richard L. Waters
Typed or Printed Name

President
Title

rlwaters@godfreysassociates.com
Email Address

Telephone number (469) 987-5725 Fax number (214) 691-3645

NM Tax & Revenue Dept. CRS # not available

Current NM Secretary of State Business ID # renewal pending (corporations only)

Current CLC Business Registration # not applicable (respondents located in Las Cruces only)

Federal I.D. number 75-1726928 (mandatory for all respondents)

NM Resident Certificate from NM Tax and Revenue Department enclosed _____ Yes __X__ No

THIS FORM MUST BE COMPLETED AND INCLUDED WITH PROPOSAL
FAILURE TO INCLUDE WILL SUBJECT RESPONSE TO REJECTION

Godfrey's Associates
an R.L. Waters Library Consultation Services Co.

Library Planners & Consultants
www.godfreysassociates.com

February 24, 2022

Bid Clerk, City Purchasing Section
City of Las Cruces, a New Mexico Municipal Corporation
submitted electronically via e-mail to: bidclerk@las-cruces.org

Re: City of Las Cruces Thomas Branigan Memorial Library Master Plan & Branch Feasibility Study, Request for Proposal (RFP) No. 21-22-209

Godfrey's Associates, Inc. Library Planners & Consultants is pleased to submit our proposal for the Thomas Branigan Memorial Library (TBML) Master Plan & Branch Feasibility Study. Godfrey's has successfully completed over 380 library projects in our 40+ year history, including 29 public library master plans in the past 10 years. We have organized our submittal into the four Sections stipulated in the RFP, to address your four Evaluation Criteria:

Section 1. Technical Approach. Our proposed approach to the services to be provided outlines the major tasks to be accomplished, detailing the services we will provide under each of 29 discrete tasks. We are confident we can complete the project within a 7-month time schedule.

Section 2. Qualifications/Competence. We provide the qualifications of our key personnel assigned to your project, including descriptions of our experience, areas of competence, and percent of time assigned to the project for each person. Our work will be performed on-site, in our offices in Dallas, Texas, and in the home offices of our Associate Consultants. Godfrey's requires no subcontractors for your project.

Section 3. Performance of the Firm. Due to page limits, we provide only five descriptions of our contracts that are similar in scope to yours, with contact information for the persons overseeing each project. For Godfrey's, repeat clients are a common occurrence.

Section 4. Cost Proposal. Our cost matrix with supporting details has been submitted under separate cover.

Our proposal concisely responds to each of the items requested in the RFP but is not limited to those criteria. We highlight additional considerations we suggest for your Master Plan – set apart in blue text – in Section 1 of our proposal.

Our extensive experience has taught us that we provide our clients with the best results when we marry our national library perspective with your expertise on local matters. We enjoy collaborating with your practicing librarians to bring the best possible level of service to your library customers – and the best return on the community's investment – within the financial limits of City government and private philanthropy.

If we are fortunate enough to be selected as your consultant, I will be the officer of our firm responsible for administering the contract. Brad Waters, my son, is an Architect and will be the individual responsible for the day-to-day direction of our work, in direct contact with your Project Manager.

We thoroughly enjoy consulting, and we would love to collaborate with the TMBML staff on this exciting project.

The future belongs to those who plan for it!

Yours truly,

Richard L. Waters, MLS rlwaters@godfreysassociates.com
President & Principal Consultant for Godfrey's Associates, Inc.

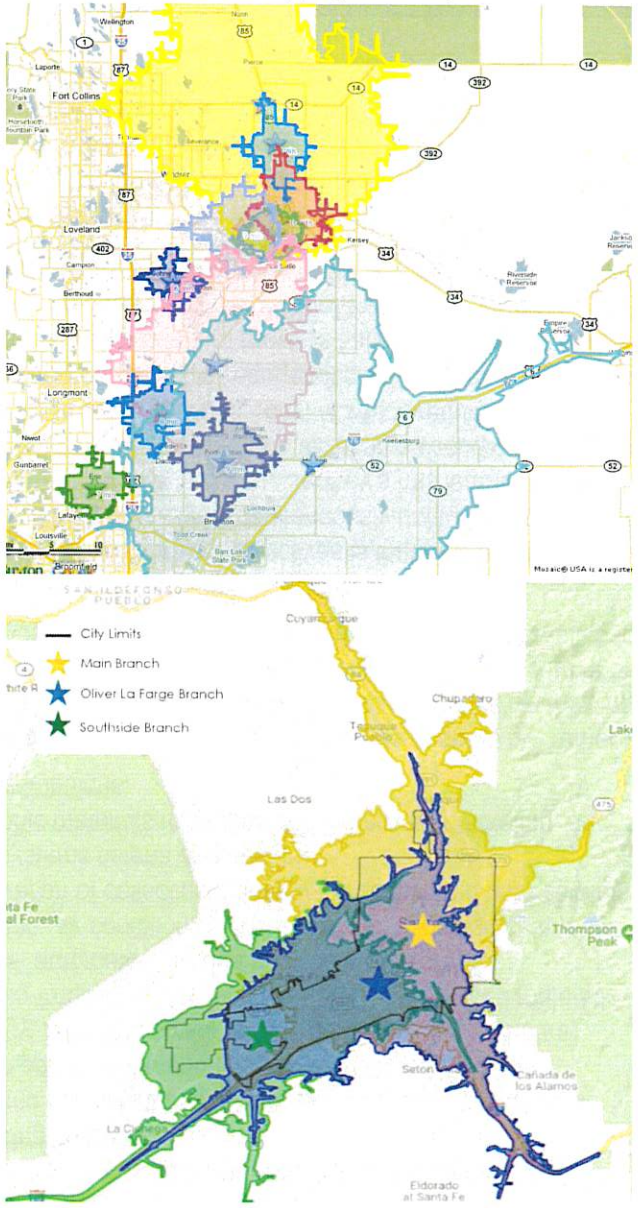
6333 E. Mockingbird Lane • suite 1474-840 • Dallas, Texas 75214-2692

voice: *(469) 987-5725* ***fax:*** *(214) 691-3645*

Table of Contents

section		page
1.	***Technical Approach***	
	A) Proposed technical approach to services to be provided	1
	B) Outline major tasks to be accomplished	1
	C) Detail the services to be provided under each task	4
	D) A project time schedule	9
2.	***Qualifications/Competence***	
	A) Key personnel & percent of time assigned to the project	10
	B) Methods/results of candidate qualification	13
	C) Officer of the firm responsible for contract administration	13
	D) Office locations & percent of work performed at each	13
	E) Person responsible for and in charge of the work	13
3.	***Performance of the Firm***	
	A) Five past contracts similar in scope with contact person	13
4.	***Cost Proposal***	
	A) Cost Proposal Matrix & supporting data	under separate cover

Samples of Godfrey's work –Mapping of Library Service Areas:



Data visualizations of drive-time service area maps for libraries as determined by geographic algorithms that calculate the average time to drive an existing road network and showing boundaries within which 75% of customers of a given library location reside

Top: *High Plains Library District, Greeley, Colorado*
Note the overlap of service for the libraries concentrated in the municipality of Greeley contrasted with the rural libraries located in Weld County

Bottom: *Santa Fe Public Library, Santa Fe, New Mexico*
Note the significant overlap of service areas & extensions beyond the city limits for all three libraries of the Santa Fe system

Agenda Item #7.5.
Page 238 of 637

Section 1A. Technical Approach. Describe our proposed technical approach to all professional, technical & customary services to be provided.

Godfrey's Associates, Inc. Library Planners & Consultants is a full-time library consulting and planning firm, in continuous business since 1979. We collaborate nationwide with libraries of all types and sizes, but public libraries are our largest customer base. We combine the expertise of several Masters of Library Science (MLS)-trained Librarians with a practicing Architect, providing our clients with a wide array of needed services.

Godfrey's Associates provides quality professional services for public, academic, state, and school libraries, having consulted with more than 380 libraries in 47 of the 50 states, and the District of Columbia. Godfrey's blends a keen understanding of ***library operations*** with more than 30 years of in-house ***library space planning*** and ***design*** expertise. Our combined experience makes us sensitive to the need for staff-efficient library buildings – so we stress functionality. Godfrey's work is typically conducted on-site – and from our offices in Dallas, Texas.

Godfrey's history brings to Las Cruces a broad range of trends, innovative ideas, and solutions to meet the challenges of today and tomorrow. Our expertise will provide TBML with an awareness of successful methods other progressive communities and their libraries use to meet emerging needs of residents and businesses. Many of our consultants have worked as librarians and administrators of public library systems, active in national library organizations such as the American Library Association (ALA), the Public Library Association (PLA), and the Urban Libraries Council (ULC).

Godfrey's comprehensive perspective of the entire library planning process enables us to offer a seamless package of technical services customized to meet the specific needs of our clients. We are structured to efficiently provide these areas of expertise:

- Library site evaluation, selection, planning, and design.
- Functional, operational, organizational, and physical assessment of libraries and library services for sustainability.
- Library standards/design criteria for comprehensive needs assessments.
- Acoustical design criteria for noise control.
- Space projections, programming of space requirements, and space planning for efficient utilization of square footage.
- Architectural and interior design for new buildings and renovations/ additions to existing buildings.
- Design, layout, and specification of library furniture and equipment, in coordination with power, data, and telecommunications systems.
- Library technology, including customer self-service/extended hours applications, radio-frequency identification (RFID), automated materials handling systems, automated storage and retrieval systems.
- Heating, ventilation, air conditioning (HVAC) systems design criteria for optimum preservation of collections, energy efficiency, and user comfort.
- Library lighting systems criteria and design.
- Written and graphic materials in support of fundraising, marketing, and public relations campaigns.

Godfrey's challenges our clients to consider "how things ought to be" rather than "how things have always been," unleashing creative, innovative thinking. We are proud of the fact that in most projects, our recommendations have been implemented. Our final reports are plans of action that have resulted in billions of dollars of library improvements worldwide.

Godfrey's understanding of your project objectives is that they are like many public libraries in the United States, yet simultaneously unique to Las Cruces. Over the course of our 380+ library projects, Godfrey's has learned that successful public library planning cannot be realized in a vacuum. Library customers dictate programs and services, most of which require staff to deliver. Customers, services, and staff require efficient facilities – all of which require adequate funding – which in turn requires satisfied customers who vocalize their support. On goes the cycle of life of the Public Library.

Section 1B. Outline major tasks to be accomplished.

Godfrey's has organized our Work Plan along the lines of the three phases stated in the RFP, taking the liberty to reorder some of the tasks you identify. The Master Plan for the TBML we execute will address all RFP-stipulated requirements and then some (blue text indicates Consultant modification or augmentation to original RFP scope). Our sequence for completing the Scope of Work is as follows:

Phase 1 ***Project Administration***

- City-Provided Items.
- Progress Reporting.
- Deliverables.
- Public Engagement & Information.

Phase 2 ***Needs Assessment***

- Library Facilities Analysis.
- Operations, Programs & Services Analysis.
  - Staffing Analysis.
  - Financial Analysis, operational & capital.
- Library Service Area & Location Mapping.

Phase 3 ***Recommendations***

- Draft Master Plan Review.
  - Implementation Plan.
- Final Comprehensive Master Plan.

Godfrey's will provide a comprehensive Needs Assessment with specific attention to Staffing, Financial, and Implementation Analyses – details of which are specified in this Section. Our work will incorporate feedback from the public and Library staff, your Project Manager, the Library Advisory Board, and the Las Cruces City Council.

Godfrey's Proposed Methodology & Work Plan

Godfrey's has developed a logical Work Plan, outlining how each phase of the project will be completed. The results will produce a Master Plan that is concise and manageable to implement. We believe the descriptions of each task indicate our command of the skills needed to execute a successful Work Plan based on customized needs of greater Doña Ana County.

Work Plan. Godfrey's proposes 29 sequential Tasks to complete your Master Plan. We order these Tasks chronologically by Phase. While tasks are sequential, Phases and Tasks will overlap, as our team of consultants is deep enough to prosecute multiple Tasks at one time.

Phase 1: Project Administration

Public Engagement & Information (PE Tasks): Our public involvement strategies and methods will incorporate stakeholders into discussions of the Library's future. Our methodology will include a pathway for how and when stakeholders will be involved in formulating service and facility priorities.

Task PE.1 Develop public involvement strategies and a methodology to encourage citizen participation in the decision-making process.

Task PE.2 Prepare a public information program to inform all interested stakeholders about participation opportunities and Master Plan process, progress, findings, and recommendations.

Task PE.3 Work with staff on public meeting notification compliance.

Task PE.4 Provide a menu of options to identify significant issues within the Las Cruces community and to convey City goals to various representatives of the public:

- Interview key stakeholders.
- Facilitate Focus Group discussions.
- Facilitate Community Workshops.
- Other options, e.g. online and paper surveys.

City Provided Items (CP Tasks)

Task CP.1 Coordinate project items with the Project Manager and staff:

- Finalize the Scope of Work with staff.
- Confirm Master Plan planning standards.

Task CP.2 Review copies of existing project-relevant data requested.

Task CP.3 Coordinate Public Engagement & Information tasks for community meetings, etc. with staff.

Progress Reporting (PR Tasks, on-going)

Task PR.1 Hold regularly scheduled semi-monthly progress meetings.

Task PR.2 Supply the Project Manager with completed monthly reports at least three business days before a progress meeting.

Task PR.3 Meet with the Project Manager at other times, as needed.

Deliverables (D Tasks, on-going). Godfrey's will submit Draft Reports summarizing findings and conclusions at the completion of each Task. We will generate Interim Reports as a portion of each Task work effort, rather than waiting until the end of the project to document findings. Reports will be bilingual, compatible with City's website, and ADA compliant.

Task D.1 Produce Library Master Plan report master copies in full color and editable digital format for each Interim Draft Report.

Task D.2 Submit Interim Draft Reports to the Project Manager for review & approval prior to publication, to include but not be limited to:

- Identify industry standards/best practices for resource allocation per capita e.g., for library services, staffing, facilities, square footage allocation, etc.
- Define clear and attainable library service goals.
- Incorporate technological innovations and opportunities for services and facilities.
- Determine options for improvements using a phased approach over a 5- to 10-year implementation schedule.

Phase 2: Needs Assessment

Library Facilities (LF Tasks). The Needs Assessment will evaluate internal and external layout of existing facilities to develop recommendations for changes in size and configuration. Knowing if and how to maximize the use of existing resources will influence the size of future libraries, as will service recommendations from the Operations Analysis.

Task LF.1 Visit the Thomas Branigan Memorial and Munson Branch Libraries to assess existing buildings and locations.

Task LF.2 Determine if current facilities meet industry standards for:

- Size and location.
- Functional layout.
- Technology.

Task LF.3 Provide a Gap analysis of the City's current and projected space compared with national and state standards, and peer cities and their public libraries.

Analysis of Operations, Programs & Services (AO Tasks). The Needs Assessment will review currently-offered TBML services in relation to proposed services for consideration. We will analyze and compare TBML's performance with regional peer libraries and industry standards for customers and staff, resulting in reports focused on personnel and fiscal parameters.

Staffing Analysis. Because personnel costs represent the majority of TBML's annual budget, library sustainability hinges heavily on planning for efficient staffing of future facilities. We will analyze entrance(s), checkpoints, use of proven library technology, visibility of youth and teen spaces and private study rooms, customer self-service applications, etc.

Financial Analysis will propose alternate funding mechanisms for program and service needs for consideration by the Library Advisory Board, providing guidance about costs associated with service and facility recommendations. It will identify viable funding sources to help implement recommendations for future services and facilities, including grants and partnerships.

Task AO.1 Analyze personnel and funding for internal library customers:

- Number and type of staff required to operate recommended services and operating hours.
- Staff compensation estimates.
- Ratio of staff to operating hours.
- Library technology relative to current/future staff needs.
- Diversity and inclusion in staffing based on demographics.
- Budget resources for funding for library operations.

Task AO.2 Analyze level of service for external library customers:

- Library technology relative to current/future customer needs.
- Expenditures for books, media, and database subscriptions.
- Literacy programs/offerings.
- Other library programs/services, including bilingual offerings.
- Diversity and inclusion in programs and services based on demographics.

Mapping Service Areas/Future Library Location Analysis (MS Tasks). Mapping existing library service areas will identify gaps and overlaps of service provisions around Las Cruces, revealing ideal location(s) for potential library service outlets. Data analysis will be compatible with City of Las Cruces GIS data systems using maps and graphic visualizations, taking into account current usage patterns, library locations, current and projected population distribution, and demographic profiles.

Task MS.1 Provide analysis using maps for current usage patterns, population distribution, and demographics for:

- The reach/service area of existing libraries.
- Underserved areas of the City that need or would benefit from library services, including East Mesa.
- Areas of the City not currently serviced by a library.

Task MS.2 Identify City areas within reach of libraries in neighboring communities to avoid duplication of service areas:

- In Doña Ana County: Anthony Public Library, White Sands Missile Range Base Library, Hatch Public Library, and Sunland Park Community Library.
- New Mexico State's service to students, faculty, and staff.

Task MS.3 Determine library locations that strategically broaden the reach of library services to the greatest number of residents.

Phase 3: Recommendations

Draft Recommendations (DR Tasks). A draft ***Implementation Plan*** will be an integral part of the Draft Report, to determine options for improvements using a phased, multi-tiered approach over a 5- to 10-year schedule, with long-term contingencies up to 20 years. This Plan will be actionable – a result of the Needs Assessment – prioritizing recommendations from the facility and service analyses. An ideal Plan will provide a visual pathway – a flowchart – for implementing recommendations while considering cost, synergy, and prioritization, per the details in the RFP.

Task DR.1 Ensure that the Library Master Plan complies with the Quality of Life Department's/Library's Strategic Business Plans and Elevate Las Cruces when making final recommendations.

Task DR.2 Prepare a Draft Implementation Plan to include:

- Strategies, priorities, and budget needed for short-term (5-year), mid-term (10-year), and long-term (20-year) planned growth and sustainability of a library system.
- Comparisons of renovate/expand options of existing facilities with acquisition and development of land and/or space for new library facilities – with associated capital project funding estimates for each alternative.
- Staffing, staff compensation, operating hours, a capital maintenance/repair/replacement plan – with associated operational funding estimates.
- Supporting charts, graphs, maps, and other data as needed to support the Plan and its presentation.

Task DR.3 Prepare draft recommendations for library services, facilities, operations, and maintenance for review by the public, project team, and Library Advisory Board. Provide materials for review prior to a meeting with the Board.

Task DR.4 Present the Draft Report at a Library Board meeting.

Task DR.5 Update and modify the Draft Library Master Plan based on feedback results from the Library Board review.

Final Comprehensive Plan (FR Tasks)

Task FR.1 Prepare a Final document based on recommended revisions from review and editing by the project team for public review.

Task FR.2 Assist staff with preparing associated reports to City Council.

Task FR.3 Present Plan findings and recommendations at City Council meetings.

Task FR.4 Incorporate areas of study identified in Phases 1, 2 and 3 into a comprehensive Library Master Plan to include:

- Analysis of existing inventories/conditions/levels of service.
- Areas of shortfall compared to average regional/state/national/industry standards identified by Needs Assessment.
- Goals/targets/objectives/policy statements to articulate a clear roadmap/vision to guide library services and facilities.
- An updated Implementation Plan based on feedback.

Section 1C. Detail the services to be provided under each task.

Godfrey's details our understanding of project scope and deliverables in the remainder of this Section. The Master Plan's ability to communicate TBML goals, objectives of the City of Las Cruces – and concepts required to achieve those ends – will be a critical part of this project.

Phase 1: Project Administration

This phase is foundational to the Master Plan, so each aspect of the scope will be addressed fully. Provisions by the City include intangible knowledge, tangible data, and most important of all – timely participation and feedback.

CE Tasks: Godfrey's Approach to Public Engagement

Because Godfrey's believes every step in the library planning process is a public relations opportunity, it is critical that all library stakeholders get a chance to participate in a visioning process and contribute to a Master Plan for TBML. Using multi-faceted tools, Godfrey's will design effective dialogues, to garner input from all segments, build consensus, and inform library planning. We will facilitate participation, solicit input, and disseminate data on a variety of topics, moving toward a recommended option(s) for consideration by the public, staff, and City leaders. We are open to collaboratively crafting methods to meet community needs within City budget constraints through any combination of RFP-specified forums:

- ***One-on-One Key Stakeholder Interviews*** with key community leaders such as City Council members, elected and appointed officials, business executives, or non-profits to get a take on the future of TBML and it's role in the fabric of the community. Interviews typically last 30 to 45 minutes, ideally conducted in-person at a place of the interviewee's choice. Godfrey's believes interviews are an efficient way to build bridges to funding sources and partnerships. Feedback is candid during individual discussions versus in groups, and they are easier to schedule.
- ***Focus Group Discussions*** with a cross-section of Library customer groups – business owners, teens/tweens, caregivers of young children, seniors – as determined with TBML input.
- ***Community Workshops.*** Bilingual conversations open to all, to listen, solicit input on, and discuss ideas, goals, and dreams – in places such as grocery stores, shopping centers, and community spaces.
- ***Online & Paper Surveys.*** Web-based surveys capture input from virtual users. Paper versions capture walk-in customers – or non-users, via distribution by news outlets, utility bill mailings, and/or social media.

We know that language and cultural expertise increases public engagement through inclusion. To better understand the specific needs of the individuals TBML will serve, Godfrey's will analyze the opinions collected via input in English and Spanish, then summarize those needs and preferences.

CP Tasks: Responsibilities of the Project Participants

Godfrey's is a full-time Library Consulting firm, so we do not your staff to do our work for us. But there is knowledge you have accumulated that we will never be able to assimilate in our seven-month project schedule. We relish opportunities to collaborate with dedicated professionals in making TBML the best Library it can be. To this end, we need your help in three ways:

1. Provision of data that we cannot readily access online.
2. Assistance in advertising community forums where we will gather input – specifically making the initial contact to invite individual stakeholder participation in Focus Group Discussions and one-on-one Stakeholder Interviews. In addition, or as an alternative, broadcasting community forums via the City's email or social media contacts list(s), if any.
3. Your presence and enthusiastic participation at select junctures of the Assessment and Recommendation Phases.

Opportunities to improve library service delivery through new and improved facilities are rare, so we take this process seriously.

Task CP.1: Confirming Planning Guidelines. It's important at the beginning to establish evaluation criteria to be used throughout the project, to avoid any appearance of manipulation. Criteria that could impact library service delivery and space needs come in many forms. Standards Godfrey's proposes will need vetting by TBML, such as peer libraries used for benchmarking purposes. TBML will choose several comparable libraries to contrast its facilities, operations, budgets, etc. We will adjust our work to integrate established internal performance criteria already in place such as the Quality of Life Business Plan FY2022.

Modern Library Space Standards. In lieu of no codified national or New Mexico public library guidelines, Godfrey's staff has developed a set of space planning and design standards for libraries of all types, based on three-dimensional characteristics of a Modern Library. We base these planning guidelines on our work with hundreds of library clients throughout the U.S. and abroad, updating them as trends and technological advances demand. Our space standards are predicated on providing ADA-compliant space, adaptable to future change.

Task CP.2: Data Collection & Review. At project outset, Godfrey's will gather information to develop comprehensive criteria for your Master Plan. In preparing our proposal, we have downloaded useful documentation from the City's website. We will look to the New Mexico State Library and/or IMLS for library statistics of Las Cruces peers.

Task CP.3: Library Staff & City Participation. Godfrey's will respectfully request assistance from Library and City staff to facilitate community input:

- Assist in identifying/making first contact with key stakeholders and inviting frequent library users as Focus Group participants.
- Provide refreshments at Focus Group discussions.
- Promote Community Workshops to be led by Godfrey's across the City, as well as during any other portion of the project.
- Participate in project progress meetings and conference calls.
- Timely review of Interim Draft Reports and Monthly Progress Reports.
- Provide statistical data from TBML's Integrated Library System (ILS).
- Participate in Stakeholder Interviews (City Council members/City staff).
- Personnel responsible for maintaining Library building and grounds would ideally be available for a building tour of the Branigan Library.

PR Tasks: Regular Project Meetings & Monthly Status Reports

Godfrey's management approach marries our experts in library planning with your knowledge of your library customers and the community at-large.

Project Administration Procedures. At our initial meeting with the Project Manager, we get acquainted, review our Work Plan, and discuss remaining data collection needs. We will finalize procedures for these issues:

1. Establish lines of communication to be maintained throughout the project.
2. Agree upon regularly scheduled progress meetings and monthly status reports, in conjunction with monthly invoicing.
3. Review project timeline milestones and deliverables for each Task.
4. Schedule all meetings, community and staff forums, and site visits – clearly delineating Consultant time to be spent on-site and off-site.
5. Detail monthly budget allocations, to account for when and how much is to be paid for services rendered, itemized by percentage of completion.
6. Describe how the Final Master Plan will be published and presented.
7. Identify potential quality assurance measures Godfrey's will use to ensure our Assessment meets expectations of the Library and the City.
8. Agree upon amount and timing of Library and City staff participation.

Progress Meetings. Godfrey's proposes progress meetings be held during the first and third week of each month, rather than bi-weekly as stated in the RFP. Our experience is that meeting attendance is highest when scheduled weeks in advance, on the same days/weeks in each month. Consistent communication is conducive to all aspects of effective project management. Godfrey's is a national consulting practice with over 40 years of experience in being accessible to our clients. Our longevity and repeat clients are indications of our success in communicating with our clientele.

Progress Status Reports. Godfrey's will submit written monthly Progress Reports to your Project Manager substantiating monthly invoices for work completed to-date –at least three days prior to a progress meeting. Each Report will document tasks completed that month. Interim Drafts will comprise a substantial portion of each Progress Report, along with findings from partially completed tasks during the given month. We find delivering our work product monthly – rather than waiting until the end of the project – makes it easier for our clients to stay abreast of our progress and direction of the project. The sequence is delineated in the Timeline at this Section's end.

D Tasks: Project Deliverables

Interim Draft Reports will stand for review prior to their finalization as individual Chapters in the Final Report. Each deliverable will be concise, supported by appendices – and sent electronically to the Project Manager and designated staff. After a review period, we will make all needed changes and a revised document will be returned to TBML. The Final Report will document the process and recommendations on all fronts.

Final Deliverables. TBML can expect the following deliverables from Godfrey's at the conclusion of the project:

- A written final Library Master Plan & Branch Study integrating the elements described in the RFP and this proposal.
- Appendices incorporating statistics, surveys, technical evaluations, facilities drawings, and supporting data used in the process.

- An Executive Summary of the final Plan summarizing its highlights.
- A presentation to the Library Board, City Council, and other stakeholders to communicate highlights of the Plan.

Godfrey's proposes the formal submission of the Final Report will follow the final presentation, allowing any additional feedback to be incorporated.

Phase 2: Needs Assessment

This phase analyzes the qualitative data from public input and quantitative demographics, to decipher what the community wants – and what it needs.

LF Tasks: Evaluating Exiting Library Facilities

We will separately assess physical and functional conditions of each Library, itemizing current resources. We have particular interest in recent annual budgets – staff costs, expenditures for technology, library materials, etc.

Determine Space Needs. Godfrey's will inventory space allocations for all existing library spaces and functions via a space projection spreadsheet, so we can contrast those figures with the square footages required to meet Modern Library baseline standards. This spreadsheet will include projected future quantities and sizes of functions required, forecasting current and future space needs in five-year increments for 20 years, per best practices.

We will convert community and staff input into quantifiable space needs, tailored to each function so our recommendations will be accurately sized and priced. Square footage is projected to reflect TBML service priorities, based on achieving a fully-accessible, user-friendly Modern Library – regardless of whether it is housed in new or existing construction.

Task LF.1: Gathering Staff Input. Godfrey's knows it is important to involve Library staff early in the planning process. They are on the front line of community interaction and have firm ideas and input to share. This interaction will be in addition to our regularly scheduled meetings, including:

- ***Library Tours.*** A visual survey of current Library spaces with key staff to understand current programs and services. We will identify services not offered due to budget, staff and/or space limitations, and will observe staff interaction with customers. We will itemize the core services TBML is providing, adding services you could provide for future core practice.
- ***Staff Focus Groups.*** Godfrey's proposes discussions with line staff separate from administrative staff, to promote candor. We will record what is said but not by whom, to maintain confidentiality. We will collaborate with your Project Manager to schedule these discussions.

Tasks LF.2 & LF.3: Library Industry Trends Survey. Godfrey's will survey various parameters that impact library service delivery and space needs:

- ***Peer Comparisons.*** Godfrey's will benchmark TBML against exemplary library performance statistics, programs, and services offered. We will compare TBML data with libraries similar in characteristics and size. Incongruent parameters will be analyzed on a per capita basis, to better compare "apples to apples."
- ***Public Library Trends & Best Practices.*** We will also contrast TBML with the modern library standards – guidelines for library planning, design, and operations – the basis for establishing future space needs.
- ***Emerging Technologies,*** from the library world and beyond.

AO Tasks: Analysis of Operations – Projected Staff & Budget Levels

Capital costs are eventually be retired but operational costs go on each year, so we routinely forecast operating costs in all our projects. Based on approved concepts, we will develop operational costs for any modified existing Library or new prototype service outlet option, forecasting staffing patterns for each. We evaluate feasibility of existing facility improvements versus the prospects of a new Library location to operate successfully.

Develop Operating Costs. To align with current City and TBML fiscal practices, Godfrey's will use your established budget categories and terminology for future budget projections. For evaluation purposes, we will provide operational budget estimates for each facility option, as applicable:

- Full- and part-time staff salaries/wages and work benefits.
- Collection acquisition and development for all formats.
- In-house or outsourced collection processing, including acquisitions, cataloging/classifying, processing, and binding.
- Office, janitorial supplies, utilities, telephone, postage, printing, etc.
- Technology costs, including licenses, hardware replacement, software.
- Labor costs for building cleaning, maintenance, and security.

Before we finalize our projected capital and operational budgets, we will review them with City and TBML staff, to ensure our recommendations comply with funding realities in Las Cruces.

Capital Cost Estimates. To focus on timing of prioritized projects, we will identify appropriate capital projects for consideration by TBML integrating them into the Implementation Plan. Costs will be all-inclusive total project cost estimates for design, construction, and soft costs such as furniture, equipment, and library relocation. Godfrey's will recommend viable capital projects by comparing alternatives, including:

- Allowances for site acquisition and demolition of existing structures.
- Renovation of existing structures to be re-used and/or new construction.
- Furniture and equipment – refurbishing existing and/or purchasing new.
- IT, audio/visual, and security systems equipment and infrastructure.
- Contractor general conditions, overhead, and profit.
- Architect, Engineer, and sub-consultant design fees.
- Owner costs for building permits, site surveys, testing, temporary relocation of library operations, if any, etc.
- Design and construction contingencies.
- Escalation to the mid-point of the anticipated construction period.

MS Tasks: Mapping Service Areas for Each Library

This task identifies the time, in minutes, library customers are willing to drive to a branch, based on speed limits, road types, time of day, etc. Resulting boundaries are then mapped on the existing street network to define the drive-time service area for each library location.

Service Area Analysis shows geographic gaps and overlaps in convenient service coverage. It is used to delineate the service areas of each existing and new facility, based on actual cardholder household locations. Existing library service areas are determined by geographic algorithm that calculates average times to drive existing street networks to each library – defining a boundary within which 75% of current customers reside. The definition of service areas is critical to assuring optimal service delivery and convenience for all residents of the greater community. This analysis is predicated on organizing data by existing Library location, and provides these benefits:

- Identifies the area where customers live relative to a given library.
- Defines clear geographic boundaries of all library service areas.
- Identifies library service area overlap and gaps.
- Calculates the number of households in a proposed new service area.
- Ensures consistency of data collection inside and out of these defined boundaries, eliminating duplicate counting of households.

Godfrey's will identify new service outlet locations based on where library customers live who are not within convenient driving time of an existing library. We will suggest solutions for neighborhoods where a significant number of households are without vehicles. The result – a more efficient service network to maximize coverage and minimize redundancy.

Phase 3: Recommendations

Godfrey's will create roadmaps for fiscal investment based on equitable access to service in each community, and your capacity to respond.

DR Tasks: Compiling the Draft Library Master Plan

Godfrey's will collaborate with your Project Manager on the format of the document, delivered electronically in PDF, Microsoft Word and Excel formats. We will provide separate PDFs for each Chapter and Appendices, for incremental presentation of content online.

Task DR.1: Compile Interim Draft Reports into a Final Master Plan. After all Tasks are complete, Godfrey's will compile Interim Reports into one document, presented as the Final Draft Master Plan for a full TBML review.

Task DR.2: Implementation Plan. Godfrey's will develop framework to help staff implement recommendations for capital investments. We will develop an initial timeline of phased goals for each existing and future library option:

- ***Service Priorities*** will suggest a schedule of expenditures for facility renovation/expansion phased-in over time.
- ***Capital Funding Allocations*** will outline opportunities available for capital funding, identifying funds available to implement each option based on City goals. We will factor in existing community resources and opportunities for grants, gifts, and potential revenue from a ballot issue.
- ***Phasing Timelines*** – realistic action plans for each location, based on available funding, growth, and other variables bringing services online.

Task DR.3: Present & Review the Draft Report On-Site. Godfrey's will review the Draft Plan on-site in its entirety with staff. We will answer questions face-to-face to gain staff and Board approval in a timely fashion. We will provide electronic copies with graphic illustrations of Plan elements. We will develop an Executive Summary highlighting key points of the Plan.

FR Tasks: Publishing the Final Library Master Plan

Task FR.1: Prepare the Final Report. Godfrey's will incorporate all feedback into a Final Master Plan, delivering it to TBML within two weeks of completing the Draft review..

Task FR.2: Assist Staff with Reports. We will provide collateral materials to Library staff in support of, and at least one week prior to, a presentation.

Task FR.3: Present the Final Master Plan On-Site. Godfrey's will design and deliver a dynamic presentation using Microsoft PowerPoint, highlighting process, findings, and recommendations mirroring the Executive Summary, coinciding with a regular Council meeting.

Section 1D. Project time schedule.

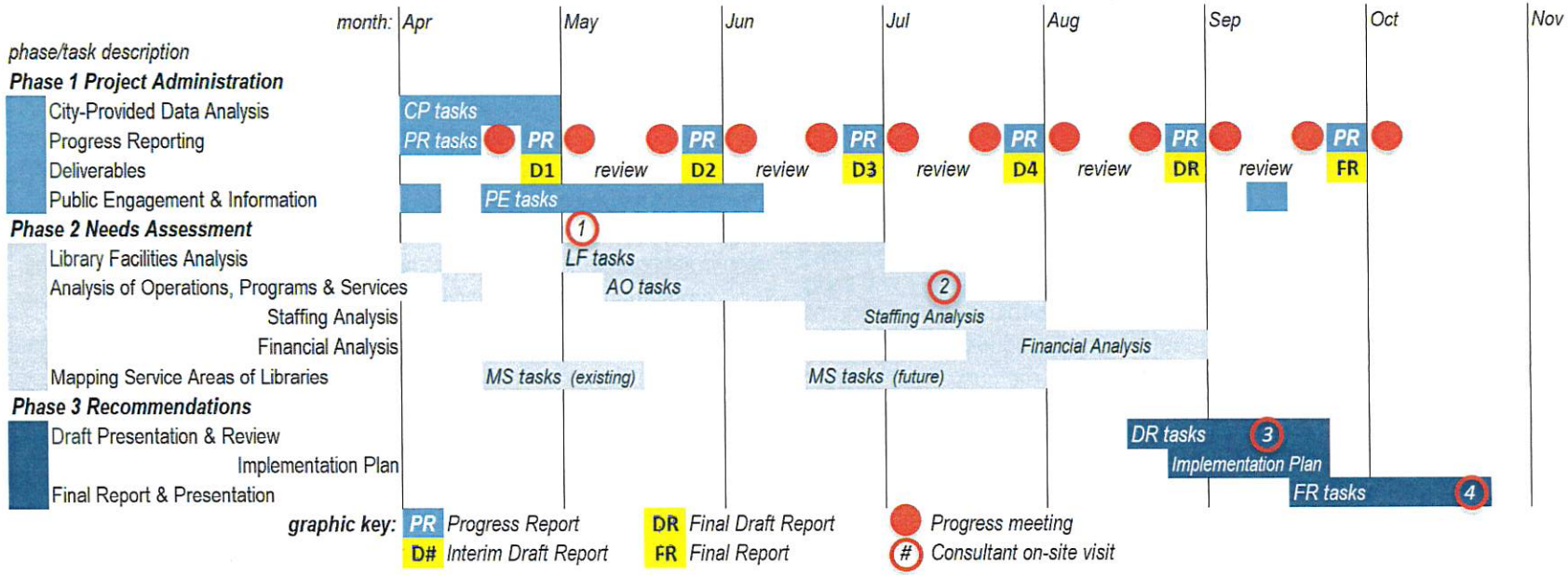
Based on an April 1 start date, Godfrey's is confident we can complete your Final Master Plan Report by October 31, 2022. This timeline shows:

- Task sequence and duration.
- Timing of bi-weekly progress meetings.
- Timing of consultant on-site visits.
- Timing of all deliverables and review periods.

Color-coded symbols are depicted in the graphic key below as follows:

- Colored bars represent project Tasks by Phase, color-coded to the preceding phase/task descriptions.
- Red dots represent semi-monthly Progress meetings.
- Red circles enumerate on-site consultant visits.
- Yellow rectangles indicate deliverables. All Interim Draft Reports (D#) will be delivered to TBML for review prior to compiling them as Chapters in the Final Draft Report (DR) and Final Report (FR).

A minimum of three weeks is provided for review of all Interim Drafts.



Section 2A. Qualifications. Provide names of key personnel assigned to provide services described herein, including descriptions of experience, areas of competence & percent of time assigned to the project.



Richard L. Waters, MLS, Principal Library Consultant, founder of Godfrey's Associates, will be responsible for contract matters. He will have an active, on-site presence, from facilitating community engagement forums to developing and presenting the Final Report. He will contribute 24.2 percent of total project hours.

Qualifications. Dick began his consulting career in 1972 and has been a full-time library consultant since 1985, involved with most of our 380+ projects. Dick's New Mexico consulting assignments include public libraries for Farmington, Gallup, and Santa Fe, along with numerous other public libraries in the southwest. His qualifications include employment with four public libraries – Springfield-Greene County (Missouri), Wichita (Kansas), Seattle (Washington), and Dallas (Texas). He has served on the Board of Trustees of the Urban Libraries Council, the AMIGOS Bibliographic Council, and has been a member of various library associations for over 30 years, including the American Library Association (ALA) and Public Library Association (PLA), active on several committees.

Dick believes that public libraries are a major component of the educational fabric of every community, supporting life-long learning for all ages. As the "People's University," the public library touches the lives of people by means of provided resources, caring and dedicated staff, courses, and activities responsive to community needs.

Education. Dick received his Master degree in Librarianship from the University of Washington, and his Bachelor of Science from Missouri State University. Dick has served as an adjunct faculty member at Texas Women's University and the University of Arizona.

Accolades. Dick has published numerous articles in Library publications and served as editor of *Public Library Quarterly* for 12 years. He has made several presentations to library conferences in the United States and Canada.



Brad Waters, Project Director & Facilities Consultant has 36 years of experience in the Architecture profession, specializing in planning and design of libraries. Brad will be responsible for directing the work of the entire team. He will weave all Interim Draft Reports into the Final Report and presentation. He will contribute 37.1 percent of the total hours on your project.

Qualifications. Brad's specific experience encompasses programming, planning, design, and construction documentation – having designed over 70 libraries in the United States and abroad. Brad has designed renovations and additions to over 25 existing public libraries. He has performed library site analyses, designs, and site selection for over 50 new libraries. Brad is a licensed Architect in Texas and Wyoming.

Brad has performed facilities assessments for multiple-library systems in California, Delaware, Florida, Iowa, Maryland Michigan, New Jersey, New Mexico, Pennsylvania, Texas, Wyoming, and Colorado. He has planned and/or designed public library system administrative headquarters in Abilene, Atlantic City, Boise, Cincinnati, Denver, Des Moines, Fort Worth, Houston, Louisville, San Diego, and Yuma County Arizona. Brad has designed several projects which entailed additions and/or renovations to existing library buildings, including the California public libraries of Commerce, San Diego, Santa Monica, and Shasta County. His international projects include space planning for the Kuwait National Library and design of the five libraries at the Taipei American School in Taiwan.

Education. Brad received his Master of Architecture from the University of Texas at Arlington (UTA) and his Arts Baccalaureate degree with a major in Architecture from Washington University in St. Louis. He has taught design and drawing courses at UTA and El Centro College in Dallas.

Accolades. Brad's work has been featured in design and construction magazines such as *Progressive Architecture* and *Building Design & Construction*. He co-authored "On the Verge of a Revolution: Current Trends in Library Lighting" in *Library Trends*. Brad has been named Exemplary Volunteer for Musicians On Call.



Elizabeth Martinez, MLS, Library Services Consultant, is a Godfrey's Associate and educator, experienced in the development of libraries with public engagement perspectives. A proven innovator and idea creator of programs and services, she is also a New Mexico State Library Commissioner. She will lend 15.4 percent of our total hours to the project.

Qualifications. Elizabeth grew up in Pomona, California, and she lived in the Upland area for 25 years. She has spent years of library work in Southern California, developing Language and cultural experience and expertise.

Formerly the City Librarian for the City of Salinas, California, Elizabeth was responsible for citywide library service at three libraries and two bookmobiles, with 68 employees and an annual $5 million budget. She oversaw design of the new LEED Gold Cesar Chavez Library in East Salinas, raising one million dollars from foundations and private donors. The Chavez Library now averages 1,000 daily visitors. During her tenure, she established major partnerships with the California Endowment for Construction and youth leadership programs, the David & Lucile Packard Foundation, and the Monterey Bay Aquarium.

As the Executive Director of ALA, Elizabeth increased visibility, technology, and intellectual property expertise for members of the largest library association in the world. She secured $200 million from Bill Gates for 21st century computers and Internet connectivity for public libraries in poor communities and established the Office of Information Technology for research and development.

As City Librarian for the City of Los Angeles, California, Elizabeth was responsible for over 70 community public libraries throughout the city as administrator for all programs and services. She opened the newly renovated and expanded historic Central Library – a $214 million project – and established a Master Plan for 23 new and renovated libraries, overseeing a $100 million facilities planning budget. Elizabeth was liaison to 55 Friends of the Library groups, while establishing the Foundation for the Los Angeles Public Library.

Education. Elizabeth received her Master of Library Science from the University of Southern California and Bachelor of Arts in Latin American Studies from the University of California, Los Angeles (UCLA). She has served as Adjunct Faculty at UCLA, the University of Arizona, and San Jose State University.

Accolades. A select list of her awards and recognition includes being the namesake of both the Elizabeth Martinez Scholarship and the Lifetime Achievement Award from REFORMA, a national organization promoting library services to the Spanish Speaking and Latino people. She received recognition from the State of California Legislative Congress on professional accomplishments, the Ralph B. Atkinson Award for Civil Liberties, and ALA's 2013 Equality Award.



Judy Daniluk, MLS, Associate Library Consultant, is a Godfrey's Associate who has worked with us for over seven years as a technical researcher. Judy has a great command of demographics research and analysis, especially in comparing and contrasting public libraries of all sizes with peer communities and library systems. Her hours will account for 12.0 percent of the project total.

Qualifications: Prior to joining Godfrey's, Judy had seven years of experience as a library consultant at North Texas Regional Library System, focusing on topics related to library technology issues, serving nearly 80 city, county, district, multi-jurisdiction, and nonprofit libraries. Since 2013, she has also provided technology and consulting assistance to libraries and nonprofit organizations on a pro bono basis. Judy has participated in developing multiple proposals for IMLS/LSTA-funded grants from the Texas State Library and Archives Commission, in implementation of the funded projects.

Judy will perform the peer benchmarking analysis using data from the IMLS database and New Mexico State Library's public libraries in the state.

Education. Judy earned her Master of Library Science from University of North Texas, Master of Computer Science from Johns Hopkins University, and Bachelor of Arts in Secondary Education (Math) from University of North Carolina.



Binnie Tate Wilkin, Library Services Consultant, is a Godfrey's Associate, writer, and professional storyteller. She is on the current roster of the Nevada Arts Council's performing artists, active in storytelling workshops for adults and teachers in schools. She participates in the local storytelling guild composed of persons developing their skills and presenting community programs. She will lend 5.1 percent of total project hours.

Qualifications. Binnie served as Public Services Administrator for the Orange County Library System (California), directing Children's and Adult Services and Archives. She initiated new programs including homework centers and a teacher's newsletter. Preceding Orange County, she was the Minority Services Coordinator for Los Angeles County Library, focusing on services African Americans, Native American Tribal Nations, Asians, and Latinos. During each of these assignments, she instructed librarians in the art of storytelling techniques with movement. Binnie consulted with the Salinas Public Library providing an instructional series of workshops in children's services. Early in her career, Ms. Wilkin was a school librarian.

As Children's Specialist for Los Angeles City Library, she received national attention for her creative federally funded outreach project, including unique storytelling programs. Binnie has authored several professional articles and books including *A Life in Storytelling*, *Anecdotes, Stories to Tell, Stories with Movement and Dance* and *Survival Themes in Fiction for Children & Young People*.

Education. Ms. Wilkin currently teaches storytelling at the University of Nevada-Las Vegas. She lectured on all aspects of children's services at Columbia University School of Library and Information Science, University of Wisconsin-Milwaukee, California State University-Fullerton, University of California in Los Angeles and Berkeley, and University of Hawaii.

Accolades. Binnie is an inductee of the California Library Association's *Library Hall of Fame* and received "Recognition of Your Outstanding Contributions" from the California Librarians Black Caucus and Professional Achievement Award from the Black Caucus of ALA. Ms. Wilkin has worked on numerous ALA committees including "The Future of Libraries."



Andy Wright, MLS, Library Technology Consultant, has been a Godfrey's Associate for over 10 years. Since 2005, Andy has managed eServices and Materials for the Dallas Public Library (DPL), where he oversees acquisitions, management of cataloging, and interlibrary loan, planning and implementing workflow concepts and changes. He will account for 6.2 percent of total hours on your project.

Qualifications. Andy is a member of DPL's Polaris ILS team, responsible for all cataloging-related functionality issues. He is a member of a team assigned to planning and implementing a shift in materials selection to Evidence-Based Stock Management (EBSM) and customer-driven selection. Before working for Dallas Public, Andy was a Librarian at Abilene Public Library, overseeing cataloging and budgeting for equipment, personnel, and supplies. Prior to coming to the United States, Andy was on the staff of the Higher Colleges of Technology in Abu Dhabi, United Arab Emirates, where among other responsibilities, he selected a new library management system to replace the existing Horizon system. He also implemented a cataloging module and OPAC library management system, provided Cascade Classifier Training, and developed and implemented standards for newly created digital learning objectives. Andy has worked on several projects, including:

- A Comprehensive Master Plan for services, staffing, technology, and facilities for the Nicholson Memorial Library System, Garland, Texas.
- Building Program for the Lincoln Central Library, Nebraska.
- A Master Plan for the Westminster Public Library in Colorado.
- A Master Plan for Mary Riley Styles Library in Falls Church, Virginia.
- A study for the Mayor's Blue Ribbon Task Force for the Future of the Miami-Dade Public Library System, Florida.
- A Capacity Plan for Charlotte County Library, Port Charlotte, Florida.
- Master Plan for the Washoe County Library System, Reno, Nevada.
- A Strategic Services and Facilities Plan for the Springdale Public Library, Arkansas.

Education. Andy was awarded his Post Graduate Diploma in Information Studies from the University of North London and his Bachelor of Arts in Humanities with Honors from Thames Polytechnic.

Section 2B. Competence. Methods & results of candidate qualification, including pre-employment testing, screening, and/or assessments.

Godfrey's selects our Associate Consultants based upon their reputation within the Library industry, with their qualifications being assessed by their peers. No other pre-employment testing or screening is performed.

Section 2C. Competence. Name & contact data of the officer of the firm responsible for administration of the contract. If applicable, list subcontractors, with addresses, qualifications & areas of responsibility.

Richard L. Waters, as President and sole owner of the firm, will be responsible for administration of the contract.

rlwaters@godfreysassociates.com (401) 556-2398

No subcontractors have been retained by Godfrey's for your project.

Section 2D. Competence. Location of office where the work will be performed & percent of work to be performed at each.

Godfrey's corporate office is in Dallas, Texas. In addition to work done on-site and in Godfrey's office, our Associates will work in their home offices, completing these percentages of the total contract hours, on-site and off:

Dallas-Fort Worth, Texas
Dick Waters, 24.2%
Brad Waters, 37.1%
Judy Daniluk, 12.0%
Andy Wright, 6.2%

Santa Fe, New Mexico
Elizabeth Martinez, 15.4%

Las Vegas, Nevada
Binnie Wilkin, 5.1%

Total 100.0%

Section 2E. Competence. Name, address & applicable State registration of the professional responsible for & in direct charge of the work.

Brad Waters, Project Director for Godfrey's, will be in direct charge and responsible for the work completed by our other Associates.

bradwaters@sbcglobal.net (469) 987-5725

Godfrey's knows of no applicable New Mexico individuals' professional registration requirement for Library Consulting work that we have proposed for this project, other than our business registration.

Section 3. Performance of the Firm. Provide names & descriptions of five past contracts similar in scope that have been completed by our firm including name & telephone number of contact person.

Godfrey's has learned a great deal over our many years in business and we continue refine our tools and processes while we sharpen our expertise. We understand cultural, racial, and ethnic issues facing public libraries in New Mexico – program and services, uses of technology for youth especially, information trends impacting public library services, and inclusion of organizations reflecting the Latinx and Native American populations.

Seminole County Public Library Master Plan, Casselberry, Florida. Godfrey's is currently working with Seminole County (SCPL) – our second contract with this system of five libraries, all constructed in 1986 with no renovations or additions since. With only 0.31 square feet per capita of library space, SCPL has half of the Florida minimum standard. In addition to a space shortfall, their library system has been chronically underfunded. Our scope of work includes many similarities to your request:

- Public Library Trends and Peer Analyses, to establish best practices.
- Demographics, Population, and Stakeholder Analyses and findings.
- Assessment of Existing Conditions and a resulting Gap Analysis.
- Achievable Recommendations with an Implementation Plan.

While our work is still in progress, there is an obvious need to convey to elected officials the value SCPL brings to the community in attracting new residents, supporting early childhood education, and incubating small business start-ups. We will propose a spatial reorganization of their Central Library, a new and much larger replacement Branch Library in one family-rich community, and deployment of satellite kiosks and bookmobile service to outlying communities.

Our stakeholder interviews with County Commissioners yielded conclusions that better cooperation between County and municipal governments would be beneficial to all residents, and that new mixed-use buildings might house libraries and affordable housing.

Contact: Christine Patten, Library Director, Seminole County Public Library
cpatten@santafenm.gov (407) 665-1501



Reading Room, Venice Library, Sarasota County Libraries, Sarasota, Florida

Library Space Needs Analysis for the Venice Branch of the Sarasota County Libraries, Sarasota, Florida. Godfrey's was engaged to provide library space needs and programming services for the design of a replacement facility for the Venice Branch in this 10-library system. The new building was constructed on the same location as its predecessor, and includes a drive-up book return, and two outdoor seating areas – one each for adults and children. Interior features include a café, Friends bookstore, a dedicated Teen room, six group study rooms, two conference rooms, and a kitchenette adjacent to a 140-seat multi-purpose meeting room. The staff work room is planned to accommodate a 7-bin automated materials handling sorter.

The scope of services completed by Dick Waters included facilitating six focus groups, two town hall meetings, staff interviews, library space programming of 21,000 square feet completed in 2016, and design review of the new Library in 2017. The project opened to the public in December 2018, at a construction cost of $7.4 million.

Contact: Sarabeth Kalajian, Director, Sarasota County Libraries
skalajian@comcast.net (941) 232-1871 (cell)

Please note: *Sarabeth recently retired but was Godfrey's primary contact for the project.*

Multiple Projects for Delaware Division of Libraries, Dover, Delaware. Godfrey's assisted the Delaware Division of Libraries (DDL) in a state-wide assessment of all 34 public libraries in the state and visioning for a 10-year Master Plan. Our work included:

- Surveying the condition of – and demand for – collections, services, and technology at each public library location.
- An assessment of the IT and technological capabilities of the Delaware Public Library system.
- Investigation into the 10-year future trends and needs for collections, services, technology, and facilities in libraries.
- Specific recommendations to improve the state of staff training and operations for the library locations and central DDL administration.
- Framework to budget and implement recommendations over time.

Our work with DDL delivered a 10-year Master Plan update, capturing the vision for the future of the Delaware Library System with clear and implementable recommendations. Other scope of services undertaken by Dick and Brad Waters for this client includes:

- Central Library Space Programming, Space Planning & Design Consultation, 45,600 square feet for Wilmington Public Library, completed in 2014.
- Library Space Programming, 16,800 square feet for the Seaford District Library, completed in 2008.
- Library Space Planning & Conceptual Design of a 42,000 square foot public library addition for a new Joint-Use Library for Georgetown Public Library and Delaware Technical College, completed in 2008.
- Library Space Planning, 20,000 square feet for the South Coastal Public Library, completed in 2006.
- Branch Library Design, 23,000 square feet for the New Castle Public Library, completed in 2006.
- State-wide Public Library Master Plan, completed in 2005.

Contact: Annie Norman, State Librarian, Delaware Division of Libraries
annie.norman@delaware.gov (302) 257-3001

Agenda Item #7.5.

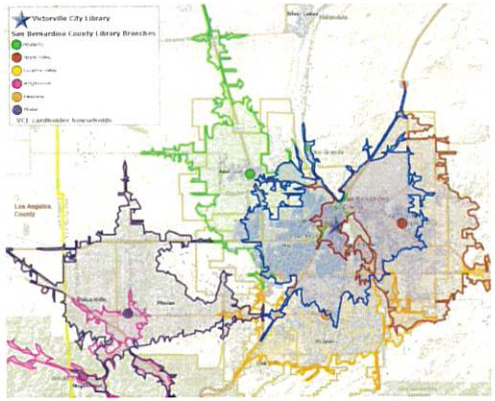
21st Century Library Plan for the Santa Fe Public Library (SFPL), Santa Fe, New Mexico. Godfrey's completed a comprehensive master plan for this three-building system serving the capitol city and Santa Fe County. SFPL had recently hired a new Library Director to succeed an Interim Director, who stepped in for the previous Director who hired Godfrey's prior to her suffering a serious car accident. So, this project has had its fits and starts. The 21st Century Library Plan addressed several issues confronting the City of Santa Fe and SFPL for years, including:

- Changes in community demographics and usage patterns by diverse customers having different needs.
- Significant economic, educational, and literacy disparities.
- Financial challenges, coupled with small, aging facilities.
- Emerging technologies/national innovations in library service delivery.
- All leading to new thinking about the role of libraries in communities.

Scope of services included gap and peer analyses, standards compliance assessment, a staffing plan based on recommended new facility locations, and identification of alternative funding. Mapping service areas revealed the three existing locations provided excellent coverage of the city limits, but abnormally long drive times (19-minute average). Soliciting increased financial support was a key recommendation, as County government provided less than $1.00 per capita, compared with the City's $43.78. Recommendations included abandoning the smallest branch in favor of a new 65,000 square foot Central Library and converting the current downtown Main Library into the Southwest Center for Santa Fe Cultural Life, envisioned as a multicultural, multilinguistic library incorporating the historic Southwest Reading Room. The third branch will be expanded in place. A new 24/7 lending kiosk will be located at a commuter rail station.

Dick and Brad Waters provided operational/capital project cost estimates, making a final presentation to City Council in December 2019. Elizabeth Martinez made multicultural service recommendations. Judy Daniluk compared peer library and researched emerging library trends. Andy Wright proposed changes to collection development and technology plans.

Contact: Maria Sanchez-Tucker, Library Director, Santa Fe Public Library
metucker@santafenm.gov (505) 245-4222



Map of Service Areas, Victorville City Library & County Libraries, Victorville, California

Library Master Plan for Victorville City Library (VCL), Victorville, California. Godfrey's recently completed a comprehensive Master Plan for the most populous city in the high desert of the Victor Valley. The single building of 8,229 square feet serving 124,000 city residents does not allow their talented library staff to offer the full range of programs and services that the people desire, causing many to seek alternative providers.

VCL's scope of services was similar to yours. Godfrey's projected population, analyzed demographics, and compared VCL with over 40 California public libraries. Our research identified potential gaps in service to at-risk residents. We analyzed over 20 properties as potential new library locations, mapping service area overlaps and gaps in geographic coverage. We projected space needs out 20 years in five-year increments so the City could track actual growth versus projections in population and library space. We recommended a single, centralized new library as the most cost-effective solution – both operationally and in capital costs – with a goal of providing 0.50 square feet per capita within 20 years to overcome their severe space shortfall. To improve staffing efficiency and the customer experience, we recommended several technology investments.

Elizabeth Martinez, Binnie Wilkin, Judy Daniluk, and Dick and Brad Waters all contributed significantly to this project. We presented our unanimously approved Final Report to Victorville City Council on May 4, 2021. Subsequently, we analyzed surplus space in a City-owned facility as a potential interim home for the Library, identifying how space might be configured within the existing building and how it might be expanded.

Contact: George Carter, City Librarian, Victorville City Library
gcarter@victorvilleca.gov (760) 245-4222

Section 4. Cost Proposal. Cost will be a factor in the evaluation of proposals. Please complete the following Cost Proposal Matrix and submit it with the Technical Proposal.

Bid Matrix One

	General Obligation Bond Facilitation Services	Total Amount
A	Base Proposal for Master Plan & Branch Feasibility Study Services: This amount is inclusive of all items delineated in Section B of the Cost Proposal Content	$84,986
The above matrix will be used in the evaluation of the proposals		

Godfrey's proposes this all-inclusive, not-to-exceed, fixed price for our consulting fees and expenses of $84,986 for the activities described in our Work Plan and Timeline found in Section 1 of this proposal. Our Work Plan is based on the Scope of Services required by your RFP and augmented by Godfrey's as based on our experience.

Summary of Hours & Fees. In the interest of transparency, Godfrey's includes a breakdown of our proposed fees by phase and major task, as follows:

Phase 1 Project Administration	*hours*	*fees*	*% of total*
Public Engagement & Information	81	$9,686	12.9%
City-Provided Data Analysis	23	2,805	3.7%
Progress Reporting	50	6,314	8.4%
Deliverables	84	10,188	13.6%
Phase 2 Needs Assessment			
Library Facilities Analysis	57	6,865	8.1%
Analysis of Operations, Programs & Services	103	12,309	16.4%
Mapping Service Areas of Libraries	40	4,587	6.1%
Phase 3 Recommendations			
Draft Review of Master Plan	113	13,860	18.5%
Final Review of Master Plan	74	9,109	12.2%
Total Project Completion	625	$75,723	100.0%

Our cost includes the series of 29 inter-related Tasks presented in Section 1 – all of which we concur are important to develop a comprehensive Library Master Plan. Each of these Tasks can be considered separate line items so the City can choose the tasks you want most, should our fees exceed your budget. In other words, our fees are flexible and negotiable. By tailoring the Scope that you wish us to provide, the City has options to meet your budget.

Godfrey's Proposed Expenses. Godfrey's total budget includes travel and printing expenses to complete your Library Master Plan. One of the many lessons COVID-19 has taught us is our work is best done on-site, although we can successfully complete our assignments remotely, if required. In this light, we have proposed what we believe is the ideal balance between on- and off-site workdays, with fees and expenses summarized below.

item	*total cost*
Consulting fees	$75,723
Reimbursable expenses	9,263
Total proposed cost	$84,986

As with our consulting fees, this amount for expenses is also negotiable. Expenses are based on the four site visits outlined in the Project Timeline in Section 1 of our proposal.

Proposed Site Visits. The site visits by our team of Consultants we propose total 32 consultant-days on-site. While we provide a healthy cost estimate for expenses now, we will be able to provide a fixed expense amount in our contract, once you approve the schedule and number of site visits – eliminating any risk of cost overruns – should we be fortunate enough to be hired for your project. Our proposed schedule for trips to Las Cruces is predicated on the following assumptions:

Trip 1 This trip will be to facilitate the Public Engagement process of Phase 1: Project Administration, and to begin the Operations/Programs/Services Analysis, and the Library Facilities Analysis in Phase 2: Needs Assessment. We propose the duration of Trip 1 be five days in one week.

Trip 2 To continue the Operations/Programs/Services Analysis and Library Facilities Analysis in the Needs Assessment Phase. We propose the duration of Trip 2 be three days.

Trip 3 For the Draft Master Plan Review in Phase 3: Recommendations, we propose the duration of Trip 3 be two.

Trip 4 For presentation of the Final Master Plan in Phase 3, we propose the duration of Trip 3 be three days in one week.

Portions of the Library Service Area Mapping and Location Analysis will also be completed during Trips 1 and 2. Each trip will include one to three individual Consultants, as appropriate for the Task(s) at hand.

Progress Meetings. Godfrey's has included 12 semi-monthly progress meetings in our proposed price as delineated on our Timeline in Section 1.

Breakdown of Cost. Per your RFP, Godfrey's accounting of our proposed costs, by type, is tabulated below. As you can see, we have no extraneous costs or expenses. The entire amount of our price will be focused on assisting you in making the Thomas Branigan Memorial Library the best library system it can be!

item	*cost*
1. Direct costs (on-site travel)	$8,505
2. Indirect costs	0
3. Labor by major tasks (625 hours)	75,723
4. Materials (service area mapping & printing)	758
5. Equipment	0
6. Sub consultants	0
7. Any other proposed costs	0

Our Pledge to You. All costs for data gathering, analysis, and any other tasks associated with the master planning process are included in our price. Godfrey's knows public funds are limited. We know what it takes to do this type of work well. We truly believe the value of our services will be returned to the Las Cruces community for years after our work has been completed.

Samples of Godfrey's work – space programming from Needs Assessments:

New Books area (top right), Jacksonville Public Library, Jacksonville, Florida

Service desk (middle right), Champaign Public Library, Champaign, Illinois

Civil Rights Room (bottom right), Nashville Public Library, Nashville, Tennessee

New items display shelving (bottom left), Santa Monica Public Library, Santa Monica, California









ACORD

CERTIFICATE OF LIABILITY INSURANCE

GODFASS-01 KNOURY

DATE (MM/DD/YYYY) 5/19/2022

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

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

PRODUCER	CONTACT NAME: Kathleen Noury
World Insurance Associates, LLC 20 Newman Ave Suite 2001 Rumford, RI 02916	PHONE (A/C, No, Ext): (401) 414-1100 2224 FAX (A/C, No): (401) 210-4943 E-MAIL ADDRESS: kathleennoury@worldinsurance.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Sentinel Insurance Company, Ltd.	11000
INSURER B : Hartford Insurance Group	00914
INSURER C : United States Liability Insurance Co.	25895
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

Godfrey's Associates, Inc
6333 E. Mockingbird
Suite 147-840
Dallas, TX 75214-2398

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC OTHER:	X	X	02SBAZU9959	11/26/2021	11/26/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
A	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY	X	X	02SBAZU9959	11/26/2021	11/26/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000	X	X	02SBAZU9959	11/26/2021	11/26/2022	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	X	02WECLH4364	11/1/2021	11/1/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
C	Professional Liabili			SP1017324M	3/23/2022	3/23/2023	Each Occurrence	2,000,000
C	Professional Liabili			SP1017324M	3/23/2022	3/23/2023	Aggregate	2,000,000

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

RE: Thomas Branigan Memorial Library Master Plan and Branch Feasibility Study - RFP 21-22-029

If required by a written contract or agreement with this insured, the certificate holder is included as Additional Insured, with respect to General Liability coverage. Coverage is primary and non-contributory and includes blanket waiver of subrogation when required by written contract. This is per policy form #SS0008 04/05 and subject to the policy's terms & conditions. Waiver of Subrogation is also included under the Workers compensation policy.

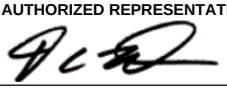
CERTIFICATE HOLDER

City of Las Cruces
Purchasing Dept.
1501 Hadley Ae
Las Cruces, NM 88001

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



© 1988-2015 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD

QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY

BUSINESS LIABILITY COVERAGE FORM	Beginning on Page
A. COVERAGES	**1**
Business Liability	**1**
Medical Expenses	**2**
Coverage Extension - Supplementary Payments	**2**
B. EXCLUSIONS	**3**
C. WHO IS AN INSURED	**10**
D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE	**14**
E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS	**15**
1. Bankruptcy	**15**
2. Duties In The Event Of Occurrence, Offense, Claim Or Suit	**15**
3. Financial Responsibility Laws	**16**
4. Legal Action Against Us	**16**
5. Separation Of Insureds	**16**
6. Representations	**16**
7. Other Insurance	**16**
8. Transfer Of Rights Of Recovery Against Others To Us	**17**
F. OPTIONAL ADDITIONAL INSURED COVERAGES	**18**
Additional Insureds	**18**
G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS	**20**

BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C**. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G**. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph **1.** of Section **C.** – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **C.** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

© 2005, The Hartford

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

(2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

(2) The expenses are incurred and reported to us within three years of the date of the accident; and

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:

(1) All expenses we incur.

(2) Up to $1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

(5) All costs taxed against the insured in the "suit".

(6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

(7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under **(1)** through **(7)** above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

(1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

(2) This insurance applies to such liability assumed by the insured;

(3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

(4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;

(5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

(6) The indemnitee:

(a) Agrees in writing to:

(i) Cooperate with us in the investigation, settlement or defense of the "suit";

(ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(iii) Notify any other insurer whose coverage is available to the indemnitee; and

(iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(b) Provides us with written authorization to:

(i) Obtain records and other information related to the "suit"; and

(ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

(1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or

(2) The conditions set forth above, or the terms of the agreement described in Paragraph **(6)** above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

(1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or

(2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

(1) "Bodily injury" or "property damage"; or

(2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

(a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

(i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and

(ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of **(1)** above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 51 feet long; and

(b) Not being used to carry persons for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;

(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or

(6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

(1) Legal, accounting or advertising services;

(2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;

(3) Supervisory, inspection, architectural or engineering activities;

(4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;

(5) Any health or therapeutic service treatment, advice or instruction;

(6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;

(7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

(8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting,demonstration or distribution of ophthalmic lenses and similar products;

(9) Any:

(a) Body piercing (not including ear piercing);

(b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and

(c) Similar services;

(10) Services in the practice of pharmacy; and

(11) Computer consulting, design or programming services, including web site design.

Paragraphs **(4)** and **(5)** of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph **1.e.** in Section **A.** - Coverages.

k. Damage To Property

"Property damage" to:

(1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section **D.** - Limits Of Insurance.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to the use of elevators.

Paragraphs **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

(1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;

(2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;

(3) Arising out of a criminal act committed by or at the direction of the insured;

(4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";

(5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";

(6) Arising out of the wrong description of the price of goods, products or services;

(7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

(a) Copyright;

(b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

(9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;

(10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;

(11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

(a) An "advertisement" for others on your web site;

(b) Placing a link to a web site of others on your web site;

(c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or

(d) Computer code, software or programming used to enable:

(i) Your web site; or

(ii) The presentation or functionality of an "advertisement" or other content on your web site;

(13) Arising out of a violation of any anti-trust law;

(14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or

(15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs **(a)**, **(b)**, or **(c)** above is directed.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".

(2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or

(3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance.

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

(1) "Bodily injury" or "property damage" that occurred; or

(2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs **a.** through **f.** below are additional insureds when you have agreed, in a written

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section **F.** – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs **(d)** or **(f)**; or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

(1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or

(b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

(1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In connection with your premises; or

(b) In the performance of your ongoing operations performed by you or on your behalf.

(2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

(1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

(1) Any other person or organization who is not an insured under Paragraphs **a.** through **e**. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products-completed operations hazard", but only if

(i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D.** – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E.** – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.

b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or

b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph **3.** above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

(1) You or any additional insured that is an individual;

(2) Any partner, if you or an additional insured is a partnership;

(3) Any manager, if you or an additional insured is a limited liability company;

(4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;

(5) Any trustee, if you or an additional insured is a trust; or

(6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.

b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

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

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

(1) The statements in the Declarations are accurate and complete;

(2) Those statements are based upon representations you made to us; and

(3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph **6.** (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section **C.**, Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

a. In the performance of your ongoing operations; or

b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

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

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

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

This insurance does not apply to:

(1) Any "occurrence" that takes place after you cease to lease that land; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

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

This insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. The insurance afforded to the vendor is subject to the following additional exclusions:

(1) This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs **(d)** or **(f)**; or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

a. Their financial control of you; or

b. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section **D.** – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E.** – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

a. (1) Radio;

(2) Television;

(3) Billboard;

(4) Magazine;

(5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

a. Injury;

b. Sickness; or

c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in **a.** above;

(2) The activities of a person whose home is in the territory described in **a**. above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

7. "Electronic data" means information, facts or programs:

a. Stored as or on;

b. Created or used on; or

c. Transmitted to or from

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D.** – Liability and Medical Expenses Limits of Insurance.

b. A sidetrack agreement;

c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;

d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement; or

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(1)** above and supervisory, inspection, architectural or engineering activities.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, on which are permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in **a.**, **b.**, **c.**, or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in **a.**, **b.**, **c.**, or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral, written or electronic publication of material that violates a person's right of privacy;

f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";

g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or

h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

19. "Products-completed operations hazard";

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

As used in this definition, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who:

a. Is not your "employee";

b. Donates his or her work;

c. Acts at the direction of and within the scope of duties determined by you; and

d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

Policy Number: 02 WEC LH4364 **Endorsement Number:** 4
Effective Date: 05/19/22 Effective hour is the same as stated on the Information Page of the policy.
Named Insured and Address: GODFREY'S ASSOCIATES, INC
6333 E MOCKINGBIRD LN STE 147-840
DALLAS TX 75214

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

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, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. (X) Special Waiver
   Name of person or organization City of Las Cruces, 1501 Hadley Ave, Las Cruces, NM, 88001

   ( ) Blanket Waiver
   Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:
   5

3. Premium:
   The premium charge for this endorsement shall be 5 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium:

24-040

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:**	October 16, 2023
Drafter:	Virginia Barela	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION TO AWARD A PRICE AGREEMENT FOR ELECTRONIC FUEL CARD SERVICES TO WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, IN AN AMOUNT NOT TO EXCEED $350,000.00 ANNUALLY, FOR A TERM TO COINCIDE WITH NEW MEXICO STATE PURCHASING DIVISION (NMSPD) PRICE AGREEMENT NO. 20-00000-22-00058, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.**

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

PURPOSE(S) OF ACTION:
Award price agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The Fleet Services Section (Fleet) of the City of Las Cruces (City) is responsible for the acquisition and management of fuel provided to City Fleet customers. Fleet currently manages three fuel sites that provide unleaded gasoline with an octane level of 87, diesel, and/or biodiesel fuel.

At this time, the two fuel sites located at 1501 E. Hadley and one fuel site located at 680 N. Motel are out of district for five of the eight fire stations. It is not in the best interest of public safety for emergency response crews to leave their designated districts. If crews left their districts, this would negatively affect response times in the event of an emergency. Therefore, it is not advisable to use the Fleet fueling stations. Additionally, the City has active Police Department units that require a higher octane than that which is provided at our City's fuel sites. The electronic fuel card service allows the units to be fueled within their district and with the higher octane levels by choosing private fueling stations that meet their needs.

Las Cruces Municipal Code, Chapter 24, Section 24-4 (25) – Authorized exemptions, allow the City to utilize contracts from other entities. Utilization of these contracts is currently the most effective and cost-efficient manner for staff to procure supplies and services for the operational needs of the City.

Due to the continuous fluctuation of fuel prices and public safety demands, Fleet anticipates purchasing beyond the $100,000.00 threshold which requires City Council approval.

The Electronic Fuel Card Services Agreement will coincide with the terms of NMSPD No. 20-00000-22-00058, contingent on sufficient budget appropriations.

SUPPORT INFORMATION:

Exhibit "A" NMSPD_20-00000-22-00058_WEX

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

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

Funding Source(s):
VARIOUS

Overall Budget Impact:
Individual department purchase order requests will be dependent upon available budgeted amounts and funds approved through the Financial Services Department Budget program.

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 award a price agreement for electronic fuel card services to WEX Bank dba Wright Express FSC of Carol Stream, Illinois, in an amount not to exceed $350,000.00 annually, for a term to coincide with NMSPD No. 20-00000-22-00058, subject to approved budget appropriations.
2. Vote "No"; this will deny the resolution and prohibit the price agreement for electronic fuel card services. This would require Fleet Services to pursue other options as directed by the City Council which may result in a higher cost to the City and negatively impact safety services.
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 indefinite cost, indefinite quantity price agreement for electronic fuel card services and may negatively impact safety services.

RESOLUTION 24-040

A RESOLUTION TO AWARD A PRICE AGREEMENT FOR ELECTRONIC FUEL CARD SERVICES TO WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, IN AN AMOUNT NOT TO EXCEED $350,000.00 ANNUALLY, FOR A TERM TO COINCIDE WITH NEW MEXICO STATE PURCHASING DIVISION (NMSPD) PRICE AGREEMENT NO. 20-00000-22-00058, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

The City Council is informed that:

WHEREAS, The Fleet Services program manages two fuel sites located at 1501 E. Hadley Ave and 680 N. Motel Blvd, which provide unleaded, diesel, and biodiesel fuel for City vehicles and equipment; and

WHEREAS, the fuel sites are out of response district for all but two of the City's fire stations and public safety complexes; and

WHEREAS, Las Cruces Municipal Code, Chapter 24, Section 24-4 (25) – Authorized exemptions, allow the City to utilize contracts from other entities; and

WHEREAS, WEX Bank of Carol Stream, Illinois is currently under contract with New Mexico State Purchasing Division (NMSPD) Price Agreement No 20-00000-22-00058; and

WHEREAS, staff is requesting approval from the City Council to enter into a prices agreement on an as-need basis, in an amount not to exceed $350,000.00 annually, for a term that coincides with NMSPD No. 20-00000-22-00058, subject to approved budget appropriations.

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

(I)

THAT the Resolution authorizing the City to enter into a price agreement, utilizing NMSPD No. 20-00000-22-00058, as shown in Exhibit "A" attached hereto, and 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 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Tessa Abeyta

Seconded by: Becki Graham

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

Exhibit "A"

CITY OF LAS CRUCES

EXISTING CONTRACT PURCHASE AGREEMENT

NEW MEXICO STATE PURCHASING DIVISION
CONTRACT NO. 20-00000-22-00058

ELECTRONIC FUEL CARD SERVICES

Pursuant to terms and conditions of New Mexico State Purchasing Division (NMSPD) Contract No. 20-00000-22-00058, , between the WEX Bank dba Wright Express FSC (WEX) and CONTRACTOR NAME (CONTRACTOR), as amended and incorporated herein by reference, the City of Las Cruces (CITY) and CONTRACTOR hereby agree on this _____ day of October, 2023, as follows:

1. This Purchase Agreement is intended to be an Existing Contract Purchase Agreement in accordance with LCMC Chapter 24, Article I, Sec. 24-4 (25).

2. In a satisfactory and proper manner, the CONTRACTOR shall provide services pursuant to NMSPD Contract No. 20-00000-22-00058, as set forth in Attachment A, attached hereto and made a part of this Agreement.

3. The effective period of this Agreement shall coexist with NMSPD Contract No. 20-00000-22-0058.

4. In consideration for the satisfactory delivery of services, the CONTRACTOR shall be compensated pursuant to the cost terms of NMSPD Contract No. 20-00000-22-00058. Cost of services shall be paid by CITY within 30 days upon receipt of undisputed invoice.

5. 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 of Las Cruces ordinances, and laws regarding the Contractor's services or any work done pursuant to this Agreement.

6. The Contractor shall defend, indemnify, and hold harmless the City, its officers, and employees from and against any and all losses suffered by the City, its officers, and employees, and any special claims, liabilities or penalties asserted against the City, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor, subcontractor, subgrantee, or other agent of the Contractor. This covenant shall survive the termination of this Agreement.

7. That in the event any of the provisions of this Contract are violated by the Contractor or by any of his Subcontractors, the City may serve written notice upon the Contractor and, if a surety exists, upon the surety of its intention to terminate such Contract, such notices to contain the reasons for such intention to terminate the Contract; and, unless within ten (10) days after and satisfactory arrangement for correction be made, the Contract shall, upon the expiration of said ten (10) days,

cease and terminate. On the event of any such termination, if a surety exists, the City shall immediately serve notice thereof upon the surety who shall have the right to take over and perform the Contract, provided, however, that if the surety does not commence performance thereof within thirty (30) days from the date of the mailing of such surety of notice of termination, the City may take over the work and prosecute the same to completion by the Contract for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the City for any excess cost occasioned the City thereby; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, and plans as may be on the site of the work and necessary therefore. 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.

8. The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City 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 decisions as to whether sufficient appropriations and authorizations exist shall be accepted by Contractor and shall be final.

9. Contractor will maintain records for five (5) years after the completion of the project, indicating dates, length of time, and services rendered. The City has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the City's right to recover excessive or illegal payments.

10. Contractor represents and warrants the following:
    a. No Current or Prior Conflict of Interest. That Contractor has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement.
    b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Contractor shall immediately inform the City in writing of such conflict.
    c. Termination for Material Conflict. If, in the reasonable judgement of the City, such conflict poses a conflict to and with the performance of Contractor's obligations under this Agreement, or is otherwise a violation of the City's current policy or ordinances, then the City may terminate the Agreement immediately upon written notice to Contractor; such termination of the agreement shall be effective upon the receipt of such notice by Contractor.

11. The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

12. 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.

WEX BANK DBA WRIGHT EXPRESS FSC

BY: _____
Name
Title

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

_____ 10/2/23
City Attorney

Revised: May 2023

Attachment A

State of New Mexico
General Services Department
State Purchasing Division

Statewide Price Agreement Cover Page

Awarded Vendor:
0000045609
WEX Bank
97 Darling Avenue
So. Portland, ME 04106

Contact: Ryan Kelly
Email: ryan.kelly@wexinc.com
Telephone No.: (952) 922-1104

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law

Invoice:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law

Agreement Number**: 20-00000-22-00058**

NASPO Master Agreement No.: **00819**

Payment Terms**: Net 30**

F.O.B.**: Destination**

Delivery**: As Requested**

Procurement Specialist**: Tami Concha** JC

Telephone No.**: 505-660-3671**

Email: **Tami.Concha@state.nm.us**

Title**: Fleet Card Services**

Term**: July 8, 2022 thru December 31, 2025**

NASPO ValuePoint Master Agreement Link: https://www.naspovaluepoint.org/portfolio/fleet-card-services-2021-2025/wex-bank/

The attached Agreement is made subject to the "terms and conditions" as indicated.

DocuSign Envelope ID: 9C28E4D0-70E8-4865-9600-074B759B78E8

NASPO ValuePoint

PARTICIPATING ADDENDUM

FLEET CARD SERVICESS

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

Master Agreement #: 00819

Contractor: **WEX BANK**

Participating Entity: **STATE OF NEW MEXICO**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

MASTER AGREEMENT TERMS AND CONDITIONS:

1. Scope: This addendum covers the ***Fleet Card Services*** led by the State of ***Washington*** for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. By this reference, this Participating Addendum incorporates the Master Agreement between the State of Washington and Fleet Card Services with the exceptions, clarifications, and modifications as set forth in this addendum and in accordance with Section 33 of this addendum.

2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *New Mexico*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Ryan Kelly
Address:	97 Darling Avenue So. Portland, ME 04106
Telephone:	Office (952) 922-1104 Cell (612) 213-7699
Email:	ryan.kelly@wexinc.com

Participating Entity

Name:	Tami Concha – State of New Mexico
Address:	1100 Saint Francis Dr., Santa Fe, New Mexico 87505
Telephone:	(505) 660-3671
Email:	Tami.Concha@state.nm.us

DocuSign Envelope ID: 9C28E4D0-70E8-4865-9600-074B759B78E8

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.
Participating Entity must check one of the boxes below.

[___] No changes to the terms and conditions of the Master Agreement are required.

[X] The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. Taxes:

As applicable, the Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage.
Reserved

E. Performance Bond.
Reserved

2. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent and end on December 31, 2025. The Participating State reserves the right to extend this agreement, pursuant to the term in the Master Agreement. In the event that a local or regional agency submits a PO or enters into an Addendum pursuant to the terms of this Participating Addendum, termination of this Addendum shall not impact the term of the subordinate ordering document, unless the Parties to that ordering document agree otherwise

in writing (including through specifying a specific term of services that extends beyond the term of this document).

3. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

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

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

4. 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 Procuring Agency to the Contractor, provided that the Procuring Agency remains responsible for all outstanding balances

and fees as set forth in this Agreement. Except as set forth in the preceding sentence, the Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor

is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A)because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

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. Reserved.

8. 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. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

10. Equal Opportunity Compliance:

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

11. Workers Compensation:

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

12. Applicable Law:
Reserved.

13. Records and Financial Audit:
Reserved

14. Invalid Term or Condition:
Reserved.

15. Enforcement of Agreement:
A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective

unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

17. Notices:

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:

To the Procuring Agency:
Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:
Ryan Kelly
97 Darling Avenue So. Portland, ME 04106
Office (952) 922-1104 Cell (612) 213-7699
ryan.kelly@wexinc.com

18. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

19. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Default/Breach:

The Procuring Agency shall have the same rights set forth in Section 16 of the Master Agreement as Enterprise Services with respect to this Participating Addendum. For the avoidance of doubt, the Procuring Agency shall have no rights to terminate the Master Agreement or any other Addendum executed by a customer of Contractor.

21. Equitable Remedies:

Reserved.

22. New Mexico Employees Health Coverage: The following requirements shall apply to Contractor's business operations within the state of New Mexico, if any:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

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

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

23. Indemnification:

Reserved.

24. Default and Force Majeure:

The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

Reserved.

26. Subcontracting:

Reserved.

DocuSign Envelope ID: 9C28E4D0-70E8-4865-9600-074B759B78E8

27. Inspection of Plant:
Reserved

28. Commercial Warranty:
Reserved

29. Condition of Proposed Items:
Reserved

30. Release:
Reserved.

31. Confidentiality:
Reserved

32. Contractor Personnel:
Reserved

33. Incorporation by Reference and Precedence:

In the event of a dispute under this Agreement between the Procuring Agency and Contractor, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Participating Addendum in reverse chronological order; (2) the Participating Addendum; (3) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

Upon request by the Procuring Agency, not more than once per year, Contractor will provide a copy of its SOC 1 or 2 report, as applicable.

36. Insurance:

Reserved

37. Dispute Resolution:

The parties shall cooperate to resolve any dispute pertaining to this Participating Addendum efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute. For the avoidance of doubt, this Section 15 shall not apply to disputed transactions, which shall be governed by Exhibit G Section 16 of the Master Agreement.

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** The 1% Administrative Fee is not an additional percentage added to the rebate being offered by Contractor pursuant to the NASPO ValuePoint Master Agreement, but rather, it is based on the qualified rebate amount for all accounts and a direct share of the rebate (e.g. 1.7% rebate (170 basis points), 100 bps (1%) would be paid as the administration fee and the remaining 70 bps (.7%) would go to the account holder)..This assessment shall apply to all New Mexico state agencies and local public bodies.

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this Agreement, subtotaled by procuring agency name, in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	September 30	November 30
Second	December 31	February 28 (29)
Third	March 31	May 31
Fourth	June 30	August 31

Sample Reports can be found at:
http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors
Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

The quarterly report shall include the gross total sales for the quarter; zero sales during the quarter shall be reported, and partial quarters at the beginning or end of the contract term shall also be reported. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to the 1% of the qualified rebate amount for New Mexico state agencies and local public bodies for the period. The Vendor shall indicate the contract number **SWPA #20-00000-22-00058 on the remittance**.

Send payment of fees through U.S. Mail or Courier Delivery:
New Mexico State Purchasing Division
Joseph Montoya Building Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 469-2679 or (505) 795-4512

39. Lease Agreements: ***Reserved***

40. Subcontractors: All contactors, dealers, and resellers authorized in the State of *State of New Mexico*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

41. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

NASPO ValuePoint

PARTICIPATING ADDENDUM

FLEET CARD SERVICESS

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of New Mexico	Contractor: WEX Bank
Signature: Valerie Paulk X **This Agreement was signed on behalf of the State Purchasing Agent.**	Signature: Jason Price
Name: Mark Hayden	Name: Jason Price
Title: State Purchasing Agent	Title: President & CEO
Date: 7/11/2022	Date: 7/11/2022

CF

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

DocuSign

Certificate Of Completion

Envelope Id: 9C28E4D070E848659600074B759B78E8
Status: Completed
Subject: Please Electronically Sign: 20-00000-22-00058 Fleet Card Services PA
Source Envelope:
Document Pages: 13 | Signatures: 2 | Envelope Originator:
Certificate Pages: 5 | Initials: 3 | Tami Concha
AutoNav: Enabled | 13 Bataan Blvd
EnvelopeId Stamping: Enabled | Santa Fe, NM 87508
Time Zone: (UTC-07:00) Mountain Time (US & Canada) | tami.concha@state.nm.us
IP Address: 174.56.109.88

Record Tracking

Status: Original
7/8/2022 3:28:00 PM
Holder: Tami Concha
tami.concha@state.nm.us
Location: DocuSign
Security Appliance Status: Connected
Pool: StateLocal
Storage Appliance Status: Connected
Pool: GSD
Location: DocuSign

Signer Events	Signature	Timestamp
Natalie Martinez natalie.martinez1@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)	NM Signature Adoption: Pre-selected Style Using IP Address: 207.155.55.132	Sent: 7/8/2022 3:47:23 PM Viewed: 7/8/2022 3:48:12 PM Signed: 7/8/2022 3:49:01 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Tami Concha tami.concha@state.nm.us Procurement Officer-A New Mexico General Services, State Purchasing Division Security Level: Email, Account Authentication (None)	TC Signature Adoption: Pre-selected Style Using IP Address: 174.56.109.88	Sent: 7/8/2022 3:49:03 PM Viewed: 7/8/2022 3:50:00 PM Signed: 7/8/2022 3:50:06 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Casi Finstad casi.finstad@wexinc.com Security Level: Email, Account Authentication (None)	CF Signature Adoption: Pre-selected Style Using IP Address: 163.116.133.118	Sent: 7/8/2022 3:50:07 PM Resent: 7/11/2022 11:36:10 AM Viewed: 7/11/2022 12:18:01 PM Signed: 7/11/2022 12:19:44 PM
Electronic Record and Signature Disclosure: Accepted: 7/8/2022 4:00:54 PM ID: 576411f7-3566-4a5f-ac88-68427f359c2e		
Jason Price jason.price@wexinc.com Security Level: Email, Account Authentication (None)	Jason Price Signature Adoption: Pre-selected Style Using IP Address: 4.1.4.226	Sent: 7/11/2022 12:19:46 PM Viewed: 7/11/2022 1:00:59 PM Signed: 7/11/2022 1:01:34 PM
Electronic Record and Signature Disclosure: Accepted: 7/11/2022 1:00:59 PM ID: ed994523-e666-40c3-95b1-99f080936494		

Signer Events	Signature	Timestamp
Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff	 Signature Adoption: Pre-selected Style Using IP Address: 75.161.227.238 Signed using mobile	Sent: 7/11/2022 1:01:35 PM Viewed: 7/11/2022 1:06:22 PM Signed: 7/11/2022 1:08:15 PM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/8/2022 3:47:23 PM
Certified Delivered	Security Checked	7/11/2022 1:06:22 PM
Signing Complete	Security Checked	7/11/2022 1:08:15 PM
Completed	Security Checked	7/11/2022 1:08:15 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a $1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: *GSD.SPDinfo@state.nm.us*

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a $1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to *GSD.SPDinfo@state.nm.us* and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:
https://support.docusign.com/guides/signer-guide-signing-system-requirements

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to "I agree to use electronic records and signatures," before you click "CONTINUE" within the DocuSign system.

By selecting the check-box next to "I agree to use electronic records and signatures," you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

24-041

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:**	October 16, 2023
Drafter:	Rocio Gamboa	**Department:**	Financial Services
Program:	Budget	**Line of Business:**	Fiscal Management

Title: **A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAS CRUCES (CITY) TO ACCEPT FIRST QUARTER BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023-24 BUDGET, AND THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP).**

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

PURPOSE(S) OF ACTION:
To request various budget adjustments for compliance and operational needs of the City.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
City staff will prepare budget adjustments for the fiscal year starting July 1, 2023 through June 30, 2024. Adjustments include funding for supplies, services, equipment, and projects to meet the demands of a growing community and to align budgets for effective and efficient City of Las Cruces operations.

The budget adjustment proposed within this Resolution will not deplete the City's 2/12ths reserve requirement for the General Fund.

SUPPORT INFORMATION:
Exhibit "A" - Fund Summary
Exhibit "B" - FY24-29 CIP
Attachment "A" - Budget Adjustment Summary

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

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

Funding Source(s):
Various

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

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 accept the budget adjustments as presented, and will adjust the City’s FY2024 budget and the FY2024 Capital Improvement Plan (CIP).
2. Vote “No”; this will not approve the Resolution nor accept the budget adjustments as presented, and will not adjust the City’s FY2024 budget and the FY2024 Capital Improvement Plan (CIP).
3. Vote to “Amend”; this will delay the process of spending the funds within the predetermined funding schedule and require direction to staff.
4. Vote to “Table”; this will impact the City’s ability to utilize funds and may impact programs and services.

REFERENCE INFORMATION:
Attachment "A" Budget Adjustment Summary

RESOLUTION 24-041

A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAS CRUCES (CITY) TO ACCEPT FIRST QUARTER BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023-24 BUDGET, AND THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP).

The City Council is informed that:

WHEREAS, City staff members have prepared a monthly budget adjustment for the fiscal year starting July 1, 2023 through June 30, 2024; and

WHEREAS, the monthly budget adjustment includes funding for supplies, services, equipment, and projects to meet the demands of a growing community and to align budgets for effective and efficient City of Las Cruces operations; and

WHEREAS, this adjustment will not deplete the General Fund 2/12ths reserve requirement.

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

(I)

THAT the FY2024 First Quarter budget adjustments as indicated in Exhibit "A", attached hereto and made a part of this Resolution, are hereby approved.

(II)

THAT the FY2024 CIP, is hereby amended as outlined in Exhibit "B", attached hereto and made a part of this Resolution, are hereby approved.

(III)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Tessa Abeyta

Seconded by: Becki Graham

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	1200 VEHICLE ACQUISITION 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 663,765	663,765	0	663,765
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**0**	**0**	**0**	**0**
TOTAL RESOURCES	**$ 663,765**	**663,765**	**0**	**663,765**
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	70,000	70,000
Las Cruces Police Department	1,384,916	1,525,498	0	1,525,498
Las Cruces Fire Department	39,239	39,293	106,000	145,293
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	62,000	0	62,000
Parks & Recreation	931,204	943,733	(13,000)	930,733
Community Development	94,254	94,254	70,000	164,254
Quality of Life	166,000	104,000	14,000	118,000
Public Works	730,000	730,000	(296,000)	434,000
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 3,345,613**	**3,498,778**	**(49,000)**	**3,449,778**
Other Resources				
Operating Transfers In	2,744,915	2,879,928	0	2,879,928
Operating Transfers Out	(44,915)	(44,915)	0	(44,915)
Total Other Resources	**$ 2,700,000**	**2,835,013**	**0**	**2,835,013**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 18,152**	**0**	**49,000**	**49,000**

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	0	14,721,028
State Grants	5,898,088	9,749,254	0.01	9,749,254
Local Grants	26,065	32,577	0	32,577
Debt Service	0	0	0	0
Total Revenues	**20,791,799**	**24,751,397**	**0**	**24,751,397**
TOTAL RESOURCES	**$ 21,490,295**	**25,449,893**	**0**	**25,449,893**
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	0	10,129,440
Legal	0	0	0	0
Las Cruces Police Department	2,707,818	2,841,077	0	2,841,077
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	412,656	(37,559)	375,097
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	9,793	384,334	0	384,334
Community Development	338,931	398,550	0	398,550
Quality of Life	1,769,141	1,907,090	0.01	1,907,090
Public Works	365,000	348,895	0	348,895
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 20,791,800**	**24,798,867**	**(37,559)**	**24,761,308**
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**	**651,026**	**37,559**	**688,585**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	2700 HEALTH CARE SERVICES MMC LEASE 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 5,608,324	5,608,324	0	5,608,324
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**0**	**0**	**0**	**0**
TOTAL RESOURCES	**$ 5,608,324**	**5,608,324**	**0**	**5,608,324**
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	3,414,204	3,414,204	(2,306,367)	1,107,837
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
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	117,000	64,918	0	64,918
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 3,531,204**	**3,479,122**	**(2,306,367)**	**1,172,755**
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	**$ 2,077,120**	**2,129,202**	**2,306,367**	**4,435,569**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	4031 2017 FACILITIES PROJECT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 514,972	514,972	0	514,972
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	15,000	15,000	0	15,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**15,000**	**15,000**	**0**	**15,000**
TOTAL RESOURCES	**$ 529,972**	**529,972**	**0**	**529,972**
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
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	332,476	332,476	31,015	363,491
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 332,476**	**332,476**	**31,015**	**363,491**
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	**$ 197,496**	**197,496**	**(31,015)**	**166,481**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	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	5,959,752	(491,927)	5,467,825
State Grants	12,716,645	12,352,945	(1,752)	12,351,193
Local Grants	851,264	861,264	0	861,264
Debt Service	0	0	0	0
Total Revenues	**20,676,047**	**19,173,961**	**(493,679)**	**18,680,282**
TOTAL RESOURCES	**$ 20,676,047**	**19,173,961**	**(493,679)**	**18,680,282**
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
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**	0	3,820,138
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	15,776,031	12,876,961	(492,965)	12,383,996
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 20,676,047**	**19,173,246**	**(492,965)**	**18,680,281**
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)**	**715**	**(714)**	**1**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	4106 PUBLIC PARK DEVELOPMENT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 6,915,110	6,915,110	0	6,915,110
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	1,600,000	1,600,000	0	1,600,000
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	60,000	60,000	0	60,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**1,660,000**	**1,660,000**	**0**	**1,660,000**
TOTAL RESOURCES	**$ 8,575,110**	**8,575,110**	**0**	**8,575,110**
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
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	3,462,463	3,367,743	1,552,000	4,919,743
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	**$ 3,462,463**	**3,367,743**	**1,552,000**	**4,919,743**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**0**	**0**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 5,112,647**	**5,207,367**	**(1,552,000)**	**3,655,367**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	4202 GRT STREET MAINTENANCE 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 10,903,812	10,903,812	0	10,903,812
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	300,000	300,000	0	300,000
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	60,000	60,000	0	60,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**360,000**	**360,000**	**0**	**360,000**
TOTAL RESOURCES	**$ 11,263,812**	**11,263,812**	**0**	**11,263,812**
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
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	17,724,253	17,724,253	19,348	17,743,601
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 17,724,253**	**17,724,253**	**19,348**	**17,743,601**
Other Resources				
Operating Transfers In	6,500,000	6,500,000	0	6,500,000
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 6,500,000**	**6,500,000**	**0**	**6,500,000**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 39,559**	**39,559**	**(19,348)**	**20,211**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	4230 GO BOND PROJECT 2019 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 3,960,289	3,960,289	0	3,960,289
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	200	200	0	200
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**200**	**200**	**0**	**200**
TOTAL RESOURCES	**$ 3,960,489**	**3,960,489**	**0**	**3,960,489**
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
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	3,674,758	0	29,199	29,199
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 3,674,758**	**0**	**29,199**	**29,199**
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	**$ 285,731**	**3,960,489**	**(29,199)**	**3,931,290**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	4270 TIDD PROJECTS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 2,959,022	2,959,022	0	2,959,022
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	1,550	1,550	0	1,550
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**1,550**	**1,550**	**0**	**1,550**
TOTAL RESOURCES	**$ 2,960,572**	**2,960,572**	**0**	**2,960,572**
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	7,314,397	7,314,397	0	7,314,397
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
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	1,201,104	1,184,803	16,300	1,201,103
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 8,515,501**	**8,499,200**	**16,300**	**8,515,500**
Other Resources				
Operating Transfers In	8,515,501	8,515,501	0	8,515,501
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 8,515,501**	**8,515,501**	**0**	**8,515,501**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 2,960,572**	**2,976,873**	**(16,300)**	**2,960,573**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	4620 2020A NMFA FACILITY PROJECTS 2023-24			
	Original Budget	**Amended Budget**	**Req. Adjustment**	**Adjusted Budget**
RESOURCES				
Beginning Balance	$ 7,918,614	7,918,614	0	7,918,614
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	15,000	15,000	0	15,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**15,000**	**15,000**	**0**	**15,000**
TOTAL RESOURCES	**$ 7,933,614**	**7,933,614**	**0**	**7,933,614**
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
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	500,001	500,001	0	500,001
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	7,256,300	6,920,810	(560,801)	6,360,009
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 7,756,301**	**7,420,811**	**(560,801)**	**6,860,010**
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	**$ 177,313**	**512,803**	**560,801**	**1,073,604**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	4634 2020 NMFA MGRT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 2,644,613	2,644,613	0	2,644,613
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	20,000	20,000	0	20,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**20,000**	**20,000**	**0**	**20,000**
TOTAL RESOURCES	**$ 2,664,613**	**2,664,613**	**0**	**2,664,613**
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
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	2,454,790	2,454,177	21,578	2,475,755
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 2,454,790**	**2,454,177**	**21,578**	**2,475,755**
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	**$ 209,823**	**210,436**	**(21,578)**	**188,858**

CITY OF LAS CRUCES

Exhibit "A"

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	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	0	0
State Grants	3,148,527	4,176,466	174,549	4,351,015
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**3,330,027**	**4,357,966**	**174,549**	**4,532,515**
TOTAL RESOURCES	**$ 4,239,390**	**5,267,329**	**174,549**	**5,441,878**
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	6,066,903	(54,081)	6,012,822
Human Resources	0	0	0	0
Financial Services	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**	**6,066,903**	**(54,081)**	**6,012,822**
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**	**213,426**	**228,630**	**442,056**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5100 UTILITIES SHARED SERVICES 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ (70,712)	(70,712)	0	(70,712)
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	18,046,169	18,046,169	178,450	18,224,619
Investment Income	13,996	13,996	0	13,996
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**18,060,165**	**18,060,165**	**178,450**	**18,238,615**
TOTAL RESOURCES	**$ 17,989,453**	**17,989,453**	**178,450**	**18,167,903**
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	15,651,805	15,959,392	34,000	15,993,392
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
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	1,657,561	1,698,506	0	1,698,506
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 17,309,366**	**17,657,898**	**34,000**	**17,691,898**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(285,000)	(285,000)	(27,000)	(312,000)
Total Other Resources	**$ (285,000)**	**(285,000)**	**(27,000)**	**(312,000)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 395,087**	**46,555**	**117,450**	**164,005**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5160 SHARED SVCS EQUIP REPL RESERVE 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 548,306	548,306	0	548,306
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	1,073	1,073	0	1,073
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**1,073**	**1,073**	**0**	**1,073**
TOTAL RESOURCES	**$ 549,379**	**549,379**	**0**	**549,379**
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	831,961	831,961	27,000	858,961
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
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	**$ 831,961**	**831,961**	**27,000**	**858,961**
Other Resources				
Operating Transfers In	285,000	285,000	27,000	312,000
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 285,000**	**285,000**	**27,000**	**312,000**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 2,418**	**2,418**	**0**	**2,418**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5200 GAS OPERATIONS 2023-24			
	Original Budget	**Amended Budget**	**Req. Adjustment**	**Adjusted Budget**
RESOURCES				
Beginning Balance	$ 2,211,961	2,211,961	0	2,211,961
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	574,691	574,691	0	574,691
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	13,309,082	13,309,082	0	13,309,082
Natural Gas Sales - Commodity	19,370,531	19,370,531	0	19,370,531
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	39,104	39,104	0	39,104
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**33,293,408**	**33,293,408**	**0**	**33,293,408**
TOTAL RESOURCES	**$ 35,505,369**	**35,505,369**	**0**	**35,505,369**
Expenditures				
General Government	5,015,030	5,015,030	0	5,015,030
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	29,458,741	29,475,239	469,566	29,944,805
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
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	**$ 34,473,771**	**34,490,269**	**469,566**	**34,959,835**
Other Resources				
Operating Transfers In	400,000	400,000	0	400,000
Operating Transfers Out	(557,383)	(557,383)	(40,000)	(597,383)
Total Other Resources	**$ (157,383)**	**(157,383)**	**(40,000)**	**(197,383)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 874,215**	**857,717**	**(509,566)**	**348,151**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5205 GAS CONTINGENCY FUND 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 393,653	393,653	0	393,653
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	5,000	5,000	0	5,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**5,000**	**5,000**	**0**	**5,000**
TOTAL RESOURCES	**$ 398,653**	**398,653**	**0**	**398,653**
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	100,000	0	100,000
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
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 0**	**100,000**	**0**	**100,000**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	(215,000)	(215,000)
Total Other Resources	**$ 0**	**0**	**(215,000)**	**(215,000)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 398,653**	**298,653**	**(215,000)**	**83,653**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5250 GAS CAPITAL IMPROVEMENTS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 2,350,129	2,350,129	0	2,350,129
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	8,451	8,451	0	8,451
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**8,451**	**8,451**	**0**	**8,451**
TOTAL RESOURCES	**$ 2,358,580**	**2,358,580**	**0**	**2,358,580**
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	2,276,963	2,276,963	214,990	2,491,953
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
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	**$ 2,276,963**	**2,276,963**	**214,990**	**2,491,953**
Other Resources				
Operating Transfers In	0	0	215,000	215,000
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**215,000**	**215,000**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 81,617**	**81,617**	**10**	**81,627**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5260 GAS EQUIPMENT REPLACE RESERVE 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 564,614	564,614	0	564,614
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	5,069	5,069	0	5,069
Miscellaneous Revenues	5,000	5,000	0	5,000
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**10,069**	**10,069**	**0**	**10,069**
TOTAL RESOURCES	**$ 574,683**	**574,683**	**0**	**574,683**
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	150,516	150,516	60,200	210,716
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
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	**$ 150,516**	**150,516**	**60,200**	**210,716**
Other Resources				
Operating Transfers In	0	0	40,000	40,000
Operating Transfers Out	(400,000)	(400,000)	0	(400,000)
Total Other Resources	**$ (400,000)**	**(400,000)**	**40,000**	**(360,000)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 24,167**	**24,167**	**(20,200)**	**3,967**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5300 WATER OPERATIONS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 1,710,776	1,710,776	0	1,710,776
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	289,930	289,930	0	289,930
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	20,582,502	20,582,502	0	20,582,502
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	60,000	60,000	0	60,000
Investment Income	5,790	5,790	0	5,790
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**20,938,222**	**20,938,222**	**0**	**20,938,222**
TOTAL RESOURCES	**$ 22,648,998**	**22,648,998**	**0**	**22,648,998**
Expenditures				
General Government	4,399,656	4,399,656	0	4,399,656
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	15,747,692	17,323,301	120,000	17,443,301
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
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	**$ 20,147,348**	**21,722,957**	**120,000**	**21,842,957**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(775,000)	(775,000)	0	(775,000)
Total Other Resources	**$ (775,000)**	**(775,000)**	**0**	**(775,000)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 1,726,650**	**151,041**	**(120,000)**	**31,041**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

5300	5305 WATER CONTINGENCY FUND 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 354,344	354,344	0	354,344
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	500	500	0	500
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**500**	**500**	**0**	**500**
TOTAL RESOURCES	**$ 354,844**	**354,844**	**0**	**354,844**
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	50,000	50,000	0	50,000
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
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	**$ 50,000**	**50,000**	**0**	**50,000**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(250,000)	(250,000)	(50,000)	(300,000)
Total Other Resources	**$ (250,000)**	**(250,000)**	**(50,000)**	**(300,000)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 54,844**	**54,844**	**(50,000)**	**4,844**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

5300	5350 WATER CAPITAL IMPROVEMENTS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 1,924,815	1,924,815	0	1,924,815
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	10,874	10,874	0	10,874
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	27,008	27,008	0	27,008
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**37,882**	**37,882**	**0**	**37,882**
TOTAL RESOURCES	**$ 1,962,697**	**1,962,697**	**0**	**1,962,697**
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	2,265,137	2,265,137	92,000	2,357,137
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
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	**$ 2,265,137**	**2,265,137**	**92,000**	**2,357,137**
Other Resources				
Operating Transfers In	350,000	350,000	50,000	400,000
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 350,000**	**350,000**	**50,000**	**400,000**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 47,560**	**47,560**	**(42,000)**	**5,560**

CITY OF LAS CRUCES

Exhibit "A"

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

5300	5395 WATER20A PROJECT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 1,954,006	1,954,006	0	1,954,006
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	50,000	50,000	50,000	100,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**50,000**	**50,000**	**50,000**	**100,000**
TOTAL RESOURCES	**$ 2,004,006**	**2,004,006**	**50,000**	**2,054,006**
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	1,878,849	1,878,849	50,000	1,928,849
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
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	**$ 1,878,849**	**1,878,849**	**50,000**	**1,928,849**
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	**$ 125,157**	**125,157**	**0**	**125,157**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5451 WW20B PROJECTS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 194,502	194,502	0	194,502
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	50,000	50,000	0	50,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**50,000**	**50,000**	**0**	**50,000**
TOTAL RESOURCES	**$ 244,502**	**244,502**	**0**	**244,502**
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	244,000	244,000
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
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 0**	**0**	**244,000**	**244,000**
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	**$ 244,502**	**244,502**	**(244,000)**	**502**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5450 WASTEWATER CAPITAL IMPROVEMENT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 2,931,197	2,931,197	0	2,931,197
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	2,214	2,214	0	2,214
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	1,756,438	1,756,438	(84,971)	1,671,467
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**1,758,652**	**1,758,652**	**(84,971)**	**1,673,681**
TOTAL RESOURCES	**$ 4,689,849**	**4,689,849**	**(84,971)**	**4,604,878**
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	4,107,847	4,107,846	484,248	4,592,094
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
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	**$ 4,107,847**	**4,107,846**	**484,248**	**4,592,094**
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	**$ 582,002**	**582,003**	**(569,219)**	**12,784**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5495 WW20A PROJECT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 61,023	61,023	0	61,023
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	10,000	10,000	15,000	25,000
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**10,000**	**10,000**	**15,000**	**25,000**
TOTAL RESOURCES	**$ 71,023**	**71,023**	**15,000**	**86,023**
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	85,500	85,500
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
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 0**	**0**	**85,500**	**85,500**
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	**$ 71,023**	**71,023**	**(70,500)**	**523**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5500 SOLID WASTE OPERATIONS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 1,409,697	1,409,697	0	1,409,697
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	233,400	233,400	0	233,400
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	17,237,737	17,237,737	0	17,237,737
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	2,231	2,231	0	2,231
Miscellaneous Revenues	5,000	5,000	0	5,000
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**17,478,368**	**17,478,368**	**0**	**17,478,368**
TOTAL RESOURCES	**$ 18,888,065**	**18,888,065**	**0**	**18,888,065**
Expenditures				
General Government	4,367,173	4,367,173	0	4,367,173
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	14,956,174	14,977,640	430,239	15,407,879
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
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	**$ 19,323,347**	**19,344,813**	**430,239**	**19,775,052**
Other Resources				
Operating Transfers In	557,383	557,383	400,000	957,383
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 557,383**	**557,383**	**400,000**	**957,383**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 122,101**	**100,635**	**(30,239)**	**70,396**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5505 SOLID WASTE CONTINGENCY FUND 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 986,628	986,628	0	986,628
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**0**	**0**	**0**	**0**
TOTAL RESOURCES	**$ 986,628**	**986,628**	**0**	**986,628**
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	150,000	150,000	0	150,000
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
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	**$ 150,000**	**150,000**	**0**	**150,000**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	(400,000)	(400,000)
Total Other Resources	**$ 0**	**0**	**(400,000)**	**(400,000)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 836,628**	**836,628**	**(400,000)**	**436,628**

Exhibit "A"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5920 TRANSIT OPERATING 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ (541,492)	(541,492)		(541,492)
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	767,000	767,000	0	767,000
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	12,115	0	12,115
Federal Grants	1,363,171	4,409,679	670,657	5,080,336
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**2,130,171**	**5,188,794**	**670,657**	**5,859,451**
TOTAL RESOURCES	**$ 1,588,679**	**4,647,302**	**670,657**	**5,317,959**
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	4,555,730	9,152,315	(830,672)	8,321,643
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	**$ 4,555,730**	**9,152,315**	**(830,672)**	**8,321,643**
Other Resources				
Operating Transfers In	3,991,355	3,991,355	0	3,991,355
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 3,991,355**	**3,991,355**	**0**	**3,991,355**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 1,024,304**	**(513,658)**	**1,501,329**	**987,671**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5923 TRANSIT CAPITAL 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 7,608,979	7,608,979	0	7,608,979
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	19,699,498	25,408,639	(364,066)	25,044,573
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**19,699,498**	**25,408,639**	**(364,066)**	**25,044,573**
TOTAL RESOURCES	**$ 27,308,477**	**33,017,618**	**(364,066)**	**32,653,552**
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	23,586,799	30,339,890	(3,528,083)	26,811,807
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	2,759,945	2,748,013	0	2,748,013
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 26,346,744**	**33,087,903**	**(3,528,083)**	**29,559,820**
Other Resources				
Operating Transfers In	870,618	870,618	0	870,618
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 870,618**	**870,618**	**0**	**870,618**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 1,832,351**	**800,333**	**3,164,017**	**3,964,350**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	7492 HIDTA-CLC 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	1,470,259	1,470,237	(147,123)	1,323,114
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**1,470,259**	**1,470,237**	**(147,123)**	**1,323,114**
TOTAL RESOURCES	**$ 1,470,259**	**1,470,237**	**(147,123)**	**1,323,114**
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
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
METRO	539,416	525,646	10	525,656
HIDTA	930,842	822,479	(25,021)	797,458
Total Expenditures	**$ 1,470,258**	**1,348,125**	**(25,011)**	**1,323,114**
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	**$ 1**	**122,112**	**(122,112)**	**0**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Exhibit A

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
ECONOMIC DEVELOPMENT							
Economic Development - Newly Funded Projects							
Downtown Video Security	100,000						**TIDD**
Economic Development - Total Newly Funded Projects	**$ 100,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Economic Development - Carryover Projects							
Downtown Plaza Shade Structures	643,400						**Taxes**
Downtown Callecitas Shade Structure	100,000	400,000					**TIDD**
Gateway Entry Points Improvements 1 - LCIIP Signage 2 - LCIIP Pocket Park 3 - Gateway Signage	250,000	230,000	25,000	25,000	25,000	25,000	**Bonds,** Grants, Taxes
Parking Lot 7 and Bathrooms	99,404						**TIDD**
Economic Development - Total Carryover Projects	**$ 1,092,804**	**$ 630,000**	**$ 25,000**	**$ 25,000**	**$ 25,000**	**$ 25,000**	
Economic Development - Annual Projects							
Downtown Parking Lots Renovation 1 - Parking Lot 9/10 2 - Parking Lot at Campo & Hadley	2,100,000	255,000	255,000	255,000	255,000	255,000	Grants, **TIDD**
Economic Development - Total Annual Projects	**$ 2,100,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	
Economic Development - Future Projects							
Rocket Drive Expansion		820,000	7,173,000				Grants, Taxes
Transit Loop Road		1,661,000	7,800,000	7,800,000			Grants, Taxes
Economic Development - Total Future Projects	**$ -**	**$ 2,481,000**	**$ 14,973,000**	**$ 7,800,000**	**$ -**	**$ -**	
Total Economic Development	**$ 3,292,804**	**$ 3,366,000**	**$ 15,253,000**	**$ 8,080,000**	**$ 280,000**	**$ 280,000**	
FACILITIES MANAGEMENT							
Facilities Management - Carryover Projects							
Energy Efficiency Program - IGA	1,948,383						**Bonds, Taxes**
Facility Parking Lot Program 1 - Munson Center 2 - Henry R Benavidez Community Center 3 - Train Depot	200,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
Gateway Entry Points Signage Maintenance	7,000	50,000	50,000	50,000	50,000	50,000	**Taxes**
Facilities Management - Total Carryover Projects	**$ 2,155,383**	**$ 300,000**	**$ 300,000**	**$ 300,000**	**$ 300,000**	**$ 300,000**	
Facilities Management - Annual Projects							
General Facilities Improvements 1 - Communication Office Construction 2 - Jardin de Esperanazas 3 - WIA Rehabilitation 4 - Arc Flash Plan 5 - City Hall Furnishings 6 - Surveillance Camera Upgrades 7 - Records Center Improvements 8 - Branigan Library Exterior Re-Stucco 9 - Frank O'Brien Papen Community Center 10 - City Hall Building Operations Storage	175,085	500,000	500,000	500,000	500,000	500,000	**Taxes**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Roof Replacement Program 1 - Police Department Main Building 2 - WIA Building 3 - Municipal Court 4 - Meerscheidt Rec Center 5 - Rio Grande Theater 6 - Museum of Fine Arts 7 - Branigan Cultural Center 8 - Railroad Museum 9 - Police Department Academy 10 - Roof Inspections	2,397,032	375,000	375,000	375,000	375,000	375,000	**Taxes, TIDD, Bonds**
Safety, Health, Environmental & Emergency 1 - City Hall Security Upgrades 2 - Parks Sidewalk Replacement 3 - Pool Hoist 4 - Fire Alarm & Security Upgrades 5 - Pigeon Abatement	28,448						**Taxes**
Facilities Management - Total Annual Projects	**$ 2,600,565**	**$ 875,000**	**$ 875,000**	**$ 875,000**	**$ 875,000**	**$ 875,000**	
Facilities Management - Future Projects							
HVAC Upgrade Program		200,000	200,000	200,000	200,000	200,000	Taxes
Generator Buffer Program Fire Stations		50,000	50,000	50,000	50,000	50,000	Taxes
Refuse & Recycling Buffer Program Henry R Benavidez Community Center		50,000	50,000	50,000	50,000	50,000	Taxes
Generator Replacement Program		35,000	35,000	35,000	35,000	35,000	Taxes
ADA Compliance		25,000	25,000	25,000	25,000	25,000	Taxes
Facilities Management - Total Future Projects	**$ -**	**$ 360,000**	**$ 360,000**	**$ 360,000**	**$ 360,000**	**$ 360,000**	
Total Facilities Management	**$ 4,755,948**	**$ 1,535,000**	**$ 1,535,000**	**$ 1,535,000**	**$ 1,535,000**	**$ 1,535,000**	
LAS CRUCES AIRPORT							
Las Cruces Airport - Carryover Projects							
LRU Airport Infrastructure Improvements	969,354						**Grants, Taxes, Other**
LRU Passenger Terminal	191,037		8,608,963				Grants, **Taxes, Other**
LRU Runway 8/26 Extension 1 - Environmental Assessment 2 - Design 3 - Construction	219,417				4,200,000	8,400,000	Grants, **Taxes, Other**
LRU Runway 12/30 Extension 1 - Environmental Assessment 2 - Design 3 - Construction	262,902				13,500,000		Grants, **Taxes, Other**
LRU Taxilane Improvements	130,982	170,000					Grants, **Taxes, Other**
Las Cruces Airport - Total Carryover Projects	**$ 1,773,692**	**$ 170,000**	**$ 8,608,963**	**$ -**	**$ 17,700,000**	**$ 8,400,000**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Las Cruces Airport - Annual Projects							
LRU Striping and Marking Maintenance Program	75,000	75,000	75,000	75,000	75,000	75,000	**Taxes, Other**
Las Cruces Airport - Total Annual Projects	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	
Las Cruces Airport - Future Projects							
LRU Utility Infrastructure Improvements		4,500,000					Bonds, Grants, Taxes, Other
LRU Commercial Hangar Design and Construct		2,800,000					Grants, Taxes, Other
LRU Maintenance Facility Design-Construct			650,000				Grants, Taxes, Other
2023 Legislative Appropriation		*1,050,000*					
LRU Airport Maintenance Equipment		850,000					Bonds, Grants, Taxes, Other
LRU Runway 4/22 Rehabilitation			1,605,000				Grants, Taxes, Other
2023 Legislative Appropriation		*595,000*					
LRU Airport Automated Weather Observation System (AWOS)		412,460					Grants
LRU Airport Rotating Beacon		170,520					Bonds, Grants, Taxes, Other
LRU Runways 8-26 and 12-30 Blast Pads		166,667					Grants
LRU Pavement Maintenance Program		125,000	125,000	125,000	125,000	125,000	Taxes, Other
LRU Passenger Air Service Infrastructure Revitalization			15,200,000				Grants, Taxes, Other
LRU Fuel Farm Relocation & Expansion			1,900,000				Grants, Taxes, Other
LRU ARFF Index B Equipment Upgrades			1,600,000				Grants, Taxes, Other
LRU Passenger Terminal Parking			1,200,000				Grants, Taxes, Other
LRU Airline Ground Support Equipment Facilities				750,000			Grants, Taxes, Other
LRU Taxilane Extensions				3,400,000			Grants, Taxes, Other
LRU Multi-Modal Public Passenger Transit Facility					2,500,000		Grants, Taxes, Other
LRU East Perimeter Road						11,200,000	Grants, Taxes, Other
LRU Apron West Hangar Rehabilitation						70,000	Grants, Taxes, Other
LRU Apron West Rehabilitation						70,000	Grants, Taxes, Other
Las Cruces Airport - Total Future Projects	**$ -**	**$ 10,669,647**	**$ 22,280,000**	**$ 4,275,000**	**$ 2,625,000**	**$ 11,465,000**	
Total Las Cruces Airport	**$ 1,848,692**	**$ 10,914,647**	**$ 30,963,963**	**$ 4,350,000**	**$ 20,400,000**	**$ 19,940,000**	
NON-PROFIT ORGANIZATIONS							
Non-Profit Organizations - Carryover Projects							
Arts and Cultural District Improvements	1,776,147						**Grants**
2023 Legislative Appropriation		*815,128*					
MV Community of Hope - Building 1, Solar Project	200,000			600,000			**Grants**
MV Community of Hope - Casa de Peregrinos Food Rescue Whse	651,942	1,847,000					**Grants, Other**
MV Community of Hope - Expansion Remodel	50,000						**Grants**
2023 Legislative Appropriation		*1,150,000*					
MV Community of Hope - Health Facility Improvements	1,853,922						**Grants**
Non-Profit Organizations - Total Carryover Projects	**$ 4,532,011**	**$ 3,812,128**	**$ -**	**$ 600,000**	**$ -**	**$ -**	
Non-Profit Organizations - Future Projects							
MV Community of Hope - Campus Extension		5,000,000					Grants
MV Community of Hope - Master Plan Implementation		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
Paseos Verdes		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
MV Community of Hope - Cocina de Peregrinos/El Caldito Kitchen			1,125,000	7,000,000	2,700,000		Grants
2023 Legislative Appropriation		*1,875,000*					
La Clinica de Familia - Behavioral Health Facility							Grants
2023 Legislative Appropriation		*922,349*					
Children's Museum Facility			100,000	400,000	5,500,000		Bonds, Grants
2023 Legislative Appropriation		*601,175*					
MV Community of Hope - Jardin de los Niños Re-Roof							Grants
2023 Legislative Appropriation		*250,000*					

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
MV Community of Hope - Flooring *2023 Legislative Appropriation*		*10,317*					Grants
MV Community of Hope - El Caldito Upgrade			150,000				Grants
MV Community of Hope - Patio to Office Remodel				1,000,000			Grants
MV Community of Hope - Jardin de los Niños Security Improvements				200,000			Grants
Non-Profit Organizations - Total Future Projects	**$ -**	**$ 12,658,841**	**$ 5,375,000**	**$ 12,600,000**	**$ 12,200,000**	**$ 4,000,000**	
Total Non-Profit Organizations	**$ 4,532,011**	**$ 16,470,969**	**$ 5,375,000**	**$ 13,200,000**	**$ 12,200,000**	**$ 4,000,000**	
PARKS & RECREATION							
Parks & Recreation - Carryover Projects							
A. Fielder Memorial Safe Haven Renovations	685,905						**Taxes**
Apodaca Park Aquatic Playground and Multi-Use Path	1,487,820						**PIF**
Ballfield/Soccer Field Renovations & Upgrades	820,236	834,600	144,000	3,200,000			**Grants**
Chandler Tank Park	1,082,035						**Bonds, Taxes**
Dona Ana Move Trail	690,000						**Grants, Taxes**
East Mesa Public Safety Area Park	100,000	100,000		100,000		100,000	Grants, **PIF**
Gallagher Park Improvements	149,189						**Taxes**
Highland Park	2,028,552	510,850					Grants,**PIF, Taxes**
JCP Learning Center Exterior Repairs	292,800						**Grants, Taxes**
Las Cruces Lateral RTP Trail	489,011						**Grants**
Las Cruces Regional Aquatic Center HVAC & Dehumidifier	75,000						**Taxes**
Meerscheidt Recreation Center - Remodel/Expansion	2,000,000						**Bonds,** Grants
Meerscheidt Recreation Center Improvements	186,169	145,831					Grants, **Taxes**
New Skate Park - Plan & Design	550,000	800,000					**Grants**
Parks Smart Controllers & Pumps	150,001						**Grants, Taxes**
Pioneer Women's Park Gazebo Improvements *2023 Legislative Appropriation*	175,699	*660,000*	600,000	600,000	600,000	600,000	**Grants**
Regional Rec & Aquatic Cntr - Ph II - Community Pool Construction	476,026						**Bonds, PIF, Taxes**
Skate Park Renovation & Improvements	1,070,000	836,500	1,650,000	500,000			**Grants, PIF**
Tortugas Trail	75,000						**Grants**
Wayfinding Signage	1,183						**Grants,** PIF
Parks & Recreation - Total Carryover Projects	**$ 12,584,626**	**$ 3,887,781**	**$ 2,394,000**	**$ 4,400,000**	**$ 600,000**	**$ 700,000**	
Parks & Recreation - Annual Projects							
Land Acquisition, Planning, and Design for Parks	100,000	500,000	500,000	500,000	500,000	500,000	**PIF**
Median Landscaping *2023 Legislative Appropriation*	239,477	*411,957*	200,000	200,000	200,000	200,000	**Grants**, Loans, Taxes
Metro Verde Neighborhood Parks	619,814	500,000	500,000	500,000	500,000	500,000	**PIF,** Grants
Neighborhood Parks	539,085	500,000	500,000	500,000	500,000	500,000	**PIF, Taxes**
Parks Parking Lots BMX Track Parking Lot & ADA Improvements Paz Ball Field Parking Lot Improvements Tony Gomez Park Parking Lot Improvements Veterans' Park Parking Lot Apodaca Park East Mesa Recreation Center Maag Ball Park Skate Park	2,465,881	907,500	252,500	272,700	272,700	272,700	**Bonds, Grants, Taxes**
Parks Shade Structures	24,000	24,000	24,000	24,000	24,000	24,000	**Taxes**
Parks & Recreation - Total Annual Projects	**$ 3,988,257**	**$ 2,843,457**	**$ 1,976,500**	**$ 1,996,700**	**$ 1,996,700**	**$ 1,996,700**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Parks & Recreation - Future Projects							
Multi-Use Recreation Center		60,000,000					Bonds, Grants
Various Park Restroom Replacement/Repairs & Upgrades		360,000					Grants
Parks and Recreational Facilities Structural Renovations			399,000	125,000			Grants, Taxes
2023 Legislative Appropriation		*286,000*					
Veterans' Memorial Park Enhancements			412,500	662,500	662,500	662,500	Bonds, Grants
2023 Legislative Appropriation		*250,000*					
Klein Park Improvements			590,000				Grants, Taxes
2023 Legislative Appropriation		*210,000*					
Indoor/Outdoor Aquatic Amenities		195,000					Grants, Taxes
East Mesa Bataan Memorial Pool - HVAC Replacement		78,000					Grants
Trail Renovations			480,000	500,000	500,000	500,000	Bonds, Grants
2023 Legislative Appropriation		*100,000*					
Albert Johnson Park Electrical Improvements		70,000					Grants, Taxes
Park Drinking Fountains			70,000				Grants, PIF, Taxes
2023 Legislative Appropriation		*14,000*					
Benavidez Park			500,000				Grants
Veterans' Memorial Park Restroom Plumbing Repairs and Upgrades			134,000				Grants, PIF
Valley View Park - Heske Garden Lighting Replacement			80,000				Grants, Taxes
Laabs Pool - HVAC Replacement			78,000				Grants, Taxes
Hadley Complex Recreation Rehabilitation			31,500	318,500			Grants, Taxes
Four Field Baseball/Softball Complex				5,995,500			Bonds, Grants, PIF
Laabs Pool - Shade Structures				97,500			Bonds, Grants, PIF
New Sand Volleyball Courts					40,000		Grants, PIF
Waterfalls Park						1,200,000	Grants, PIF
Parks & Recreation - Total Future Projects	**$ -**	**$ 61,563,000**	**$ 2,775,000**	**$ 7,699,000**	**$ 1,202,500**	**$ 2,362,500**	
Total Parks & Recreation	**$ 16,572,883**	**$ 68,294,238**	**$ 7,145,500**	**$ 14,095,700**	**$ 3,799,200**	**$ 5,059,200**	
PUBLIC SAFETY							
Public Safety - Newly Funded Projects							
Fire Station Alerting System	434,492						**Taxes**
Fire Department Training tower	99,000	120,000					Grants, **Taxes**
Public Safety - Total Newly Funded Projects	**$ 533,492**	**$ 120,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Public Safety - Carryover Projects							
Fire Dept. Administration Building Lobby Remodel	199,026	350,000	193,400				**Grants,** Other
Fire Department CIT and MIH Building	348,895	3,420,315					**ARPA**, Grants, Taxes, Other
Police Department Building Renovations	37,598	400,000					**Grants, Taxes**
Public Safety Regional Radio Communication System	468,000	500,000	25,000	25,000	25,000	25,000	**Grants, Taxes**
Public Safety - Total Carryover Projects	**$ 1,053,519**	**$ 4,670,315**	**$ 218,400**	**$ 25,000**	**$ 25,000**	**$ 25,000**	
Public Safety - Annual Projects							
Fire Department Equipment	330,000	720,000	500,000	500,000	500,000		**Grants**
Public Safety - Total Annual Projects	**$ 330,000**	**$ 720,000**	**$ 500,000**	**$ 500,000**	**$ 500,000**	**$ -**	
Public Safety - Future Projects							
Fire Department Station 9		5,165,000					Bonds, Grants, Taxes, Other
Police Department Mobile Operations Command Vehicle							Grants
2023 Legislative Appropriation		*750,000*					
Public Safety Vehicles - Bearcat							Grants
2023 Legislative Appropriation		*500,000*					
Public Safety Vehicles - Rook							Grants
2023 Legislative Appropriation		*500,000*					

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Police Department Equipment							Grants
Technology Equipment							
2023 Legislative Appropriation		*450,000*					
Police Parking Lot Resurfacing		276,000					Grants, Taxes
Fire Stations 4 & 5 Security Fencing and Gates		130,000					Grants, Taxes
Fire Station 2 Bay Remodel							Grants
2023 Legislative Appropriation		*100,000*					
Fire Station 5			214,000	230,000			Bonds, Grants, Taxes, Other
1 - North/South Aprons							
2 - Parking Lot							
3 - Improvements							
2023 Legislative Appropriation		*100,000*					
Fire Station 6 Repairs							Grants
2023 Legislative Appropriation		*100,000*					
Public Safety Vehicles - Critical Incident Command Vehicle		100,000					Grants
Fire Station 4 Restroom Remodel		90,000					Grants, Taxes, Other
Police North Parking Lot Fencing		20,000					Grants
Fire-Energy Efficiency and Sustainability				334,000	330,000	270,000	Grants
Fire Station 2 Replacement					5,165,000		Taxes, Grants
1 - Land Acquisition							
2 - Plan, Design, Construct, and FF&E							
3 - Demolition							
Downtown Public Safety Complex						57,000,000	Bonds, Grants
Police/Fire Training Facility - Design & Construct						6,900,000	Grants
Police/Fire Training Facility - Furniture, Fixtures, & Equipment						2,100,000	Grants
Public Safety - Total Future Projects	**$ -**	**$ 8,281,000**	**$ 214,000**	**$ 564,000**	**$ 5,495,000**	**$ 66,270,000**	
Total Public Safety	**$ 1,917,011**	**$ 13,791,315**	**$ 932,400**	**$ 1,089,000**	**$ 6,020,000**	**$ 66,295,000**	
PUBLIC WORKS							
Public Works - Newly Funded Projects							
Complete Streets	7,660,000	1,750,000	1,750,000	1,500,000	1,750,000	1,750,000	**Bonds**
University Ave. Complete Street Improvements							
El Paseo Rd.							
Idaho Ave							
Resiliency	3,000,000	1,250,000	1,250,000	1,000,000	1,250,000	1,250,000	**Bonds**
Public Works - Total Newly Funded Projects	**$ 10,660,000**	**$ 3,000,000**	**$ 3,000,000**	**$ 2,500,000**	**$ 3,000,000**	**$ 3,000,000**	
Public Works - Carryover Projects							
Amador Hotel	3,086,723	2,950,000	2,950,000	2,950,000			**Grants, TIDD**
Bellamah Drive - Lees Drive to Luna Street	2,676,899						**Bonds, Taxes**
Campo Street Design and Reconstruct	1,401,103	4,815,197					**TIDD,** Taxes
Hadley Ave.							
Organ Ave.							
Casa Linda Acres Reconstruction	3,634,760						**ARPA, Taxes**
Del Rey Blvd Signal Improvements	177,390						**Grants, Taxes**
East Mesa Recreation Complex	2,000,000						**Bonds**
East Mesa Recreation Complex Roads	567,698	637,906					**Bonds, Taxes**
East Mesa Roads and Drainage	1,617,088		900,000	500,000	500,000	500,000	**Grants, Taxes**
2023 Legislative Appropriation		*550,000*					
GO Bonds - ARPA Funding	2,506,687						**ARPA**
GO Bond 2022 - Fire Station 9	9,800,000						**Bond**
GO Bond 2022 - Parks Improvements	1,960,000						**Bond**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
GO Bond 2022 - East Mesa Recreation Facility	4,900,000						Bond
GO Bond Q1 - Park & Sport Field Improvements & Additions	45,517						GO Bonds, PIF
GO Bond Q2 - New Animal Shelter Facility	49,997						GO Bonds
GO Bond Q3 - New Fire Station No. 3 Building	29,164						GO Bonds
GO Bond Q4 - Walking, Jogging, Biking Trails Improvements & Additions	7,065						GO Bonds
Madrid Ave Extension - Martha Dr to N Triviz Dr	2,864,997	1,000,000					Grants, Taxes
Midway Ave - Gas Line Rd to Mesa Dr	600,000						Taxes, Grants
Picacho Ave HAWK System	238,652						Grants, Taxes
South Main St - Avenida de Mesilla to Boutz	3,308,139						Bonds
Storm Water System Mapping	100,000	100,000					Taxes
Traffic Signals Hoagland Rd & N Alameda Blvd Roadrunner Parkway & Sonora Springs Sonoma Ranch Blvd & Northrise	1,010,523						Bonds
Telshor ADA Improvements Phase VI	316,659						Grants, Taxes
Telshor Spruce Intersection Improvements *2023 Legislative Appropriation*	586,959	*250,000*	850,000				Grants
Voluntary Assessment District Phase I Sanitary Sewer Infrastructure Sonoma Ranch Blvd Mile 2: Peachtree to Arroyo Red Hawk Golf Rd: N.Bound Metro Verde S.P1E to Arroyo Rd Regional Drainage Phase 1	69,808						Bonds
Voluntary Assessment District Phase II Peachtree Hills Rd. East & West Regional Drainage Sonoma Ranch Blvd to Engler, Mile 1, Mile 2, Mile 3, & Roundabout Sonoma Ranch Blvd Landscaping to Engler, Mile 1, Mile 2, & Mile 3	3,196,542						Bonds
Villa Mora Dam Park Study	612,588						Grants, Taxes
Walnut-Madrid TAP Bike/Pedestrian Improvements	982,250						Bonds, Grants
Public Works - Total Carryover Projects	**$ 48,347,207**	**$ 10,303,103**	**$ 4,700,000**	**$ 3,450,000**	**$ 500,000**	**$ 500,000**	
Public Works - Annual Projects							
Active Transportation Bicycle Facilities Pedestrian Safety Improvements ADA Sidewalk Gap	5,115,779	350,000	350,000	350,000	350,000	350,000	Bonds, Taxes
Chip Seal Program	200,000	200,000	200,000	200,000	200,000	200,000	Taxes
CO-OP Match	80,000	80,000	80,000	80,000	80,000	80,000	Taxes
Drainage Infrastructure Improvements EBID Drains & Laterals Land Acquisition Other Improvements	3,068,122	500,000	500,000	500,000	500,000	500,000	Bonds, Taxes
Land Acquisition - Public Works Flood Control Rights of Way East Mesa Other	200,000	250,000	250,000	250,000	250,000	250,000	Taxes
M.A.P. Match	165,000	150,000	150,000	150,000	150,000	150,000	Taxes
Materials Testing	240,000	250,000	250,000	250,000	250,000	250,000	Taxes
Neighborhood Traffic Calming Program	60,000	60,000	60,000	60,000	60,000	60,000	Taxes
Pavement Condition Index Improvements Pavement Condition Index Improvements Pavement Overlays Pavement Replacement Pavement Treatment	10,238,981	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000	Bonds, Taxes

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Pavement Marking Program	169,000	500,000	250,000	500,000	250,000	500,000	Taxes
Roadway Maintenance Program	902,569	700,000	700,000	700,000	700,000	700,000	Taxes
Street Lighting & Traffic Signal Maintenance Program	1,096,291	500,000	500,000	500,000	500,000	500,000	Taxes
Traffic Signal Program Bataan Memorial at Rinconada	514,847	500,000	500,000	500,000	500,000	500,000	Taxes
Transportation System Modernization ITS	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	Taxes
Unpaved Roads	250,000	250,000	250,000	250,000	250,000	250,000	Taxes
Weed Control & Maintenance Program City Rights of Way Las Cruces Dam Ponds	95,000	100,000	100,000	100,000	100,000	100,000	Taxes
Public Works - Total Annual Projects	**$ 23,395,589**	**$ 11,690,000**	**$ 11,440,000**	**$ 11,690,000**	**$ 11,440,000**	**$ 11,690,000**	
Public Works - Future Projects							
HWY 70 and Elks/Triviz Intersection Improvements		25,000,000					Grants, Taxes
Melendres Ave - Hadley to Picacho		1,979,500					Loans, Taxes
Johnson St - Rouault Ave to Topley Dr		1,712,000					Loans, Taxes
Ethel Ave - Alameda Blvd to Miranda, and Houma		1,043,250					Loans, Taxes
Mesquite Historical District Renovations							Grants
2023 Legislative Appropriation		*1,025,000*					Grants
Lift Up Las Cruces - Street Improvements			600,000	600,000	600,000	600,000	Grants
2023 Legislative Appropriation		*595,000*					
University Ave. Complete Street Improvements-Design			480,000				Grants, Bonds, Taxes
2023 Legislative Appropriation		*520,000*					Loans, Taxes
Pittsburg Ave - Melendres to Cul de Sac		250,000					Loans, Taxes
Med Park Ave - Idaho to Perkins Ave			1,824,000				Loans, Taxes
Evelyn St - Madrid Ave to Ash Ave			1,710,000				Loans, Taxes
Sacramento St - Ash Ave to Oasis Ave			1,482,000				Loans, Taxes
Mountain Ave - Melendres St to Armijo St			1,368,000				Loans, Taxes
Armijo St - Picacho Ave to Parker Rd			684,000				Loans, Taxes
Sequoia Ave - Valley Dr to E.O.P.				2,420,000			Loans, Taxes
Lohman at Walnut and Walton Signal Improvements				1,500,000			Bonds, Loans, Taxes
Kilmer St - Spruce Ave to Ash Ave				1,391,000			Loans, Taxes
Armijo St - Organ Ave to Mountain Ave				1,331,000			Loans, Taxes
Poplar Ave - Mesquite St to Santa Fe St				871,200			Loans, Taxes
La Fonda Dr - Idaho Ave to E.O.P.				726,000			Loans, Taxes
6th Street - Hayner Ave to Hadley Ave				484,000			Loans, Taxes
South Valley Dr Reconstruction - Avenida de Mesilla to Boutz					3,379,200		Loans, Taxes
Miranda Ave - Picacho Ave to Court Ave					1,664,000		Loans, Taxes
Rigsby Rd - Barker to Valley Dr					768,000		Loans, Taxes
Scoggins Ave - 6th St to Sweet St					652,800		Loans, Taxes
Mountain Ave - Water St to Alameda Blvd					640,000		Loans, Taxes
Street Lighting Management System					500,000		Bonds, Loans, Taxes
Aspen Ave - Sequioa Ave to S Valley Dr						2,970,000	Loans, Taxes
Alameda Blvd - Amador Ave to Las Cruces Ave						1,409,400	Taxes, TIDD
Westgate St - Amador Ave to Cul de Sac						1,350,000	Loans, Taxes
Parkview Dr - Espina St to E.O.P.						972,000	Loans, Taxes
Sweet St - Hadley Ave to Hayner St						568,000	Loans, Taxes
Targeted Road and Lighting Improvements - Design						50,000	Taxes
West Mesa Fiber Optics Improvements - Design						50,000	Taxes
Public Works - Total Future Projects	**$ -**	**$ 32,124,750**	**$ 8,148,000**	**$ 9,323,200**	**$ 8,204,000**	**$ 7,969,400**	
Total Public Works	**$ 82,402,796**	**$ 57,117,853**	**$ 27,288,000**	**$ 26,963,200**	**$ 23,144,000**	**$ 23,159,400**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
QUALITY OF LIFE							
Quality of Life - Newly Funded Projects							
Museum System Technology Improvements	210,000						**TIDD**
Quality of Life - Total Newly Funded Projects	**$ 210,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Quality of Life - Carryover Projects							
Branigan Cultural Center Improvements	124,363	93,000	1,000,000	1,000,000	1,200,000		**Grants, Taxes**
2023 Legislative Appropriation		*165,000*					
Branigan Library - Expansion Phase II/Branch	64,364	2,615,000	1,650,000				Bonds, Grants, **Other**
Go Bond 2023 Public Art	340,000						**Bond**
Munson Center Renovations	885,952						**Grants**
2023 Legislative Appropriation		*2,302,399*					
Sage Café Expansion	902,525	3,083,180					**Grants**
Senior Programs Kitchen Equipment	52,409	150,000					**Taxes**
Quality of Life - Total Carryover Projects	**$ 2,369,613**	**$ 8,408,579**	**$ 2,650,000**	**$ 1,000,000**	**$ 1,200,000**	**$ -**	
Quality of Life - Annual Projects							
Public Art Program	108,506	300,000	300,000	300,000	300,000	300,000	**Taxes**
Quality of Life - Total Annual Projects	**$ 108,506**	**$ 300,000**	**$ 300,000**	**$ 300,000**	**$ 300,000**	**$ 300,000**	
Quality of Life - Future Projects							
Munson Center Floor		750,000					Bonds, Grants, Taxes
Sage Café Backup Generator		422,500					Bonds, Grants, Taxes
Senior Programs Vehicles		30,000	280,000	280,000			Grants
2023 Legislative Appropriation		*310,000*					
Senior Programs Existing Kitchen Expansion Assessment		260,000					Taxes
Munson Center Bathrooms		250,000					Bonds, Grants, Taxes
Munson Center Kitchen Expansion		221,000	3,053,100				Bonds, Grants, Taxes
Benavidez Kitchen Expansion			93,800	2,854,800			Bonds, Grants, Taxes
Museum System On-site Server		115,000					Bonds, Grants, Taxes
Museum of Nature and Science - Atrium Redesign			15,000				Grants, Taxes
2023 Legislative Appropriation		*50,000*					
Frank O'Brien Papen Center - Dining Room Floor			47,140				Grants, Taxes
2023 Legislative Appropriation		*35,000*					
Museum of Art Improvements		35,000	95,000	320,000	200,000		Bonds, Grants, Taxes
Museum of Art - Gallery Flooring		35,000	165,000				Bonds, Grants, Taxes
Museum of Nature and Science - Nature Center Redesign		25,000	75,000	175,000			Taxes, Grants
Railroad Museum Reinterpretation		25,000	60,000	150,000	75,000		Bonds, Grants, Taxes
Benavidez Center Renovations			38,900				Bonds, Grants, Taxes
2023 Legislative Appropriation		*127,500*					
Railroad Museum - Exterior Improvements			38,000	60,000	17,500		Bonds, Grants, Taxes
Branigan Library Renovation				209,000	2,750,000	1,111,000	Bonds, Grants, Taxes
Museum of Art Relocation/Remodel						30,000,000	Bonds, Grants, Taxes
Museums Collection Storage Facility						9,500,000	Grants, Taxes
Quality of Life - Total Future Projects	**$ -**	**$ 2,691,000**	**$ 3,960,940**	**$ 4,048,800**	**$ 3,042,500**	**$ 40,611,000**	
Total Quality of Life	**$ 2,688,119**	**$ 11,399,579**	**$ 6,910,940**	**$ 5,348,800**	**$ 4,542,500**	**$ 40,911,000**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/23

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
ROADRUNNER TRANSIT							
RoadRUNNER Transit - Carryover Projects							
Municipal Services Center - Transit	20,831,233	8,383,338					**ARPA, Bonds, Grants, Taxes**
RoadRUNNER Transit - Total Carryover Projects	**$ 20,831,233**	**$ 8,383,338**	**$ -**	**$ -**	**$ -**	**$ -**	
RoadRUNNER Transit - Annual Projects							
Transit Facilities Improvement Program	75,000	75,000	75,000	75,000	80,000	185,000	**Grants, Taxes**
RoadRUNNER Transit - Total Annual Projects	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 80,000**	**$ 185,000**	
Total RoadRUNNER Transit	**$ 20,906,233**	**$ 8,458,338**	**$ 75,000**	**$ 75,000**	**$ 80,000**	**$ 185,000**	
SUSTAINABILITY							
Sustainability - Carryover Projects							
Solar Energy Photo Voltaic Projects	214,152						**Taxes**
Fleet Electric Vehicle Chargers	376,000	-					Grants, Bonds, **Taxes**
Sustainability - Total Carryover Projects	**$ 590,152**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Sustainability - Future Projects							
DC Fast Chargers for Electric Vehicles		200,000	200,000				Grants, Bonds, Taxes
Public Electric Vehicle Chargers		200,000	200,000				Grants, Bonds, Taxes
Green Cool Corridors for Bicycles				174,000			Grants, Bonds, Taxes
LMI Housing Retrofits for Resiliency				1,270,000			Grants, Bonds, Taxes
Sustainability - Total Future Projects	**$ -**	**$ 400,000**	**$ 400,000**	**$ 1,444,000**	**$ -**	**$ -**	
Total Sustainability	**$ 590,152**	**$ 400,000**	**$ 400,000**	**$ 1,444,000**	**$ -**	**$ -**	
UTILITIES							
Utilities - Newly Funded Projects							
Wastewater SCADA	96,569	296,569	196,569	30,000	30,000	30,000	**Other**
Water Development	163,224	1,469,019					**WIF**
Utilities - Total Newly Funded Projects	**$ 259,793**	**$ 1,765,588**	**$ 196,569**	**$ 30,000**	**$ 30,000**	**$ 30,000**	
Utilities - Carryover Projects							
Wastewater Development	165,000						**WWIF**
Wastewater Septic Systems - NMED Grant	1,671,467	1,972,100	1,619,000				**Other,** Grant
Water Rehabilitation - NMFA	56,155						**Loans**
Water Utilities Bond Projects 2020A	1,928,849	4,939,151					**Bonds**
Utilities - Total Carryover Projects	**$ 3,821,471**	**$ 6,911,251**	**$ 1,619,000**	**$ -**	**$ -**	**$ -**	
Utilities - Annual Projects							
Gas Admin Building Improvements	468,323	475,000	125,000	125,000	125,000	125,000	**Other**
Fiberoptic Cable Replacement from Roundtree to JU							
Gas Development - Low & High Pressure	35,624	19,234,390	3,168,364	652,341	300,000	300,000	**Other**
Gas Rehabilitation - Low & High Pressure	110,000	2,403,244	2,543,189	460,000	250,000	250,000	**Other**
Gas Rehabilitation - Street Utility Rehabilitation	1,566,258	1,044,223					**Other**
Gas SCADA	236,748	236,748	236,748	50,000	50,000	50,000	**Other**
Solid Waste Building Improvements	1,088,572	405,000	125,000	125,000	125,000	125,000	**Other**
Fiberoptic Cable Replacement from Roundtree to JU							**Other**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 10/16/25

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Wastewater Building Improvements	175,000	1,031,000	75,000	75,000	75,000	75,000	**Other**
Fiberoptic Cable Replacement from Roundtree to JU							**Other**
Wastewater JHWWTF	69,219	727,835					**Other**
Wastewater Lift Station Renovations	50,000	100,000	50,000	100,000	50,000	100,000	**Other**
Wastewater Rehabilitation - East Mesa Water Reclamation Facility	598,309	486,985					**Other**
Wastewater Street Utility Rehabilitation	1,931,532	3,465,381	400,000		400,000		**Other**
Water Building Improvements	245,333	475,000	125,000	125,000	125,000	125,000	**Other**
Fiberoptic Cable Replacement from Roundtree to JU							**Other**
Water Rehabilitation - Line Extension	106,832	1,126,230					**Other**
Water Rehabilitation - Reservoir Rehabilitation	60,068	7,367,011	3,565,500				**Other**
Water Rehabilitation - Street Utility Rehabilitation	2,321,605	3,098,992	250,000	350,000	250,000	350,000	**Other**
Water SCADA	50,000	1,188,922	669,461	50,000	30,000	50,000	**Other**
Utilities - Total Annual Projects	**$ 9,113,423**	**$ 42,865,961**	**$ 11,333,262**	**$ 2,112,341**	**$ 1,780,000**	**$ 1,550,000**	
Utilities - Future Projects							
Water Transite Pipe ID and replace		5,000,000					Grants
Water Well Buildings		1,800,000					Other
Water Booster Station		1,006,771					Other
Water Pump Station Well Rehab		481,040	2,709,364				Other
Water Rehabilitation - Pump Station Rehabilitation		377,800	100,000	100,000	100,000	100,000	Other
Water Rehabilitation - Pump PRV		324,000					Other
Gas Rehabilitation - Regulator Stations		223,658	2,012,923				Other
Wastewater Jacob Hands Wastewater Treatment Facility		100,000	100,000	100,000	100,000	100,000	Other
Water NMFA Loan		100,000					Bonds
Wastewater East Mesa Water Reclamation		50,000	50,000	50,000	50,000	50,000	Other
Wastewater Development Lift Station Upgrades			100,000				WWIF
Utilities - Total Future Projects	**$ -**	**$ 9,463,269**	**$ 5,072,287**	**$ 250,000**	**$ 250,000**	**$ 250,000**	
Total Utilities	**$ 13,194,687**	**$ 61,006,069**	**$ 18,221,118**	**$ 2,392,341**	**$ 2,060,000**	**$ 1,830,000**	
VISIT LAS CRUCES							
Visit Las Cruces - Carryover Projects							
Convention Center FF&E	75,000	75,000	-	-	-	-	**Taxes**
Visit Las Cruces - Total Carryover Projects	**$ 75,000**	**$ 75,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Total Visit Las Cruces	**$ 75,000**	**$ 75,000**	**$ -**	**$ -**	**$ -**	**$ -**	
ALL DEPARTMENTS							
Total Newly Funded Projects	**$ 11,763,285**	**$ 4,885,588**	**$ 3,196,569**	**$ 2,530,000**	**$ 3,030,000**	**$ 3,030,000**	
Total Carryover Projects	**$ 99,226,712**	**$ 47,551,495**	**$ 20,515,363**	**$ 9,800,000**	**$ 20,350,000**	**$ 9,950,000**	
Total Annual Projects	**$ 41,786,340**	**$ 59,699,418**	**$ 26,829,762**	**$ 17,879,041**	**$ 17,301,700**	**$ 16,926,700**	
Total Future Projects	**$ -**	**$ 140,692,507**	**$ 63,558,227**	**$ 48,364,000**	**$ 33,379,000**	**$ 133,287,900**	
GRAND TOTAL	**$ 152,776,337**	**$ 252,829,008**	**$ 114,099,921**	**$ 78,573,041**	**$ 74,060,700**	**$ 163,194,600**	

Abbreviations and Notes:
Indicates a Change
Pending Legislative Appropriations noted in italic
Current funding sources noted in bold

ARPA - American Rescue Plan Act
Bonds - Includes Bonds and Loans
Grants - Includes Local, State, Federal, or private entity
Other - Includes Fees, State Entitlements, Leases, Developer Contributions, and Donations
PIF - Park Impact Fees
PSIF - Public Safety Impact Fees
TIDD - *Tax Increment Development District*
WIF - *Water Impact Fees*
WWIF - *Wastewater Impact Fees*

ATTACHMENT "A"

BUDGET ADJUSTMENT SUMMARY

FUND NO.	1200
FUND TITLE:	Vehicle Acquisition
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Legal
PROGRAM:	Claims Mgmt & Risk Mitigation
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$70,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Moving VAF budget to correct Department.	

FUND NO.	1200
FUND TITLE:	Vehicle Acquisition
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Fire
PROGRAM:	Operational Support
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$106,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Moving VAF budget to correct Department.	

ATTACHMENT "A"

FUND NO.	1200
FUND TITLE:	Vehicle Acquisition
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Parks & Recreation
PROGRAM:	Administration-P&R
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$(13,000)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Moving VAF budget to correct Department.	

FUND NO.	1200
FUND TITLE:	Vehicle Acquisition
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Community Development
PROGRAM:	Building Safety
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$70,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Moving VAF budget to correct Department.	

ATTACHMENT "A"

FUND NO.	1200
FUND TITLE:	Vehicle Acquisition
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Quality of Life
PROGRAM:	Administration - QOL
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$2,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Moving VAF budget to correct Department.	

FUND NO.	1200
FUND TITLE:	Vehicle Acquisition
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Quality of Life
PROGRAM:	Senior Nutrition
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$12,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Moving VAF budget to correct Department.	

ATTACHMENT "A"

FUND NO.	1200
FUND TITLE:	Vehicle Acquisition
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Street Management
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$(296,000)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Moving VAF budget to correct Department.	

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Expense and Revenue
DEPARTMENT:	Quality of Life
PROGRAM:	Senior Nutrition
REVENUE ADJ AMOUNT	$.01
EXPENDITURE ADJ AMOUNT	$.01
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To adjust Senior NM Grown grant projections to actuals.	

ATTACHMENT "A"

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Finance
PROGRAM:	Grants
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$(37,559.21)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To adjust ARPA-contract administration grant projections to actuals.	

FUND NO.	2700
FUND TITLE:	Health Care Services MMC Lease
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	City Manager
PROGRAM:	Housing Neighborhood Services
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$(2,306,367.48)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust budget projections to actuals for Horse and Hound food bank conversion.	

ATTACHMENT "A"

FUND NO.	4031
FUND TITLE:	2017 Facilities Project
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering And Surveying
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$31,015.02
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To increase budget for Regional Rec & Aquatic Center – Phase II.	

FUND NO.	4100
FUND TITLE:	Capital Projects Reimb Grants
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering And Surveying
REVENUE ADJ AMOUNT	$(493,679.37)
EXPENDITURE ADJ AMOUNT	$(492,964.53)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: Adjusting grant budget projections to actuals for Tap-NMDOT Walnut-Madrid, 2022 Amador Hotel Improvements II, and ARPA- GOB projects.	

ATTACHMENT "A"

FUND NO.	4106
FUND TITLE:	Public Park Development
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Parks & Recreation
PROGRAM:	Administration-P&R
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$1,552,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To increase budget for Chandler Tank and Highland Park for construction.	

FUND NO.	4202
FUND TITLE:	GRT Street Maintenance
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering And Surveying
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$19,347.55
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust grant projections to actuals for FY23 NMDOT Map Del Rey project.	

ATTACHMENT "A"

FUND NO.	4230
FUND TITLE:	GO Bond Project 2019
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering And Surveying
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$29,199
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To add $18,392 to pay the remaining amount owed for the art piece at ASCMV and $10,807 to pay for the remaining amount owed for the art piece at Fire Station No. 3.	

FUND NO.	4270
FUND TITLE:	TIDD Projects
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering and Surveying
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$16,300.19
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust budget projection to actuals for Campo Street design.	

ATTACHMENT "A"

FUND NO.	4620
FUND TITLE:	2020A NMFA FACILITY PROJECTS
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering & Surveying
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$(561,395.40)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust grant projections to actuals for ATP Sidewalk GAP and Transit Maintenance Facility	

FUND NO.	4620
FUND TITLE:	2020A NMFA FACILITY PROJECTS
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Traffic Management
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$594.19
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust grant projections to actuals for Traffic Signals.	

ATTACHMENT "A"

FUND NO.	4634
FUND TITLE:	2020 NMFA MGRT
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering And Surveying
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$21,578.06
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust budget projections to actuals for Flood Cycle, Street Cycle, and Tap – NMDOT Walnut-Madrid projects.	

FUND NO.	5010
FUND TITLE:	Airport
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Assistant City Manager's Office
PROGRAM:	Airport
REVENUE ADJ AMOUNT	$174,548.73
EXPENDITURE ADJ AMOUNT	$(54,081)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust grant projections to actuals for Airport Terminal and Airport Taxi Lanes.	

ATTACHMENT "A"

FUND NO.	5100
FUND TITLE:	Utilities Shared Services
TYPE OF ADJUSTMENT:	Revenue, Expense, Transfer
DEPARTMENT:	d
PROGRAM:	Regulatory & Compliance
REVENUE ADJ AMOUNT	$178,450
EXPENDITURE ADJ AMOUNT	$34,000
TRANSFER ADJ AMOUNT	$(27,000)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expenditures for WQL electricity and security guards. Increase revenues to acknowledge admin charges paid from funds 5301,5320,5401. Transfer to 5160 Shared Services Equipment Replacement Reserve fund to cover carryover and purchase of new vehicles.	

FUND NO.	5160
FUND TITLE:	Shared Svcs Equip Repl Reserve
TYPE OF ADJUSTMENT:	Expense & Transfer
DEPARTMENT:	Utilities
PROGRAM:	Locating And Mapping
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$27,000
TRANSFER ADJ AMOUNT	$27,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To carryover PO for Cooperative Educational Services for VAF_FY21_RPLC#32135_JU Gas L&&M F-550 and transfer from fund 5100 Utilities Shared Services to cover PO carryover & purchase of new vehicles.	

ATTACHMENT "A"

FUND NO.	5200
FUND TITLE:	Gas Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Energy Management
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$260,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses to cover funding for energy transition plan.	

FUND NO.	5200
FUND TITLE:	Gas Operations
TYPE OF ADJUSTMENT:	Expense & Transfer
DEPARTMENT:	Utilities
PROGRAM:	Natural Gas & Energy Admin
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$209,566
TRANSFER ADJ AMOUNT	$(40,000)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses for NMSU electrical utilities management program, LCU 2021 Masterplan, Jacobs Engineering Group. Transfer to fund 5260 Gas Equipment Replace Reserve for PO for Cooperative Educational Services VAP_31430_Ford F-250.	

ATTACHMENT "A"

FUND NO.	5205
FUND TITLE:	Gas Contingency Fund
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Utilities
PROGRAM:	Non-Section
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$
TRANSFER ADJ AMOUNT	$(215,000)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer To fund 5250 – Gas Capital Improvements for parking lot Amador and Motel Optic Fiber.	

FUND NO.	5250
FUND TITLE:	Gas Capital Improvements
TYPE OF ADJUSTMENT:	Transfer & Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$214,990
TRANSFER ADJ AMOUNT	$215,000
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: Increase in expenses to cover funding LCU parking lot Amador/Motel optic fiber. Transfer from fund 5205 – Gas Contingency for parking lot Amador and Motel Optic Fiber funds.	

ATTACHMENT "A"

FUND NO.	5260
FUND TITLE:	Gas Equipment Replace Reserve
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	NGE-Construct, Maint & Corrosion
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$60,200
TRANSFER ADJ AMOUNT	$40,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To carryover PO for Cooperative Educational Services VAP_31430_FORD F-250 and a transfer from 5200 Gas Operations fund to cover PO.	

FUND NO.	5300
FUND TITLE:	Water Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Water Administration
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$120,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase expense to fund masterplan project.	

ATTACHMENT "A"

FUND NO.	5305
FUND TITLE:	Water Contingency Fund
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Utilities
PROGRAM:	Water Administration
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$
TRANSFER ADJ AMOUNT	$(50,000)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer to fund 5350 -Water Capital Improvements to fund projects.	

FUND NO.	5350
FUND TITLE:	Water Capital Improvements
TYPE OF ADJUSTMENT:	Expense & Transfer
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$92,000
TRANSFER ADJ AMOUNT	$50,000
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: Increase in expenses to cover Estados Serenos line rehabilitation, Amador/Motel Fiber Optics, and S Parking Lot Rehab. Transfer from fund 5305 – Water Contingency fund to cover FY24 Projects.	

ATTACHMENT "A"

FUND NO.	5395
FUND TITLE:	Water20A Project
TYPE OF ADJUSTMENT:	Expense & Revenue
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	$50,000
EXPENDITURE ADJ AMOUNT	$50,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: Increase revenues to match actual income received. Increase in expenses to carryover incomplete projects.	

FUND NO.	5450
FUND TITLE:	Wastewater Capital Improvement
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	$(84,971)
EXPENDITURE ADJ AMOUNT	$484,248
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: Increase in expenses to cover Walnut/Madrid, JHWWTF UV disinfect, Midway, Bellamah, pavement replacements, Boutz force Main, East Mesa booster station, EMRC booster Stn, EMWRF UV disenf. Adjust grant projections to actuals for 2020 Septic System Replacement.	

ATTACHMENT "A"

FUND NO.	5451
FUND TITLE:	WW20B Projects
TYPE OF ADJUSTMENT:	Expenses
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$244,000
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase in expenses to fund JCI phase II project.	

FUND NO.	5495
FUND TITLE:	WW20A Projects
TYPE OF ADJUSTMENT:	Expenses
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	$15,000
EXPENDITURE ADJ AMOUNT	$85,500
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase revenue to match actual income received. Increase in expenses to fund JHWWTF Ultra Violet project.	

ATTACHMENT "A"

FUND NO.	5500
FUND TITLE:	Solid Waste Operations
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Utilities
PROGRAM:	Solid Waste Residential Collec
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$430,239
TRANSFER ADJ AMOUNT	$400,000
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: Increase in expenses to purchase magnetic container locks, Amador/Motel fiber optics, parking lot rehab, SWGW storage sheds. Transfer from 5505 Solid Waste Contingency fund to cover FY24 projects.	

FUND NO.	5505
FUND TITLE:	Solid Waste Contingency Fund
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Utilities
PROGRAM:	Non-Section
REVENUE ADJ AMOUNT	$
EXPENDITURE ADJ AMOUNT	$
TRANSFER ADJ AMOUNT	$(400,000)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Transfer to 5500 Solid Waste Operations to cover FY24 projects.	

ATTACHMENT "A"

FUND NO.	5920
FUND TITLE:	Transit Operating
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Assistant City Manager's Off
PROGRAM:	Fixed Route & Dial A Ride
REVENUE ADJ AMOUNT	$670,657
EXPENDITURE ADJ AMOUNT	$(830,672)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To adjust grant budget projections to actuals for FTA-ARPA FY2022 5307 Operating grant and Transit FFY22 FTA 5307 Operating. These two grants are closing.	

FUND NO.	5923
FUND TITLE:	Transit Capital
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Assistant City Manager's Off
PROGRAM:	Fixed Route
REVENUE ADJ AMOUNT	$(364,066.26)
EXPENDITURE ADJ AMOUNT	$(3,528,083.04)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	Yes
REASON FOR ADJUSTMENT: To adjust grant budget projections to actuals for Electric Bus FFY16 5339, Electric Bus FFY18 5307, Electric Bus FFY17 5307, Electric Bus FFY18 5339, Electric Bus FFY17 5339, Electric Bus FFY16 5339, Electric Bus FFY16 5307, and Transit Maintenance Facility.	

ATTACHMENT "A"

FUND NO.	7492
FUND TITLE:	HIDTA-CLC
TYPE OF ADJUSTMENT:	Transfer, Expense
DEPARTMENT:	HIDTA
PROGRAM:	Non-Subsection
REVENUE ADJ AMOUNT	$(147,123)
EXPENDITURE ADJ AMOUNT	$(25,011)
TRANSFER ADJ AMOUNT	$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: To bring grant projections to actuals for HIDTA 2022.	

24-042

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:**	October 16, 2023
Drafter:	Jan Lauterbach	**Department:**	City Manager's Office
Program:	Housing & Neighborhood Services	**Line of Business:**	Housing & Neighborhood Services

Title: **A RESOLUTION APPROVING A HOUSING TRUST FUND LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THOMAS DEVELOPMENT CO. AN IDAHO CORPORATION, AS DEVELOPER OF THE MULTI-FAMILY AFFORDABLE HOUSING PEDRENA APARTMENT COMPLEX AND AMEND THE CITY'S ADOPTED FY2024 BUDGET FOR $3,000,000.**

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

PURPOSE(S) OF ACTION:

Approve Housing Trust Fund Loan agreement and amend the FY24 budget.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Thomas Development Co (TDC) is the developer of the planned Pedrena Apartments, an 80-unit senior affordable housing apartment complex to be located at 801 E. Farney Lane. Pedrena Apartments LLC, a New Mexico limited liability company, will be the owner of the complex with Pedrena-TDC LLC, as a co-managing member along with Pedrena-Northwest Integrity Housing Co Associates (NIHC) LLC.

On December 19, 2022, City Council approved Resolution No. 23-077 committing to loan $3M to support the Pedrena apartments development (project) subject to the project being awarded Low Income Housing Tax Credits (LIHTC) from the New Mexico Mortgage Finance Authority (MFA). The project was awarded LIHTC funding from MFA and is expected to begin construction before end of year 2023. The allocation of City funding for affordable housing development is in compliance with the State of New Mexico Affordable Housing Act (The Act), the City's Affordable Housing Ordinance and support the goals and objectives of the City's adopted Affordable Housing Plan and other City planning documents.

With the award of funding, and in order to comply with regulatory requirements of the Act, a Housing Trust Fund Loan Agreement, along with a Mortgage and Security Agreement including a Note, and Restrictive Real Estate Covenants and shown in Exhibit's "A", "B", and "C" are required to be executed with City Council Approval, as indicated under the proposed Resolution.

A budget adjustment as shown in Exhibit "D" will allow the developer to request building permits and begin construction within the time frame set by MFA and meet LIHTC regulations.

SUPPORT INFORMATION:

Exhibit "A" City Housing Trust Fund Loan Agreement (Modrell approval as to form on p. 30)
Exhibit "B" City Mortgage and Security Agreement (with approval as to form on p. 8)
Exhibit "C" Restrictive Covenants Agreement 10.3.23 (with approval as to form on p. 5)
Exhibit "D" FY24 Fund Summary 2705

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

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
$3,000,000	$3,000,000	$3,000,000

Funding Source(s):
Telshor Facility Fund (2705) 20430051-721080-24271

Overall Budget Impact:
Res. 23-077 approved pre-commitment funding taken from the Telshor Facility Fund (2705), expenditures from this fund may be reclassified under Affordable Housing Fund (2013)

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

Does this action align with Elevate Las Cruces?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this action will approve the Resolution and approve the loan agreements between the City and Thomas Development Co/ Pedrena Apartments LLC including the applicable budget adjustment for Pedrena Apartments an affordable housing development.
2. Vote "No"; this action will not approve the Resolution and will not approve the funding agreements between the City and Thomas Development Co/ Pedrena Apartments LLC including the applicable budget adjustment for Pedrena Apartments an affordable housing development.
3. Vote to "Amend"; this could delay the Resolution and would require further direction from City Council.
4. Vote to "Table"; this could delay the start of construction on the project and LIHTC violates project regulations.

REFERENCE INFORMATION:
1. Resolution 23-077

RESOLUTION 24-042

A RESOLUTION APPROVING A HOUSING TRUST FUND LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THOMAS DEVELOPMENT CO. AN IDAHO CORPORATION, AS DEVELOPER OF THE MULTI-FAMILY AFFORDABLE HOUSING PEDRENA APARTMENT COMPLEX AND AMEND THE CITY'S ADOPTED FY2024 BUDGET FOR $3,000,000.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) is subject to the State of New Mexico Affordable Housing Act (Act) which identifies specific requirements to ensure governmental entities can assist with land, building, infrastructure, and financing of affordable housing projects; and

WHEREAS, the City desires to assist Low Income Housing Tax Credit (LIHTC) applicants in submitting highly competitive applications to the New Mexico Mortgage Finance Authority (MFA) which can be supported with cash, land, buildings, or fee waivers from local governments; and

WHEREAS, the allocations of City funding for affordable housing development are in compliance with the Act, the City's Affordable Housing Ordinance and support the goals and objectives of the City's adopted Affordable Housing Plan; and

WHEREAS, City Council approved Resolution #23-077 allocating $3M in funding from the Telshor Facility Fund to subsidize the development of the Pedrena Apartments LIHTC project; and

WHEREAS, in order to comply with regulatory requirements of the Act, a Housing Trust Fund Loan Agreement between the City and Thomas Development Co / Pedrena Apartments LLC as shown in Exhibit "A" is required to be executed; and

WHEREAS, in order to comply with regulatory requirement of the Act, the Mortgage and Security Agreement, including the note between the City and Thomas Development Co/ Pedrena Apartments LLC, and shown in Exhibit "B" is required to be executed; and

WHEREAS, in order to comply with regulatory requirement of the Act, the Restrictive Real Estate Covenants Agreement, including the note between the City and Thomas Development Co/ Pedrena Apartments LLC, and shown in Exhibit "C" is required to be executed; and

WHEREAS, the City hereby amends the FY2024 City Budget as shown in the Fund Summary, Exhibit “D”, the budget adjustment will allow for the developer to request building permits and begin construction within the timeframe set by MFA and meet LIHTC regulations.

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

(I)

THAT the Housing Trust Fund Loan Agreement between the City and Thomas Development Co / Pedrena Apartments LLC, as shown in Exhibit "A" is hereby approved for execution.

(II)

THAT the Mortgage and Security Agreement between the City and Thomas Development Co / Pedrena Apartments LLC, as shown in Exhibit "B" is hereby approved for execution.

(III)

THAT the Restrictive Real Agreement between the City and Thomas Development Co / Pedrena Apartments LLC, as shown in Exhibit "C" is hereby approved for execution.

(IV)

THAT the City hereby amends the FY2024 City Budget as shown in the Fund Summary, Exhibit “D”, attached hereto and made part of this Resolution.

(V)

THAT the City Manager as the official representative of the City is hereby authorized to execute the Housing Trust Fund Loan Agreement, approve the Mortgage and Security Agreement, and the Restrictive Real Estate Covenants Agreement on the City's behalf.

(VI)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Tessa Abeyta

Seconded by: Becki Graham

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

EXHIBIT "A"
Modrall Sperling 9.15.23

CITY OF LAS CRUCES

HOUSING TRUST FUND LOAN AGREEMENT

PEDRENA APARTMENTS LLC

This Housing Trust Fund Loan Agreement ("Loan Agreement") is entered into as of _____ , 2023 by and between the **City of Las Cruces**, a New Mexico municipal corporation (the "City" or "Lender") with a principal address of 700 N. Main St., Las Cruces NM 88001, and **Pedrena Apartments LLC ("Pedrena"),** a New Mexico limited liability company ("Borrower") with a principal address of, with reference to the following facts:

A. Borrower is acquiring certain real property located at 801 E. Farney, in the City of Las Cruces, State of New Mexico, as more particularly described in Attachment "A", attached hereto and made a part hereof (the "Property"). The Property is vacant and the Borrower desires to construct the improvements located on the Property in order to construct new affordable housing for low to extremely-low income households, to include eighty (80) restricted units.

B. Borrower wishes to borrow from the City and the City wishes to extend to Borrower a loan of Three Million Dollars ($3,000,000) in Local Housing Trust Fund ("Trust Fund") Loan Funds to assist in the construction of the Development. The Loan will be evidenced by a promissory note executed by Borrower in favor of City and secured by a Mortgage and Security Agreement and Restrictive Real Estate Covenants.

C. The Loan is being made to finance construction costs associated with the Development in order to help achieve financial feasibility for the Development and to increase the supply of affordable rental housing in the City of Las Cruces.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND ATTACHMENTS

Section 1.1 Definitions

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Affordability Period" shall mean the 20 years from the date City of Las Cruces issues a final certificate of occupancy that the property shall be designated as affordable housing for extremely low and low-income households.

(b) "Agreement" shall mean this City of Las Cruces Housing Trust Fund Loan Agreement.

(c) "Approved Development Budget" shall mean the pro forma development budget, including sources and uses of funds, as approved by the City, and attached hereto and incorporated herein as Attachment "B".

(d) "Approved Financing" shall be limited to the following funds acquired by the Borrower and approved by the City for the purposes of financing the Development, in addition to the City Loan:

i. "First Mortgage Loan" means the Cedar Rapids Bank and Trust (CRBT) permanent loan which will constitute the permanent first mortgage financing for the Apartment Complex in the anticipated principal amount of $4,671,000 to be made or deemed made to the Borrower by CRBT at the Final Closing, and which is to be secured by the First Leasehold Mortgage, Assignment of Rents and Security Agreement, and/or a SWAP First Leasehold Mortgage, Assignment of Rents and Security Agreement (both or either, as applicable, the "First Mortgage") and other related security documents and financing statements.

ii. "Second Mortgage Loan" means the City of Las Cruces Residual Receipts Second Leasehold Mortgage Loan which will constitute the permanent second mortgage financing for the Apartment Complex in the anticipated principal amount of $3,000,000 to be made to the Borrower pursuant to this Affordable Housing Trust Fund Loan Agreement at Initial Closing, and which is to be secured by the Second Leasehold Mortgage and Security Agreement (the "Second Mortgage") and other related security documents and financing statements.

iii. "Third Mortgage Loan" means the SLFRF Leasehold Mortgage Loan to be made by the New Mexico Mortgage Finance Authority ("MFA") in the anticipated amount of $2,000,000 to the Borrower at the Initial Closing, and which is to be secured by the Third Leasehold Mortgage, Assignment of Rents and Security Agreement (the "Third Mortgage") and other related security documents and financing statements.

iv. "Fourth Mortgage Loan" means the National Housing Trust Fund Leasehold Mortgage Loan in the anticipated principal amount of $1,500,000 to be made by MFA to the Borrower at the Initial Closing, and which is to be secured by the Fourth Leasehold Mortgage, Assignment of Rents and Security Agreement (the "Fourth Mortgage") and other related security documents and financing statements.

v. "Fifth Mortgage Loan" means the New Mexico Housing Trust Fund Leasehold Mortgage Loan in the anticipated principal amount of $1,000,000 to be made by MFA to the Borrower at the Initial Closing, and which is to be secured by the Fifth Leasehold Mortgage (the "Fifth Mortgage") and other related security documents and financing statements.

vi. "Sixth Mortgage Loan" means the HOME Leasehold Mortgage Loan in the anticipated principal amount of $800,000 to be made by MFA to the Borrower at the Initial Closing, and which is to be secured by the Sixth Leasehold Mortgage (the "Sixth Mortgage") and other related security documents and financing statements.

vii. "Seventh Mortgage Loan" means the HOME Leasehold Mortgage Loan in the anticipated principal amount of $200,000 to be made by the City of Las Cruces to the Borrower at the Initial Closing, and which is to secured by a seventh leasehold mortgage (the "Seventh Mortgage") and other related security documents and financing statements.

viii. "Eighth Mortgage Loan" means the CDBG Leasehold Mortgage Loan in the anticipated principal amount of $100,000 to be made by the City of Las Cruces to the Borrower at the Initial Closing, and which is to secured by an eighth leasehold mortgage (the "Eighth Mortgage") and other related security documents and financing statements.

(e) "City" shall have the same meaning set forth in the first paragraph of this Agreement.

(f) "Residual Receipts" means in a particular calendar year the amount by which Gross Revenue exceeds Annual Operating Expenses.

(g) "Default" shall have the meaning set forth in Section 6.1 hereof.

(h) "Default Rate" shall have the meaning set forth in Section 6.2(c).

(i) "Development" shall mean the Property and eighty sixty-nine (80) multi-family apartment units, and attendant site improvements.

(j) "Hazardous Materials" shall have the meaning set forth in Section 4.5.

(k) "Hazardous Materials Claim" shall have the meaning set forth in Section 4.5

(l) "Hazardous Materials Law" shall have the meaning set forth in Section 4.5

(m)"Lender" means collectively, (i) CRBT in its capacity as the maker of the First Mortgage Loan (ii) the City of Las Cruces in its capacity as the maker of the Second Mortgage Loan; (iii) New Mexico Mortgage Finance Authority in its capacity as the maker of the Third Mortgage Loan; (iv) New Mexico Mortgage Finance Authority in its capacity as the maker of the Fourth Mortgage Loan; (v) New Mexico Mortgage Finance Authority in its capacity as the maker of the Fifth Mortgage Loan; (vi) New Mexico Mortgage Finance Authority in its capacity as the maker of the Sixth Mortgage Loan; (vii) the City of Las Cruces in its capacity as the maker of the Seventh Mortgage Loan; (vii) the City of Las Cruces in its capacity as the maker of the Eighth Mortgage Loan; and (viii) any of their successors(s) and assign(s) in such capacities.

(n) "Loan" or "Second Mortgage Loan" shall mean the City residual receipts loan to the Borrower pursuant to this Agreement in the total principal amount of Three Million Dollars ($3,000,000)

(o) "Loan Documents" shall mean this Agreement, the Mortgage and Security Agreement and Note, and the Restrictive Real Estate Covenants agreement.

(p) "Mortgage and Security Agreement" shall mean the Mortgage and Security Agreement dated _____, 2023, between the borrower and the City that will encumber the Note development to secure repayment of the Loan and performance of covenants of the Loan Documents. The "Restrictive Real Estate Covenants Agreement dated _____2023, shall be provided by the City and recorded against the property.

(q) "Note" shall mean the promissory note dated _____, 2023, between the Borrower and the City evidencing Borrower's obligation to repay the Loan. The form of the Note shall be provided by the City.

(r) "Parties" shall mean the City and the Borrower.

(s) "Property" shall have the same meaning set forth in paragraph A of the Recitals.

(t) "Restricted Units" shall mean the Eighty (80) units whose occupancy and rental charges are restricted pursuant to the Approved Financing and Loan Documents.

(u) "Retention Amount" shall mean the One Hundred Thousand Dollars ($100,000) of Loan funds set forth in Section 2.7 hereof.

(v) "Term" shall have the meaning set forth in Section 2.8(a) hereof.

(w) "Transfer" shall have the meaning set forth in Section 4.11 hereof.

(x) "Unit" means any one (1) of the eighty (80) apartment units to be constructed on the Property.

Section 1.2 Attachments

The following exhibits are attached to this Agreement and incorporated into this Agreement by reference:

ATTACHMENT A: Legal Description of the Property

ATTACHMENT B: Approved Development Budget

ATTACHMENT C: Subordination Agreement

ARTICLE 2 LOAN PROVISIONS.

Section 2.1 Loan.

The City shall loan to the Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. The obligation to repay the Loan shall be evidenced by the Note in the form provided by the County.

Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2 (b) hereof, the outstanding principal balance of the Loan funds shall accrue simple interest at the rate of Three percent (3 %) per annum, commencing on the date of disbursement.

(b) In the event of a default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan is repaid in full or the Default is cured, at the default rate of twelve percent (12%), compounded annually.

Section 2.3 Use of Loan Funds.

(a) The Borrower shall use the Loan funds to fund development soft costs consisting of architecture, engineering and legal expenses, and hard construction costs of the property consistent with the Approved Development Budget and the Scope of Work.

(b) The Borrower shall not use the Loan for any other purposes without the prior written consent of the City

Section 2.4 Security.

(a) Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement and recording them as a lien against the Property.

Section 2.5 Subordination

The Mortgage and Security agreement and Restrictive Real Estate Covenants agreement may be subordinated to other Approved Financing (in each case, a "Senior Loan" made by a "Senior Lender"), but only on condition that all following conditions are satisfied:

(a) All proceeds of the proposed Senior Loan(s), less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Development.

(b) The proposed Senior Lender must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(c) Borrower must demonstrate to the City's reasonable satisfaction that subordination of the Mortgage and Security Agreement and the Restrictive Real Estate Covenants agreement is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the city, in addition to any other information reasonably required by the city, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate construction and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(d) The subordination agreement(s)on, must be structured to minimize the risk that the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder(s) of Senior Loan(s). To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by Borrower, including: (i) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii)

providing the City with a cure period of at least sixty (60) days to cure any default. The City shall have the right to determine, in its sole and reasonable discretion, whether the provisions of this subparagraph are satisfied.

(e) The subordination(s) described in this section may be effective only during the original term of the Senior Loan(s) and any extension of its term approved in writing by the City.

(f) No subordination may limit the effect of the Mortgage and Security Instrument agreement and Restrictive Real Estate Covenants agreement before a foreclosure, nor require consent of any Senior Lender.

(g) Upon determination by the City's City Manager that the conditions in this Section have been satisfied, the City Manager or their designee will be authorized to execute the approved subordination agreement as shown in Attachment "C", without the necessity of any further action or approval.

(h) In the event there is a foreclosure of the Property, the Restrictive Covenants shall be revived according to their original terms if, during the term of the original Mortgage and Security agreement, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtained an ownership interest in the Development or Property.

Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

The maximum amount of funds to be disbursed pursuant to this Section shall not exceed the amount of the Loan less the Retention Amount. The City shall not be obligated to make any disbursements of Loan funds for construction of the Development or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each disbursement of Loan funds:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under Article 6 of this Agreement;

(b) The Borrower holds title to the Property or is acquiring title simultaneously with the disbursement of the Loan proceeds;

(c) The Borrower has furnished the City with evidence of the insurance coverage meeting the requirements of this Agreement;

(d) Borrower has caused to be executed and delivered to the City all Loan Documents and any other instruments, and policies required under the Loan Documents;

(e) The Mortgage and Security agreement and Restrictive Real Estate Covenants agreement has been recorded against the Property in the County Clerk of Doña Ana County;

(f) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of title insurance insuring the priority of the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to

the City, and containing such endorsements as the City may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety that is reasonably required by the title company in order for the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement to have lien priority over any mechanics liens in connection with any early start of construction;

(g) The City has received and approved all applicable environmental reviews under local, State, and the National Environmental Policy Act ("NEPA"), as necessary, and the application for the construction of the Development, and Borrower has provided the city evidence of compliance with all applicable environmental requirements;

(h) The City has determined that the undisbursed proceeds of the Loan, together with the funds or firm commitments for funds that the Borrower has obtained in connection with the Development, are not less than the amount that is necessary to pay for construction of the Development and to satisfy all of the covenants contained in this Agreement and the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement;

(i) Borrower has obtained all permits and approvals necessary for the construction of the Development, as required by Section 3.1 hereof, and the City has received a copy of the building permits required to construct the Development (required for disbursements for construction costs only);

(j) The City has received and approved the final plans and specifications for the Development, as required pursuant to Section 3.2 hereof;

(k) The City has received and approved the general contractor's construction contract that the Borrower has entered into or proposed to enter into for construction of the Development as required pursuant to Section 3.3 hereof;

(l) The City has receive copies of labor and material (payment) bonds and performance bonds as required pursuant to Section 3.4 hereof;

(m) Borrower has closed all Approved Financing described in Section 1.1 (d)(i) through (iii) hereof and is eligible to receive proceeds thereof;

(n) Borrower has obtained a commitment letter from a tax credit equity investor, in form, substance, and amount consistent with the Approved Development Budget, and acceptable to and approved by the City in its reasonable exercise of discretion;

(o) The City has received a written draw request from the Borrower, including certification that the condition set forth in Section 2.6(a) hereof continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, the amount of funds needed, and where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested for payment of any contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification by the Borrower's architect reasonably acceptable to the City that the work for which

disbursement is requested has been completed (although the City reserves the right to inspect the Property and make an independent evaluation); and (ii) lien release and/or mechanics lien title insurance endorsements reasonably acceptable to the City.

Section 2.7 Conditions Precedent to Disbursement of Retention Amount.

The City shall not be obligated to disburse the Retention Amount unless the following conditions precedent are satisfied:

(a) The City has received a completion report from the Borrower setting forth (i) the income, household size, and ethnicity of tenants of the Development, (ii) the Unit size, rent amount and utility allowance for all Units in the Development, and (iii) designation of the accessible and/or adaptable Units in the Development.

(b) The City has received a cost certification for the Development from the Borrower showing all sources and uses of funds.

(c) The City has received from the Borrower copies of the final certificate of occupancy for the Development.

(d) The City has received for the Borrower current evidence of the insurance coverage meeting the requirements of Section 4.12 hereof.

(d) The City has received from Borrower a form of lease and marketing plan for the Development.

(e) The City has received from Borrower a final management plan for the Development and contact information for the property manager of the Development and the name and phone number of the on-site property manager.

(f) If the Borrower was required to comply with relocation requirements, the City has received from the Borrower evidence of compliance with all applicable relocation requirements.

(g) If, as result of the City's funding, the Borrower was required to pay prevailing wages under the Davis- Bacon Act (40 USC 3141-3148), the City has received from Borrower a written certification from the Borrower that they are in compliance with all certified payrolls, and any identified payment issues have been resolved, or the Borrower is working diligently to resolve any such issues. The City reserves the right to confirm with MFA the status of prevailing wage compliance throughout duration of construction.

(h) The City has received a written draw request from the Borrower, including certification that the conditions set forth in this Agreement and continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

(i) Borrower shall apply the disbursement for the purpose(s) requested.

Section 2.8 Repayment Schedule.

The Loan shall be repaid as follows:

(a) Term and Affordability Period. The Loan and this Agreement shall have a term and affordability period (the "Term") that expires on the date 20 years from the date City of Las Cruces issues a final certificate of occupancy, for the Development as set forth in the Certificate Notice, but in any event no later than June 30, 2045.

(b) Amount and Time of Payments. The loan will bear 3% interest per annum and be subject to annual repayment to Lender during the Affordability Period, as defined in Section 1.1 (a) of this Loan Agreement, or the greater of the (i) 42.85% of any positive annual Net Cash Flow as defined in Borrower's operating agreement after payments of items 11.01 (b)(i) through (vi) of the Partnership Agreement, as determined and certified by the independent accounting firm preparing borrower's annual audited financial statements: or (ii) $500.00 per year. Any repayment required by this paragraph shall be due within 180 days after the close of the Development's fiscal year. Any and all amounts or principal and interest outstanding upon the maturity of the Loan shall be then due and payable.

Notwithstanding Borrower's requirement to pay principal and interest as otherwise set forth in this Loan Agreement, Lender shall forgive the obligations of Borrower to repay the remaining principal of the Loan, plus accumulated interest, and any other amounts owed to the Lender under the Loan at the Maturity Date, provided no Default or Event of Default specified in any of the Loan Documents shall have occurred and be continuing on such date.

(c) Payment in Full. All principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the City, (ii) the date of any Default, and (iii) the expiration date of the Term.

(d) Prepayment. The Borrower shall have the right to prepay the Loan at any time without premium or penalty. However, the Agreement shall remain in effect for the entire Loan Term and the Regulatory Agreement, and the Deed Restriction and Restrictive Covenants Agreement shall remain in effect for the entire Term, regardless of any prepayment.

Section 2.9 Non-Recourse.

Except as provided in this Section 2.9, neither the Borrower, nor any general or limited partner of the Borrower, shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Loan or the performance of the covenants of the Borrower under the Deed Restriction and Restrictive Covenants Agreement. Following recordation of the Deed Restriction and Restrictive Covenants Agreement, the sole recourse of the City with respect to the principal of, and interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed Restriction and Restrictive Covenants Agreement shall be to the property described in the Deed Restriction and Restrictive Covenants Agreement; provided, however, that nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement of the Note of all the rights and remedies of the City thereunder, or (ii) be deemed in any way to impair the right of the City to accelerate the unpaid principal amount of the Note as a demand for money within the meaning and intent of the New Mexico Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Borrower's obligations under the Deed Restriction and Restrictive Covenants Agreement, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under Sections this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed Restriction and Restrictive Covenants Agreement (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed Restriction and Restrictive Covenants Agreement; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Permits and Approvals

All permits and approvals necessary for the construction of the Development on the Property must be received no later than _____, 20__, or such later date that the City may approve, or the City, at its option, and with forty-five (45) days' written notice and opportunity to cure, may declare Borrower in default hereunder.

Section 3.2 Construction Plans.

(a) Simultaneously with submission to the City of Las Cruces Community Development Department ("Development Department") the Borrower shall submit to the City a copy of the Construction Plans for the Development. As used in this Agreement, "Construction Plans" shall mean all construction documentation upon which Borrower and Borrower's contractor shall rely in constructing all the improvements on the Property (including the Units, the community building, landscaping, parking, and common areas) and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, and building plans and specifications (also known as "working drawings").

(b) If the Construction Plans submitted to the City Development Department conform to the provisions of this Agreement, the City shall approve in writing the Construction Plans. Such approval of the Construction Plans by the City shall not relieve Borrower's Obligation to obtain any and all other approvals required by the City Departments.

(c) If rejected by the City in whole or in part, Borrower shall submit new or corrected Construction Plans within fifteen (15) business days after notification of the City's rejection and the reasons therefor. The City shall then have fifteen (15) days to review and approve Borrower's new or corrected Construction Plans. The provisions of this Section relating to time periods for approval, rejection, or resubmission of a new or corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the City.

Section 3.3 Construction Contract.

(a) Not later than thirty (30) days prior to the proposed commencement of construction of the Development, the Borrower shall submit to the City a copy of its proposed construction contract for the Development. All construction work and professional services shall be performed by persons or entities licensed or otherwise lawfully authorized to perform the applicable construction work or service in the State of New Mexico.

Section 3.4 Construction Bonds.

Prior to commencement of construction of the Development, the Borrower shall deliver to the City copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the Development. Such bonds shall name the City as a co-obligee.

Section 3.5 Commencement of Construction.

Borrower shall cause the commencement of construction of the Development no later than _____, 20___ or such later date that the City may approve.

Section 3.6 Completion of Construction. Borrower shall diligently prosecute construction of the Development to completion and shall cause the completion of the construction of the Development no later than June 30, 2025, or such later date that the City may approve.

Section 3.7 Construction Pursuant to Plans and Laws; Prevailing Wages.

(a) To the extent required by applicable law, the Borrower shall cause construction of the Development to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act (40 USC 3141-3148).

(b) The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act in connection with the construction pursuant to this Agreement, of the Development or any other work undertaken or in connection with the Property and shall indemnify and hold the City harmless against damages, compensation, fines, penalties or other amounts resulting from the successful prosecution of such claim. The requirements in this Subsection shall survive repayment of the Loan, the release of the Deed Restriction and the expiration or termination of the Deed Restriction and Restrictive Covenants Agreement.

(c) Borrower shall construct the Development in conformance with the plans and specifications approved by the Development Department. Borrower shall notify the City in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the City.

Section 3.8 Marketing Plan.

(a) No later than three (3) months prior to the projected date of the completion of the Development, Borrower shall submit to the City, its plan for marketing the Development to

income-eligible households, including information on affirmative marketing efforts and compliance with fair housing laws, including, but not limited to the information required under 24 C.F.R. Section 92.351(a) (the "Marketing Plan").

Section 3.9 Equal Opportunity.

During the construction of the Development there shall be no discrimination on the basis of race, color, religion, age, disability, sex, sexual orientation, marital status, familial status, genetic information, gender identity, serious medical condition, domestic abuse leave, source of income, ancestry or national origin or any other characteristic protected by federal, state or local law in the hiring, firing, promoting, or demoting of any person engaged in the construction of the Development.

Section 3.10 Minority and Women-Owned Contractors.

Borrower will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Development. Borrower shall, at a minimum, notify applicable minority-owned and women-owned business firms located in the City of Las Cruces or surrounding areas of bid opportunities for the construction of the Development. Documentation of such notifications shall be maintained by Borrower and available to the City as requested.

Section 3.11 Progress Reports.

Until such time as Borrower has received a certificate of occupancy from the City for the Development, Borrower shall provide the City with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time.

Section 3.12 Construction Responsibilities.

(a) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement.

(b) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement.

(c) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction or work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the City and should not be relied upon by Borrower or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 3.13 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the City or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the City may require Borrower to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such a deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction on the Development for a continuous period of thirty (30) days or more and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

Section 3.14 Inspections.

Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

Section 3.15 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the City has approved the Approved Development Budget. Borrower shall submit any required amendments to the Approved Development Budget to the City for approval within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the City shall be required to amend the Approved Development Budget.

Section 3.16. Developer Fee.

The maximum cumulative developer fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, shall not exceed the amount allowed by MFA’s Low Income Housing Tax Credit requirements.

Section 3.17 NEPA Mitigation Requirements.

Borrower shall comply with any and all applicable NEPA mitigation requirements attached as Attachment D to this Agreement and incorporated by this reference, if applicable.

ARTICLE 4 LOAN REQUIREMENTS.

Section 4.1 Financial Accountings and Post- Completion Audits.

No later than sixty (60) days following completion of construction of the Development, Borrower shall provide to City a financial accounting of all sources and uses of funds for the Development. No later than one hundred fifty (150) days following completion of construction of the Development, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the Development.

Section 4.2 Annual Operating Budget.

At least 150 days prior to the end of each year of the Term, Borrower shall provide to the City an annual budget for the operation of the Development. Unless rejected by the City in writing within fifteen (15) business days after receipt of the budget, said budget shall be deemed accepted. If rejected by the City in whole or in part, Borrower shall submit a new or corrected budget within thirty (30) calendar days of notification of the City's rejection and the reasons therefor. The provisions of this Section relating to time periods for resubmission of new or corrected budgets shall continue to apply until such budget has been approved by the City.

Section 4.3 Records.

(a) The Borrower shall keep and maintain at the Development, or elsewhere with the City's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's compliance with the terms and provisions of this Agreement. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied and shall be consistent with requirements of this Agreement. All such books, records, and accounts shall be open to and available for inspection and copying by the Approved Financing lenders, the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish to any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts of the Borrower are kept. All supporting documents shall be maintained in accordance with the requirements of 24 CFR §85.20. The Borrower shall preserve such records for a period of not less than five (5) years after the creation of such records in compliance with all HUD records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then the Borrower shall retain such records until such action and all related issues are resolved. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Such records shall include but not be limited to:

(i) Records providing a full description of the activities undertaken with the use of the Loan funds;

(ii) Records demonstrating compliance with the HUD property standards and lead-based paint requirements;

(iii) Records demonstrating compliance with the affordability and income requirements for tenants;

(iv) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;

(v) Records demonstrating compliance with applicable relocation requirements which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments;

(vi) Records demonstrating that tenant leases comply with the applicable funding requirements;

(vii) Records demonstrating compliance with Section 3, and labor requirements, including certified payrolls from the Borrower's general contractor evidencing that applicable prevailing wages have been paid, if applicable;

(viii) Financial records as required by 2 CFR 200 subpart F *et seq*, as amended from time to time.

(b) The City shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 4.4 City Audits.

Each year during the Term, Borrower shall provide the City with a copy of Borrower's annual audit within 30 days after its completion, which shall include information on all of Borrower's activities and not just those pertaining to the Development. In addition, the City or any designated agent or employee of the City at any time shall be entitled to audit all of Borrower's books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to Borrower.

Section 4.5 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the

definition of "hazardous substances", " hazardous wastes", "hazardous materials", or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The City shall have the right to join and participate as a party if it so elects, in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the City and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the City in connection with clauses (i) and (ii), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property: and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify shall survive termination of this Agreement.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, Borrower shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the City's reasonable judgment, impair the value of the City's security hereunder; provided, however, that the City's prior consent shall not be necessary in

the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's consent before taking such action, provided that in such event Borrower shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action which would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

(e) Borrower hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by state, local, and federal regulations and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of state, local, and federal regulations.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" or to be an "affected parcel", then, without otherwise limiting or in any way affecting the City's or the trustee's rights and remedies under the Deed Restriction and Restrictive Covenants Agreement, the City may (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law. The Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by local and State laws, to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) and the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed Restriction and Restrictive Covenants Agreement and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

Section 4.6 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right to

perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of Senior Lenders, and if economically feasible in the City's reasonable judgment after consultation with the Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the City with such changes as have been approved by the City.

(c) Such work or repair shall be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the City in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds and shall be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not make repairs, then any insurance proceeds collected for such damage or destruction shall be distributed as if such proceeds were Residual Receipts (as defined in this Agreement subject to the rights of the Senior Lenders.

Section 4.7 Fees and Taxes.

Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Borrower and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the City, Borrower deposits with the City any funds or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful.

Section 4.8 Notice of Litigation.

Borrower shall promptly notify the City in writing of any litigation which has the potential to materially affect Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 4.9 Operation of Development as Affordable Housing.

(a) Promptly after completion of construction or rehabilitation, the Borrower shall operate the Development as an affordable housing development consistent with requirements for use of all Approved Financing and the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement.

(b) Before leasing any Unit in the Development, the Borrower shall submit its proposed form of lease agreement for the City's review.

(c) Before leasing the Development, the Borrower must provide the City, for its review, with the Borrower's written tenant selection plan. Borrower's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253 and any modifications thereto.

(d) The Borrower shall determine the income eligibility of each tenant household in pursuant to the MFA's tenant selection procedures within sixty (60) days before the household's expected occupancy of one of the Development's Restricted Units. The Borrower shall comply with tenant certification requirements of any and all applicable Approved Financing.

(e) The maximum household income of a household occupying a Restricted Unit in the Development, and the total charges for rent, utilities, and related services to each household occupying a Restricted Unit shall be maintained as provided in the Restrictive Covenants.

Section 4.10 Nondiscrimination.

(a) The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, age, disability, sex, sexual orientation, marital status, genetic information, gender identity, serious medical condition, domestic abuse leave, source of income, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant shall run with the land.

Section 4.11 Transfer.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. "Transfer" shall exclude the leasing of any single unit in the Development to an occupant in compliance with the Restrictive Covenant. The City Manager is authorized to execute assignment and assumption agreements on behalf of the City to implement any approved Transfer.

(b) No Transfer shall be permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the City.

(c) The City approves the grant of the security interests in the Property described in this Agreement.

Section 4.12 Insurance Requirements.

The Borrower shall maintain the insurance and the following insurance coverage throughout the Term of the Loan:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars ($1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(d) Builders' risk insurance during the construction and, upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) The Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with the Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars ($1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (f), (g), and (h) below, including, without limitation, the requirement of subsection (g). Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the City, its officers, agents, employees and members of the City Council.

(f) Comprehensive and General Liability, Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the City and its officers, agents, employees and members of the City Council.

(g) All policies and bonds shall contain (i) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the City; (iii) a provision that no act or omission of the Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

Section 4.13 Anti-Lobbying Certification.

The Borrower certifies, to the best of Borrower’s knowledge or belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the

extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will notify the City prior to execution of Loan Agreement and documents.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars ($10,000) and no more than One Hundred Thousand Dollars ($100,000) for such failure.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER.

Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the City as follows:

(a) Organization. Borrower is in existing and in good standing under the laws of the State of New Mexico and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal,

state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the City pursuant hereto.

(h) Title to Land. At the time of recordation of the Mortgage and Security agreement and Restrictive Real Estate Covenants agreement, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the City or as approved in writing by the City.

(i) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the City fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property and the construction of the Development in accordance with the plans and specifications approved by the City.

(k) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse

effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Borrower and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of Borrower to perform under any Loan Document, or a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

ARTICLE 6 DEFAULT AND REMEDIES

Section 6.1 Evidence of Default.

Each of the following shall constitute "Default" by Borrower under this Agreement.

(a) Failure to Construct. Failure of Borrower to commence and complete construction of the Development within the times set forth in Article 3 above.

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days after receipt of written notice from the City that such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the City to the Borrower and to any limited partner of the Borrower who has requested written notice from the City of such failure (a "Permitted Limited Partner") or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control. The Permitted Limited Partner shall have thirty (30) additional days to cure a breach beyond the cure periods for the Borrower described in this subsection. If a Permitted Limited Partner cannot cure a Default because the Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of the Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of the Borrower in order to effect a cure of the Default, the cure period shall be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than one hundred eighty (180) days after the date of receipt by the Permitted Limited Partner of written notice of Default.

(d) Default Under Other Loans. A default is declared under any other financing for the Development by the lender of such financing.

(e) Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the City) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the City.

(f) Suspension; Termination. Borrower shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(g) Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the City) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the City.

(h) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development.

(i) Representation or Warranty Incorrect. Any Borrower representation or

warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made. After issuance of the certificates of occupancy for the Development, Default may be declared under this subsection only if the failure of representation or warranty also has a material adverse effect on the operation of the Development.

Section 6.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the City or automatically where so specified, relieve the City of any obligation to make or continue the Loan and shall give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The City shall have the right to cause all indebtedness of the Borrower to the City under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under all applicable laws, including foreclosure under the Deed Restriction and Restrictive Covenants Agreement. The Borrower shall be liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The City shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Borrower upon demand therefor, together with interest of twelve (12%) per annum (the "Default Rate") from the date of expenditure until the date of reimbursement.

Section 6.3 Right to Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and, in a manner not prejudicial to the City or the rights of the City hereunder.

Section 6.4 Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regard to the construction and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the City by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or

operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties. The City Housing Director is authorized to execute on behalf of the City amendments to the Loan Documents or amended and restated Loan Documents as long as any material change in the amount or terms of this Agreement is approved by the City Council, or in the event the amounts or terms of financing provided by other parties for the Development is revised, requiring conforming amendments to the City Loan documents.

Section 7.4 Indemnification.

The Borrower shall indemnify, defend and hold the City harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the City, its agents, and its employees. The provisions of this Section shall survive the expiration of the Term and the release of the Deed Restriction and Restrictive Covenants Agreement.

Section 7.5 Non-Liability of City Officials, Employees and Agents.

Pursuant to applicable local, state, and federal statutes and regulations, no member, official, employee or agent of the City shall be personally liable to Borrower in the event of any default or breach by the City or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third-Party Beneficiaries. There shall be no third-party beneficiaries to this Agreement.

Section 7.7 Discretion Retained by City. The City's execution of this Agreement in no way limits the discretion of the City in the permit and approval process in connection with the development of the Development.

Section 7.8 Conflict of Interest.

(a) Disclosure upon assumption of office. Each candidate for councilor and mayor shall within five (5) working days after filing their nomination petition, file a disclosure statement identifying the following:

1. All business and civic group interests, including both policy and financial interests, of the councilor or mayor.

2. All trusts of which the councilor or mayor is a beneficiary.

3. All investments of the councilor or mayor including real estate holdings. In this respect, the real estate holdings shall include a legal description or other description sufficient to identity the location and extent of the property.

The council shall determine the format of the disclosure statement. The disclosure statement shall not require valuation of the assets owned by the councilor or mayor nor the number of shares of ownership in limited partnerships or corporations wherein that individual is an owner. The disclosure statement shall be filed with the city clerk and shall be updated annually thereafter by the councilor or mayor during his or her term of office. This report shall be a public record. It is intended that this section be broadly construed.

(b) Disclosure at council meeting. A councilor or mayor who has any private financial interest, direct or indirect, in any matter pending before or within the city or council shall disclose such private interest immediately. The council then shall determine if that councilor or mayor shall be disqualified from participating in any debate, decision or vote related thereto. Violation of this section shall render the contract, sale or purchase voidable at the option of the council.

(c) Employees' conflicts of interest. The city shall adopt, by ordinance or resolution, a policy for municipal employees prohibiting employees' conflicts of interest and dealing with violations of such policy.

Section 7.9 Notices, Demands and Communications. Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

City:

City of Las Cruces
700 N Main
Las Cruces, NM 88001
Attn: Housing and Neighborhood Services Administration

Borrower:

Pedrena Apartments LLC
413 W. Idaho Street
Suite 200
Boise, ID 83702

Investor: CREA Pedrena, LLC
1331 NM Lovejoy St, Suite 700
Portland, OR 97209

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.10 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 7.11 Parties Bound. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof shall inure to the benefit of the City and its successors and assigns.

Section 7.12 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party

Section 7.13 Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.14 Force Majeure. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 City Approval. The City has authorized the City Manager to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Borrower defaults under the Loan Documents. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by Borrower made in connection with this Agreement.

Section 7.16 Waivers. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 7.17 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 7.18 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

Section 7.19 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

This Agreement has been entered into by the undersigned as of the first above written.

SIGNATURE PAGES FOLLOW

CITY:

City of Las Cruces, a New Mexico Municipal Corporation

By: _____
Ifo Pili, City Manager

Approved as to form:

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.

By: _____
Peter Franklin, Shareholder

BORROWER:

Pedrena Apartments LLC,
a New Mexico limited liability company

By: Pedrena-TDC Associates LLC,
a New Mexico limited liability company
its Managing Member

By: Thomas Development Co.,
an Idaho corporation
its Managing Member

By:_____
Thomas C. Mannschreck, President

ATTACHMENT “A”

LEGAL DESCRIPTION

All that certain real property located in the County of Dona Aña, State of New Mexico, described as follows:

A tract of land situate in the Dona Ana Bend Colony Grant, Dona Ana County, New Mexico, and in Sec. 20, T 23 S, R 2 E, of the Surveys of the USRS, being a part of County Plat No. 660 and of Serial No. 11-15 on the USRS Property Maps, and more particularly described as follows, to-wit:

Beginning at an iron fence Post, an established point, marking the southwest corner of this tract at the intersection of El Paseo and a road to the east; thence along the north side of the road to the east, North 76 deg. 01’ East 573.4 feet to an iron pipe marking the southwest corner of USRS Tract 11-14; whence an iron pipe marking the southeast corner of USRS 11-14 bears N. 73 deg. 53’ W. 627 feet distant; thence following the east line of USRS Tract 11-15 North 36 deg. 20’ West 393.95 feet to an angle iron marking the northeast corner of the parcel herein described; thence across USRS 11-15 to the east line of El Paseo South 76 deg. 01' West 444.67 feet to an angle iron In the north bank of a farm ditch at the NW corner of this tract; thence following the east line of El Paseo South 17 deg. 18’ East 364.3 feet to the place of beginning. Commitment No.: 2303052 ORT FORM 4690 NM6 8-1-16 Old Republic National Title Insurance Company Page 5 of 8 Excepting there from a portion deeded to the City of Las Cruces, a New Mexico Municipal Corporation, in Warranty Deed recorded June 5, 2015, as Document No. 1511766, records of Dona Ana County, New Mexico.

ATTACHMENT "B"

APPROVED DEVELOPMENT BUDGET

8/14/2023

DEVELOPMENT BUDGET
Pedrena

	Project Costs	Cost Per Unit	Cost Per Res. Sq. Ft.	Tax Credit Eligible Basis
Land Costs	**$521,493**	**$ 6,519**	**$ 7.07**	XXXXXXXXXX
Acquisition Costs	**$53,507**	**$ 669**	**$ 0.73**	**$ 53,507**
Construction Costs				
Off-Site Improvements	$0	$ -	$ -	XXXXXXXXXX
Contractor Bond & Insurance	$79,621	$ 995	$ 1.08	$ 79,621
On Site Work	$1,266,900	$ 15,836	$ 17.19	$ 1,266,900
Structures	$12,363,442	$ 154,543	$ 167.72	$ 12,363,442
Solar	$180,000	$ 2,250	$ 2.44	$ 180,000
Garages	$300,000	$ 3,750	$ 4.07	XXXXXXXXXX
General Requirements	$851,398	$ 10,642	$ 11.55	$ 851,398
Contractor Overhead	$283,799	$ 3,547	$ 3.85	$ 283,799
Contractor Profit	$851,398	$ 10,642	$ 11.55	$ 851,398
Predevelopment Costs/Fees	$0	$ -	$ -	$ -
Sales Tax	$1,273,904	$ 15,924	$ 17.28	$ 1,273,904
Total Construction Costs	**$17,450,462**	**$ 218,131**	**$ 236.74**	**$ 17,150,462**
Financing Costs				
Construction Loan Interest	$397,959	$ 4,974	$ 5.40	$ 397,959
Construction Loan Fee	$160,000	$ 2,000	$ 2.17	$ 160,000
Construction Lender Costs (Legal, Etc.)	$55,000	$ 688	$ 0.75	$ 55,000
Construction Inspection Fees	$21,000	$ 263	$ 0.28	$ 21,000
Permanent Loan Fees & Costs	$0	$ -	$ -	XXXXXXXXXX
Post Construction Interest	$405,749	$ 5,072	$ 5.50	XXXXXXXXXX
Tax Credit Fees	$84,919	$ 1,061	$ 1.15	XXXXXXXXXX
Bond Counsel & Financial Advisor	$115,000	$ 1,438	$ 1.56	XXXXXXXXXX
Syndication Costs	$0	$ -	$ -	XXXXXXXXXX
Total Financing Costs	**$1,239,628**	**$ 15,495**	**$ 16.82**	**$ 633,959**
Soft Costs				
Architectural	$550,000	$ 6,875	$ 7.46	$ 550,000
Engineering/Surveying/Environmental	$135,387	$ 1,692	$ 1.84	$ 135,387
Soil Report & Surveys	$55,000	$ 688	$ 0.75	$ 55,000
Energy Rater Reports	$65,000	$ 813	$ 0.88	$ 65,000
Taxes During Construction	$10,000	$ 125	$ 0.14	$ 10,000
Insurance	$291,200	$ 3,640	$ 3.95	$291,200
Title & Recording	$92,369	$ 1,155	$ 1.25	$ 92,369
Borrower Attorney	$45,000	$ 563	$ 0.61	$45,000
Local Tap, Building Permit	$255,000	$ 3,188	$ 3.46	$ 255,000
Resident Relocation Fees	$20,000	$ 250	$ 0.27	XXXXXXXXXX
Marketing	$0	$ -	$ -	XXXXXXXXXX
Supportive Services	$0	$ -	$ -	XXXXXXXXXX
Furnishings & RBM Design	$150,000	$ 1,875	$ 2.03	$ 150,000
Cost Certification & Accounting	$15,000	$ 188	$ 0.20	XXXXXXXXXX
Appraisal	$10,000	$ 125	$ 0.14	$ 10,000
Market Study	$13,000	$ 163	$ 0.18	$ 13,000
Owner's Hard Cost Contingency	$872,523	$ 10,907	$ 11.84	$ 872,523
Soft Cost Contingency	$273,440	$ 3,418	$ 3.71	$ 273,440
Developer Overhead & Profit	$2,654,161	$ 33,177	$ 36.01	$ 2,654,161
Total Soft Costs	**$5,507,080**	**$ 68,838**	**$ 74.71**	**$ 5,472,080**
Reserves				
Operating Reserve (6 Months)	$334,323	$ 4,179	$ 4.54	XXXXXXXXXX
Capitalized Replacement Reserves	$300,000	$ 3,750	$ 4.07	XXXXXXXXXX
Total Reserve Costs	**$634,323**	**$ 7,929**	**$ 8.61**	XXXXXXXXXX
Totals	**$25,406,492**	**$ 317,581**	**$ 344.67**	**$ 23,310,007**

Total Tax Credit Eligible Basis	**$ 23,250,910**
Total Acquisition Eligible Basis	**$ 59,097**

10/2/2023

ATTACHMENT "C"

SUBORDINATION AND STANDSTILL AGREEMENT
(CEDAR RAPIDS BANK AND TRUST COMPANY AND CITY DIRECT LOAN)

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is entered into this ___ day of _____, 2023, by and among (i) CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation (the "**Senior Lender**"), (ii) CITY OF LAS CRUCES, a New Mexico municipal corporation (the "**Subordinate Lender**"), and (iii) PEDRENA APARTMENTS LLC, a New Mexico limited liability company (the "**Borrower**").

RECITALS

A. Borrower owns a multifamily affordable housing development (the "Project") in Las Cruces, New Mexico (the "Property").

B. Doña Ana County, New Mexico ("Issuer") issued its Multifamily Housing Revenue Bond (Pedrena Apartments Project) Series 2023, dated as of [_____], 2023, in the original principal amount of $[_____] (the "Bond"), to Senior Lender pursuant to that certain Financing Agreement dated as of [_____] 1, 2023 (the "Financing Agreement"), by and among Issuer, Borrower, and Senior Lender to finance the rehabilitation of the Project.

C. The Senior Lender purchased the Bond and the Issuer used the proceeds from the sale of the Bond to make a loan to the Borrower in the maximum principal amount of the Bond (the "Senior Loan") pursuant to that certain Financing Agreement.

D. The Loan will be subject to the terms of that certain Continuing Covenants Agreement dated as of [_____], 2023 between the Borrower and the Senior Lender (the "Senior Loan Agreement").

E. The Senior Loan is secured by that certain Leasehold Mortgage, Assignment of Rents and Security Agreement dated as of [_____], 2023, executed by Borrower for the benefit of Senior Lender (the "Senior Mortgage"). The Continuing Covenants Agreement, the Bond, the Mortgage, and each of the other documents evidencing or securing the Senior Loan are hereinafter referred to collectively as the "Loan Documents."

F. Subordinate Lender has extended to Borrower a loan in the original principal amount of $[_____] (the "Subordinate Loan"); and

G. The obligations of Borrower to repay the Subordinate Loan is currently evidenced by a Promissory Note (City of Las Cruces Housing Trust Fund) dated as of [_____],

2023, executed by Borrower in favor of Subordinate Lender in the original principal amount of $3,000,000 (the "Subordinate Note"); and

H. The Subordinate Note is secured by, among other things, a Mortgage and Security Agreement [_____], 2023 (the "Subordinate Mortgage"), executed by Borrower in favor of Subordinate Lender, recorded concurrently herewith in the records of the Doña Ana County Clerk (the "Official Records"), and recorded concurrently herewith in the Official Records, and encumbering the Property; and

I. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place a subordinate lien against the Property subject to all of the conditions contained in this Agreement.

J. WHEREAS, as a condition to making advances under the Continuing Covenants Agreement, Senior Lender requires that Borrower and Subordinate Lender enter into this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to place a subordinate lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

1. **Definitions**.

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a Senior Loan Default has occurred under the Senior Loan; or (b)

a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Senior Loan Default" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

"Senior Loan Documents" means the Senior Mortgage, Bonds, the Senior Loan Agreement, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Loan.

"Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the Bonds, such other Person shall automatically become the Senior Lender.

"Subordinate Lender" means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"Subordinate Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

"Subordinate Mortgage" means the mortgage encumbering the Property as security for the Subordinate Loan, as defined in the Recitals.

"Swap Documents" mean those swap documents as described in the Continuing Covenants Agreement.

2. **Permission to Place Lien Against Property**.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the Senior Mortgage) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan.

3. **Borrower's and Subordinate Lender's Representations and Warranties**.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

a. **Subordinate Note**. The Subordinate Note shall be deemed to contain the following provision:

> The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness from Cedar Rapids Bank and Trust Company to Pedrena Apartments LLC, a New Mexico limited liability company, in the original principal amount of $[_____], to the extent and in the manner provided in that certain Subordination and Standstill Agreement dated as of [_____], 2023 between the payee of this Note, the Senior Lender and Subordinate Lender (the "Subordination Agreement"). The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage securing the Senior Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement.

b. **Relationship of Borrower to Subordinate Lender and Senior Lender**. The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

c. **Term**. The terms of the Subordinate Note does not end before 6 months after the term of the Senior Note.

d. **Subordinate Loan Documents**. The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

e. **Senior Loan Documents**. The executed Senior Loan Documents are substantially in the same forms as, when applicable, those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. **Terms of Subordination**.

a. **Agreement to Subordinate**. The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Mortgage and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of protecting or further securing the lien of the Senior Mortgage, curing defaults by the Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Mortgage. Notwithstanding any contrary provision of this Agreement, Senior Lender agrees that it will not amend or modify the terms of the Senior Loan or any of the Senior Loan Documents without the prior written consent of Subordinate Lender, which consent Subordinate Lender shall not unreasonably withhold, if such amendment or modification would have the effect of (i) increasing the amount of the Senior Loan, except in the case of sums advanced by Senior Lender in exercising its rights and remedies with respect to the Senior Loan or for protective advances; (ii) increasing the annual interest rate(s) above the interest rate(s) described in the Senior Note, except as contemplated by the Senior Loan Documents; or (iii) decreasing the term of the Senior Loan, except in connection with any acceleration of the Senior Loan pursuant to the Senior Loan Documents.

b. **Subordination of Subrogation Rights**. The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage.

c. **Payments Before Senior Loan Default**. Until the Subordinate Lender receives a Default Notice of a Senior Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents. Such payments include scheduled principal payments and the Subordinate Lender agrees that Subordinate Loan does not include any hyper-amortization feature. Such payments include simple, non-compounding, interest. Such payments are payable only from surplus cash flow after the payment of operating expenses, replacement reserve

contributions, contributions to escrow accounts, and debt service on the Senior Loan from the operation of the Property.

d. **Payments After Senior Loan Default**. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. Notwithstanding anything to the contrary in this Agreement, including the immediately preceding sentence, nothing herein shall limit Subordinate Lender's rights, in the event of a default under the Subordinate Loan Documents, to (a) compute interest on all amounts due and payable under the Subordinate Note at the default rate described in the Subordinate Loan Documents, (b) compute prepayment premiums and late charges, (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Subordinate Note. If the Subordinate Lender receives written notice from the Senior Lender that the Senior Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

e. **Remitting Subordinate Loan Payments to Senior Lender**. If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such

payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

f. **Agreement Not to Commence Bankruptcy Proceeding**. The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

5. **Default Under Subordinate Loan Documents**.

a. **Notice of Default and Cure Rights**. The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the Senior Mortgage.

b. **Subordinate Lender's Agreement to Standstill**. If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

c. **Cross Default**. The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then

provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Senior Loan Default.

6. **Default Under Senior Loan Documents**.

a. **Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the Senior Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 90 days from the date of the Default Notice to cure a non-monetary default if during such 90-day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 90-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the liens of, the Subordinate Mortgage.

b. **Cross Default**. The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Senior Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Mortgage. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, the

Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Senior Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

7. **Conflict**.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Senior Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. **Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the Senior Loan Documents**.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

a. **Protection of Security Interest**. The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

b. **Condemnation or Casualty**. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Senior Mortgage remains a lien on the Property the following provisions shall apply:

i. The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the Senior Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

ii. all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

c. **No Modification of Subordinate Loan Documents**. The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amounts of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the terms of the Subordinate Loan, increase the interest rates on the Subordinate Loan, or otherwise amend the terms of the Subordinate Loan in a manner that creates an adverse effect upon the Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever.

9. **Default by the Subordinate Lender or Senior Lender**.

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

10. **Notices**.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Cedar Rapids Bank and Trust Company
500 First Avenue NE
Cedar Rapids, Iowa 52401

SUBORDINATE LENDER:

City of Las Cruces
700 N. Main Street
Las Cruces, New Mexico 88001
Attention: Director, Economic Development or
Administrating Department Director

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

11. **General**.

a. **Assignment/Successors**. This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

b. **No Partnership or Joint Venture**. The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

c. **Senior Lender's and Subordinate Lender's Consent**. Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

d. **Further Assurances**. The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Mortgage, or to further evidence the intent of this Agreement.

e. **Amendment**. This Agreement shall not be amended except by written instrument signed by all parties hereto.

f. **Governing Law**. This Agreement shall be governed by the laws of the State in which the Property is located.

g. **Severable Provisions**. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

h. **Term**. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

i. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes;

provided, however, that all such counterparts shall together constitute one and the same instrument.

14823.581
27180855v1

[REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation

By: _____
Sam D. Kramer
Vice President

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF IOWA)
)
COUNTY OF LINN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Sam D. Kramer, a Vice President of Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation, for and on behalf of said banking corporation.

_____
Notary Public

SUBORDINATE LENDER:

CITY OF LAS CRUCES, a
New Mexico municipal corporation

By: _____
Ifo Pili
City Manager

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF NEW MEXICO)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by Ifo Pili, the City Manager of the City of Las Cruces, a New Mexico municipal corporation, for and on behalf of said municipal corporation.

_____
Notary Public for New Mexico
My commission expires: _____

EXHIBIT B
Modrall Sperling draft 9.15.23

CITY OF LAS CRUCES
MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the "Agreement") is made this _____ day of_____, 2023, between **PEDRENA APARTMENTS LCC**, a New Mexico limited liability limited partnership ("Mortgagor"), whose address is **420 W. Idaho Street, Suite 200, Boise, ID 83702** and the **CITY OF LAS CRUCES**, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico, with a principal address of 700 N Main Street, Las Cruces, New Mexico 88001 ("Mortgagee").

WHEREAS, the Mortgagor and Mortgagee have entered into a residual receipts loan agreement to be funded by the City of Las Cruces Housing Trust Fund Loan (hereinafter referred to as "Loan Agreement"), a copy of which is on file in the City Clerk's Office for the City of Las Cruces, New Mexico, and the definitions and terms of which are incorporated herein by this reference as if fully set forth herein, and which provides, among other things, that the Mortgagee will use Mortgagor Housing Trust Funds on their behalf for the development and new construction of the Property, and being more particularly described in the Scope of Work in **Attachment "A,"** and upon construction completion and occupancy, the Mortgagor will utilize the property for the rental of the Property to low-income income households at affordable rents; and

WHEREAS, to ensure that the new construction of the Property is completed and the Property is leased to Low Income households at affordable rents, the Mortgagor has executed a note in favor of Mortgagee in the principal sum of Three Million Dollars ($3,000,000.00), which indebtedness is evidenced by the Mortgagor's promissory note dated of even date herewith (hereinafter referred to as "Note"), a copy of which is attached hereto as **Attachment "B",** due and payable as provided in the Note.

This Mortgage secures the performance of the following obligations: (1) the indebtedness evidenced by the Note as disbursed by the City on behalf of the Mortgagor in accordance with the provisions set forth in this Note and all renewals, extensions and modifications thereof, and the performance of all covenants contained therein, and the payment of such amounts, if any, advanced, or costs incurred by Mortgagee in accordance herewith to protect the security of this Mortgage or in connection with the enforcement of this Mortgage or Note; and (2) the performance of the covenants, agreements and obligations of Mortgagor herein contained and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law.

For consideration paid, Mortgagor does hereby MORTGAGE, GRANT, BARGAIN, SELL, ASSIGN, GRANT A SECURITY INTEREST IN and CONVEY TO Mortgagee, its successors and assigns, all of Mortgagor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter held or acquired, with mortgage covenants.

(a) All of Mortgagor's leasehold estate and interest in that certain parcel of real property situated in the City of Las Cruces, County of Dona Ana, and State of New Mexico, and being more particularly described on **Attachment "C"** attached hereto and made a part hereof.

(b) All and each of the buildings and improvements, structures, additions, tenements, easements, hereditaments, and appurtenances belonging or in anywise appertaining to the aforesaid real property ("Real Property"), now existing or hereafter acquired, installed, or constructed and the revision or reversions, remainder and remainders rents, issues, and profits thereof and also all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor of, in, and to the same, and of, in and to every part and parcel thereof;

(c) All right, title and interest of Mortgagor, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Real Property to the centerline thereof;

(d) All right, title and interest of Mortgagor in all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and other articles of personal property and replacements thereof, now or at any time hereafter affixed to, attached to, placed upon or used in anyway in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property or the Development, together with any proceeds realized from the sale, transfer or conversion of any of the above (subject to the right of replacement described in the Note);

(e) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards or judgments, and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Mortgagor;

(f) To the extent assignable, any and all plans, specifications, site plans, drawings, renderings and schematics; however, characterized, from time to time prepared for use in connection with the construction and operation of the Development;

(g) To the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, the rendering of any services, the supply of any materials or the conduct of operations in the management of the Real Property and/or the Development including without limitation, construction contracts, architect agreements, development agreements, management agreements with respect to operations, franchise agreements and other similar agreements;

(h) To the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, whether necessary or not, for the operation and use of the Real Property and/or the Development, including, without limitation, building permits, environmental certificates, certificates of occupancy, certificates of operation, room permits, elevator licenses, warranties and guaranties; and

(i) All municipal or utility deposits made by or on behalf of Mortgagor or made in connection with the Real Property and/or the Development, together with all escrow accounts or reserves maintained or required to be maintained by

Mortgagor hereunder, and any and all other assets, revenues and profits of any kind of the Development.

All of the property described in the foregoing subparagraphs (a) through (i) shall sometimes hereinafter be collectively referred to as the "Property". All of the assignments hereinabove referenced are subject to the right of the Mortgagor to collect, receive, apply, manage, and use the rights assigned until the occurrence of an event of default hereunder. The maximum amount of unpaid indebtedness, exclusive of interest thereon, which may be outstanding at any time, is Three Million Dollars ($3,000,000.00).

In addition to the other debt or obligation secured hereby, this Mortgage shall secure unpaid balances or advances made for the payment of taxes, tax increment payments, assessments, insurance premiums, and other costs incurred for the protection of the Real Property or the Development, if not paid by Mortgagor as required by law or this Mortgage.

Mortgagor represents and warrants that it has full right and authority to grant this Mortgage, and that it shall warrant and defend the lien and interest of the Mortgagee in the Property against all claims and demands whatsoever, except any encumbrances acceptable to Mortgagee, and that Mortgagor shall maintain the priority of the lien of and the security interest granted by this Mortgage upon the property until the Mortgage is defeased as provided herein.

The Mortgagor, at its expense, shall cause this Mortgage and instruments supplemental hereto and financing statements and all necessary supplements appropriate continuation statements, to be recorded, registered, and filed in such manner and in such places as may be directed from time to time by Mortgagee as required in order to establish, preserve, and protect the lien of this Mortgage as a lien on all real property, fixtures, and interests therein included in the Property, and a valid security interest in all personal property, fixtures and interest therein included in the Property, including in each such case and without limitation, any such properties acquired after the execution hereof.

All property of every kind acquired by the Mortgagor after the date hereof which, by the terms hereof, is intended to be subject to the lien of this Mortgage, shall immediately upon the acquisition thereof by the Mortgagor, and without further mortgage or assignment, become subject to the lien of this Mortgage as fully as though now owned by the Mortgagor and specifically described herein. Mortgagor shall take such actions and execute such additional instruments as the Mortgagee shall reasonably require to further evidence or confirm the subjection to the lien of this Mortgage of any such after-acquired property.

Upon notification of the pending sale of any parcel comprising the Development, Mortgagee shall release and reconvey such parcel from the charge and lien of this mortgage subject to the condition concurrent of the consummation of such sale and the payment of principal from the proceeds of such sale as required by the Note. Further, Mortgagor shall modify the Mortgage, if required, to amend the legal description of the Real Property to conform to any replatting of the Real Property. Further, Mortgagee shall execute all documents and instruments necessary to subordinate this Mortgage to any mortgage securing the construction loan(s) for the Development.

This Mortgage constitutes a security agreement as to all or any part of the Property, which is of a nature that a security interest therein can be perfected under the Uniform Commercial Code. This Mortgage also constitutes a financing statement with respect to any and all property included in the Property, which is or may become fixtures.

Mortgagor shall pay promptly when due all taxes, tax increment payments, assessments, and other governmental charges on the property which, if not paid, may become a lien on the Property or any part thereof.

During construction of the Development, until issuance of Certificates of Occupancy for each unit and, if applicable, a letter of acceptance by the City for public infrastructure, Mortgagor, at its expense, shall keep or cause to be kept, the Property fully insured by a policy or policies of Builder's Risk and Fire Insurance (in an amount not less than the outstanding balances of the Loan evidenced by the Note and of any mortgage to which this Mortgage is subordinate) against fire with extended coverage and in good order and condition, ordinary wear and tear excepted, and shall make all necessary or appropriate repairs, replacements, and renewals thereof. All policies of insurance required by this paragraph shall be endorsed to indicate Mortgagee as an insured Mortgagee.

In the event of any damage or injury to the Development, the Mortgagor agrees that it shall either repay its obligations under the Note in full, or it shall take any and all actions necessary to restore the Development substantially to its condition prior to the damage or injury and shall apply any proceeds of such insurance coverage to the extent necessary to the costs of such restoration.

If the Mortgagor shall fail to make any payments or perform any act required to be paid or performed hereunder or under the Note, Mortgagee may (but shall be under no obligation to do so), upon five (5) days written notice to the Mortgagor and to the Lender of any mortgage loan to which this Mortgage is subordinate, make such payment or perform such act for the account of and at the expense of Mortgagor. All payments so made by the Mortgagee and all costs, fees and expenses incurred in connection therewith shall, together with interest thereon as provided herein, be additional indebtedness secured by this Mortgage, to the extent permitted by law, and shall be paid by the Mortgagor to the Mortgagee on demand. In any action brought to collect such indebtedness, or to foreclose this Mortgage, the Mortgagee shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision rendered in any such proceedings.

Notwithstanding any other provisions of this Mortgage, the Note, or the Loan Agreement, upon any failure by Mortgagor to pay when due any obligation under the Note, or failure to pay any other obligation under the Note, and such failure is not cured as provided in the Loan Agreement, after receipt of written notice from the Mortgagee, such failure to pay or cure shall constitute an immediate default entitling the Mortgagee to exercise any remedy hereafter described in this paragraph, or elsewhere in this Mortgage or the Loan Agreement. Upon any failure to observe or perform any other obligation under this Mortgage, which has not been remedied or cured within ten (10) days after receipt of written notice thereof from Mortgagee, or for such longer period as the Mortgagee shall agree to in writing, then the Mortgagee at its option may declare a default to have occurred hereunder. Subject to the foregoing provisions, with respect to either a failure to make payment when due or any other default, the remedies available

to Mortgagee include at any time at its election to exercise any or all or any combination of the remedies conferred upon or reserved to it under this Mortgage, the Note, the Loan Agreement, or now or hereafter existing at law or in equity. Without limitation, the Mortgagee may declare the entire Loan Amount of the Note immediately due and payable without notice or demand, the same being expressly waived by the Mortgagor; may proceed at law or equity to collect all amounts secured by this Mortgage and due hereunder, whether at maturity or by acceleration; may foreclose the lien of this Mortgage as against all or any part of the Property; and may exercise any rights, powers, and remedies it may have as a secured party under the Uniform Commercial Code, or other similar laws in effect from time to time.

Each right, power, and remedy of the Mortgagee provided for in the Loan Agreement, the Note, and Mortgage, now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Mortgage, the Loan Agreement, or the City, now or hereafter existing at law or in equity, and the exercise or beginning of exercise or partial exercise by the Mortgagee of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Mortgagee of any or all such rights, power or remedies.

No failure by the Mortgagee to insist upon the strict performance of any provision of the Loan Agreement, Note or this Mortgage, or to exercise any right, power, or remedy consequent upon a breach hereof, shall constitute a waiver of any such provision or of any remedy for such breach. No waiver of any breach shall affect or alter this Mortgage, and the Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach.

PROVIDED, however, that if the Mortgagor shall well and truly pay to Mortgagee, its successors and assigns, not less than the total of the indebtedness secured hereby and shall fully keep and perform all the conditions, covenants and agreements to be kept and performed by Mortgagor under this Mortgage, then this Mortgage shall be void; otherwise this Mortgage shall remain in full force and effect in law and equity forever.

The existence and lien of this Mortgage shall not impede or affect the right of Mortgagor from time to time with respect to all or a portion of the Real Property, to dedicate public areas by subdivision plat or otherwise, including streets, easements and park areas, grant to public utilities and other agencies entitled thereto ordinary and necessary easements, and apply for and obtain zoning acceptable to Mortgagor.

Unless Mortgagee or Mortgagor gives written instructions to the other party of a change in the person or address set forth below, all notices, demands or requests permitted or required to be given under the provisions of this Mortgage or the Loan Agreement shall be hand-delivered or mailed, registered or certified mail, return receipt requested to the following addresses:

Mortgagee:

City of Las Cruces
Attn: Housing & Neighborhood Services Administrator or Administrating Department Director
700 N. Main St.
Las Cruces, New Mexico 88001

Mortgagor:

Pedrena Apartments LLC, a New Mexico limited liability company
420 W. Idaho Street, Suite 200, Boise, ID 83702
Attention:_Thomas Mannschreck_____

In the event of foreclosure of this Mortgage, the period of redemption shall be one month in lieu of the statutory redemption period of nine months.

IN WITNESS, WHEREOF, Mortgagor, Pedrena Apartments LLC, hereunto duly authorized, and Mortgagee, the City of Las Cruces, have each caused this instrument to be executed on this the _____ day of 2023.

SIGNATURE PAGES FOLLOW

BORROWER and MORTGAGOR:
Pedrena Apartments LLC,
a New Mexico limited liability company

By: Pedrena-TDC Associates LLC
a New Mexico limited liability company
its Managing Member

By: Thomas Development Co.,
an Idaho corporation
its Managing Member

By:_____
Thomas C. Mannschreck, President

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2023, by _____, as _____ of Pedrena Apartments LLC, a New Mexico limited liability company.

(NOTARY SEAL)

_____
Notary Public

My Commission Expires: _____

[Signature Page]

CITY OF LAS CRUCES, as MORTGAGEE:

By: _____
Ifo Pili, City Manager

Approved as to form:

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.

By: _____
Peter Franklin, Shareholder

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2023, by Ifo Pili, as City Manager of the City of Las Cruces, a New Mexico municipal corporation.

(NOTARY SEAL)

_____
Notary Public

ATTACHMENT "A"
(To Exhibit B)

SCOPE OF WORK AND BUDGET

Pedrena apartments LLC, to be located at 801 E. Farney is a 80-unit senior new construction multi-family development. The project will contain 44 1- bedroom units and 36 2-Bedroom units for senior 55+ households earning up to 60% area median income. The main building will consist of 74 units with enclosed central hallways, community space with business center, kitchen, library, exercise room, craft room and private meeting rooms. 3 duplex buildings will contain direct access garages.
The project is anticipated to begin construction in December 2023 with anticipated completion in December 2024 and involves the relocation of the current resident on the property prior to beginning of construction.

The current estimated budget for the project is attached. HOME funds will be used for land acquisition for new construction of the Pedrena Apartment complex. The City will benefit with 4 low HOME-assisted units among the 80 units of affordable housing to be constructed.

EXHIBIT B
Modrall Sperling draft 9.15.23

8/14/2023

DEVELOPMENT BUDGET
Pedrena

	Project Costs	Cost Per Unit	Cost Per Res. Sq. Ft.	Tax Credit Eligible Basis
Land Costs	**$521,493**	**$ 6,519**	**$ 7.07**	XXXXXXXXXX
Acquisition Costs	**$53,507**	**$ 669**	**$ 0.73**	**$ 53,507**
Construction Costs				
Off-Site Improvements	$0	$ -	$ -	XXXXXXXXXX
Contractor Bond & Insurance	$79,621	$ 995	$ 1.08	$ 79,621
On Site Work	$1,266,900	$ 15,836	$ 17.19	$ 1,266,900
Structures	$12,363,442	$ 154,543	$ 167.72	$ 12,363,442
Solar	$180,000	$ 2,250	$ 2.44	$ 180,000
Garages	$300,000	$ 3,750	$ 4.07	XXXXXXXXXX
General Requirements	$851,398	$ 10,642	$ 11.55	$ 851,398
Contractor Overhead	$283,799	$ 3,547	$ 3.85	$ 283,799
Contractor Profit	$851,398	$ 10,642	$ 11.55	$ 851,398
Predevelopment Costs/Fees	$0	$ -	$ -	$ -
Sales Tax	$1,273,904	$ 15,924	$ 17.28	$ 1,273,904
Total Construction Costs	**$17,450,462**	**$ 218,131**	**$ 236.74**	**$ 17,150,462**
Financing Costs				
Construction Loan Interest	$397,959	$ 4,974	$ 5.40	$ 397,959
Construction Loan Fee	$160,000	$ 2,000	$ 2.17	$ 160,000
Construction Lender Costs (Legal, Etc.)	$55,000	$ 688	$ 0.75	$ 55,000
Construction Inspection Fees	$21,000	$ 263	$ 0.28	$ 21,000
Permanent Loan Fees & Costs	$0	$ -	$ -	XXXXXXXXXX
Post Construction Interest	$405,749	$ 5,072	$ 5.50	XXXXXXXXXX
Tax Credit Fees	$84,919	$ 1,061	$ 1.15	XXXXXXXXXX
Bond Counsel & Financial Advisor	$115,000	$ 1,438	$ 1.56	XXXXXXXXXX
Syndication Costs	$0	$ -	$ -	XXXXXXXXXX
Total Financing Costs	**$1,239,628**	**$ 15,495**	**$ 16.82**	**$ 633,959**
Soft Costs				
Architectural	$550,000	$ 6,875	$ 7.46	$ 550,000
Engineering/Surveying/Environmental	$135,387	$ 1,692	$ 1.84	$ 135,387
Soil Report & Surveys	$55,000	$ 688	$ 0.75	$ 55,000
Energy Rater Reports	$65,000	$ 813	$ 0.88	$ 65,000
Taxes During Construction	$10,000	$ 125	$ 0.14	$ 10,000
Insurance	$291,200	$ 3,640	$ 3.95	$291,200
Title & Recording	$92,369	$ 1,155	$ 1.25	$ 92,369
Borrower Attorney	$45,000	$ 563	$ 0.61	$45,000
Local Tap, Building Permit	$255,000	$ 3,188	$ 3.46	$ 255,000
Resident Relocation Fees	$20,000	$ 250	$ 0.27	XXXXXXXXXX
Marketing	$0	$ -	$ -	XXXXXXXXXX
Supportive Services	$0	$ -	$ -	XXXXXXXXXX
Furnishings & RBM Design	$150,000	$ 1,875	$ 2.03	$ 150,000
Cost Certification & Accounting	$15,000	$ 188	$ 0.20	XXXXXXXXXX
Appraisal	$10,000	$ 125	$ 0.14	$ 10,000
Market Study	$13,000	$ 163	$ 0.18	$ 13,000
Owner's Hard Cost Contingency	$872,523	$ 10,907	$ 11.84	$ 872,523
Soft Cost Contingency	$273,440	$ 3,418	$ 3.71	$ 273,440
Developer Overhead & Profit	$2,654,161	$ 33,177	$ 36.01	$ 2,654,161
Total Soft Costs	**$5,507,080**	**$ 68,838**	**$ 74.71**	**$ 5,472,080**
Reserves				
Operating Reserve (6 Months)	$334,323	$ 4,179	$ 4.54	XXXXXXXXXX
Capitalized Replacement Reserves	$300,000	$ 3,750	$ 4.07	XXXXXXXXXX
Total Reserve Costs	**$634,323**	**$ 7,929**	**$ 8.61**	XXXXXXXXXX
Totals	**$25,406,492**	**$ 317,581**	**$ 344.67**	**$ 23,310,007**
		Total Tax Credit Eligible Basis		**$ 23,250,910**
		Total Acquisition Eligible Basis		**$ 59,097**

10/2/2023

EXHIBIT B
Modrall Sperling draft 9.15.23

ATTACHMENT "B"
(To Exhibit B)

PROMISSORY NOTE
(CITY OF LAS CRUCES HOUSING TRUST FUND)

PEDRENA APARTMENTS LLC

$3,000,000.00 Las Cruces, New Mexico
_____, 2023

FOR VALUE RECEIVED, the undersigned Pedrena Apartments LLC, a New Mexico limited liability limited company ("Borrower") with a principal address of 413 W. Idaho Street, Suite 200, Boise, ID 83702, hereby promises to pay to the order of the City of Las Cruces, a New Mexico municipal corporation, with a principal address of 700 N. Main St., Las Cruces, NM 88001 ("Holder"), a principal amount of Three Million Dollars and No Cents ($3,000,000.00), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation.

This promissory note (the "Note") evidences Borrower's obligation to pay Holder the principal amount of up to Three Million Dollars and No Cents ($3,000,000.00), for the funds loaned to Borrower by Holder pursuant to the City of Las Cruces Housing Trust Fund Loan Agreement between Borrower and Holder of even date herewith (the "Loan Agreement"). All capitalized terms not otherwise defined in this Note have the meanings set forth in the Loan Agreement.

2. Interest.

a. Subject to the provisions of Subsection (b) below, this Note bears simple interest at a rate Three percent (3%) per annum from the date of disbursement until full repayment of all principal.

b. If a Default occurs, interest will accrue on all amounts due under this Note at the Default Rate until such Default is cured by Borrower or waived by Holder.

3. Term and Repayment Requirements.

Payments here under shall be made in the amount of the greater of: (i) 42.85% of any positive annual Net Cash Flow as defined in the Borrower's Operating Agreement dated on or about the date hereof (the [Operating Agreement") after payments of items 11.01 (b)(i) through (vi) of the Partnership Agreement, as determined and certified by the independent accounting firm preparing Borrower's annual audited financial statements; or (ii) $500.00 per year. Any repayment required by this paragraph shall be due within 180 days after the close of the Development's fiscal

year. Any and all amounts of principal or interest outstanding upon the maturity of the Loan shall be then due and payable.

Payments received by the city shall be credited first against accrued interest and then against outstanding principal. The Borrower shall provide the City with any documentation reasonably requested by the City to substantiate the Borrower's determination of Residual Receipts.

4. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of Holder, except as provided in the Loan Agreement.

5. Security. This Note is secured by the Mortgage and Security Instrument wherein the Borrower is the Mortgagor and the City is the Mortgagee.

6. Terms of Payment.

a. All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

b. All payments on this Note shall be paid to Holder at the City of Las Cruces, 700 N. Main St., Las Cruces, NM 88001, Attention: Treasury Department with copy to Housing & Neighborhood Services Section or Administering Department Director, or to such other place as the Holder of this Note may from time to time designate.

c. All payments on this Note shall be without expense to the Holder, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees and other professional service fees and costs of the Holder, incurred in connection with the payment of this Note and the release of any security hereof.

d. Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Holder may legally charge under the laws of the State of New Mexico, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

e. Upon recordation of the Mortgage and Security Instrument and the Restrictive Real Estate Covenants Agreement, this Note will be nonrecourse to the Borrower, pursuant to and except as provided in Section 2.9 of the Loan Agreement.

7. Default.

a. Upon the occurrence of a Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note

and the Deed Restriction and Restrictive Covenants Agreement will, at the option of Holder, become immediately due and payable without further demand.

b. Holder's failure to exercise the remedy set forth in Subsection 7(a) above or any other remedy provided by law upon the occurrence of a Default does not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Default. The acceptance by Holder of any payment that is less than the total of all amounts due and payable at the time of such payment does not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

8. Waivers.

a. The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. The Borrower expressly agrees that this Note, or any payment hereunder may be extended from time to time, and that the Holder may accept further security or release any security for this Note, all without in any way
affecting the liability of the Borrower.

b. No extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note will operate to release, discharge, modify, change, or affect the original liability of Borrower under this Note, either in whole or in part.

c. The obligations of the Borrower under this Note shall be absolute, and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

a. All notices to the Holder or the Borrower shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as the Holder and the Borrower may therein designate.

b. The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by the Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

c. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

d. This Note shall be governed by and construed in accordance with the laws of the State of New Mexico.

e. The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

f. This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year first above written.

BORROWER:
Pedrena Apartments LLC,
a New Mexico limited liability company

By: Pedrena-TDC Associates LLC,
a New Mexico limited liability company
its Managing Member

By: Thomas Development Co.,
an Idaho corporation
its Managing Member

By:_____
Thomas C. Mannschreck, President

EXHIBIT B
Modrall Sperling draft 9.15.23

ATTACHMENT "C"
(to Exhibit B)

Legal Description of the Property

All that certain real property located in the County of Dona Aña, State of New Mexico, described as follows:

A tract of land situate in the Dona Ana Bend Colony Grant, Dona Ana County, New Mexico, and in Sec. 20, T 23 S, R 2 E, of the Surveys of the USRS, being a part of County Plat No. 660 and of Serial No. 11-15 on the USRS Property Maps, and more particularly described as follows, to-wit:

Beginning at an iron fence Post, an established point, marking the southwest corner of this tract at the intersection of El Paseo and a road to the east; thence along the north side of the road to the east, North 76 deg. 01' East 573.4 feet to an iron pipe marking the southwest corner of USRS Tract 11-14; whence an iron pipe marking the southeast corner of USRS 11-14 bears N. 73 deg. 53' W. 627 feet distant; thence following the east line of USRS Tract 11-15 North 36 deg. 20' West 393.95 feet to an angle iron marking the northeast corner of the parcel herein described; thence across USRS 11-15 to the east line of El Paseo South 76 deg. 01' West 444.67 feet to an angle iron In the north bank of a farm ditch at the NW corner of this tract; thence following the east line of El Paseo South 17 deg. 18' East 364.3 feet to the place of beginning. Commitment No.: 2303052 ORT FORM 4690 NM6 8-1-16 Old Republic National Title Insurance Company Page 5 of 8 Excepting there from a portion deeded to the City of Las Cruces, a New Mexico Municipal Corporation, in Warranty Deed recorded June 5, 2015, as Document No. 1511766, records of Dona Ana County, New Mexico.

EXHIBIT “C”
Modrall Sperling draft 9.15.23

CITY OF LAS CRUCES
RESTRICTIVE REAL ESTATE COVENANTS AGREEMENT

Made in Las Cruces, New Mexico Date:_____

This Restrictive Real Estate Covenants Agreement (the “Agreement”) is made by **PEDRENA APARTMENTS LLC**, a New Mexico limited liability limited partnership (Owner) with a principal address of 420 W. Idaho Street, Suite 200, Boise, ID 83702, in favor of the **CITY OF LAS CRUCES**, a municipal corporation (City) with a principal address of 700 N. Main Street, Las Cruces, NM 88001.

1. Recitals

A. The Owner will develop an 80-unit Low-Income Housing Tax Credit (“LIHTC”) apartment complex.

B. The Owner is the beneficial owner of that certain real estate ("Real Property") in Dona Ana County, New Mexico, which is more particularly described in Exhibit "A" attached hereto and made a part hereof and, upon the issuance by Doña Ana County, New Mexico of its multifamily housing revenue bonds (the “Bonds”) in connection with the Real Property, Owner will hold a leasehold interest therein while the Bonds are outstanding.

C. The City has loaned funds under an Affordable Housing Trust Fund Loan Agreement to the owner to benefit the Real Property of the Owner.

D. In consideration for the assistance given by the City for the benefit of the Owner, the City and Owner have agreed to restrictions on the use and rental of the real property in order to implement the policies and obligations of City’s Affordable Housing General Oversight Ordinance and Affordable Housing Trust Fund.

2. Definitions

“Affordability Period” means the 20 years beginning on the date that the City of Las Cruces issues a final certificate of occupancy for the Property that the Property shall be designated as affordable housing for extremely low and low-income households.

"Annual Gross Income" means the anticipated total income from all sources, as defined in 24 CFR Part 5.609 to be received by the Family Head and spouse and by each additional member of the household during a twelve-month period.

"City's Median Income" means the median income for the City of Las Cruces, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development from time to time and published in the Federal Register.

"City Assisted Units" means the 80 revenue producing units at the Property, which shall be known as La Pedrena Apartments.

"Housing Quality Standards" means the standards set forth in 24 CFR Part 887 to maintain a decent, safe and sanitary living environment.

"Project" or “Development” means Pedrena Apartments.

"Section 8 Fair Market Rent" means that rent established by the U.S. Department of Housing and Urban Development as authorized under 24 CFR Part 882.

Except as otherwise expressly provided herein, all capitalized terms shall have the meaning given in the Affordable Housing Trust Fund Loan Agreement.

3. Restrictive Covenants

During the term of this Agreement as set forth in Paragraph 5 below:

A. Use of Property. The Real Property shall be used as, and only for, residential rental purposes.

B. Income Qualification. The Owner or its assignee shall determine the annual income of a household occupying or seeking to occupy any of the 80 revenue producing units at the Project prior to occupancy. Tenants occupying units shall meet the minimum/maximum income targeting criteria:

1. 8 units will be for households with annual gross incomes at or below 30% of Area Median Income (AMI),

2. 72 units will be for households with annual gross incomes at or below 60% AMI.

3. LIHTC Income levels are published annually by the New Mexico Mortgage Finance Authority.

C. Rent Determination. All 80 revenue producing units in the Project will be rent restricted units with rents amounts based on the Housing Credit Maximum Rents published annually by the New Mexico Mortgage Finance Authority. If utilities are not included in the rent, an allowance must be made using HUD approved established utility allowance levels.

D. Tenant Selection and Re-Certification. The Owner or its Assignee shall undertake the initial review of income eligibility of prospective tenants for all 80 revenue producing units in the Project. In determining income eligibility, the Owner acknowledges that the City shall examine rent and income calculations and tenant files on up to 10% of the units on an annual basis for monitoring compliance. All documentation including, but not necessarily limited to, a tenant's application, verifications, proposed rent and lease terms shall be kept in tenant files for the entire 20-year Affordability Period for the purpose of monitoring compliance.

E. Maintenance of Tenant Files and Re-verification. During the 20-year Affordability Period, the Owner shall re-verify tenant eligibility annually with similar documentation as submitted at initial lease-up. This information must be maintained in the tenants' files and made available for review by the City.

F. Lease Provisions. Each household in a revenue producing unit will have an executed lease with the Owner.

G. Property Standards Requirements. The Project will meet all Uniform Physical Condition Standard (UPCS) inspection protocol as developed by the U.S. Department of Housing & Urban Development to ensure that housing is decent, safe, sanitary and in good repair during the affordability period.

4. Reporting Requirements

Upon issuance of the Certificate of Occupancy by the City of Las Cruces, the Owner shall submit annual reports by no later than the last business day of July of each year during the 20-year Affordability Period. These reports shall include, but not be limited to, the financial statements for the Project, and a certified rent roll showing household size, tenant's race and ethnicity, whether the occupant is a female head of household, date of execution of the occupants current lease, adjusted gross annual income, and rental rates.

5. Term

The term of this Agreement shall commence and the restrictions set forth herein shall automatically commence to apply, on the day and time that the Mortgage securing permanent financing for the Development (as defined in the Mortgage) on the Real Property is recorded in the Office of the County Clerk of Doña Ana County, New Mexico. This Agreement and the Restrictive Covenants set forth herein shall automatically terminate at 5:00 p.m., New Mexico time on the twentieth (20th) anniversary of such recordation.

6. Covenants Running with Real Property

This Agreement shall be and constitute covenants running with the Real Property during the term of this Agreement and shall be enforceable by the City by legal and equitable action, including an action for injunctive relief.

7. Binding Effect

Upon execution of this Agreement by the Owner and the City, the terms, conditions and covenants of this Agreement shall be binding upon and inure to the benefit of the parties and of their representatives.

SIGNATURES PAGES FOLLOW

Signed this ___ day of _____, 20__.

BORROWER:

Pedrena Apartments LLC,
a New Mexico limited liability company

By: Pedrena-TDC Associates LLC,
a New Mexico limited liability company
its Managing Member

By: Thomas Development Co.,
an Idaho corporation
its Managing Member

By:_____
Thomas C. Mannschreck, President

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2023, by _____, as _____ of Pedrena Apartments LLC, a New Mexico limited liability company.

(NOTARY SEAL)

_____
Notary Public

EXHIBIT "C"
Modrall Sperling draft 9.15.23

ACKNOWLEDGED BY THE CITY OF LAS CRUCES:

By: _____
Ifo Pili, City Manager

Approved as to form:

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.

By: _____
Peter Franklin, Shareholder

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2023, by Ifo Pili, as City Manager of the City of Las Cruces, a New Mexico municipal corporation.

(NOTARY SEAL)

_____
Notary Public

EXHIBIT "C"
Modrall Sperling draft 9.15.23
ATTACHMENT "A"
(To Exhibit C)

Legal Description of Real Property

All that certain real property located in the County of Dona Aña, State of New Mexico, described as follows:

A tract of land situate in the Dona Ana Bend Colony Grant, Dona Ana County, New Mexico, and in Sec. 20, T 23 S, R 2 E, of the Surveys of the USRS, being a part of County Plat No. 660 and of Serial No. 11-15 on the USRS Property Maps, and more particularly described as follows, to-wit:

Beginning at an iron fence Post, an established point, marking the southwest corner of this tract at the intersection of El Paseo and a road to the east; thence along the north side of the road to the east, North 76 deg. 01' East 573.4 feet to an iron pipe marking the southwest corner of USRS Tract 11-14; whence an iron pipe marking the southeast corner of USRS 11-14 bears N. 73 deg. 53' W. 627 feet distant; thence following the east line of USRS Tract 11-15 North 36 deg. 20' West 393.95 feet to an angle iron marking the northeast corner of the parcel herein described; thence across USRS 11-15 to the east line of El Paseo South 76 deg. 01' West 444.67 feet to an angle iron In the north bank of a farm ditch at the NW corner of this tract; thence following the east line of El Paseo South 17 deg. 18' East 364.3 feet to the place of beginning. Commitment No.: 2303052 ORT FORM 4690 NM6 8-1-16 Old Republic National Title Insurance Company Page 5 of 8 Excepting there from a portion deeded to the City of Las Cruces, a New Mexico Municipal Corporation, in Warranty Deed recorded June 5, 2015, as Document No. 1511766, records of Dona Ana County, New Mexico.

Exhibit "D"

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	2705 TELSHOR FACILITY 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 45,111,761	45,111,761	0	45,111,761
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**0**	**0**	**0**	**0**
TOTAL RESOURCES	**$ 45,111,761**	**45,111,761**	**0**	**45,111,761**
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	3,018,000	3,456,000	3,000,000	6,456,000
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 3,018,000**	**3,456,000**	**3,000,000**	**6,456,000**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(870,618)	(870,618)	0	(870,618)
Total Other Resources	**$ (870,618)**	**(870,618)**	**0**	**(870,618)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 41,223,143**	**40,785,143**	**(3,000,000)**	**37,785,143**

24-043

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:**	October 16, 2023
Drafter:	Jan Lauterbach	**Department:**	City Manager's Office
Program:	Housing & Neighborhood Services	**Line of Business:**	Housing & Neighborhood Services

Title: **A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK LOAN (CDBG) AGREEMENT AND A HOME INVESTMENT PARTNERSHIPS (HOME) RECOVERABLE LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THOMAS DEVELOPMENT CO., AN IDAHO CORPORATION, AS DEVELOPER OF THE MULTI-FAMILY AFFORDABLE HOUSING PEDRENA APARTMENT COMPLEX.**

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

PURPOSE(S) OF ACTION:

Approve CDBG and HOME agreements.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City has received funds from the Department of Housing and Urban Development (HUD) under title 1 of the Housing and Community Development Act of 1974 which is Public Law 93-383, title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.218. The CDBG program provides the City the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs.

The Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Program. The HOME Program provides the City the opportunity to administer a federally-funded program, also in accordance with the goals of the City's consolidated Plan.

Annual Action Plans presented to and adopted by City Council outline how the CDBG and HOME funds for each Program Year (PY) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan. On May 1, 2023, City Council approved Resolution No. 23-122, adopting the 2023 Action Plan which allocated HOME funds of $200,000 and CDBG funds of $100,000 to Thomas Development Co., for the Pedrena apartments LIHTC multi-family project.

The project applicant, Thomas Development Co., managing member of Pedrena -TDC Associates LLC as a managing member of Pedrena Apartments LLC, a New Mexico limited liability company, will develop the vacant parcel located at the intersection of Farney and El Paseo roads. The 80 unit senior affordable housing apartment complex will target households earning up to 60% of area median income and contain 44 1-bedroom and 36 two-bedroom units. The City will file a mortgage and restrictive covenants along with a land

use restriction agreement on the property to secure it's interest in the property and the required affordability period.

In order to comply with CDBG and HOME regulations, a CDBG Loan Agreement and a HOME Program Recoverable Loan Agreement between the City and Thomas Development Co. and Pedrena Apartments LLC as shown in Exhibits "A" and "B" are required to be executed with City Council approval.

SUPPORT INFORMATION:

Exhibit "A" CDBG Loan Agreement 10.04
Exhibit "B" City HOME Loan Agmt-Note-Mortgage-Restrictive Covenants-Certificates (Pedrena) 9.18.23 - Copy

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
$615,746.50	$611,187.26	$300,000

Funding Source(s):

2000-20430003-721080-23033 $200,000 HOME
2000-20430002-721080-23032 $100,000 CDBG

Overall Budget Impact:

Neutral impact, expense has matching revenue source (HUD funding)

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 CDBG and HOME agreements providing funding to Thomas Development Co. / Pedrena Apartments LLC for multi-family affordable housing development.
2. Vote "No"; this will deny the approval of CDBG and HOME funding agreements to Thomas Development Co. / Pedrena Apartments LLC for multi-family affordable housing development.
3. Vote to "Amend"; further direction would come from City Council.
4. Vote to "Table"; further direction would come from City Council.

REFERENCE INFORMATION:

1. Resolution No. 23-122

RESOLUTION 24-043

A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK LOAN (CDBG) AGREEMENT AND A HOME INVESTMENT PARTNERSHIPS (HOME) RECOVERABLE LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THOMAS DEVELOPMENT CO., AN IDAHO CORPORATION, AS DEVELOPER OF THE MULTI-FAMILY AFFORDABLE HOUSING PEDRENA APARTMENT COMPLEX.

The City Council is informed that:

WHEREAS, the City has received funds from the Department of Housing and Urban Development (HUD) under Title 1 of the Housing & Community Development Act of 1974 which is Public Law 93-383, title 24 of the Code of Federal Regulations and Catalogue of Federal Domestic Assistance No. 14.218; and

WHEREAS, the CDBG Program provides the City the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs; and

WHEREAS, the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships (HOME) Program providing the City the opportunity to administer a federal-funding program in accordance with the goals of the City's Consolidated Plan; and

WHEREAS, annual Action Plans presented to and adopted by City Council outline how the HOME and CDBG funds for each Program Year (PY) will be spent in accordance with the goals of the City's Consolidated Plan; and

WHEREAS, on May 1, 2023, City Council approved Resolution No. 23-122, adopting the 2023 Action Plan, as amended, allocating HOME entitlement funds of $200,000 and CDBG funds of $100,000 to Thomas Development Co. for Pedrena Apartments LLC for multi-family affordable housing development; and

WHEREAS, the project applicant, Thomas Development Co., managing member of Pedrena -TDC Associates LLC as a managing member of Pedrena Apartments LLC will construct an 80 unit senior affordable housing apartment complex targeting households earning up to 60% of area median income; and

WHEREAS, the City will file and mortgage and restrictive covenants along with a land use restriction agreement on the property to secure it's interest in the property and the required affordability period; and

WHEREAS, in order to comply with CDBG and HOME regulations, a CDBG Loan Agreement and a HOME Program Recoverable Loan Agreement between the City and Thomas Development Co. / Pedrena Apartments LLC are required to be executed.

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

(I)

THAT the CDBG Program Loan Agreement between the City and Thomas Development Co. / Pedrena Apartments LLC, as shown in Exhibit "A" attached hereto and made a part hereof is approved.

(II)

THAT the HOME Recoverable Loan Agreement between the City and Thomas Development Co. / Pedrena Apartments LLC, as shown in Exhibit "B" attached hereto and make a part hereof is approved.

(III)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Tessa Abeyta

Seconded by: Becky Corran

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

EXHIBIT "A"

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND PEDRENA APARTMENTS LLC FOR THE PEDRENA LOW-INCOME SENIOR APARTMENTS PROJECT

THIS LOAN AGREEMENT is entered into this ____ day of _____, 2023, between the City of Las Cruces, a New Mexico municipal corporation with a principal mailing address of P.O. Box 20000, Las Cruces, New Mexico 88004 (hereinafter called the "City") and Pedrena Apartments LLC., a New Mexico limited liability company, whose address is 420 W. Main St, Ste 300, Boise, Idaho 83702 (hereinafter called the "Sub-recipient"), under CDBG Grant Number **B-23-MC-35-0002**.

WHEREAS, the City has received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.218; Munis Project #204300** -721080-; IDIS Activity #1338.

WHEREAS, the City will have performed all the steps necessary to obtain U.S. Department of Housing and Urban Development (HUD) approval of the City's 2021-2025 Consolidated Plan, including the 2023 Action Plan, approved by City Council Resolution R-23-122, which includes funding for this project in the amount of **$100,000.00** for FY 2024; and

WHEREAS, the City wishes to engage the Sub-recipient to assist the City in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. National Objectives

The Sub-recipient certifies that the activities it carries out with funds provided under this Agreement will meet the CDBG Program's National Objective (check one):

____ In accordance with 24 CFR 570.208 (a) (1) of benefiting all census blocks with the highest proportion of low and moderate persons, specifically census tract: block group(s) of ___ (i.e. Area Benefit); or

____ In accordance with 24 CFR Part 570.208 (a) (2) (i) (A), of benefiting clientele who are generally presumed to be principally low and low-moderate income persons in specific presumed groups, singularly or in combination of categories approved by the City and qualifying under this Section. Presumed benefit group to be served: severely disabled adults (i.e. Presumed Benefit); or

____ In accordance with 24 CFR Part 570.208 (a) (2) (i) (B) of benefiting low/moderate income persons by requiring information on family size and income so that at least 51 percent of the clientele are low and moderate income families, but only low and moderate income families will be qualified for the CDBG funds (i.e. Low/Mod Limited Client, Income Verification Required); or

____ In accordance with 24 CFR Part 570.208 (a) (2) (i) (C) have income eligibility requirements which limit the activity exclusively to low- and moderate-income persons, (i.e. Low-Mod Income Clientele, Income Verification Required, Exclusive Activity): or
____ In accordance with 24 CFR Part 570.208 (a) (2) (i) (D) be of such nature and be in such location that it may be concluded that there is presumed benefit and the activity's clientele will primarily be low- and moderate-income persons. The nature and location of the activity must be officially documented by the City in advance of services (i.e. nature and location).

_X__ In accordance with 24 CFR Part 570.208 (a) (3) Housing activities: An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households.

B. Activities

The Sub-recipient will benefit from the Pedrena Low-income Senior Apartments project and agrees to complete the project in a manner satisfactory to the Grantee and consistent with any standards that comply with HUD regulations and City/State requirements required as a condition of providing these funds. The CDBG program is regulated by 24 CFR part 570, and the Sub-recipient hereby agrees to complete the approved project activity in compliance with these regulations.

The program will include the following activities eligible under the Community Development Block Grant Program:

1. Program Description:

The program includes: the site improvements to the project site 1955 El Paseo Rd., in the City of Las Cruces. The scope of activity includes design, contract procurement, construction and management oversight, completion, and all reporting requirements. The improved site (hereinafter known as the "premises"), is intended to be used by the Sub-recipient in a manner that complies with HUD CDBG Regulations at Sections 570.201(c), and any other Grantee requirements specified herein.

The estimated cost of the On-Site Infrastructure Improvements is $1,051,900.00. The CDBG Loan will be used as match funding and, the project will be managed by Pedrena LLC. This project is a Low-Income Housing Tax Credit project approved by the New Mexico Mortgage Finance Authority. The total project cost is near $26,000,000.00.

2. Program Type: Affordable Housing
Program Title: Pedrena Site Improvements project

3. Program Management:

The program will be managed by the Pedrena LLC. This will include procurement and all construction management and management of funds.

C. Levels of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Sub-recipient acknowledges that funds will be disbursed for eligible expenses in conjunction with the project and agrees to provide the following level of program services during PY 2023:

Activity

Pedrena LLC will own and operate the Pedrena Low-Income Senior Apartment complex. Once completed it will be managed by Monarch Properties Inc.

D. Staffing

The program grant will be managed by the Executive Director of the Subrecipient. Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

E. Performance Monitoring

The City will monitor the performance of the Sub-recipient against goals and performance standards required herein. The Sub-recipient is expected to complete the project within eighteen months from the date of the execution of the agreement. Substandard performance as determined by the Grantee, will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-recipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures may be initiated.

II. TIME OF PERFORMANCE

A. Terms of the Loan Agreement

This Loan Agreement shall start on the Effective date of this Agreement which is the date of the last person to sign or the date on which the United States Department of Housing and Urban Development releases funds to the City for Grant B-23-MC-35-0002, whichever is later. The period of performance will continue for twenty-four (24) months after the Effective date of the Agreement.

1. Payment Terms

This loan has a set term of 30 Years at 0% interest, balloon payment note. The note will be due and payable at the conclusion of the term (30 years).

B. Eligible Payment Period

All eligible expenses and purchases approved by this Agreement and incurred during the grant period beginning from the effective date of this agreement and 24 months thereafter are eligible for payment by reimbursement. The term of this Agreement and the provisions herein shall not be extended unless deemed necessary by the grantee, which is managing the project. Such an extension may be granted by the City's Economic Development Director or his designee,

provided that such an extension is for cause beyond the Sub-recipient's control, and in accordance with the same terms and conditions of the original agreement. All other extensions or changes in scope, performance, or approved responsibility to this Agreement shall be by the City's governing body and the Sub-recipient in writing.

III. BUDGET

Sub-recipient is required to expend funds in a timely manner. Sub-recipient should expend 100% of the funds within 18 months of the Agreement Start date. Funds that are not expended by the end of the term of the Agreement will be held by the City and will not be available to the Sub-recipient.

Payments will be made for the line items listed below:

EXPENDITURE CLASSIFICATION	DESCRIPTION OF ITEM	APPROVED BUDGET
PY2023 CDBG	On-Site Infrastructure improvements to the site of the Pedrena Low-Income Senior Apartments. This includes grading, drainage improvements, sewer, gas and water and electrical, as well as any ADA improvements, and other, eligible expenses.	$100,000.00
	TOTAL	**$100,000.00**

A detailed description of each line item above may be requested of the Sub-recipient as a condition of contract execution and will be included as Attachment F.
Detailed description requested: _____ Yes __X__ No

If necessary, up to 25% of the total funding of the grant may be moved within already approved line item categories during the course of the grant. All changes to approved budget lines will require written requests for change, to be submitted on the provided Budget Line Item Revision Request by the Sub-recipient. Any budget changes must be limited to comply with the administrative scope of the program/project as defined by Part I, Scope of Service of this Agreement and the line items listed in this section. Adjustments between the individual line items above may be approved by the Housing and Neighborhood Services Manager or his designee. All other adjustments or amendments in excess of 25% or any change to the scope must be approved by the Las Cruces City Council and the Sub-recipient in writing, excluding the adjustments between budget line items.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed **$100,000.00**. The payment of eligible expenses shall be made for only the line item budgets specified in Section III herein and in accordance with the scope of

service. Payments are contingent upon adherence to all administrative requirements as specified in Section VII of this Agreement.

The Grantee shall disburse grant proceeds for approved budget items only after the Grantee has approved the project plans, reviewed and approved of both procurement and contracting award procedures, and ascertained that all the necessary and proper permits have been obtained by the recipient at each phase prior to the beginning of construction. Other documents may be needed during construction specified in writing by the Grantee to the Sub-recipient. Notwithstanding anything in this Agreement, the Grantee also reserves the right to request and approve documentation supporting any requests for disbursement to verify reasonableness and validity of such costs and the Sub-recipient's budget may be modified by the Grantee accordingly. Funds expected to be spent during the last 30 days of the grant will be presented for payment consideration to the Grantee within 60 days of the end of the grant period. Any funds that are not expended by the end of the 60-day period after the end of the grant will be held by the Grantee and not be available to the Sub-recipient, unless an Agreement extension is approved in accordance with Section II, (B).

V. NOTICES

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

CITY	SUB-RECIPIENT
Raymond Burchfield, Neighborhood Programs Specialist Housing and Neighborhood Services City of Las Cruces P.O. Box 20000 Las Cruces, NM 88004 Phone: (575) 528-3094 E-mail: rburchfield@lascruces.gov	Thomas C. Mannschreck, President Thomas Development Co. 420 W. Main St. Su 300 Boise, Idaho 83702 Phone: (208) 867-0314 E-mail: tmannschreck@thomasdevelopment.com

VI. GENERAL CONDITIONS

A. General Compliance

The Sub-recipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Sub-recipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Sub-recipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 58. The Sub-recipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract. The Sub-recipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in this Agreement is intended to, nor shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Sub-recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Sub-recipient is an "independent contractor."

C. Hold Harmless

The Sub-recipient agrees to defend, indemnify and save harmless the City and its officers, agents and employees from any and all suits, actions and claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from negligence of the Sub-recipient under this Agreement; however, this hold harmless clause shall not extend to liability, claims, damages, losses or expenses, including attorney fees arising out of:

1. The preparation or approval of maps, drawings, opinion, reports, surveys, change orders, designs or specification by the City, or its agents or employees; or

2. The giving of or failure to give directions or instructions by the City, or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

In the event the City, or its officers, agents or employees actively participate in such negligence, (a) the Sub-recipient is relieved of its obligation to defend the City, and (b) the Sub-recipient's obligation to indemnify and save harmless is limited to the amount representing the Sub-recipient's comparative share of negligence as between the Sub-recipient and the City.

D. Workers' Compensation

The Sub-recipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance and Bonding

The Sub-recipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud, and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City.

All Sub-recipients located within or providing services within a City of Las Cruces-owned facility are required to include the City as an additional insured with the same coverage as the Sub-recipient on the Sub-recipient's liability insurance policies.

The Sub-recipient shall comply with the bonding and insurance requirements of 2 CFR Part 200, Subpart D, Post Federal Award Requirements, Procurement Standards.

F. Grantee Recognition

The Sub-recipient shall insure recognition of the role of the Grantor agency in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Sub-recipient will include a reference to the support, provided herein, in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Sub-recipient may amend the budget, scope of work, or this Agreement at any time, provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body except as provided in Section III. Such amendments shall not invalidate nor relieve or release the City or Sub-recipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of the Agreement, such modifications will be incorporated only be a written amendment signed by both City and Sub-recipient.

H. Suspension or Termination

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial terminations of the approved Scope of Service may only be undertaken with the prior approval of the City. In the event of any termination for convenience in accordance with 2 CFR 200.339, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Sub-recipient under this Agreement shall become the property of the City, and the Sub-recipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

In accordance with 2 CFR 200, Subpart D, Remedies for Noncompliance, the City may also suspend or terminate this Agreement, in whole or in part, if the Sub-recipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the City may declare the Sub-recipient ineligible for any further participation in the City's Agreements, in addition to other remedies as provided by law. In the event there is probable cause to believe the Sub-recipient is in noncompliance with any applicable rules or regulations, the City may withhold up to fifteen (15) percent of said Agreement's funds or such amount that the City may determine as appropriate. Such suspension will last until such time as the Sub-recipient is found to be in compliance by the City or is otherwise adjudicated to be in compliance.

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

The Sub-recipient agrees to comply with 2 CFR Part 200, Subpart D, Financial Program Management, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and to maintain necessary source documentation for all costs incurred. The Sub-recipient shall administer its program in conformance with 2 CFR part 200.

B. Applicable Laws

The Sub-recipient shall comply with all applicable federal, state and local laws, rules, and regulations dealing with property rehabilitation and quality standards whether they are presently or subsequently promulgated. The Sub-recipient agrees to comply with any and all CDBG regulations, as amended from time to time whether set forth herein or not and agrees to execute or amend documents as necessary to be in compliance forthwith. The Sub-recipient shall also comply with all other applicable federal, state or local statutes, ordinances, rules and regulations including, but not limited to, all applicable provisions of the City's Municipal, Building and Zoning Codes and the New Mexico State Environmental Requirements for rehabilitation of offices and community services spaces.

C. Documentation and Record-Keeping

1. Records to be Maintained

As applicable, the Sub-recipient shall maintain all records required by Federal regulations, State law, local ordinances and City requirements that are pertinent to the activities to be funded under this Agreement, including 24 CFR Part 570 and 2 CFR Part 200. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken and demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
b. Records necessary to determine the eligibility of activities;
c. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973;
d. Financial records as required by 24 CFR Part 570.502 and 2 CFR Part 200, Subpart Financial and Program Management;
e. Other records necessary to document compliance with 24 CFR 570 Subpart K;
f. Records of the ethnicity, race, gender and disability status of all eligible clients;
g. For those Sub-recipients not covered by 24 CFR part 570.208 (a) (2) (i) (A) or (D), disclosure of family income, individual income, annual income and as adjusted income.

2. Required Documents for Regular City Submissions:

REPORTS and/or DOCUMENTATION	SUBMITTED TO CITY	RETAINED N CLIENT FILES
Client Verification (Intake) Forms		
Verification of Las Cruces residency		
Monthly Expenditure Report	X	
Client List		
Monthly Summary Progress Report	X	
Monthly Request for Payment w/back-up documentation	X	
Final (Annual) Report	X	

3. Retention and Inspection of Records

a. The Sub-recipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. Records for any displaced person must be kept for three (3) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

b. The Sub-recipient agrees to include in first-tier subcontracts under this agreement, a clause substantially the same as paragraph (a) above, "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.00

The periods of access and examination in paragraphs (A) and (B) above for records relating to appeals, litigation or settlement of claims arising from the performance of the contract to which the City, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigations, claims, or exceptions.

4. Close-Outs

The Sub-recipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, submission of Final Report, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement

shall remain in effect during any period that the Sub-recipient has control over CDBG funds, including program income.

5. Audits and Inspections

All Sub-recipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

One copy of the Sub-recipient's reporting package shall be submitted to the City 30 days after receipt of an auditor's report or 9 months after the end of the audit period, whichever occurs first. The reporting package shall include:

1. Financial statement,
2. Schedule of prior year audit findings,
3. Auditor's report, and
4. Corrective action plan that addresses each audit finding.

Any deficiencies noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient. Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Sub-recipient audits, and 2 CFR 200 subpart F (Audit Requirements for Federal Awards), as applicable.

D. Reporting and Payment Procedures

1. Program Income

In accordance with 24 CFR 570.504, no program income is anticipated by this Agreement by the Sub-recipient. If such program income is collected/awarded, said program income shall be paid to the City.

2. Indirect Costs

If indirect costs are charged, the Sub-recipient will develop an indirect cost allocation plan for determining the appropriate Sub-recipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The City will make all payments under this program directly to the contracted vendors consistent with any approved budget and City policy concerning payments. Payments will be made for eligible expenses actually incurred by the project, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with

advance funds and program income balances available (if any) in Sub-recipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Sub-recipient.

4. Monthly Reports

The Sub-recipient shall submit regular Progress Reports by the 15th of each month even if there is no monthly billing. For reports with no payment requested, an indication shall be made in writing "no billing for this month."

E. Procurement

1. Compliance

The Sub-recipient shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

2. Standards

The Sub-recipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 200 Subpart D, Procurement Standards (200.213 – 200.326) and shall subsequently follow 2 CFR part 200 Subpart D, Property Standards (200.310 – 200.316), Property Management Standards, as modified by 24 CFR 570.502 (b) (6) covering utilization and disposal of property.

3. Travel (*Check one)*

The Sub-recipient shall obtain written approval from the City for any travel outside the State of New Mexico, excepting El Paso County, Texas, with funds provided under this agreement.

__X__ Travel is NOT included as part of this Agreement.

F. Use and Reversion of Assets

Upon expiration of this Agreement, the Sub-recipient shall transfer to the Grantee any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. The Grantee and Sub-recipient and Grantee hereby acknowledge that the real property under the Sub-recipient's control that has been acquired or improved in whole or in part with CDBG funds meets the national objective criteria at §570.208 (2), Limited Clientele Activities.

VIII. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Sub-recipient agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964, as amend; Title VIII of the Civil Rights Act of 1968, as amended; Section 104 (b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 11063; and with Executive Order 11246, as amended by Executive Orders 11375 and 12086.

2. Non-discrimination/EEO-AA Statement

The Sub-recipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable. Attachment "C" Certification is required of all Sub-recipients as part of the entire Agreement.

3. Land Covenants/ Land Use Restriction Agreement

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Sub-recipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Sub-recipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate. See Attachment "A" of this agreement and made a part hereof.

4. Drug-Free Workplace

The Sub-recipient shall maintain a drug-free workplace and so place signs in appropriate places indicating such to clients, staff, and applicants. See Attachment "B" of this agreement and made a part hereof.

5. Section 504

The Sub-recipient agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any Federally assisted program.

6. Americans with Disabilities Act.

a. Contracts to Conduct Programming

The Sub-recipient shall ensure that all programs, services and activities are accessible to and useable by persons with disabilities in accordance with the Americans with Disabilities Act, including but not limited to, equal opportunity to participate and benefit, equally effective communication for persons with speech, hearing or cognitive disabilities, integrated seating and the provision of reasonable modifications and/or accommodations and to maintain, and provide to the City upon request, a record of all such requests received, granted and/or denied and the reason for any denials.

b. Operational Duties and Responsibilities

The Sub-recipient shall post one or more signs containing facility hours, rules, warning signs and emergency telephone numbers, anti-drug policy, EEO, New Mexico Workforce and Fair Housing Posters as appropriate. The Sub-recipient shall make such postings available in alternate formats upon request. The Sub-recipient shall adhere to the City of Las Cruces Communication Policy when publicizing events, activities, programs or services.

c. Bid Specifications for Products, Design and/or Construction

The Sub-recipient shall insure all proposed products, services, or activities contained as a part of this Agreement comply with the requirements of the Americans with Disabilities Act and ADAAG requirements, ANSI Accessibility Guidelines and NMBC Accessibility Requirements (when applicable) to ensure accessibility to persons with disabilities.

B. Affirmative Action

1. Approved Plan

The Sub-recipient agrees to be committed to and carry out the City's specifications pursuant to an Affirmative Action Program (AAP) in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. Each Sub-recipient must have an Affirmative Action Plan/Program filed with the City within 30 calendar days of the signing of this Agreement or certify that there is an AAP on file with the City from another activity undertaken by the Sub-recipient within the last five (5) years. State the activity:

If the Sub-recipient does not have an AAP, it must develop one. The Sub-recipient shall develop and submit a plan for approval within 60 calendar days of the signing of the Agreement.

2. Women/Minority Business Enterprises

The Sub-recipient will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, a "minority group members" are African--Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Sub-recipient shall furnish and cause each of its own Sub-recipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Sub-recipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Sub-recipient's commitments hereunder, and shall post copies of the notice in conspicuous, easily accessible places available to employees and applicants for employment.

5. Sub-contract Provisions

If the Sub-recipient decides to sub-contract part of the scope of work in this Agreement, it must get prior written authorization from the City. The Sub-recipient also must include the provisions of Attachment "C" (Equal Employment Opportunity/Affirmative Action Clause) of this agreement made a part hereof, in every sub-contract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own sub-contractors.

Additionally, the Sub-recipient will include the Section 3 Clause, in any sub-contract and will take appropriate action pursuant to the sub-contract upon a finding that the sub-contractor is in violation of regulations issued by the grantor agency. The Sub-recipient will not sub-contract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 75 and will not execute any sub-contract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

The Sub-recipient shall furnish and cause each of its own sub-contractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

1. Approvals

The Sub-recipient shall not enter into any sub-contracts with any agency or individual in the performance of this Agreement without the written consent of the City, prior to the execution of such agreement.

2. Monitoring

The Sub-recipient will monitor any sub-contracted services on a regular basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of non-compliance. These reports will be submitted to the City within 45 calendar days of completed correction of the non-compliance matter.

3. Content

The Sub-recipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any sub-contract executed in the performance of this Agreement.

4. Selection Process

The Sub-recipient shall undertake to insure that any sub-contracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all sub-contracts shall be forwarded to the City along with documentation concerning the selection process.

C. Employment Restrictions

1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

2. Labor Standards

a. The Sub-recipient shall comply with all applicable provisions of the Davis-Bacon Act (40 U.S.C. 201, et. Seq.) and it's implementing labor regulations at 29 CFR Part 5. The Sub-recipient shall also comply with the Contract and Work Hours and Safety Standards Act (40 U.S.C. Section 327-332), Fair Labor Standards Act (29 U.S.C. 201, et seq.) and other Federal laws

and regulations pertaining to labor standards and HUD Handbook 1344.2, as applicable.

b. The Sub-recipient shall ensure that the Federal Labor Standards Provision, HUD form 4010, is included in the Bid Documents.

c. During the duration of construction, the Grantee will conduct at least 2 employee interviews monthly and include them with each request for payment to the Grantee to ensure Davis Bacon Act compliance.

d. The City will be responsible for the collection of the Certified Payrolls from the Prime Contractor. If there are any Sub-Contractors, it is the responsibility of the Prime Contractor to collect all Certified Payrolls and to deliver them to the Grantee. These payrolls are due no later than 1 week after an employee is paid for a given pay period.

e. When the Grantee receives a pay request from the Prime Contractor, and before payment is made, the Grantee will evaluate for work completed, and ensure Davis Bacon compliance through the Certified Payrolls. At that time, the Grantee, after certifying that the Contractors are in compliance with the Davis Bacon Act will attach the Davis Bacon Compliance Certification form to the pay request. At this time payment can be made to the Prime Contractor. This process is necessary to ensure contractor compliance with the Davis Bacon Act.

2. "Section 3" Clause

The Sub-recipient hereby agrees to comply with "Section 3," regulations set forth in 24 CFR 75. The Sub-recipient further agrees to comply with the "Section 3" requirements and to include the language of Attachment "E", Sections A, B, and D in all sub-contracts executed under the Agreement. The Sub-recipient certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements. Sub-recipient shall sign Attachment "E" as a condition of receiving this grant.

3. Copeland "Anti-Kickback" Act:

As applicable, the Sub-recipient shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874), as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.

D. Conduct

1. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such

approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals:

The Sub-recipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring:

The Sub-recipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content:

The Sub-recipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process:

The Sub-recipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

4. Debarment and Suspension

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small

purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

5. Hatch Act

The Sub-recipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United State Code.

6. Lobbying

The Sub-recipient hereby certifies that federally appropriated funds have not been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence any award action. Attachment "E" Certification is required of the Sub-recipients as part of the entire Agreement.

7. Conflict of Interest

The Sub-recipient agrees to abide by the provisions of 570.611 including the acknowledgement of the Conflict of Interest Statement in Attachment "E" made a part of this Agreement.

8. Copyright

If this Agreement results in any copyrightable material or inventions, the City reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

9. Religious Organizations

The Sub-recipient agrees that all funds and/or programs under this Agreement, which includes faith-based organizations, are subject to the requirements specified in 24 CFR Part 570.200 (j), as amended.

10. Federal Changes

The Sub-recipient shall at all times comply with all applicable HUD regulations, policies, procedures and directives, including without limitation those listed directly or by reference by the Master Agreement between the City and HUD, as they may be amended or promulgated from time to time during the term of the agreement. Sub-recipient's failure to so comply shall constitute a material breach of this contract.

IX. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Sub-recipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

1) Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Sub-recipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

X. WAIVER

The Grantee's failure to act with respect to a breach by the Sub-recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XI. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Sub-recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Sub-recipient with respect to this Agreement.

XII. GOVERNANCE AND SEVERABILITY

A. This agreement shall be governed by the laws of the State of New Mexico.

B. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

C. All attachments are part of this Agreement have the same weight and importance as the initial Sections I through VIII.

D. All certifications in Attachments "A" through "E" shall be signed by the Sub-recipient as part of this Agreement.

Signatures on the following page:

IN WITNESS WHEREOF, the parties hereto do mutually execute the Agreement as of the date first written:

Pedrena Apartments LLC, a New Mexico limited liability company

By: Pedrena-TDC Associates LLC.,
A New Mexico limited liability company
Its Managing Member

By: Thomas Development Co.,
an Idaho corporation
its Managing Member

By: _____ Date: _____
Thomas C. Mannschreck, President

By Pedrena-NIHC Associates LLC,
a New Mexico limited liability company
Its Managing Member

By: Northwest Integrity Housing Co.,
an Idaho nonprofit corporation
its Managing Member

By: _____ Date: _____
Rick Sullivan, Executive Director

CITY OF LAS CRUCES

_____
Ikani Taumoepeau, Assistant City Manager

APPROVED AS TO FORM:

_____ _____
Date City Attorney

REQUIRED CERTIFICATIONS FOR EXECUTION AS PART OF THIS AGREEMENT:

1. Attachment A. Land Use Restrictions Agreement

2. Attachment B. Drug-Free Workplace.

3. Attachment C. EEO/AA Clause.

4. Attachment D. Certification Regarding Lobbying

5. Attachment E. Required City and Federal Clauses and Certifications:

   Protest Procedures
   Conflicts of Interest
   Breaches and Dispute Resolution/ Rights and Remedies
   Contracting with Small and Minority Firms, Women's
   Business Enterprise and Labor Surplus Area Firms
   Bidder's Certification of Energy Conservation, Air Quality and Clean Water Compliance
   Retention and Inspection of Records
   No Government Obligation to Third Parties
   False or Fraudulent Statements of Claims
   Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
   Lower Tier Covered Transactions
   Instructions for Certification
   Privacy Act
   Termination
   State and Local Law Disclaimer
   Civil Rights Requirements
   Age Discrimination Act
   Copeland "Anti-Kickback"
   Davis-Bacon Act
   Contract Work Hours and Safety Standards Act
   Section 3 Clause

6. Attachment F. Promissory Note and Mortgage and Restrictive Covenants for CDBG Loan

7. Attachment G. Subordination and Standstill Agreement

ATTACHMENT "A"

COMMUNITY DEVELOPMENT BLOCK GRANT
LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEEMENT, dated as of _____, 2023, is by and between **Pedrena Apartments LLC** (the Owner) and the **City of Las Cruces**, a New Mexico municipal corporation.

WITNESSETH:

WHEREAS, the Owner acquired the property for use as **Affordable Housing**. The property identified as 801 E. Farney LN, is located on lands in the City of Las Cruces, County of Dona Ana, State of New Mexico, more particularly described in Exhibit A hereto; and

WHEREAS, **Thomas Development Co** applied with the City of Las Cruces for Community Development Block Grant (CDBG) funds from Program Year 2023 in the amount of $_100,000.00 for the Property and has made certain representations to the City about the Project Property, as to the nature of the Project, including the number of Low-Income clients to be served and what the Property shall be used for during the time period of the grant , beginning _October 16, 2023 upon which the City of Las Cruces relied in considering the Application and committing funds to the project; and

WHEREAS, the CDBG regulations at 24 CFR 570.505, Use of Real Property, require that standards of the use of the property apply from the date CDBG funds are first spent for the property, and;

WHEREAS, the Owner, under this Agreement, intends, declares and covenants the use and occupancy of the Property shall be and are covenants running with the Project land for the term stated herein and shall be binding upon all subsequent owners of the Property for such term until there is a change of use granted following the processes outlined below and the City of Las Cruces has filed a Release of this Agreement with the Office of the County Clerk of Dona Ana County.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the City of Las Cruces agree as follows:

Representations, Covenants and Warranties of the Owner

(a) The Owner may not change the use or planned use of any such property including beneficiaries of such use from that for which the acquisition or improvement was made unless the Owner provides through, and in coordination with the City's Community Development Department, affected citizens with reasonable notice of, and opportunity to comment on, and proposed change, and either:
    1. The new use of such property qualifies as meeting one of the national objectives in §570.208 (formerly §570.901) and is not a building for the general conduct of government; or
    2. The requirements in paragraph (b) of this section are met.
(b) If it is determined, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the City's CBDG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of , and improvements to, the property.
(c) If the change in use occurs after closeout, the provisions governing income from the

disposition of the real property in §570.504 (b)(4) or (5), as applicable, shall apply to the use of the funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of the section, the property no longer will be subject to any CDBG requirements.

Miscellaneous

(a) All notices to be given pursuant to the Agreement shall be in writing and shall be deemed Given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the City of Las Cruces: City of Las Cruces
Housing & Neighborhood Services Administrator
700 N Main St.
Las Cruces, NM 88001

To the Owner: Pedrena Apartments LLC
420 W Main St., Suite 300
Boise, Idaho 83702

The City and the Owner may, by notice given hereunder, designate any further or different, addresses to which subsequent notices, certificates or other communications shall be sent.

(b) The Agreement shall be governed by the laws of the State of New Mexico and, where applicable, the laws of the United State of America.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their respective duly authorized representatives, as the day and year first written above.

Owner _____ (SEAL)

By:_____

Its:_____

State of New Mexico)
City of Las Cruces) ss.
County of Dona Ana)

This instrument acknowledged before me this _____day of _____, 20__ by _____of_____
its_____.

CITY OF LAS CRUCES (SEAL)

By:_____

Its:_____

State of New Mexico)
City of Las Cruces) ss.
County of Dona Ana)

This instrument acknowledged before me this_____ day of_____, 20__ by _____of_____
its_____.

APPROVED AS TO FORM

_____
City Attorney

ATTACHMENT "B"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification set out below is a material representation upon which reliance is placed by the City of Las Cruces and the U.S. Department of Housing and Urban Development (HUD) in awarding this Grant. If it is later determined that the Sub-recipient knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The Sub-recipient will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. The Sub-recipient certifies that it will provide a drug-free workplace by:

   A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

   B. Establishing an ongoing drug-free awareness program to inform employees about:

      1. The dangers of drug abuse in the workplace;
      2. The Sub-recipient's policy of maintaining a drug-free workplace;
      3. Any available drug counseling, rehabilitation and employee assistance programs; and
      4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

   C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by Paragraph "A."

   D. Notifying the employee in the statement required by Paragraph "A" that, as a condition of employment under the Grant, the employee would:

      1. Abide by the terms of the statement; and
      2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

   E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under Subparagraph (D) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification numbers(s) of each affected grant.

F. Taking one of the following actions, within 30 calendar days of receiving notice under Subparagraph (D) (2), with respect to any employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or other appropriate agency.

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).

2. The Sub-recipient shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Sub-recipient further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement, it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

PLACE OF PERFORMANCE
FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Name of Sub-recipient: Pedrena Apartments LLC

Program Name: Pedrena Low-Income Senior Apartments

Date: _____

The Sub-recipient shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance includes street address, city, county, state, zip code for each site:

420 E. Farney Road

Check _____ if there are work places on file that are not identified here.

By: _____ Date: _____

ATTACHMENT "C"

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION CLAUSE FOR CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246

In carrying out this Agreement, the Sub-recipient and its contractors and subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The Sub-recipient shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Sub-recipient shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Sub-recipient shall state in all solicitations or advertisement for employees placed by or on behalf of the Sub-recipient that it is an Equal Opportunity or Affirmative Action employer.

By: _____ Date: _____

ATTACHMENT "D"

CERTIFICATION OF

RESTRICTIONS ON LOBBYING

31 U.S.C. 1352; 49 CFR Part 19; & 49 CFR Part 20

I, _____, hereby certify on behalf of Pedrena Apartments LLC that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-"Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subgrants, loans, and cooperative agreement) which exceed $100,000, and that all such Sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. As required by 49 CFR part 20, "New Restrictions on Lobbying," I will disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on my behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this _____ day of _____, of 2023.

Company Name: __Pedrena Apartments LLC _____

Title of Person Authorized to Sign this Form: _ President

Date: _____

Signature: _____

ATTACHMENT "E"

PROTEST PROCEDURES

Protests concerning this proposal can be filed as per Las Cruces Municipal Code Section 24-286 and 24CFR85.36 (b) (12) (i) (ii). A protestor must exhaust all administrative remedies with the City before pursuing protest with a Federal agency. Reviews of protests by the Federal agency will be limited to:

1. Violations of the City's protest procedures for failure to review a complaint or protests
2. Violations of Federal law or regulations and the standards of 24CFR85.36

Protests received by a Federal agency other than those specified above will be referred to the City.

Company Name's: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President _____

Date:_____

Signature:_____

The Remainder Of This Page Intentionally Left Blank

CONFLICTS OF INTEREST

Based in part on federal regulations 2 CFR 200 and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,
(ii) Any member of his or her immediate family,
(iii) His or her partner, or
(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

(a) The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Proposers, or parties to sub-agreements. Grantees and subgrantee's may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub grantee's officers, employees, or agents or by Proposers or their agents.

(b) The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. Neither the Owner nor any of its proposers or their sub proposers shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect.

1. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President

Date:_____

Signature:_____

BREACHES AND DISPUTE RESOLUTION

Applicability to Contracts - All contracts in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down - The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President_____

Date: _____

Signature:_____

CONTRACTING WITH SMALL AND MINORITY FIRMS,
WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS

(1) The Prime Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Company Name: Pedrena Apartments LLC
Title of Person Authorized to Sign this Form: President

Date: _____

Signature:_____

The Remainder Of This Page Intentionally Left Blank

BIDDER'S CERTIFICATION OF ENERGY CONSERVATION
AIR QUALITY AND CLEAN WATER COMPLIANCE

Company/Organization Name: Pedrena Apartments LLC

The third party Contractor named above hereby certifies compliance with the requirements listed below and regulations issued by the Environmental Protection Agency (EPA), Federal Highway Administration, Federal Transit Administration (FTA) and other agencies of the Federal Government as well as future regulations, guidelines, standards, orders, directives or other requirements that may affect this procurement contract.

The above named Contractor will:

1. Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C., 7401 et seq.
2. Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Act, as amended, 33 U.S.C., 1251 et seq.
3. 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.
4. Report any violation of these requirements by a sub recipient or itself, resulting from completing the required manufacturing and delivery of vehicles included with this contract to HUD and the appropriate United States EPA Regional Office.
5. Agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with assistance provided by HUD.

Company Name: Pedrena Apartments LLC _____

Title of Person Authorized to Sign this Form: President _____

Date: _____

Signature: _____

The Remainder Of This Page Intentionally Left Blank

RETENTION AND INSPECTION OF RECORDS

A. Families & Youth Inc., the City, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Proposer's directly pertinent books, documents, papers or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

B. The Proposer agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above, "“Subcontract,” as used in this clause, excludes purchase orders not exceeding $10,000.

The periods of access and examination in paragraphs (A) and (B) above for records relating to appeals, litigation or settlement of claims arising from the performance of the contract to which the City, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

ACCESS TO RECORDS
The Contractor agrees to provide the Purchaser, the HUD Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

FEDERAL CHANGES
Contractor shall at all times comply with all applicable HUD regulations, policies, procedures and directives, including without limitation those listed directly or by reference by the Master Agreement between the City and HUD, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply shall constitute a material breach of this contract.

COPYRIGHTS AND RIGHTS IN DATA
The City shall have exclusive ownership of all proprietary interest in, and the right to full and exclusive possession of all information, materials, designs and documents discovered or produced by Proposer pursuant to the terms of the contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of the Contract.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President _____

Date: _____

Signature: _____

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The City of Las Cruces and Contractor 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 City of Las Cruces, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President _____

Date: _____

Signature:_____

The Remainder Of This Page Intentionally Left Blank

FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

The Contractor acknowledges and agrees that:
(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq*. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.
(2) If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President

Date: _____

Signature: _____

The Remainder Of This Page Intentionally Left Blank

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED NSTRUCTIONS WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

(1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
(2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President

Date: _____

Signature:_____

The Remainder Of This Page Intentionally Left Blank

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Transportation (DOT) may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by HUD.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligible and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the Federal Government, the DOT may pursue available remedies, including suspension and/or debarment.

PRIVACY ACT

The Proposer agrees to comply with all applicable terms in the Privacy Act of 1974; will notify the government when the Proposer anticipates operating a system of records on behalf of the government in order to implement the bid if such system contains information about individuals retrievable by the individual's name or other identifier; and will include in any subcontract the Privacy Act notifications above.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President

Date: _____

Signature:_____

The Remainder Of This Page Intentionally Left Blank

TERMINATION

Flow Down

The termination requirements flow down to all contracts in excess of $10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

a. **Termination for Convenience (General Provision)** The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

b. **Opportunity to Cure (General Provision)** The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

c. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President _____

Date: _____

Signature:_____

The Remainder Of This Page Intentionally Left Blank

STATE AND LOCAL LAW DISCLAIMER

Flow Down - The Disclaimer has unlimited flow down.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President

Date: _____

Signature:_____

The Remainder Of This Page Intentionally Left Blank

CIVIL RIGHTS REQUIREMENTS
29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630; & 41 CFR Parts 60 et seq.

Flow Down - The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements HUD may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor 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. Parts 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. § 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 Contractor 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 Contractor agrees to comply with any implementing requirements HUD may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor 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 Contractor agrees to comply with any implementing requirements HUD may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by HUD, modified only if necessary to identify the affected parties.

The Remainder Of This Certification Continues on the Next Page

AGE DISCRIMINATION ACT

The Contractor shall comply with all the requirements of the Age Discrimination Act of 1975 42 U.S.C. 6101 et seq. or with respect to otherwise qualified handicapped persons as provided in section 504 of The Rehabilitation Act of 1973 29 U.S. C. 794.

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President

Date: _____

Signature: _____

The Remainder Of This Page Intentionally Left Blank

COPELAND "ANTI-KICKBACK"

Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (Applies to all contracts and subgrants for construction or repair)

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President _____

Date: _____

Signature: _____

The Remainder Of This Page Intentionally Left Blank

DAVIS-BACON ACT

Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and sub-grantees when required by Federal grant program legislation)

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President _____

Date: _____

Signature: _____

The Remainder Of This Page Intentionally Left Blank

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and sub-grantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

Company Name: Pedrena Apartments LLC

Title of Person Authorized to Sign this Form: President

Date: _____

Signature: _____

The Remainder Of This Page Intentionally Left Blank

SECTION 3 CLAUSE – SUBRECIPIENTS AND CONTRACTORS

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.

F. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

ATTEST:

By: _____ Date: _____

By: _____ Date: _____

ATTACHMENT "F"

CITY OF LAS CRUCES
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
PROMISSORY NOTE
(Loan)

$100,000.00 Date: October___ , 2023

For value received, the undersigned ("Owner(s)") promise(s) to pay to the City of Las Cruces, a New Mexico municipal corporation, ("Lender") or order, the principal sum of **One Hundred thousand and 00/100 Cents ($100,000.00**) for a loan for the site improvements for the Pedrena Low-Income Senior Apartments project located at **801 E Farney Lane, Las Cruces, New Mexico 88001** ("Property").

This Note is secured, and payment hereof is assured by, a Mortgage and Restrictive Covenants Agreement ("Mortgage") of even date herewith, and compliance with the terms hereof is secured by the Mortgage which restricts the uses of the Property.

Interest will accrue on the unpaid principal balance until paid at the rate of Zero percent (0%) per annum. Periodic payments of principal and interest are not required for this loan. Note becomes due and payable after 30 years from the date of this note. The entire outstanding principal amount of the Loan will furthermore be due and payable in full upon the earlier to occur of (1) the sale, refinance or other transfer of the Property, or (2) Owner may prepay any part of the outstanding principal amount of the Loan at any time prior to maturity without penalty. Any partial prepayment shall be applied against the unpaid principal and shall not postpone the due date of any subsequent monthly installment or change the amount of such installments unless the Lender agrees otherwise in writing.

If the Lender has not received the full amount of the lone by the end of 15 calendar days after the date it is due, Owner shall pay a late charge to the Lender in the amount of Five and No/100 Dollars ($5.00). The late charge will only be collected once on each late payment. If the Owner does not pay the full amount of each monthly payment on the date it is due, the Owner will be considered in default. The Lender may send a written notice informing the Owner that if the overdue amount is not paid by a certain date which shall be at least 30 days after the notice is mailed to the Owner, the Lender may require the Owner to pay immediately the full amount of principal which has not been paid and all the interest that is owed on that amount.

So long as any or all of the principal amount of the Loan is unpaid and outstanding ("Term"), Owner will maintain the Property as affordable, multi-family senior, residential housing pursuant to Section 570.208(a)(2)(A) of the federal regulations at 24 CFR Part 570 CDBG, as amended from time to time ("Regulations"), and specifically in accordance with the Mortgage. If Any representation or statement made or furnished to Lender by Owner or on Owner's behalf under this Note or related documents is false or misleading in any material respect, either now or at the time made or furnished shall cause this Mortgage to be considered in default.

During the Term, Owner shall keep the improvements now existing or hereafter erected on the Property insured against any fire and hazards, and extended coverage at all times. If the Property is in a flood plain, Owner agrees to obtain flood insurance for the value of the improvements located thereon.

In accordance with the terms of the Mortgage, if at any time during the Term, the Owner (or the Owner's heirs, estate, agents or assignees) sells, transfers, or in any manner conveys title to the property (including any refinancing of any mortgage on the Property), without Lender's prior written consent, the Owner (or the Owner's heirs, estate, agents or assignees) shall become liable to pay Lender or Lender's assigns the then outstanding principal balance of the Loan, in accordance with the terms of the Mortgage. Upon receipt of payment in full, Lender or Lender's assigns shall thereupon release its Mortgage which restricts the use of the Property.

This Note can only be assumed in accordance with the terms and conditions of the Mortgage. Lender reserves the right to deny any such request for approval to assume or transfer this Note. Included in any assumption (if approved), there must be a written agreement stating that the buyer will assume responsibility of the Note and all attached conditions, including the conditions contained in the Mortgage.

If Owner defaults under the terms of this Note, the Mortgage or under any other mortgage on the Property superior to or junior to the Mortgage, Lender may, at its option, accelerate maturity and the unpaid balance of the Loan, plus the accrued interest thereon, shall become immediately due and payable. If this Note is reduced to a judgment, the judgment shall bear interest at the statutory rate.

If this Note is placed in the hands of an attorney for collection or is collected through probate or bankruptcy court or through other legal proceedings, Owner agrees to pay all costs of collection including reasonable attorney's fees and court costs.

Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Even if, at any time the Mortgage is in default, the Lender does not require payment in full as described above, the Lender will still have the right to do so should the Mortgage be in default at a later time.

Presentment, notice of dishonor, and protest are hereby waived by the Owner. This Note shall be the joint and several obligation of the Owner and shall be binding on the Owner and successors.

IN WITNESS WHEREOF, this Note has been executed by the undersigned Owner(s) on the date first written above.

_____ Date _____
Owner/Borrower

_____ Date _____
Owner/Borrower

CITY OF LAS CRUCES
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
MORTGAGE AND RESTRICTIVE COVENANTS AGREEMENT

Mortgage of Property **Date: October ___, 2023**

Pedrena Apartments LLC, ("Owner") for consideration paid, grants to the City of Las Cruces, a New Mexico municipal corporation, having an office located at 700 N. Main St., Las Cruces, NM, 88001 ("Lender"), the following described real estate in Dona Ana County, New Mexico ("Property"), which has an address of 801 E Farney Lane, Las Cruces, NM, 88001, and which is more particularly described as follows in Exhibit "A" attached hereto and made a part hereof. If there is a conflict between the legal description and the Property address, the legal description shall control.

WITH MORTGAGE COVENANTS.

This Mortgage and Restrictive Covenants Agreement ("Agreement") secures the performance of the following obligations and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law:

(a) Repayment of the Promissory Note dated October , 2023 in the principal amount of $100,000.00 and bearing interest at the rate of Zero (0) % ("Note"), and all renewals, extensions and modifications of the Note, including any increase in the principal amount of the Note made subsequent to the date of this Agreement,
(b) The repayment of all other sums, with interest, advanced under the terms of the Note or this Agreement to protect the security of this Agreement,
(c) The performance of all of Owner's obligations and agreements contained in this Agreement, and
(d) The conditions and obligations imposed upon the use of the Property contained herein.

This Agreement secures all future advances of funds to Owner by Lender in connection with this Agreement, and the lien of each such advance will relate back to the date of recordation of this Agreement.

Restrictive Covenants

This Agreement restricts the use of the Property and is in consideration of a loan from Lender to Owner in the amount of One Hundred Thousand Dollars and 00/100 ($100,000.00) ("Loan") for the site improvements to the property. The Loan will be made to Owner through Lender's Affordable Housing program, and can be made to Owner only if Owner agrees to the restrictions and requirements set forth herein.

In consideration of the Loan and of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender and Owner agree as follows:

A. Affordability. Owner shall maintain the Property as a low-income senior, multi-family residential property for residential purposes only, until the Loan is paid in full.

B. Property Standards. Owner will use the entire amount of the Loan to perform the site improvements ("Work") on the Property. Upon completion of the Work, the Property will meet all applicable local codes, ordinances, and zoning ordinances in effect and applicable to the Property at the time of completion of the Work, and Owner expressly authorizes inspection of the Property by Lender or Lender's agent during and following completion of the Work.

C. Low-Income Senior Occupied. If, at any time during the repayment term of the Loan, the Property ceases to be a low-income senior occupied complex, whether through sale of the Property or otherwise, then the entire outstanding amount of the Loan, including all accrued and unpaid interest, if any, will be immediately due and payable to Lender without demand.

D. Transfer of the Property. Owner agrees that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. Owner agrees that the entire Loan will be due and payable upon any such unapproved sale or transf

E. Default. Owner agrees that any default under the terms of the Loan, as those terms are set forth in this Agreement and the Note executed contemporaneously herewith, or under the terms of any other mortgage or encumbrance on the Property, whether superior to or junior to this Agreement, will constitute a default under this Agreement and shall cause the full amount of the Loan to become immediately due and payable.

F. Right of Redemption. If this mortgage is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months.

Owner(s) acknowledges having read all the provisions of this Mortgage, and agrees to its terms.

IN WITNESS WHEREOF the undersigned Owner(s) have hereunto set their hand(s) this _____ day of October 2023.

_____ _____

Owner/Borrower Owner/Borrower

Acknowledgment

STATE OF NEW MEXICO)
) ss
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by _____.

_____ _____

My commission expires: Notary Public

ATTACHMENT "G"

SUBORDINATION AND STANDSTILL AGREEMENT
(CEDAR RAPIDS BANK AND TRUST COMPANY AND
CITY CDBG LOAN)

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is entered into this ___ day of _____, 2023, by and among (i) CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation (the "**Senior Lender**"), (ii) CITY OF LAS CRUCES, a New Mexico municipal corporation (the "**Subordinate Lender**"), and (iii) PEDRENA APARTMENTS LLC, a New Mexico limited liability company (the "**Borrower**").

RECITALS

A. Borrower owns a multifamily affordable housing development (the "Project") in Las Cruces, New Mexico (the "Property").

B. Doña Ana County, New Mexico ("Issuer") issued its Multifamily Housing Revenue Bond (Pedrena Apartments Project) Series 2023, dated as of [_____], 2023, in the original principal amount of $[_____] (the "Bond"), to Senior Lender pursuant to that certain Financing Agreement dated as of [_____] 1, 2023 (the "Financing Agreement"), by and among Issuer, Borrower, and Senior Lender to finance the rehabilitation of the Project.

C. The Senior Lender purchased the Bond and the Issuer used the proceeds from the sale of the Bond to make a loan to the Borrower in the maximum principal amount of the Bond (the "Senior Loan") pursuant to that certain Financing Agreement.

D. The Loan will be subject to the terms of that certain Continuing Covenants Agreement dated as of [_____], 2023 between the Borrower and the Senior Lender (the "Senior Loan Agreement").

E. The Senior Loan is secured by that certain Leasehold Mortgage, Assignment of Rents and Security Agreement dated as of [_____], 2023, executed by Borrower for the benefit of Senior Lender (the "Senior Mortgage"). The Continuing Covenants Agreement, the Bond, the Mortgage, and each of the other documents evidencing or securing the Senior Loan are hereinafter referred to collectively as the "Loan Documents."

F. Subordinate Lender has extended to Borrower a loan in the original principal amount of $[_____] (the "Subordinate Loan"); and

G. The obligations of Borrower to repay the Subordinate Loan is currently evidenced by a City of Las Cruces Community Development Block Grant Program Promissory Note (City of Las Cruces Housing Trust Fund) dated as of [_____], 2023, executed by Borrower in favor of Subordinate Lender in the original principal amount of $100,000 (the "Subordinate Note"); and

H. The Subordinate Note is secured by, among other things, a City of Las Cruces Home Rehabilitation Program Mortgage and Restrictive Covenants Agreement dated as of [_____], 2023 (the "Subordinate Mortgage"),executed by Borrower in favor of Subordinate Lender, recorded concurrently herewith in the records of the Doña Ana County

Clerk (the "Official Records"), and recorded concurrently herewith in the Official Records, and encumbering the Property; and

I. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place a subordinate lien against the Property subject to all of the conditions contained in this Agreement.

J. WHEREAS, as a condition to making advances under the Continuing Covenants Agreement, Senior Lender requires that Borrower and Subordinate Lender enter into this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to place a subordinate lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

1. **Definitions**.

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a Senior Loan Default has occurred under the Senior Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Senior Loan Default" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

"Senior Loan Documents" means the Senior Mortgage, Bonds, the Senior Loan Agreement, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Loan.

"Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the Bonds, such other Person shall automatically become the Senior Lender.

"Subordinate Lender" means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"Subordinate Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

"Subordinate Mortgage" means the mortgage encumbering the Property as security for the Subordinate Loan, as defined in the Recitals.

"Swap Documents" mean those swap documents as described in the Continuing Covenants Agreement.

2. **Permission to Place Lien Against Property**.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the Senior Mortgage) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan.

3. **Borrower's and Subordinate Lender's Representations and Warranties**.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

a. **Subordinate Note**. The Subordinate Note shall be deemed to contain the following provision:

> The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness from Cedar Rapids Bank and Trust Company to Pedrena Apartments LLC, a New Mexico limited liability company, in the original principal amount of $[_____], to the extent and in the manner provided in that certain Subordination and

Standstill Agreement dated as of [_____], 2023 between the payee of this Note, the Senior Lender and Subordinate Lender (the "Subordination Agreement"). The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage securing the Senior Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement.

b. **Relationship of Borrower to Subordinate Lender and Senior Lender**. The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

c. **Term**. The terms of the Subordinate Note does not end before 6 months after the term of the Senior Note.

d. **Subordinate Loan Documents**. The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

e. **Senior Loan Documents**. The executed Senior Loan Documents are substantially in the same forms as, when applicable, those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. **Terms of Subordination**.

a. **Agreement to Subordinate**. The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Mortgage and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of protecting or further securing the lien of the Senior Mortgage, curing defaults by the Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Mortgage. Notwithstanding any contrary provision of this Agreement, Senior Lender agrees that it will not amend or modify the terms of the Senior Loan or any of the Senior Loan Documents without the prior written consent of Subordinate Lender, which consent Subordinate Lender shall not unreasonably withhold, if such amendment or modification would have the effect of

(i) increasing the amount of the Senior Loan, except in the case of sums advanced by Senior Lender in exercising its rights and remedies with respect to the Senior Loan or for protective advances; (ii) increasing the annual interest rate(s) above the interest rate(s) described in the Senior Note, except as contemplated by the Senior Loan Documents; or (iii) decreasing the term of the Senior Loan, except in connection with any acceleration of the Senior Loan pursuant to the Senior Loan Documents.

b. **Subordination of Subrogation Rights**. The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage.

c. **Payments Before Senior Loan Default**. Until the Subordinate Lender receives a Default Notice of a Senior Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents. Such payments include scheduled principal payments and the Subordinate Lender agrees that Subordinate Loan does not include any hyper-amortization feature. Such payments include simple, non-compounding, interest. Such payments are payable only from surplus cash flow after the payment of operating expenses, replacement reserve contributions, contributions to escrow accounts, and debt service on the Senior Loan from the operation of the Property.

d. **Payments After Senior Loan Default**. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. Notwithstanding anything to the contrary in this Agreement, including the immediately preceding sentence, nothing herein shall limit Subordinate Lender's rights, in the event of a default under the Subordinate Loan Documents, to (a) compute interest on all amounts due and payable under the Subordinate Note at the default rate described in the Subordinate Loan Documents, (b) compute prepayment premiums and late charges, (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Subordinate Note. If the Subordinate Lender receives written notice from the Senior Lender that the Senior Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

e. **Remitting Subordinate Loan Payments to Senior Lender**. If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

f. **Agreement Not to Commence Bankruptcy Proceeding**. The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

5. **Default Under Subordinate Loan Documents**.

a. **Notice of Default and Cure Rights**. The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the Senior Mortgage.

b. **Subordinate Lender's Agreement to Standstill**. If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

c. **Cross Default**. The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under

the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Senior Loan Default.

6. **Default Under Senior Loan Documents**.

a. **Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the Senior Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 90 days from the date of the Default Notice to cure a non-monetary default if during such 90-day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 90-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the liens of, the Subordinate Mortgage.

b. **Cross Default**. The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Senior Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Mortgage. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Senior Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

7. **Conflict**.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Senior Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. **Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the Senior Loan Documents**.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

Protection of Security Interest. The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

a. **Condemnation or Casualty**. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Senior Mortgage remains a lien on the Property the following provisions shall apply:

i. The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the Senior Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

ii. all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

a. **No Modification of Subordinate Loan Documents**. The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amounts of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the terms of the Subordinate Loan, increase the interest rates on the Subordinate Loan, or otherwise amend the terms of the Subordinate Loan in a manner that creates an adverse effect upon the Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever.

9. **Default by the Subordinate Lender or Senior Lender**.

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

10. **Notices**.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Cedar Rapids Bank and Trust Company
500 First Avenue NE
Cedar Rapids, Iowa 52401

SUBORDINATE LENDER:

City of Las Cruces
PO Box 20000
Las Cruces, New Mexico 88004
Attention: Raymond Burchfield

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

11. **General**.

a. **Assignment/Successors**. This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

b. **No Partnership or Joint Venture**. The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

c. **Senior Lender's and Subordinate Lender's Consent**. Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

d. **Further Assurances**. The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Mortgage, or to further evidence the intent of this Agreement.

e. **Amendment**. This Agreement shall not be amended except by written instrument signed by all parties hereto.

f. **Governing Law**. This Agreement shall be governed by the laws of the State in which the Property is located.

g. **Severable Provisions**. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

h. **Term**. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

i. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

14823.581
27180855v1

[REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation

By: _____
Sam D. Kramer
Vice President

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF IOWA)
)
COUNTY OF LINN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Sam D. Kramer, a Vice President of Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation, for and on behalf of said banking corporation.

_____
Notary Public

CITY OF LAS CRUCES, a
New Mexico municipal corporation

By: _____
Ikani Taumoepeau
Assistant City Manager

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF NEW MEXICO)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by Ikani Taumoepeau, the Assistant City Manager of the City of Las Cruces, a New Mexico municipal corporation, for and on behalf of said municipal corporation.

_____
Notary Public for New Mexico
My commission expires: _____

BORROWER:

PEDRENA APARTMENTS LLC, a
New Mexico limited liability company

By: Pedrena-TDC Associates LLC, a
New Mexico limited liability company, its
Managing Member

By: Thomas Development Co., an
Idaho corporation, its
Managing Member

By: _____
Thomas C. Mannschreck
President

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF IDAHO)
)
COUNTY OF ADA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Thomas C. Mannschreck, the President of Thomas Development Co., an Idaho corporation, the Managing Member of Pedrena-TDC Associates LLC, a New Mexico limited liability company, the Managing Member of Pedrena Apartments LLC, a New Mexico limited liability company, and acknowledged to me that he executed the within instrument on behalf of said limited liability company

_____
NOTARY PUBLIC
Residing at: _____
My Commission Expires:_____

BORROWER:

PEDRENA APARTMENTS LLC, a
New Mexico limited liability company

By: Pedrena-NIHC Associates LLC, a
New Mexico limited liability company, its
Managing Member

By: Northwest Integrity Housing Co., an
Idaho nonprofit corporation, its
Managing Member

By: _____
Rick Sullivan
Executive Director

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF IDAHO)
)
COUNTY OF ADA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Rick Sullivan, the Executive Director of Northwest Integrity Housing Co., an Idaho nonprofit corporation, the Managing Member of Pedrena-NIHC Associates LLC, a New Mexico limited liability company, the Managing Member of Pedrena Apartments LLC, a New Mexico limited liability company, and acknowledged to me that she executed the within instrument on behalf of said limited liability company.

_____
NOTARY PUBLIC
Residing at: _____
My Commission Expires:_____

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property located in the County of Dona Aña, State of New Mexico, described as follows:

A tract of land situate in the Dona Ana Bend Colony Grant, Dona Ana County, New Mexico, and in Sec. 20, T 23 S, R 2 E, of the Surveys of the USRS, being a part of County Plat No. 660 and of Serial No. 11-15 on the USRS Property Maps, and more particularly described as follows, to-wit:

Beginning at an iron fence Post, an established point, marking the southwest corner of this tract at the intersection of El Paseo and a road to the east; thence along the north side of the road to the east, North 76 deg. 01’ East 573.4 feet to an iron pipe marking the southwest corner of USRS Tract 11-14; whence an iron pipe marking the southeast corner of USRS 11-14 bears N. 73 deg. 53’ W. 627 feet distant; thence following the east line of USRS Tract 11-15 North 36 deg. 20’ West 393.95 feet to an angle iron marking the northeast corner of the parcel herein described; thence across USRS 11-15 to the east line of El Paseo South 76 deg. 01' West 444.67 feet to an angle iron In the north bank of a farm ditch at the NW corner of this tract; thence following the east line of El Paseo South 17 deg. 18’ East 364.3 feet to the place of beginning. Commitment No.: 2303052 ORT FORM 4690 NM6 8-1-16 Old Republic National Title Insurance Company Page 5 of 8 Excepting there from a portion deeded to the City of Las Cruces, a New Mexico Municipal Corporation, in Warranty Deed recorded June 5, 2015, as Document No. 1511766, records of Dona Ana County, New Mexico.

Exhibit “B”

HOME INVESTMENT PARTNERSHIPS PROGRAM
LOAN AGREEMENT BETWEEN
THE CITY OF LAS CRUCES
AND
PEDRENA APARTMENTS LLC

This **LOAN AGREEMENT** (hereinafter referred to as the “Agreement”) is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of P.O. Box 20000, Las Cruces, New Mexico 88004 (hereinafter referred to as “City” or “Lender”) and Thomas Development Company, a Idaho corporation, whose EIN #_HZRTRLP4XKQ1, and whose address is 420 W. Main St. Suite 300, Boise, Idaho, 83702 (hereinafter referred to as “Sponsor” or “Maker”) and Pedrena Apartments LLC, a New Mexico limited liability company, whose address is 420 W. Main Street, Suite 300, Boise, ID 83702, (hereinafter referred to as “Owner” or “Co-Maker”).

WITNESSETH:

WHEREAS, the City is an entitlement recipient of the federal HOME Investment Partnerships Program (hereinafter referred to as “HOME”) in furtherance of its goal of encouraging the production of decent, safe, sanitary affordable housing for the citizens of Las Cruces;

WHEREAS, the Sponsor has caused a separate limited liability company to be formed, Pedrena Apartments LLC (“Owner”), in which the Sponsor as a managing member, to the company, Pedrena Apartments LLC, a New Mexico limited liability company of the Owner, to own, manage, and operate 80 units of subsidized rental housing for low-income persons;

WHEREAS, the Owner submitted an application for Low Income Housing Tax Credits to the New Mexico Mortgage Finance Authority and received such credits;

WHEREAS, the Sponsor has submitted a proposal to utilize Two Hundred Thousand Dollars and No Cents ($200,000) in HOME funds for land acquisition for the construction of Pedrena Apartments, a rental housing complex with a street address of 801 E. Farney Lane, Las Cruces, New Mexico 88001, and located on the property more specifically described on the attached **Attachment “A”** (hereinafter referred to as “Property”);

WHEREAS, the land acquisition for new construction of a multi-family affordable housing apartment complex is an eligible activity under the HOME Program; and

WHEREAS, the parties desire to enter into this Agreement in order to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Sponsor and Owner regarding the use of funds to benefit low-income person, as defined under the standards of eligibility established by the United States Department of Housing and Urban Development (hereinafter referred to as “HUD”), a copy of which document for the current year is attached hereto as **Attachment “B”** and is incorporated herein by this reference.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, the City and the Sponsor and Owner agree as follows:

SECTION 1. DEFINITIONS

As used herein, the following words and terms, whether capitalized or not, shall have the following meanings, unless the context demands otherwise:

1. Adjusted for Family Size – means adjusted in manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base income eligibility based upon a formula established by HUD for the Las Cruces Metropolitan Statistical Area (MSA).

2. Affordable or Affordability – as defined in Section 3, Paragraph 2 of this Agreement is 30 years.

3. Affordability Period – means Thirty (30) years commencing from date of Project close out in HUD's Integrated disbursement and Information System (IDIS).

4. Annual Gross Income – means the annual anticipated income for a household, or more specifically, the gross amount of wages, income from assets, regular cash or non-cash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR §5.609.

5. Displaced Person – means a person (family or individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds, and as further defined in 24 CFR Part 92.

6. Eligible Person or Eligible Household – means one or more natural persons or a family who are determined by the City to be of Extremely Low, Very Low, or Low Income according to the income limits Adjusted to Family Size published annually by HUD based upon the Annual Gross Income of the household.

7. Extremely Low Income Person or Extremely Low Income Household – one or more natural persons who has a total Annual Gross Income for the household that does not exceed thirty percent (30%) of the median annual income adjusted for family size for households with the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

8. HUD – means the United States Department of Housing and Urban Development, its successors or assigns.

9. IDIS – HUD's Integrated Disbursement and Information System

10. Investor Member Partner – means CREA Pedrena LLC its affiliates, successors and assigns, as investment limited partner of the Owner.

11. Loan Documents – means this Agreement, the Note, the Mortgage and/or Deed Restriction and Restrictive Covenants and all agreements, certificates, schedules, notes, statements and opinions, and exhibits or attachments to each of the foregoing, referenced therein or executed or delivered pursuant hereto or in connection with or arising under the loan contemplated hereby.

12. Low Income Housing – means housing that is Affordable to Low Income Persons.

13. Low Income Person or Low Income Household – means one or more natural persons who have a total Annual Gross Income for the household that does not exceed eighty percent (80%) of the median annual income Adjusted for Family Size for households with the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

14. Note – means that certain promissory note of even date herewith given by the Sponsor and Owner to the City evidencing the loan contemplated by this Agreement.

15. Project – means the acquisition and new construction of 80 units at Pedrena Apartment complex, i.e., the Property, in which 4 of the 80 units shall be exclusively occupied by and rented to households earning up to 60% of area median income at Affordable rents as established by HUD.

16. Project Completion – means that the acquisition and new construction work on all of the 80 units contemplated under this Agreement has been completed, 4 units have met all HOME Program regulations, the project has received the Certificate of Occupancy by the City, and the 4 units are occupied by qualified tenants, the final drawdown has been disbursed for the Project, and Project Completion information has been entered in the Integrated Disbursement and Information System established by HUD. Work contemplated under this agreement must be completed within 4 years from the IDIS set-up date of this agreement.

17. Very Low Income Person or Very Low Income Household – means one or more natural persons or a family who has a total Annual Gross Income for the household that does not exceed fifty percent (50%) of the median annual income Adjusted for Family Size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

Other terms herein which have not been defined shall have the definition, meaning, and intent given them in the HOME regulations, or 24 CFR Part 92, or as cross-referenced therein, or their ordinary dictionary meaning as the context so requires.

SECTION 2. LOAN AMOUNT AND USE OF FUNDS

1. Recitals: The recitals set forth are true and correct and are incorporated herein and made a part of this Agreement.

2. The Loan: Under the terms and conditions of this Agreement, the City agrees to loan the Sponsor and Owner Two Hundred Thousand Dollars and No Cents *($200,000.00)* for the acquisition and new construction of the Property. The loan to the Sponsor and Developer shall be on the terms set forth in this Agreement, the Promissory Note, the Mortgage and/or Deed Restrictions and Restrictive Covenants Agreement, and all other loan documents as required by the City. The Sponsor and Owner shall execute a promissory note in favor of the City substantially in the form attached hereto as **Attachment "C,"** (the "Note"), and incorporated herein by this reference. The Note shall be secured by a mortgage on the Property (the "Mortgage") substantially in the form attached hereto and incorporated herein by reference as **Attachment "D"** between the City and Owner. The City agrees to subordinate the Note and Mortgage to the Permanent Mortgage and Loan in the form attached hereto and incorporated herein by reference as **Attachment "E".** The City also agrees to subordinate the Note and Mortgage to the Lender's consent and Agreement to Recording of and Subordination to Land Use Restriction Agreement (LURA) prepared by Cedar Rapids Bank & Trust (CRBT) and submitted for applicable signatures at completion of construction without further consideration by Council.

3. Disbursement: The City shall disburse the loan proceeds only after receipt of invoices and certification from the Sponsor and Owner that the portion of work then being billed has been satisfactorily completed. Disbursement of loan proceeds will be to the Sponsor and Owner only after approval by the City of invoices submitted and verification of work completed in accordance with this Agreement and applicable HOME regulations. Notwithstanding anything to the contrary in this Agreement, the City also reserves the right to request and approve documentation supporting any requests for disbursement to verify reasonableness and validity of such costs and said Budget may be modified by the City accordingly. All HOME funds for the project must be disbursed prior to the project completion date entered into HUD IDIS reporting system.

4. Use of Loan Money: The Sponsor and Owner shall use the loan proceeds for eligible expenses permitted under applicable HOME regulations and as set forth in 24 CFR §92.206, as the same may from time to time be amended and in accordance with the Scope of Work, Project Schedule, and Budget attached hereto as **Attachment "F"** and incorporated herein by this reference. The Sponsor and Owner shall not use any HOME funds for prohibited purposes as set forth in 24 CFR §92.214 or other HOME regulations, as the same may from time to time be amended. The Sponsor and Owner acknowledge and agree that

any funds not used in accordance with permitted HOME regulations must be repaid to the City. The Sponsor and Owner acknowledge and agree if this Project is terminated before completion, either voluntary or otherwise, the Sponsor and Owner must repay any HOME funds invested in the Project to the City. The Sponsor and Owner shall keep all financial records for the Project, including source documentation to support how HOME funds were expended, which includes, but is not limited to, cancelled checks, paid bills, payrolls, time and attendance records, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the City to support the expenditures for this Project.

5. Layering Review: It is the City's responsibility under HOME regulations, and more specifically 24 CFR §92.250, to evaluate the use of other local, state, or federal assistance in HOME-assisted projects to ensure that it does not invest any more HOME funds than are necessary to provide Low Income Housing.

6. Program Income: As applicable, any program income generated from the proceeds of the loan funds, said program income will be remitted to the City in accordance with 24 CFR §92.503.

7. Term: The term of this Agreement shall commence on the effective date of this Agreement which is the project set up date in HUD IDIS reporting system (the "Effective Date"), and shall continue through the end of the thirty (30) year Affordability Period. Notwithstanding any of the foregoing, all record-keeping requirements, audit, and use and maintenance of the Property requirements set forth in this Agreement or any record-keeping or use requirements mandated by HOME regulations shall survive termination of this Agreement.

8. Payment Requests: It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed $200,000.00. Payment requests are due by the fifteenth (15th) day of each month. If no payment request is needed for a particular month, the Sponsor and Owner must submit in writing that no payment request is required for that particular month. The Sponsor and Owner agree to use the Payment Request Invoice form as referenced in **Attachment "G."** Payments may be contingent upon certification of the Sponsor's and Owner's financial management system in accordance with the standards specified in 24 CFR Part 84, Subpart C, "Financial and Program Management."

9. HOME Match Requirement: The Lender and the Owner and/or Sponsor are currently exempt from HUD's Match Requirements in 24 CFR §92.220. The Sponsor and/or Owner will be notified if the requirement becomes effective. Upon notice of a required HOME match the Sponsor and/or Owner or the City would be required to make a contribution up to 25% of the HOME funds loaned

to the Sponsor and/or Owner and expended during the applicable federal fiscal year.

Possible Maximum Match Liability: $200,000 x 25% = $50,000

SECTION 3. GENERAL TERMS AND CONDITIONS

1. Applicable Laws: The Sponsor and Owner shall comply with all applicable federal and state laws, rules, and regulations dealing with the Property, whether presently existing or hereafter promulgated. The Sponsor and Owner agree to comply with all of the HOME Program regulations, HUD regulations, 42 U.S.C. §§12701-12839, and 24 CFR Part 92, as amended from time to time, whether set forth herein or not, and agrees to execute or amend documents as necessary to be in compliance therewith. The Sponsor and Owner also shall comply with all other applicable federal, state, and local statutes, ordinances, rules and regulations, including, but not limited to, all applicable provisions of the City's Building Code.

2. Units to be Assisted: A total of 4 of the 80 units at Pedrena Apartment Complex, identified as two 2-Br units and two 1-BR units, will be assisted with HOME funds on a floating designation basis (the "City Low-HOME-assisted units"), as set forth in the HOME regulations.

3. HOME Program Rental Requirements: Every HOME-assisted unit is subject to rent controls designed to make sure that rents are Affordable to Extremely Low, Very Low, and Low-Income Persons. The term "Affordable" means that at all times the 4 units listed on the attached **Attachment "A"**, on a floating designation basis, shall be occupied by Extremely Low, Very Low, and Low-Income Persons and shall also meet the requirements set forth herein.

   Initially, all HOME-assisted units shall be leased to Eligible Persons whose total Annual Gross Income for the household at the time of occupancy does not exceed sixty percent (60%) of the median income Adjusted for Family Size for households within the Las Cruces MSA, which includes the City limits, as determined by HUD.

   The HOME regulations in 24 CFR §92.252 also set forth the maximum rents the Sponsor and Owner can charge for the HOME-assisted units. The maximum HOME rents that the Sponsor and Owner can charge for the HOME-assisted units are subject to High and Low HOME rent limits as established by HUD. HUD publishes the HOME rent limits annually. A copy of the rent chart reflecting this year's rents is attached hereto as **Attachment "H"** and incorporated herein by this reference. The City will provide the Sponsor and Owner with information on updated HOME rent limits, as they are made available by HUD so that rents may be adjusted, not to exceed the maximum HOME rent limits. In calculating allowable rents, the Sponsor and Owner shall subtract from the HOME rents any

tenant paid utilities according to the utility allowances prepared by the New Mexico Mortgage Finance Authority or the City of Las Cruces, a current copy of which is attached hereto as **Attachment "I"**. The Sponsor and Owner acknowledge that the City must review and approve all rents proposed by the Sponsor and Owner to ensure compliance with HOME regulations. The designation of High and Low HOME rent units is described in the Declaration of Restrictive Covenants attached hereto as **Attachment "J."**

In accordance with 24 CFR §92.252(f) regarding subsequent rents during the Affordability Period, the Sponsor and Owner shall annually provide the City with information on rents and occupancy of the HOME-assisted units to demonstrate compliance with HOME regulations. Any proposed increases in rents for HOME-assisted units must be submitted to the City for review and approval at least forty-five (45) days before the proposed effective date. The Sponsor and Owner can apply these rent increases to new leases and at the time of renewal of existing leases. However, before implementing any rent increase for a tenant renewing or extending an outstanding lease, the Sponsor and Owner shall provide written notice to such tenant of the proposed rent increase not less than 30 days before entering into any renewal or extension of such outstanding lease.

Notwithstanding anything herein to the contrary, the Sponsor and Owner shall at all times during the term of this Agreement comply with all relevant provisions of the HOME program regarding rent limitations and tenant protections, including, but not limited to, 42 U.S.C. §§12701-12839; 24 CFR §92.252 – "Qualification as Affordable Housing: Rental Housing" and 24 CFR §92.253 – "Tenant and Participant Protections," as these may from time to time be amended. The Sponsor and Owner shall keep records demonstrating that the HOME-assisted units meet the affordability and income targeting requirements of 24 CFR §92.252 and tenant protections of 24 CFR §92.253. Records must also be kept for each family assisted for the time periods as specified in 24 CFR §92.508(a)(7).

4. Tenant Selection and Re-Certification: The Sponsor and Owner shall undertake the initial review of income eligibility of prospective tenants for the HOME-assisted units. In determining income eligibility, the Sponsor and Owner acknowledge that the City must examine the source documents evidencing the prospective tenant's Annual Gross Income, e.g., wage statements, asset statements, etc. In conducting such review, the income definition contained in 24 CFR §5.609 shall be used. The Sponsor and Owner shall also adopt written tenant selection policies consistent with 24 CFR §92.253(d). All documentation including, but not necessarily limited to, a tenant's application, verifications, proposed rent and lease terms shall be submitted to the City's Housing & Neighborhood Services program staff or their successors or assigns, for final approval before the Sponsor and Owner enter into a lease with a prospective tenant. The Sponsor and Owners acknowledge that the City must keep documentation verifying the income eligibility of tenants. The City shall use its

best efforts to grant such approval within seven (7) business days after receipt of tenant application from the Sponsor and Owner.

During the Affordability Period, in accordance with 24 CFR §92.252(h), the Sponsor and Owner shall re-verify tenant eligibility annually with similar documentation as submitted at initial lease up. This information must be maintained in the tenants' files and made available for review by the City or HUD.

5. Period of Affordability/Restrictive Covenant: All HOME-assisted units shall be maintained as affordable housing for the 30-year Affordability Period. In order to ensure compliance with this 30-year Affordability Period, the Owner shall execute a Declaration of Restrictive Covenants, a copy of which is attached hereto as **Attachment "J"** and incorporated herein by this reference, which shall be recorded in the office of the County Clerk of Dona Aña County. The Affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. The Sponsor and Owner acknowledge that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Note and Mortgage which requires repayment of the HOME proceeds, if the Project does not meet the Affordability requirements for the Affordability Period.

6. Property Standards: The Sponsor and Owner shall comply with the property standards requirements set forth in 24 CFR §92.251. The Sponsor and Owner shall keep records to document compliance with these property standards. At Project Completion, the Property must meet all applicable local codes, ordinances, zoning ordinances, and HUD's Uniform Physical Condition Standards and/or Section 8 Housing Quality Standards (HQS), as per 24 CFR §982.401. The Property must also meet the accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973. Covered multi-family dwellings, as defined in 24 CFR §100.201, must meet the design and construction requirements set forth in 24 CFR §100.205, which implements the Fair Housing Act. The Sponsor and Owner shall maintain the Property in compliance with state and local codes, as well as UPCS/HQS as per 24 CFR §982.401 for the 20-year Affordability Period.

7. Monitoring: Pursuant to 24 CFR §92.504(d), the Sponsor and Owner shall assist the City in its obligation to conduct on-site inspections for compliance with property standard requirements listed herein and shall provide information as requested so that the City can verify tenant incomes, rents, and other HOME requirements pursuant to 24 CFR §92.252 on an annual basis. The Sponsor and Owner shall keep records to document compliance with these inspections and monitoring review and the resolutions of any findings of concern.

   The City will monitor both the financial and programmatic performance of the Sponsor and Owner on an annual basis during the Affordability Period. Substandard performance, as determined by the City, will constitute non-

compliance with this Agreement. If action to correct such substandard performance is not taken by the Sponsor, Investor Member Partner and/or Owner within 45 days of time after being notified by the City, Agreement suspension or termination procedures will be initiated.

The City will also conduct an on-site inspection of the Property in order to verify compliance with property standards. On-site inspection of the HOME-assisted units will be conducted in accordance with Uniform Property Condition Standards (UPCS) at 24 CFR 5.703 and/or (HQS) as referenced in 24 CFR §982.401.

8. Records: The Sponsor and Owner shall comply with 24 CFR §92.508 regarding records that must be maintained for this Project. The Sponsor and Owner shall maintain all records pertaining to the Project at its principal place of business for a period of no less than five (5) years after Project Completion; except that records of individual tenant income verifications, Project rents, and Project inspections must be retained for the most recent 5-year period, until five years after the Affordability Period terminates. The Sponsor and Owner shall make all records available to the City, HUD, and to their respective representatives during normal business hours. The Sponsor and Owner shall maintain all leases and Project financial records, including source documentation to support how HOME funds were expended, which includes, but is not limited to invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the City to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 24 CFR §85.20. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of this required 5-year period, the Sponsor and Owner must maintain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 5-year period, whichever is later. This section shall survive the termination of this Agreement.

9. Reports: Upon issuance of the Certificate of Occupancy by the City of Las Cruces, the Sponsor and Owner shall submit annual reports at the end of the City's fiscal year (June 30th) with such reports due by the last business day of July. These reports shall include, but not be limited to, the financial statements for the Project, and, for the HOME assisted units, a certified rent roll showing household size, tenant's race and ethnicity, whether the occupant is a female head of household, date of execution of the occupants current lease, adjusted gross annual income, and rental rates.

10. Beneficiary Data: The Sponsor and Owner shall maintain beneficiary data demonstrating beneficiary eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level. The Sponsor and Owner will use 24 CFR Part 5 for determining income eligibility. Such information shall be maintained in a beneficiary file by the Sponsor and

Owner and shall be made available to the City's monitors and/or their designees for review upon request.

11. Uniform Administrative Requirements: The Sponsor and Owner and the City shall comply with 24 CFR §92.505 regarding uniform administrative requirements. The Sponsor and Owner shall provide the City with such documentation and records to satisfy the City's requirements under these various provisions. The Sponsor and Owner also agree to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

12. Audits and Inspections: The Sponsor and Owner's records with respect to any matters covered by this Agreement shall be made available to the City, lender agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or lender agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

    One copy of the Sponsor and Owner's reporting package shall be submitted to the City 30 days after receipt of an auditor's report or 9 months after the end of the audit period, whichever occurs first. The reporting package shall include:

    1. Financial statement,
    2. Schedule of prior year audit findings,
    3. Auditor's report, and
    4. Corrective action plan that addresses each audit finding.

    Any deficiencies noted in audit reports must be fully cleared by the Sponsor/ Owner within 30 days after receipt by the Sub-recipient. Failure of the Sponsor/Owner to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Sponsor/Owner audits and 2 CFR 200 subpart F (Audit Requirement for Federal Awards), as applicable.

13. Compliance with Davis-Bacon Act: As applicable, the Sponsor and Owner shall comply with 24 CFR §92.354 and all applicable provisions of the Davis-Bacon Act (40 U.S.C. §276a, et seq.) and implementing labor regulations contained in 29 CFR Part 5. The Sponsor and Owner shall also comply with the Contract Work and Hours and Safety Standards Act (40 U.S.C. §§327-332), and other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1, as applicable. The Sponsor and Owner shall maintain records demonstrating compliance with 24 CFR §92.354, including contract provisions and payroll records.

14. Copeland "Anti-Kickback" Act: The Sponsor and Owner shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874), as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.

15. Debarment and Suspension: The Sponsor and Owner shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. The Sponsor and Owner shall not enter into a contract with any person, agency, or entity that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689, "Debarment and Suspension," which is made a part of this Agreement by reference. In the event that the Sponsor and Owner have entered into a contract or subcontractor with a debarred or suspended party, no HOME funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor. The Sponsor and Owner shall keep copies of the debarment and suspension certifications required by 24 CFR Parts 24 and 91.

16. Drug-Free Workplace: The Sponsor and Owner shall comply with the Drug Free Workplace Act of 1988 and implementing regulations in 24 CFR Part 24, Subpart F regarding maintenance of a drug-free workplace. The Sponsor and Owner agree to complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Attachment "K"** and incorporated herein by reference. The Sponsor and Owner will complete this certification, and a copy will be kept in the files of each party.

17. Utilization of Minority/Women's Business Enterprises: The Sponsor and Owner shall, to the greatest extent feasible, ensure that Minority/Women's Business Enterprises are included for consideration for participation in all construction, supply or service contracts, if any. The Sponsor and Owner shall comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise). The Sponsor and Owner shall keep such records necessary to comply with 24 CFR §92.508(a)(7).

18. Section 3 Economic Opportunity: The Sponsor and Owner shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and implementing regulations at 24 CFR Part 75 regarding economic development opportunities for Low Income and Moderate-Income Persons. The Sponsor and Owner shall comply with the "Section 3" requirements attached hereto as **Attachment "L"** and incorporated herein by this reference. In essence, Section 3 provides that opportunities for training and employment arising from the use of HOME funds shall be provided to Low Income and Moderate-Income Persons residing in the Project Area. Contracts for all types of work to be performed in connection with the Project shall be awarded to business concerns that are located in or owned by persons residing in the area. The

Sponsor and Owner shall keep records documenting compliance with these requirements as required by 24 CFR §92.508 (a)(7).

19. Equal Employment Opportunity: The Sponsor and Owner shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR Part 60, and the Equal Employment Opportunity Clause attached hereto as **Attachment "M"** and incorporated herein by this reference. Any contracts entered into by the Sponsor and Owner shall include a provision requiring compliance with these regulations. The Sponsor and Owner shall keep records and documentation demonstrating compliance with these regulations.

20. Conflict of Interest: The Sponsor and Owner shall comply with the conflict of interest provisions in 24 CFR §92.356. No person who is any employee, agent, consultant, officer, or elected official or appointed official of the City or of the Sponsor and Owner who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. The Sponsor and Owner shall also keep records supporting requests for waivers of conflicts prohibited in 24 CFR §92.356.

21. Anti-Lobbying Provision: The Sponsor and Owner shall comply with the disclosure requirements and prohibitions of 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87 and shall so certify to the City. The Sponsor and Owner shall complete and comply with the "Certification Regarding Lobbying," attached hereto as **Attachment "N"** and made a part hereof by this reference. A copy of this document will be kept in each of the party's files. The Sponsor and Owner shall also comply with the requirements for funding competition established by 42 U.S.C. §3531 et seq.

22. Displacement and Relocation: The Sponsor and Owner shall comply with the provisions of 24 CFR §92.353, "Displacement, relocation, and acquisition." The Sponsor and Owner shall keep records of its compliance with the requirements of 24 CFR §92.353, including occupancy lists identifying the name and address of all persons occupying the HOME-assisted units, moving into the units, and those occupying the Property upon Project Completion, as specified in 24 CFR §92.508.

23. Lead-Based Paint Prohibited: The Sponsor and Owner shall not use lead-based paint in the Project or anywhere on the Property and shall comply with 24 CFR §92.355, an the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-

4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, J, K, M, and R. The Sponsor and Owner shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

24. Non-Discrimination and Equal Opportunity: The Sponsor and Owner shall not exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination, with respect to the rehabilitation, rental, or operation of the Project, on the grounds of race, color, national origin, religion, ancestry, sex, sexual orientation, gender identity, familial status, spousal affiliation, or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation. The Sponsor and Owner shall fully comply with the requirements of 24 CFR §92.350, including the federal requirements set forth in 24 CFR Part 5, Subpart A, the nondiscrimination requirements at Section 282 of the HOME Investment Partnerships Act, and the unlawful discriminatory practice set forth in NMSA 1978 Section 28-1-7 (2003) of the New Mexico Human Rights Act and keep record of its compliance. The Sponsor and Owner shall at all times comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations contained in 24 CFR Part 1. The Sponsor and Owner shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.) and implementing regulations in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973 and implementing regulations contained in 24 CFR Part 8. The Sponsor and Owner shall also comply with Title II of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.). Any contracts entered into by the Sponsor and Owner shall include a provision requiring compliance with these regulations. The Sponsor and Owner shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

25. Fair Housing Act: The Sponsor and Owner shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and implementing regulations at 24 CFR Part 100, et seq., Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing Programs) and implementing regulations in 24 CFR Part 107, the City's Municipal Code 13-65, et. seq., and shall keep all records demonstrating compliance.

26. Affirmative Fair Housing Marketing: The Sponsor and Owner and the City shall exercise affirmative fair housing marketing and shall comply with the provisions of 24 CFR §92.351. The Sponsor and Owner agree to complete HUD Form 935.2, as attached in **Attachment "O,"** and submit it to the City. The Sponsor and Owner shall keep records of its efforts to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups. At a minimum, the Sponsor and Owner shall: (a) indicate in its promotional material that the

Property provides fair housing opportunities; (b) provide notice of the availability of the units to community groups and non-profit service organizations; and (c) publish the notice of the availability of the units in a community newspaper. The Sponsor and Owner shall keep records necessary to comply with 24 CFR §92.508(a)(7).

27. Miscellaneous Federal Requirements: The Sponsor and Owner shall comply with the federal requirements set forth in 24 CFR Part 5, as applicable.

28. Religious Organizations: The Sponsor and Owner shall comply with 24 CFR §92.257 regarding religious organizations. The Program must be used exclusively for secular purposes, available to all persons regardless of religion, and there must be no religious or membership criteria for participants in the Program.

29. Financial Accountability: The Sub-recipient agrees to comply with the standards specified in 24 CFR Part 84, Subpart C, Financial Program Management, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Sub-recipient shall administer its program in conformance with 2 CFR part 200 “Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards.

30. Environmental Review: The Project has been assessed in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. §4321) and implementing regulations contained in 24 CFR Parts 50 and 58.

31. Reversion of Assets: Upon the Agreement’s expiration, the Sponsor and Owner shall transfer to the City any HOME funds on hand and any accounts receivable attributable to the use of HOME funds.

32. Clean Air Act and Federal Water Pollution Control Act: As applicable, the developer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 125101387). Violations must be reported to the Federal Awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

33. Non-Recourse: Notwithstanding anything to the contrary in the Agreement or Loan Documents as defined below, the agreement shall be non-recourse to the Owner and its partners.

SECTION 4. DEFAULTS AND REMEDIES

1. Events of Default: The following shall constitute an Event of Default under this Agreement:

a) If the Sponsor and Owner fails to rent the Property to Extremely Low, Very Low, or Low-Income Persons at affordable rents as set forth in this Agreement;

b) If the Sponsor and Owner fail to comply with any regulations governing HOME Program awards, including, but not limited to, 42 U.S.C. §§12701-12839, 24 CFR Part 92, or fails to comply with any of the terms contained in this Agreement and such failure continues for a period of thirty (30) days following written notice thereof given by the City to the Sponsor and Owner;

c) If the Sponsor and Owner is deemed in default under the terms of other financing or mortgages used for the Project and said defaults extends beyond the applicable cure period provided in said documents;

d) If at any time any material representation made by the Sponsor and Owner in any written certification or communication submitted by the Sponsor and Owner to the City in an effort to induce the making of this loan or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner;

e) If the Sponsor and Owner does not disclose to the City, upon demand, the names of all persons with whom the Sponsor and Owner has contracted or intends to contract with for the construction or management of any portion of the Project, including contracts for services and/or labor; and

f) If any default shall occur under the Note, Mortgage, Declaration of Restrictive Covenant, or any loan documents executed in connection with this loan by the City (herein in the "Loan Documents") which is not elsewhere specifically addressed herein and such default is not cured within the applicable cure period set forth in the Loan Documents, or if there is no cure period set forth, then within thirty (30) days following the date of written notice to the Sponsor and Owner thereof.

g) Failure of Sponsor and Owner to complete construction of the project within required time frame.

Notwithstanding any of the foregoing provisions to the contrary, if the Sponsor and Owner have failed to cure any default within five (5) days prior to the expiration of any applicable cure period, the City may, at its sole option, cure such default, provided, however, that the City shall be under no duty or obligation to do so.

2. No Waiver: Failure of the City to declare a default shall not constitute a waiver of any rights by the City. Furthermore, the waiver of any default by the City shall in no event be construed as a waiver of rights with respect to any other default, past or present.

3. Remedies: Upon the occurrence of any uncured Event of Default or any other breach of this Agreement, the City shall be free to terminate this Agreement, withhold all funding and/or exercise all rights and remedies available to it under the terms of this Agreement, or other Loan Documents, statutory law, equity, or under common law. The City may also exercise any one or more of the actions contained in 24 CFR §85.43(a)(1-5). All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy the City may have available to it. Notwithstanding any of the foregoing provisions to the contrary, if an Event of Default occurs, prior to exercising any remedies hereunder, the Lender shall give Investor Limited Partner simultaneous written notice of such default. Investor Limited Partner shall have a period of ten (10) days after receipt of such notice, or such longer period of time as may be set forth herein, to cure the default prior to exercise of remedies by the Lender. The Lender hereby agrees that any cure of any default made or tendered by Investor Limited Partner shall be (a) deemed to be a cure by the Owner, and (b) accepted or rejected on the same basis as if made or tendered by Owner. Copies of all notices sent to Owner under the terms herein shall also be sent to Investor Member Partner, CREA Pedrena, LLC., 1331 NM Lovejoy St, Suite 700, Portland, Oregon 97209, Attn: Alison Anderson, Executive Vice President. Any notice delivered to Owner under the terms herein shall be deemed ineffective and not delivered until a copy of the notice is delivered to the Investor Limited Partner. Notwithstanding any of the provisions contained herein or any of the Loan Documents, the withdrawal, removal, and/or replacement of Owner's general partner for cause in accordance with Owner's Amended and Restated Agreement of Limited Partnership shall not require the consent of Lender and shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan. If the Investor Member Partner exercises its right to remove the general partner, Lender will not unreasonably withhold its consent to the substitute general partner. The substitute general partner shall assume all of the rights and obligations or the removed general partner hereunder.

SECTION 5. INDEMNIFICATION

1. Environmental Indemnification: The Sponsor and Owner shall indemnify and hold the City harmless from any claim arising from, or in any way related to, the environmental condition of the Property, including, but not limited to, the cost of investigating, defending, and/or negotiating to a satisfactory conclusion claims made by environmental regulatory agencies, as well as all cleanup and property maintenance requirements imposed by any agency with lawful jurisdiction over the Property. This indemnification shall run from the time of initial discovery of any such adverse environmental condition and shall not be construed to commence only upon realization by the City of an actual pecuniary loss as a result of such adverse environmental condition. The existence of this indemnification agreement shall not be construed as indicia of ownership, management or control of the Property by the City, and the Sponsor and Owner

hereby recognize and acknowledge that the City is not an owner or manager of the Property and does not exert any control thereupon. Notwithstanding anything herein, or in the Note, Mortgage, or other Loan Documents to the contrary, this indemnification provision shall survive closing.

SECTION 6. INSURANCE

1. Insurance: Without limiting the Sponsor and Owner's indemnification, the Sponsor and Owner shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Valid certificates and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the City thirty (30) days prior to commencement of construction. The City shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The City, its officers and employees, shall be named as an additional named insured on all policies of liability insurance.

    a) All policies of insurance shall be in a company or companies authorized by law to transact insurance business in the State of New Mexico. In addition, such policy shall provide that the coverage shall be primary for losses arising out of the Sponsor and Owner's performance of the Agreement. Neither the City nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Participation prior to execution of this Agreement.

    b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Sponsor and Owner shall provide the City with evidence of the renewal of said insurance policies in a form satisfactory to the City.

    c) The Policies of Insurance which must be secured are:

        i. Commercial General Liability Insurance: The Sponsor and Owner must secure commercial property liability insurance to include, but not be limited to, bodily injury and property damage coverage. The policy's limit liability shall not be less than the limits of liability set forth in the New Mexico Tort Claims Act, which limits of liability are presently $1,000,000.
        ii. Worker's Compensation Coverage: All employees of the Sponsor and Owner must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
        iii. Flood Insurance: The Sponsor and Owner shall provide Flood Insurance as required under applicable HUD regulations.

SECTION 7. MISCELLANEOUS PROVISIONS

1. Assignment: This Agreement may not be assigned to any other entity without the prior written consent of the City. Notwithstanding anything to the contrary contained herein or any of the Loan Documents, the interest of the Investor Member Partner in the Owner shall be transferable to any affiliate of the Investor Member Partner without the consent of the Lender or the Sponsor. The interests of the Investor Member Partner in the Owner shall be transferable to a non-affiliate of the Investor Member Partner with the consent of Lender and the Sponsor, which consent shall not be unreasonably withheld. Ownership interests in the Investor Member Partner shall be transferable without the consent of the Lender or the Sponsor.

2. No partnership or agency: The City shall not in any way or for any purpose be considered to be or to have become a partner of the Sponsor and Owner with respect to the Program. The Sponsor and Owner are not, and shall not be, the agent of the City for any purpose, nor shall the City be the agent of the Sponsor and Owner for any purpose.

3. Severability: If any court of competent jurisdiction finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement. If the rights and obligation of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be affected, this Agreement is declared severable.

4. Entire Agreement/Modification: This Agreement, together with **Attachments "A"** through **"O"** attached hereto, constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, representations, and agreements as to the items herein contained. The City or the Sponsor and Owner may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or the Sponsor and Owner from its obligations under this Agreement. The City may, in its discretion, amend this Agreement to conform with Federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and the Sponsor and Owner.

5. Notices: Whenever by the terms of this Agreement notice shall be given to either party, such notice shall be in writing and shall be hand delivered, sent by regular mail, or sent electronically to:

A. Housing Development Coordinator (HOME)
Housing & Neighborhood Services
City of Las Cruces
P.O. Box 20000
Las Cruces, New Mexico 88004

B. Pedrena Apartments LLC
Thomas Mannschreck
420 W. Main Street, Suite 300
Boise, ID 83702

C. Investor Member Partner
CREA Pedrena, LLC
1331 NM Lovejoy St, Suite 700
Portland, OR 97209

6. Compliance with All Laws: Notwithstanding anything to the contrary, the Program shall be operated consistent with all applicable federal, state, and local laws and regulations.

7. Governing Law: This Agreement shall be construed in accordance with the laws of the State of New Mexico.

IN WITNESS WHEREOF the parties have executed this Agreement, each upon the date set forth next to his/her name.

Signatures on the next page:

PROJECT OWNER:

Pedrena Apartments LLC

By: Pedrena-TDC Associates LLC,
a New Mexico limited liability company, its Managing Member

By: Thomas Development Co., an Idaho corporation, its Managing Member

By: _____
Thomas C. Mannschreck, President

By: Pedrena- NIHC Associates LLC,
A New Mexico limited liability company, its managing Member

By: Northwest Integrity Housing Co.,
An Idaho nonprofit corporation, its Managing Member

By:

By: _____
Rick Sullivan, Executive Director

Date: _____

LENDER:

By: City of Las Cruces, a New Mexico municipal corporation.

By: _____
Ikani Taumoepeau, Assistant City Manager

_____
Date

ATTACHMENT "A"

LEGAL DESCRIPTION

All that certain real property located in the County of Dona Aña, State of New Mexico, described as follows:

A tract of land situate in the Dona Ana Bend Colony Grant, Dona Ana County, New Mexico, and in Sec. 20, T 23 S, R 2 E, of the Surveys of the USRS, being a part of County Plat No. 660 and of Serial No. 11-15 on the USRS Property Maps, and more particularly described as follows, to-wit: Beginning at an iron fence Post, an established point, marking the southwest corner of this tract at the intersection of El Paseo and a road to the east; thence along the north side of the road to the east, North 76 deg. 01' East 573.4 feet to an iron pipe marking the southwest corner of USRS Tract 11-14; whence an iron pipe marking the southeast corner of USRS 11-14 bears N. 73 deg. 53' W. 627 feet distant; thence following the east line of USRS Tract 11-15 North 36 deg. 20' West 393.95 feet to an angle iron marking the northeast corner of the parcel herein described; thence across USRS 11-15 to the east line of El Paseo South 76 deg. 01' West 444.67 feet to an angle iron In the north bank of a farm ditch at the NW corner of this tract; thence following the east line of El Paseo South 17 deg. 18' East 364.3 feet to the place of beginning. Commitment No.: 2303052 ORT FORM 4690 NM6 8-1-16 Old Republic National Title Insurance Company Page 5 of 8 Excepting there from a portion deeded to the City of Las Cruces, a New Mexico Municipal Corporation, in Warranty Deed recorded June 5, 2015, as Document No. 1511766, records of Dona Ana County, New Mexico.

ATTACHMENT "B"

2023 HOUSING CREDIT INCOME LIMITS

Las Cruces MSA

2023 HOUSING CREDIT INCOME LIMITS AND MAXIMUM RENTS									
Las Cruces MSA (Las Cruces and Dona Ana County)									
For all Placed in Service Properties									
Median Income $59,600*									
FY2023 Income Limits & Rents	# in Hshld	1	2	3	4	5	6	7	8
	20%	9,060	10,340	11,640	12,920	13,960	15,000	16,040	17,060
	30%	13,590	15,510	17,460	19,380	20,940	22,500	24,060	25,590
	40%	18,120	20,680	23,280	25,840	27,920	30,000	32,080	34,120
	50%	22,650	25,850	29,100	32,300	34,900	37,500	40,100	42,650
	60%	27,180	31,020	34,920	38,760	41,880	45,000	48,120	51,180
	70%	31,710	36,190	40,740	45,220	48,860	52,500	56,140	59,710
	80%	36,240	41,360	46,560	51,680	55,840	60,000	64,160	68,240
	Maximum Gross Rents by Bedroom Size								
		0	1	2	3	4	5		
	20%	226	242	291	336	375	413		
	30%	339	363	436	504	562	620		
	40%	453	485	582	672	750	827		
	50%	566	606	727	840	937	1,034		
	60%	679	727	873	1,008	1,125	1,241		
	70%	792	848	1,018	1,176	1,312	1,448		
	80%	906	970	1,164	1,344	1,500	1,655		

HUD INCOME GUIDELINES
LAS CRUCES MSA INCOME LIMITS
Income Levels by Family Size
HOME INCOME AND RENT LIMITS
EFFECTIVE DATE, June 15, 2023

MEDIAN FAMILY INCOME (MFI): $59,600

FAMILY SIZE * # OF PERSONS	EXTREMELY LOW INCOME (30% of Median)	VERY LOW INCOME (50% of Median)	LOW INCOME (80% of Median)	MODERATE INCOME (100% of Median)
1	$13,600	$22,650	$36,200	$41,700
2	$15,550	$25,850	$41,350	$47,700
3	$17,500	$29,100	$46,500	$53,650
4	$19,400	$32,300	$51,650	$59,600
5	$21,000	$34,900	$55,800	$64,350
6	$22,550	$37,500	$59,950	$69,150
7	$24,100	$40,100	$64,050	$73,900
8	$25,650	$42,650	$68,200	$78,650

2023 HOME Rents Effecive June 15, 2023

FAMILY SIZE * # OF PERSONS	Low HOME	High HOME	Fair Market Rent	50% limit	65% limit
Efficiency	$566	$715	$715	$566	$715
1BR	$606	$768	$772	$606	$768
2BR	$727	$893	$893	$727	$923
3BR	$840	$1,057	$1,269	$793	$1,057
4BR	$937	$1,160	$1,459	$937	$1,160
5BR	$1,034	$1,261	$1,678	$1,034	$1,261
6Br	$1,130	$1,362	$1,897	$1,130	$1,362

ATTACHMENT "C"

PROMISSORY NOTE

$200,000.00 Las Cruces, New Mexico
_____, 20__

FOR VALUE RECEIVED, the undersigned Thomas Development Company, ("Maker"), a Idaho corporation, with its address at 420 W. Main Street, Boise, ID, 83702, and the undersigned ("Co-Maker"), Pedrena Apartments LLC, a New Mexico limited liability company, with its address at 420 W. Main Street, Suite 300, Boise, ID 83702, promise to pay to the order of the **CITY OF LAS CRUCES** ("Holder/Lender"), a New Mexico municipal corporation, organized and existing under the Constitution and laws of the State of New Mexico and its charter, and having a mailing address of PO Box 20000, Las Cruces, New Mexico, 88004, or its assigns, and the end of the 30-year affordability period, the principal sum of Two Hundred Thousand Dollars an No Cents ($200,000.00), or so much thereof as shall have been advanced to Maker and Co-Maker by Holder from time to time, together with all charges as provided herein and in the Mortgage (as hereinafter defined) and accrued interest on the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.

On the _____ day of ____, 20__, the Maker, Co-Maker, and the Holder entered into a certain HOME Loan Agreement, which provided for the loan by the Holder to the Maker of an amount not to exceed the Principal Sum of this Note. All capitalized terms used in this Note have the meaning provided in the Loan Agreement.

The loan authorized shall be for thirty (30) years or until the Maker and Co-Maker sells or refinances the Project, whichever occurs first. This Note shall bear interest at zero percent (0%) per year, compounded annually, The Maker and Co-Maker will pay the entire $200,000 to the City at the end of the Thirty-year (30) affordability.

The proceeds of the loan evidenced by this City Note may be assigned, upon written consent of the City, to any successors, assignees or purchasers of the Project who agree in writing to assume all of the obligations of Maker and Co-Maker, its successors and assigns under the Agreement, this City Note and the Mortgage and the Maker and Co-Maker shall thereupon be released from all future liability hereunder.

The entire principal balance and any accrued interest thereon shall become immediately due and payable upon: (1) the bankruptcy or reorganization of the Maker and Co-Maker under the Bankruptcy Code or the Internal Revenue Code of 1954, as amended; or (2) the dissolution or liquidation of the Maker and Co-Maker prior to the permitted assignment of Maker's and Co-Maker's rights and assumption of its obligation hereunder.

If at any time during the term of this City Note, any material portion of the improvements or equipment situated on the Project site shall be removed, demolished or materially altered without prior written consent of Holder, the entire principal balance of the loan, plus accrued and unpaid interest thereon, shall become immediately due and payable; provided, however, that Maker and Co-Maker shall have the right, without such consent to remove and dispose of (free from any lien of Holder) such equipment as from time to time has become worn out or obsolete, provided that simultaneously with or prior to such removal, any such equipment shall be replaced with other equipment of value at least equal to that of the replaced equipment and free from any title retention or other encumbrance not otherwise permitted herein or in the Mortgage. By such removal and replacement, Maker and Co-Maker shall be deemed to have subjected such equipment to the lien of Holder.

All cash payments hereunder shall be payable in lawful money of the United States, which shall be legal tender for public and private debts at the time of payment, at the office of the City Accountant, or at such other place as the Holder hereof may from time to time give notice in writing to the Maker and Co-Maker.

Prepayments of all or any part of the principal balance of this City Note may be made at any time and from time to time by Maker and Co-Maker. No premium or penalty shall be charged in connection with such prepayment. Notwithstanding any of the provisions contained herein or any of the Loan Documents, the Loan shall be non-recourse to the Owner and its partners.

Notwithstanding any of the provisions contained herein or any of the Loan Documents, the withdrawal, removal, and/or replacement of Owner's general partner for cause in accordance with Owner's Amended and Restated Agreement of Limited Partnership shall not require the consent of Holder and shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan. If the Investor Member Partner exercises its right to remove the general partner, Holder will not unreasonably withhold its consent to the substitute general partner. The substitute general partner shall assume all of the rights and obligations or the removed general partner hereunder.

Notwithstanding anything to the contrary contained herein or any of the Loan Documents, the interest of the Investor Member Partner in the Owner shall be transferable to any affiliate of the Investor Member Partner without the consent of the Holder or the Maker or Co-Maker. The interests of the Investor Member Partner in the Owner shall be transferable to a non-affiliate of the Investor Member Partner with the consent of Holder and the Sponsor, which consent shall not be unreasonably withheld. Ownership interests in the Investor Member Partner shall be transferable without the consent of the Holder or the Maker.

This City Note is secured by a mortgage and security agreement of even date herewith between the City of Las Cruces and Pedrena Apartments LLC, a New Mexico limited liability company, granted by the Maker and Co-Maker to the Holder, conveying a mortgage and security interest in the Project and the real property constituting the site therefore, which Mortgage is to be filed for record in the Office of the County Clerk of

Dona Aña County, New Mexico. All of the provisions of the Mortgage are incorporated herein by reference.

If (1) default be made as defined under this note, the full amount of the loan is due, after receipt of written notice at once or at any time thereafter during the continuance of such default, at the option of the Holder, thereof, become due and payable, and thereafter all of the entire loan amount at the time of default. The undersigned Maker and Co-Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing remedies under this Note and the Mortgage to collect any sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions.

If (2) default be made, and not timely cured, under the terms of any mortgage loan to which the Mortgage is subordinate; (3) Maker and Co-Maker shall dissolve or otherwise fail to maintain its status as a New Mexico limited partnership; (4) Maker and Co-Maker sells or conveys the Project to a third party without the prior written consent of the Holder; (5) Maker and Co-Maker sells or conveys the Project to a third party who does not agree in writing to assume all of obligations of Maker and Co-Maker, its successors and assigns under the Agreement, this City Note and the Mortgage; or (6) default be made in the performance of any of the other covenants contained in this City Note, the Loan Agreement or in the Mortgage, and such default shall continue for a period in excess of that time provided for remedy thereunder, then, in any such event, the whole unpaid principal balance together with all accrued interest hereof shall, upon ten (10) days written notice to the Maker and Co-Maker, at once or at any time thereafter during the continuance of such default, at the option of the Holder thereof, become due and payable, and thereafter all of the unpaid principal shall bear interest until paid at an annual interest rate of ten (10%), and the undersigned Maker and Co-Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing its remedies under this Note and the Mortgage to collect any and all sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions. Notwithstanding any of the foregoing provisions to the contrary, if an Event of Default occurs, prior to exercising any remedies hereunder, the Holder shall give Investor Limited Partner simultaneous written notice of such default. Investor Member Partner shall have a period of ten (10) days after receipt of such notice, or such longer period of time as may be set forth herein, to cure the default prior to exercise of remedies by the Lender. The Lender hereby agrees that any cure of any default made or tendered by Investor Member Partner shall be (a) deemed to be a cure by the Owner, and (b) accepted or rejected on the same basis as if made or tendered by Owner. Copies of all notices sent to Owner under the terms herein shall also be sent to Investor Member Partner, CREA Pedrena, LLC., 1331 NM Lovejoy St, Suite 700, Portland, Oregon 97209, Attn: Alison Anderson, Executive Vice President. Any notice delivered to Owner under the terms herein shall be deemed ineffective and not delivered until a copy of the notice is delivered to the Investor Limited Partner.

This Note is expressly non-recourse to Maker or Co-Maker (or its partners). Holder shall not have any recourse against the Maker or Co-Maker (or its partners) for obligations undertaken by or imposed upon maker or Co-maker by this Note.

The Maker and Co-Maker waive presentment for payment, protest, notice of protest and notice of dishonor. The Maker and Co-Maker consent to any number of renewals or extensions of the time of payment hereof. Any such renewals or extensions may be made without notice to Maker and Co-Maker and without affecting its liability.

Failure to accelerate the indebtedness evidenced hereby by reason of default in the payment of an installment of principal, interest, or principal and interest, or the acceptance of a past due installment of the same, shall not be construed as a novation of this City Note or as a waiver of the right of the Holder to thereafter insist upon strict compliance with the terms of this City Note without previous notice of such intention being given to the Maker and Co-Maker. This City Note shall not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a First Mortgage Note (as defined in the Subordination Agreement) of even date herewith in the original principal amount of $4,671,000, and upon conversion, a Permanent Note (as defined in the Subordination Agreement) in the original principal amount of $4,671,000, each issued by CRBT, to the extent and in the manner provided in that certain Subordination Agreement of even date herewith between the payee of this Note, and the Senior Lender and the maker of this Note (the “Subordination Agreement”). The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage and the Permanent Mortgage (as each term is defined in the Subordination Agreement) as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder’s acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement.

As used herein, the terms "Maker,” “Co-Maker,” and "Holder" shall be deemed to include their respective successors, legal representatives and assigns, whether voluntary by action of the parties or involuntary by operation of law. This City Note shall be construed according to the laws of the State of New Mexico.

Any and all references in the City Note to any other document or documents shall be references to such document or documents as the same may from time to time by modified, amended, renewed, consolidated or extended.

Subject to the qualification otherwise set forth herein, time is of the essence in the performance of this Note.

The representative of Maker and Co-Maker subscribing below represents that he has full power, authority and legal right to execute and deliver this Note and that the debt evidenced hereby constitutes a valid and binding obligation of Maker and Co-Maker.

This Note is executed in Las Cruces, New Mexico on the _____ day of _____, 20__

SIGNATURES ON THE NEXT PAGE

MAKER/ CO-MAKER:

Pedrena Apartments LLC

By: Pedrena-TDC Associates LLC,
a New Mexico limited liability company, its Managing Member

By: Thomas Development Co.,an Idaho corporation, its Managing Member

By: _____
Thomas C. Mannschreck, President

By: Pedrena- NIHC Associates LLC,
A New Mexico limited liability company, its managing Member

By: Northwest Integrity Housing Co.,
An Idaho nonprofit corporation, its Managing Member

By:

By: _____
Rick Sullivan, Executive Director

Date: _____

HOLDER:

By: City of Las Cruces, a New Mexico municipal corporation.

By: _____
Ikani Taumoepeau, Assistant City Manager

_____
Date

ATTACHMENT "D"

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as "Mortgage") is made this _____ day of _____,20__, between the Mortgagor, **PEDRENA APARTMENTS LLC.,** a New Mexico limited liability company, whose address is 420 West Main Street, Suite 300 Boise, ID 83702 (hereinafter referred to as "Borrower"), and the Mortgagee, **CITY OF LAS CRUCES**, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico, with a mailing address of PO Box 20000, Las Cruces, New Mexico 88004 (hereinafter referred to as "Lender").

WHEREAS, the Borrower and Lender have entered into a HOME Program Loan Agreement (hereinafter referred to as "HOME Loan Agreement"), a copy of which is on file in the City Clerk's Office for the City of Las Cruces, New Mexico, and the definitions and terms of which are incorporated herein by this reference as if fully set forth herein, and which provides, among other things, that the Lender will loan to Borrower HOME funds in exchange for the acquisition and new construction of the Property, and being more particularly described in **Exhibit "A,"** and the rental of the Property to Extremely Low, Very Low, and/or Low Income persons at Affordable rents; and

WHEREAS, to ensure that the new construction of the units on the Property is completed and the Property is leased to Extremely Low, Very Low and Low Income persons at Affordable rents, the Borrower has executed a note in favor of Lender in the principal sum of Two Hundred Thousand Dollars and No Cents ($200,000.00), which indebtedness is evidenced by Borrower's promissory note dated of even date herewith (hereinafter referred to as "Note"), a copy of which is attached hereto as **Exhibit "C,"** due and payable as provided in the Note.

This Mortgage secures the performance of the following obligations: (1) the repayment of the indebtedness evidenced by the City Note as disbursed to Borrower, in accordance with the payment provisions set forth in the City Note and all renewals, extensions and modifications thereof, and the performance of all covenants contained therein, and the payment of such amounts, if any, advanced, or costs incurred by Lender in accordance herewith to protect the security of this Mortgage or in connection with the enforcement of this Mortgage or City Note; and (2) the performance of the covenants, agreements and obligations of Borrower herein contained and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law.

For consideration paid, Borrower does hereby MORTGAGE, GRANT, BARGAIN, SELL, ASSIGN, GRANT A SECURITY INTEREST IN and CONVEY TO Lender, its successors and assigns, all of Borrower's estate, right, title and interest in, to and under any and all

of the following described property, whether now owned or hereafter held or acquired, with mortgage covenants.

(a) All of Borrower's fee simple estate and interest in that certain parcel of real property situated in the City of Las Cruces, County of Dona Ana, and State of New Mexico, and being more particularly described on **Exhibit "A"** attached hereto and made a part hereof containing 4.35 acres, more or less.

(b) All and singular the buildings and improvements, structures, additions, tenements, easements, hereditament, and appurtenances belonging or in anywise appertaining to the aforesaid real property ("Real Property"), now existing or hereafter acquired, installed, or constructed and the revision or reversions, remainder and remainders rents, issues, and profits thereof and also all the estate, right, title, interest, property, claim and demand whatsoever of Borrower of, in, and to the same, and of, in and to every part and parcel thereof;

(c) All right, title and interest of Borrower, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Real Property to the centerline thereof;

(d) All right, title and interest of Borrower in all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and other articles of personal property and replacements thereof, now or at any time hereafter affixed to, attached to, placed upon or used in anyway in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property or the Project, together with any proceeds realized from the sale, transfer or conversion of any of the above (subject to the right of replacement described in the City Note);

(e) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards or judgments, and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Borrower;

(f) To the extent assignable, any and all plans, specifications, site plans, drawings, renderings and schematics; however, characterized from time to time prepared for use in connection with the construction and operation of the Project;

(g) To the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, the rendering of any services, the supply of any materials or the conduct of operations in the management of the Real Property and/or the Project including without limitation, construction contracts, architect agreements, development agreements, management agreements with respect to operations, franchise agreements and other similar agreements;

(h) To the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished,

whether necessary or not, for the operation and use of the Real Property and/or the Project, including, without limitation, building permits, environmental certificates, certificates of occupancy, certificates of operation, room permits, elevator licenses, warranties and guaranties; and

(i) All municipal or utility deposits made by or on behalf of Borrower or made in connection with the Real Property and/or the Project, together with all escrow accounts or reserves maintained or required to be maintained by Borrower hereunder, and any and all other assets, revenues and profits of any kind of the Project.

All of the property described in the foregoing subparagraphs (a) through (i) shall sometimes hereinafter be collectively referred to as the "Property". All of the assignments hereinabove referenced are subject to the right of the Borrower to collect, receive, apply, manage, and use the rights assigned until the occurrence of an event of default hereunder. The maximum amount of unpaid loan indebtedness, exclusive of any interest thereon, which may be outstanding at any time, is Two Hundred Thousand Dollars and No Cents ($200,000.00).

In addition to the other debt or obligation secured hereby, this Mortgage shall secure unpaid balances or advances made for the payment of taxes, tax increment payments, assessments, insurance premiums, and other costs incurred for the protection of the Real Property or the Project, if not paid by Borrower as required by law or this Mortgage.

Borrower represents and warrants that it has full right and authority to grant this Mortgage, and that it shall warrant and defend the lien and interest of the Lender in the Property against all claims and demands whatsoever, except any encumbrances acceptable to Lender, and that Borrower shall maintain the priority of the lien of and the security interest granted by this Mortgage upon the property until the Mortgage is defeased as provided herein.

The Borrower, at its expense, shall cause this Mortgage and instruments supplemental hereto and financing statements and all necessary supplements appropriate continuation statements, to be recorded, registered, and filed in such manner and in such places as may be directed from time to time by Lender as required in order to establish, preserve, and protect the lien of this Mortgage as a valid second mortgage lien on all real property, fixtures, and interests therein included in the Property, and a valid, perfected second priority security interest in all personal property, fixtures and interest therein included in the Property, including in each such case and without limitation, any such properties acquired after the execution hereof.

All property of every kind acquired by the Borrower after the date hereof which, by the terms hereof, is intended to be subject to the lien of this Mortgage, shall immediately upon the acquisition thereof by the Borrower, and without further mortgage or assignment, become subject to the lien of this Mortgage as fully as though now owned by the Borrower and specifically described herein. Borrower shall take such actions and

execute such additional instruments as the Lender shall reasonably require to further evidence or confirm the subjection to the lien of this Mortgage of any such after-acquired property.

Upon notification of the pending sale of any parcel comprising the Project, Mortgage shall release and reconvey such parcel from the charge and lien of this Mortgage subject to the condition concurrent of the consummation of such sale and the payment of principal from the proceeds of such sale as required by the City Note. Further, Borrower shall modify the Mortgage to amend the legal description of the Real Property to conform to any replatting of the Real Property. Further, Borrower shall execute all documents and instruments necessary to subordinate this Mortgage to the mortgage securing the construction loan(s) for the Project.

This Mortgage constitutes a security agreement as to all or any part of the Property, which is of a nature that a security interest therein can be perfected under the Uniform Commercial Code. This Mortgage also constitutes a financing statement with respect to any and all property included in the Property, which is or may become fixtures.

Borrower shall pay promptly when due all taxes, tax increment payments, assessments, and other governmental charges on the property which, if not paid, may become a lien on the Property or any part thereof.

During construction of the Project, until issuance of Certificates of Occupancy for each unit and, if applicable, a letter of acceptance by the City for public infrastructure, Borrower, at its expense, shall keep or cause to be kept, the Property fully insured by a policy or policies of Builder's Risk and Fire Insurance (in an amount not less than the outstanding balances of the loan evidenced by the City Note and of any mortgage to which this Mortgage is subordinate) against fire with extended coverage and in good order and condition, ordinary wear and tear excepted, and shall make all necessary or appropriate repairs, replacements, and renewals thereof. All policies of insurance required by this paragraph shall be endorsed to indicate Lender as an insured Mortgagee.

In the event of any damage or injury to the Project, the Borrower agrees that it shall either repay its obligations under the City Note in full, or it shall take any and all actions necessary to restore the Project substantially to its condition prior to the damage or injury, and shall apply any proceeds of such insurance coverage to the extent necessary to the costs of such restoration.

If the Borrower shall fail to make any payments or perform any act required to be paid or performed hereunder or under the City Note, Lender may (but shall be under no obligation to do so), upon five (5) days written notice to the Borrower and to the Lender of any mortgage loan to which this Mortgage is subordinate, make such payment or perform such act for the account of and at the expense of Borrower. All payments so made by the Lender and all costs, fees and expenses incurred in connection therewith shall, together with interest thereon as provided herein, be additional indebtedness

secured by this Mortgage, to the extent permitted by law, and shall be paid by the Borrower to the Lender on demand. In any action brought to collect such indebtedness, or to foreclose this Mortgage, the Lender shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision rendered in any such proceedings.

Notwithstanding any other provisions of this Mortgage, the City Note, or the Loan Agreement, upon any failure by Borrower to pay when due any installment of principal and/or interest under the City Note, or failure to pay any other obligation under the City Note, and such failure is not cured as provided in the lease agreement, after receipt of written notice from the Lender, such failure to pay or cure shall constitute an immediate default entitling the Lender to exercise any remedy hereafter described in this paragraph, or elsewhere in this Mortgage, the City Note, or the Loan Agreement. Upon any failure to observe or perform any other obligation under this Mortgage, which has not been remedied or cured within ten (10) days after receipt of written notice thereof from Lender, or for such longer period as the Lender shall agree to in writing, then the Lender at its option may declare a default to have occurred hereunder. Subject to the foregoing provisions, with respect to either a default in failure to make payment or any other default, the remedies available to Lender include its ability at any time at its election to exercise any or all or any combination of the remedies conferred upon or reserved to it under this Mortgage, the City Note, the Loan Agreement, or now or hereafter existing at law or in equity. Without limitation, the Lender may declare the entire unpaid principal balance of the City Note immediately due and payable without notice or demand, the same being expressly waived by the Borrower; may proceed at law or equity to collect all amounts secured by this Mortgage and due hereunder, whether at maturity or by acceleration; may foreclose the lien of this Mortgage as against all or any part of the Property; and may exercise any rights, powers, and remedies it may have as a secured party under the Uniform Commercial Code, or other similar laws in effect from time to time.

Each right, power, and remedy of the Lender provided for in the Loan Agreement, the City Note, and Mortgage, or now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Mortgage, the HOME Loan
Agreement, or the City Note, or now or hereafter existing at law or in equity, and the exercise or beginning of exercise or partial exercise by the Lender of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Lender of any or all such rights, power or remedies.

No failure by the Lender to insist upon the strict performance of any term whereof to exercise any right, power, or remedy consequent upon a breach hereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, and the Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach.

PROVIDED, however, that these presents are upon the condition that if the Borrower shall well and truly pay to Lender, its successors and Assigns, not less than the total of the indebtedness secured hereby and shall fully keep and perform all the conditions, covenants and agreements to be kept and performed by Borrower under this Mortgage, then this Mortgage shall be void; otherwise to remain in full force and effect in law and equity forever.

The existence and lien of this Mortgage shall not impede or affect the right of Borrower from time to time with respect to all or a portion of the Real Property, to dedicate public areas by subdivision plat or otherwise, including streets, easements and park areas, grant to public utilities and other agencies entitled thereto ordinary and necessary easements, and apply for and obtain zoning acceptable to Borrower.

Unless Lender or Borrower gives written instructions to the other party of a change in the person or address set forth below, all notices, demands or requests permitted or required to be given under the provisions of this Mortgage or the City Note shall be hand-delivered or mailed, registered or certified mail, return receipt requested to the following addresses:

Lender:

City of Las Cruces
Attn: Housing & Neighborhood Services Administrator
P.O. Box 20000
Las Cruces, New Mexico 88004

Borrower:

Pedrena Apartments LLC.
420 W. Main Street, Suite 300
Boise, ID 83702

See notice in the loan agreement
In the event of foreclosure of this Mortgage, the period of foreclosure shall be one month in lieu of the statutory redemption period of nine months.

IN WITNESS, WHEREOF, the said Borrower, Pedrena Apartments LLC, a New Mexico limited liability company, hereunto duly authorized, has caused this instrument to be executed on this the _____ day of _____, 20__.

PROJECT OWNER:

Pedrena Apartments LLC

By: Pedrena-TDC Associates LLC,
a New Mexico limited liability company, its Managing Member

By: Thomas Development Co.,an Idaho corporation, its Managing Member

By: _____
Thomas C. Mannschreck, President

By: Pedrena- NIHC Associates LLC,
A New Mexico limited liability company, its managing Member

By: Northwest Integrity Housing Co.,
An Idaho nonprofit corporation, its Managing Member

By:

By: _____
Rick Sullivan, Executive Director

Date: _____

LENDER:

By: City of Las Cruces, a New Mexico municipal corporation.

By: _____
Ikani Taumoepeau, Assistant City Manager

_____
Date

ATTACHMENT "E"

SUBORDINATION AND STANDSTILL AGREEMENT
(CEDAR RAPIDS BANK AND TRUST COMPANY AND CITY HOME LOAN)

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is entered into this ___ day of _____, 2023, by and among (i) CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation (the "**Senior Lender**"), (ii) CITY OF LAS CRUCES, a New Mexico municipal corporation (the "**Subordinate Lender**"), and (iii) PEDRENA APARTMENTS LLC, a New Mexico limited liability company (the "**Borrower**").

RECITALS

A. Borrower owns a multifamily affordable housing development (the "Project") in Las Cruces, New Mexico (the "Property").

B. Doña Ana County, New Mexico ("Issuer") issued its Multifamily Housing Revenue Bond (Pedrena Apartments Project) Series 2023, dated as of [_____], 2023, in the original principal amount of $[_____] (the "Bond"), to Senior Lender pursuant to that certain Financing Agreement dated as of [_____] 1, 2023 (the "Financing Agreement"), by and among Issuer, Borrower, and Senior Lender to finance the rehabilitation of the Project.

C. The Senior Lender purchased the Bond and the Issuer used the proceeds from the sale of the Bond to make a loan to the Borrower in the maximum principal amount of the Bond (the "Senior Loan") pursuant to that certain Financing Agreement.

D. The Loan will be subject to the terms of that certain Continuing Covenants Agreement dated as of [_____], 2023 between the Borrower and the Senior Lender (the "Senior Loan Agreement").

E. The Senior Loan is secured by that certain Leasehold Mortgage, Assignment of Rents and Security Agreement dated as of [_____], 2023, executed by Borrower for the benefit of Senior Lender (the "Senior Mortgage"). The Continuing Covenants Agreement, the Bond, the Mortgage, and each of the other documents evidencing or securing the Senior Loan are hereinafter referred to collectively as the "Loan Documents."

F. Subordinate Lender has extended to Borrower a loan in the original principal amount of $[_____] (the "Subordinate Loan"); and

G. The obligations of Borrower to repay the Subordinate Loan is currently evidenced by a Promissory Note dated as of [_____], 2023, executed by Borrower in favor of Subordinate Lender in the original principal amount of $200,000 (the "Subordinate Note"); and

H. The Subordinate Note is secured by, among other things, a Mortgage and Security Agreement [_____], 2023 (the "Subordinate Mortgage"), executed by Borrower in favor of Subordinate Lender, recorded concurrently herewith in the records of the Doña Ana County Clerk (the "Official Records"), and recorded concurrently herewith in the Official Records, and encumbering the Property; and

I. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place a subordinate lien against the Property subject to all of the conditions contained in this Agreement.

J. WHEREAS, as a condition to making advances under the Continuing Covenants Agreement, Senior Lender requires that Borrower and Subordinate Lender enter into this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to place a subordinate lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

1. **Definitions**.

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a Senior Loan Default has occurred under the Senior Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Senior Loan Default" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

"Senior Loan Documents" means the Senior Mortgage, Bonds, the Senior Loan Agreement, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Loan.

"Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the Bonds, such other Person shall automatically become the Senior Lender.

"Subordinate Lender" means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"Subordinate Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

"Subordinate Mortgage" means the mortgage encumbering the Property as security for the Subordinate Loan, as defined in the Recitals.

"Swap Documents" mean those swap documents as described in the Continuing Covenants Agreement.

2. **Permission to Place Lien Against Property**.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the Senior Mortgage) to secure the Borrower's obligation to repay the

Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan.

3. **Borrower's and Subordinate Lender's Representations and Warranties**.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

a. **Subordinate Note**. The Subordinate Note shall be deemed to contain the following provision:

> The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness from Cedar Rapids Bank and Trust Company to Pedrena Apartments LLC, a New Mexico limited liability company, in the original principal amount of $[_____], to the extent and in the manner provided in that certain Subordination and Standstill Agreement dated as of [_____], 2023 between the payee of this Note, the Senior Lender and Subordinate Lender (the "Subordination Agreement"). The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage securing the Senior Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement.

b. **Relationship of Borrower to Subordinate Lender and Senior Lender**. The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

c. **Term**. The terms of the Subordinate Note does not end before 6 months after the term of the Senior Note.

d. **Subordinate Loan Documents**. The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

e. **Senior Loan Documents**. The executed Senior Loan Documents are substantially in the same forms as, when applicable, those submitted to, and approved by,

Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. **Terms of Subordination**.

a. **Agreement to Subordinate**. The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Mortgage and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of protecting or further securing the lien of the Senior Mortgage, curing defaults by the Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Mortgage. Notwithstanding any contrary provision of this Agreement, Senior Lender agrees that it will not amend or modify the terms of the Senior Loan or any of the Senior Loan Documents without the prior written consent of Subordinate Lender, which consent Subordinate Lender shall not unreasonably withhold, if such amendment or modification would have the effect of (i) increasing the amount of the Senior Loan, except in the case of sums advanced by Senior Lender in exercising its rights and remedies with respect to the Senior Loan or for protective advances; (ii) increasing the annual interest rate(s) above the interest rate(s) described in the Senior Note, except as contemplated by the Senior Loan Documents; or (iii) decreasing the term of the Senior Loan, except in connection with any acceleration of the Senior Loan pursuant to the Senior Loan Documents.

b. **Subordination of Subrogation Rights**. The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage.

c. **Payments Before Senior Loan Default**. Until the Subordinate Lender receives a Default Notice of a Senior Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents. Such payments include scheduled principal payments and the Subordinate Lender agrees that Subordinate Loan does

not include any hyper-amortization feature. Such payments include simple, non-compounding, interest. Such payments are payable only from surplus cash flow after the payment of operating expenses, replacement reserve contributions, contributions to escrow accounts, and debt service on the Senior Loan from the operation of the Property.

d. **Payments After Senior Loan Default**. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. Notwithstanding anything to the contrary in this Agreement, including the immediately preceding sentence, nothing herein shall limit Subordinate Lender's rights, in the event of a default under the Subordinate Loan Documents, to (a) compute interest on all amounts due and payable under the Subordinate Note at the default rate described in the Subordinate Loan Documents, (b) compute prepayment premiums and late charges, (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Subordinate Note. If the Subordinate Lender receives written notice from the Senior Lender that the Senior Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

e. **Remitting Subordinate Loan Payments to Senior Lender**. If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender,

properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

f. **Agreement Not to Commence Bankruptcy Proceeding**. The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

5. **Default Under Subordinate Loan Documents**.

a. **Notice of Default and Cure Rights**. The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the Senior Mortgage.

b. **Subordinate Lender's Agreement to Standstill**. If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

c. **Cross Default**. The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies

under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Senior Loan Default.

6. **Default Under Senior Loan Documents**.

a. **Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the Senior Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 90 days from the date of the Default Notice to cure a non-monetary default if during such 90-day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 90-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the liens of, the Subordinate Mortgage.

b. **Cross Default**. The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Senior Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Mortgage. At any time after a Senior Loan Default is

determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Senior Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

7. **Conflict**.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Senior Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. **Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the Senior Loan Documents**.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

a. **Protection of Security Interest**. The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

b. **Condemnation or Casualty**. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting

in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Senior Mortgage remains a lien on the Property the following provisions shall apply:

i. The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the Senior Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

ii. all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

c. **No Modification of Subordinate Loan Documents**. The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amounts of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the terms of the Subordinate Loan, increase the interest rates on the Subordinate Loan, or otherwise amend the terms of the Subordinate Loan in a manner that creates an adverse effect upon the Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever.

9. **Default by the Subordinate Lender or Senior Lender**.

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

10. **Notices**.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Cedar Rapids Bank and Trust Company
500 First Avenue NE
Cedar Rapids, Iowa 52401

SUBORDINATE LENDER:

City of Las Cruces
PO Box 20000
Las Cruces, New Mexico 88004
Attention: Housing & Neighborhood Services Administrator

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

11. **General**.

a. **Assignment/Successors**. This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

b. **No Partnership or Joint Venture**. The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior

Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

c. **Senior Lender's and Subordinate Lender's Consent**. Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

d. **Further Assurances**. The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Mortgage, or to further evidence the intent of this Agreement.

e. **Amendment**. This Agreement shall not be amended except by written instrument signed by all parties hereto.

f. **Governing Law**. This Agreement shall be governed by the laws of the State in which the Property is located.

g. **Severable Provisions**. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

h. **Term**. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

i. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

[REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation

By: _____
Sam D. Kramer
Vice President

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF IOWA)
)
COUNTY OF LINN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Sam D. Kramer, a Vice President of Cedar Rapids Bank and Trust Company, an Iowa state-chartered banking corporation, for and on behalf of said banking corporation.

_____
Notary Public

SUBORDINATE LENDER:

CITY OF LAS CRUCES, a
New Mexico municipal corporation

By: _____
Ikani Taumoepeau
Assistant City Manager

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF NEW MEXICO)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023, by Ikani Taumoepeau, the Assistant City Manager of the City of Las Cruces, a New Mexico municipal corporation, for and on behalf of said municipal corporation.

_____
Notary Public for New Mexico
My commission expires: _____

BORROWER:

PEDRENA APARTMENTS LLC, a
New Mexico limited liability company

By: Pedrena-TDC Associates LLC, a
New Mexico limited liability company, its
Managing Member

By: Thomas Development Co., an
Idaho corporation, its
Managing Member

By: _____
Thomas C. Mannschreck
President

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF IDAHO)
)
COUNTY OF ADA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Thomas C. Mannschreck, the President of Thomas Development Co., an Idaho corporation, the Managing Member of Pedrena-TDC Associates LLC, a New Mexico limited liability company, the Managing Member of Pedrena Apartments LLC, a New Mexico limited liability company, and acknowledged to me that he executed the within instrument on behalf of said limited liability company

_____
NOTARY PUBLIC
Residing at: _____
My Commission Expires:_____

BORROWER:

PEDRENA APARTMENTS LLC, a
New Mexico limited liability company

By: Pedrena-NIHC Associates LLC, a
New Mexico limited liability company, its
Managing Member

By: Northwest Integrity Housing Co., an
Idaho nonprofit corporation, its
Managing Member

By: _____
Rick Sullivan
Executive Director

Signed, sealed and delivered in the presence of:

_____ _____
Witness Name:_____ Witness Name:_____

STATE OF IDAHO)
)
COUNTY OF ADA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Rick Sullivan, the Executive Director of Northwest Integrity Housing Co., an Idaho nonprofit corporation, the Managing Member of Pedrena-NIHC Associates LLC, a New Mexico limited liability company, the Managing Member of Pedrena Apartments LLC, a New Mexico limited liability company, and acknowledged to me that she executed the within instrument on behalf of said limited liability company.

_____
NOTARY PUBLIC
Residing at: _____
My Commission Expires:_____

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property located in the County of Dona Aña, State of New Mexico, described as follows:

A tract of land situate in the Dona Ana Bend Colony Grant, Dona Ana County, New Mexico, and in Sec. 20, T 23 S, R 2 E, of the Surveys of the USRS, being a part of County Plat No. 660 and of Serial No. 11-15 on the USRS Property Maps, and more particularly described as follows, to-wit:

Beginning at an iron fence Post, an established point, marking the southwest corner of this tract at the intersection of El Paseo and a road to the east; thence along the north side of the road to the east, North 76 deg. 01’ East 573.4 feet to an iron pipe marking the southwest corner of USRS Tract 11-14; whence an iron pipe marking the southeast corner of USRS 11-14 bears N. 73 deg. 53’ W. 627 feet distant; thence following the east line of USRS Tract 11-15 North 36 deg. 20’ West 393.95 feet to an angle iron marking the northeast corner of the parcel herein described; thence across USRS 11-15 to the east line of El Paseo South 76 deg. 01' West 444.67 feet to an angle iron In the north bank of a farm ditch at the NW corner of this tract; thence following the east line of El Paseo South 17 deg. 18’ East 364.3 feet to the place of beginning. Commitment No.: 2303052 ORT FORM 4690 NM6 8-1-16 Old Republic National Title Insurance Company Page 5 of 8 Excepting there from a portion deeded to the City of Las Cruces, a New Mexico Municipal Corporation, in Warranty Deed recorded June 5, 2015, as Document No. 1511766, records of Dona Ana County, New Mexico.

ATTACHMENT "F"

SCOPE OF WORK, PROJECT AND BUDGET

Pedrena apartments LLC, to be located at 801 E. Farney is a 80-unit senior new construction multi-family development. The project will contain 44 1-bedroom units and 36 2-Bedroom units for senior 55+ households earning up to 60% area median income. The main building will consist of 74 units with enclosed central hallways, community space with business center, kitchen, library, exercise room, craft room and private meeting rooms. 3 duplex buildings will contain direct access garages.
The project is anticipated to begin construction in December 2023 with anticipated completion in December 2024 and involves the relocation of the current resident on the property prior to beginning of construction.

The current estimated budget for the project is attached. HOME funds will be used for land acquisition for new construction of the Pedrena Apartment complex. The City will benefit with 4 low HOME-assisted units among the 80 units of affordable housing to be constructed.

8/14/2023

DEVELOPMENT BUDGET
Pedrena

	Project Costs	Cost Per Unit	Cost Per Res. Sq. Ft.	Tax Credit Eligible Basis
Land Costs	**$521,493**	**$ 6,519**	**$ 7.07**	XXXXXXXXXX
Acquisition Costs	**$53,507**	**$ 669**	**$ 0.73**	**$ 53,507**
Construction Costs				
Off-Site Improvements	$0	$ -	$ -	XXXXXXXXXX
Contractor Bond & Insurance	$79,621	$ 995	$ 1.08	$ 79,621
On Site Work	$1,266,900	$ 15,836	$ 17.19	$ 1,266,900
Structures	$12,363,442	$ 154,543	$ 167.72	$ 12,363,442
Solar	$180,000	$ 2,250	$ 2.44	$ 180,000
Garages	$300,000	$ 3,750	$ 4.07	XXXXXXXXXX
General Requirements	$851,398	$ 10,642	$ 11.55	$ 851,398
Contractor Overhead	$283,799	$ 3,547	$ 3.85	$ 283,799
Contractor Profit	$851,398	$ 10,642	$ 11.55	$ 851,398
Predevelopment Costs/Fees	$0	$ -	$ -	$ -
Sales Tax	$1,273,904	$ 15,924	$ 17.28	$ 1,273,904
Total Construction Costs	**$17,450,462**	**$ 218,131**	**$ 236.74**	**$ 17,150,462**
Financing Costs				
Construction Loan Interest	$397,959	$ 4,974	$ 5.40	$ 397,959
Construction Loan Fee	$160,000	$ 2,000	$ 2.17	$ 160,000
Construction Lender Costs (Legal, Etc.)	$55,000	$ 688	$ 0.75	$ 55,000
Construction Inspection Fees	$21,000	$ 263	$ 0.28	$ 21,000
Permanent Loan Fees & Costs	$0	$ -	$ -	XXXXXXXXXX
Post Construction Interest	$405,749	$ 5,072	$ 5.50	XXXXXXXXXX
Tax Credit Fees	$84,919	$ 1,061	$ 1.15	XXXXXXXXXX
Bond Counsel & Financial Advisor	$115,000	$ 1,438	$ 1.56	XXXXXXXXXX
Syndication Costs	$0	$ -	$ -	XXXXXXXXXX
Total Financing Costs	**$1,239,628**	**$ 15,495**	**$ 16.82**	**$ 633,959**
Soft Costs				
Architectural	$550,000	$ 6,875	$ 7.46	$ 550,000
Engineering/Surveying/Environmental	$135,387	$ 1,692	$ 1.84	$ 135,387
Soil Report & Surveys	$55,000	$ 688	$ 0.75	$ 55,000
Energy Rater Reports	$65,000	$ 813	$ 0.88	$ 65,000
Taxes During Construction	$10,000	$ 125	$ 0.14	$ 10,000
Insurance	$291,200	$ 3,640	$ 3.95	$291,200
Title & Recording	$92,369	$ 1,155	$ 1.25	$ 92,369
Borrower Attorney	$45,000	$ 563	$ 0.61	$45,000
Local Tap, Building Permit	$255,000	$ 3,188	$ 3.46	$ 255,000
Resident Relocation Fees	$20,000	$ 250	$ 0.27	XXXXXXXXXX
Marketing	$0	$ -	$ -	XXXXXXXXXX
Supportive Services	$0	$ -	$ -	XXXXXXXXXX
Furnishings & RBM Design	$150,000	$ 1,875	$ 2.03	$ 150,000
Cost Certification & Accounting	$15,000	$ 188	$ 0.20	XXXXXXXXXX
Appraisal	$10,000	$ 125	$ 0.14	$ 10,000
Market Study	$13,000	$ 163	$ 0.18	$ 13,000
Owner's Hard Cost Contingency	$872,523	$ 10,907	$ 11.84	$ 872,523
Soft Cost Contingency	$273,440	$ 3,418	$ 3.71	$ 273,440
Developer Overhead & Profit	$2,654,161	$ 33,177	$ 36.01	$ 2,654,161
Total Soft Costs	**$5,507,080**	**$ 68,838**	**$ 74.71**	**$ 5,472,080**
Reserves				
Operating Reserve (6 Months)	$334,323	$ 4,179	$ 4.54	XXXXXXXXXX
Capitalized Replacement Reserves	$300,000	$ 3,750	$ 4.07	XXXXXXXXXX
Total Reserve Costs	**$634,323**	**$ 7,929**	**$ 8.61**	XXXXXXXXXX
Totals	**$25,406,492**	**$ 317,581**	**$ 344.67**	**$ 23,310,007**
			Total Tax Credit Eligible Basis	**$ 23,250,910**
			Total Acquisition Eligible Basis	**$ 59,097**

10/2/2023

ATTACHMENT "G"

PAYMENT REQUEST FORM

CITY OF LAS CRUCES

INVOICE

Date _____

Agency Name Pedrena Apartments LLC
Project Name Pedrena Apartments

Original contract balance	**$ 200,000.00**
Balance as of end of previous month	$
Invoice Expenses:	
	$
	$
	$
	$
GRAND TOTAL:	**$**
Remaining Balance:	$____

Certification:

I, _____, as_____

of _____,
hereby certify that the information provided on this invoice is for reimbursement of eligible HOME expenses incurred in the month of _____for Pedrena Apartments LLC.

_____
Printed Name

_____
Signature

_____
Date

ATTACHMENT "H"

2023 HOUSING CREDIT INCOME LIMITS AND MAXIMUM RENTS

****Las Cruces MSA (Las Cruces and Dona Ana County)****

For all Placed in Service Properties

Median Income $59,600*

FY2023 Income Limits & Rents	# in Hshld	1	2	3	4	5	6	7	8
	20%	9,060	10,340	11,640	12,920	13,960	15,000	16,040	17,060
	30%	13,590	15,510	17,460	19,380	20,940	22,500	24,060	25,590
	40%	18,120	20,680	23,280	25,840	27,920	30,000	32,080	34,120
	50%	22,650	25,850	29,100	32,300	34,900	37,500	40,100	42,650
	60%	27,180	31,020	34,920	38,760	41,880	45,000	48,120	51,180
	70%	31,710	36,190	40,740	45,220	48,860	52,500	56,140	59,710
	80%	36,240	41,360	46,560	51,680	55,840	60,000	64,160	68,240
	Maximum Gross Rents by Bedroom Size								
		0	1	2	3	4	5		
	20%	226	242	291	336	375	413		
	30%	339	363	436	504	562	620		
	40%	453	485	582	672	750	827		
	50%	566	606	727	840	937	1,034		
	60%	679	727	873	1,008	1,125	1,241		
	70%	792	848	1,018	1,176	1,312	1,448		
	80%	906	970	1,164	1,344	1,500	1,655		

HUD INCOME GUIDELINES
LAS CRUCES MSA INCOME LIMITS
Income Levels by Family Size
HOME INCOME AND RENT LIMITS
EFFECTIVE DATE, June 15, 2023

MEDIAN FAMILY INCOME (MFI): $59,600

FAMILY SIZE * # OF PERSONS	EXTREMELY LOW INCOME (30% of Median)	VERY LOW INCOME (50% of Median)	LOW INCOME (80% of Median)	MODERATE INCOME (100% of Median)
1	$13,600	$22,650	$36,200	$41,700
2	$15,550	$25,850	$41,350	$47,700
3	$17,500	$29,100	$46,500	$53,650
4	$19,400	$32,300	$51,650	$59,600
5	$21,000	$34,900	$55,800	$64,350
6	$22,550	$37,500	$59,950	$69,150
7	$24,100	$40,100	$64,050	$73,900
8	$25,650	$42,650	$68,200	$78,650

Source: The US department of Housing and Urban Development (HUD) Office of Policy Development and Research (PD&R), FY 2023 Income limits from website at https://files.hudexchange.info/reports/published/HOME_IncomeLmts_State_NM_2023.pdf

Income limits for families with more than eight-persons, 8% of the four person base should be added to the either person income limit.

Income limits are rounded to the nearest $50. For simplicity, this is optional for income limits for nine-plus person families.

2023 HOME Rents Effecive June 15, 2023

FAMILY SIZE * # OF PERSONS	Low HOME	High HOME	Fair Market Rent	50% limit	65% limit
Efficiency	$566	$715	$715	$566	$715
1BR	$606	$768	$772	$606	$768
2BR	$727	$893	$893	$727	$923
3BR	$840	$1,057	$1,269	$793	$1,057
4BR	$937	$1,160	$1,459	$937	$1,160
5BR	$1,034	$1,261	$1,678	$1,034	$1,261
6Br	$1,130	$1,362	$1,897	$1,130	$1,362

ATTACHMENT "I"

UTILITY ALLOWANCE

Utility Allowance Schedule

See Public Reporting and Instructions on back.

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval
No. 25577-0169
exp.7/31/2022

The following allowances are used to determine the total cost of tenant-furnished utilities and appliances.

Date (mm/dd/yyyy):

Locality: **Mesilla Valley Public Housing Authority, NM**

Unit Type: **Apartment**
EFF. 1/1/2023

Utility or Service:	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
	Monthly Dollar Allowances					
Heating						
a. Natural Gas ***(avg)***	$18.00	$22.00	$24.00	$28.00	$30.00	$33.00
b. Bottle Gas/Propane	$65.00	$80.00	$88.00	$99.00	$107.00	$122.00
c. Electric	$13.00	$15.00	$20.00	$24.00	$29.00	$33.00
d. Electric Heat Pump	$11.00	$13.00	$16.00	$18.00	$20.00	$22.00
e. Oil	N/A	N/A	N/A	N/A	N/A	N/A
Cooking						
a. Natural Gas ***(avg)***	$3.00	$3.00	$6.00	$7.00	$9.00	$10.00
b. Bottle Gas/Propane	$11.00	$11.00	$19.00	$27.00	$34.00	$38.00
c. Electric	$5.00	$6.00	$9.00	$11.00	$14.00	$17.00
Other Electric & Cooling						
Other Electric (Lights & Appliances)	$19.00	$23.00	$32.00	$41.00	$50.00	$59.00
Air Conditioning	$10.00	$12.00	$17.00	$21.00	$26.00	$30.00
Water Heating						
a. Natural Gas ***(avg)***	$7.00	$8.00	$13.00	$16.00	$20.00	$23.00
b. Bottle Gas/Propane	$27.00	$31.00	$46.00	$57.00	$73.00	$84.00
c. Electric	$12.00	$14.00	$18.00	$22.00	$26.00	$30.00
d. Oil	N/A	N/A	N/A	N/A	N/A	N/A
Water, Sewer, Trash Collection						
Water ***(avg)***	$23.00	$23.00	$26.00	$30.00	$35.00	$39.00
Sewer ***(avg)***	$25.00	$25.00	$27.00	$29.00	$33.00	$37.00
Trash Collection ***(avg)***	$22.00	$22.00	$22.00	$22.00	$22.00	$22.00
Tenant-supplied Appliances						
Range / Microwave Tenant-supplied	$11.00	$11.00	$11.00	$11.00	$11.00	$11.00
Refrigerator Tenant-supplied	$12.00	$12.00	$12.00	$12.00	$12.00	$12.00
Other--specify: Monthly Charges						
Electric Charge $7.57	$8.00	$8.00	$8.00	$8.00	$8.00	$8.00
Natural Gas Charge $14.07 (avg)	$14.00	$14.00	$14.00	$14.00	$14.00	$14.00

Actual Family Allowances

To be used by the family to compute allowance. *Complete below for the actual unit rented.*

Name of Family

Address of Unit

Utility or Service	per month cost
Heating	$
Cooking	$
Other Electric	$
Air Conditioning	$
Water Heating	$
Water	$
Sewer	$
Trash Collection	$

ATTACHMENT "J"

RESTRICTIVE REAL ESTATE COVENANTS

Made in Las Cruces, New Mexico Date: _____

This Agreement is made by **PEDRENA APARTMENTS LLC, A NEW MEXICO LIABILITY LIMITED COMPANY**, (hereinafter referred to as "Owner") whose address is 420 W. Main Street, Suite 300, Boise, ID 83702, in favor of the **CITY OF LAS CRUCES**, a municipal corporation (hereinafter referred to as "City").

1. Recitals

A. Thomas Development Company, an Idaho corporation, (hereinafter referred to as "Sponsor") has caused a separate limited liability company to be formed, Pedrena Apartments LLC (hereinafter referred to as "Owner") whose address is 420 W. Main Street, Suite 300, Boise, ID 83702, to own, and manage, and operate 80 units of subsidized rental housing for low-income persons.

B. The Owner is the owner in fee simple of that certain real estate ("Real Property") in Dona Ana County, New Mexico, which is more particularly described in **Exhibit "A"** attached hereto and made a part hereof and containing 4.35 acres, more or less.

C. The City has advanced certain sums of money under the National Affordable Housing Act of 1990/HOME Investment Partnership Program (24 CFR Part 92) to the Sponsor and Owner. Such sum benefits the Real Property of the Owner.

D. In consideration for the assistance given by the City for the benefit of the Sponsor and Owner, the Sponsor and Owner have agreed to restrictions on the use and rental of the Real Property in order to implement the policies and obligations of the National Affordable Housing Act of 1990/HOME Investment Partnership Program (24 CFR Part 92).

2. Definitions

"Annual Gross Income" means the anticipated total income from all sources, as defined in 24 CFR Part 5.609 to be received by the Family Head and spouse and by each additional member of the household during a twelve-month period.

"City's Median Income" means the median income for the City of Las Cruces, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development from time to time and published in the Federal Register.

"HOME Assisted Units" means that apartment unit which either directly, or indirectly, has received financial assistance through the City under the National Affordable Housing Act/HOME Investment Partnership Program (24 CFR Part 92).

"Uniform Physical Condition Standards" means the standards set forth in 24 CFR 92.251 to maintain a decent, safe and sanitary living environment.

"Program Income" means that portion of income generated as a direct result of Project funding and subject to the restrictions of 24 CFR Part 92.

"Project" has the meaning given in the Loan Agreement.

"Section 8 Fair Market Rent" means that rent established by the U.S. Department of Housing and Urban Development as authorized under 24 CFR Part 882.

Except as otherwise expressly provided herein, all capitalized terms shall have the meaning given in the HOME Loan Agreement.

3. Restrictive Covenants

During the term of this Agreement as set forth in Paragraph 5 below:

A. Use of Property. The Real Property shall be used as, and only for, residential rental purposes. A minimum of four (4) of the 80 units shall comply with the requirements of 24 CFR Part 92.

B. Income Qualification. The Sponsor and Owner shall determine the annual income of a household occupying or seeking to occupy a HOME assisted unit prior to occupancy of a HOME assisted unit. Tenants occupying HOME assisted units shall meet the minimum income targeting criteria:

1. 100% of the households occupying HOME assisted units will have annual incomes that do not exceed 60% of the City's Median Income adjusted for family size; and,
2. The income of households occupying HOME assisted units must be verified using 24 CFR Part 5 prior to occupancy and annually thereafter until the term of affordability is met;
3. Following occupancy, if a HOME assisted unit household's income exceeds 80% of the City's Median Income, adjusted for family size, the household may remain in the unit. However, the household must pay the lesser of 30% of their adjusted monthly income for rent and utilities, or fair market rent for the unit.

1. Rent Determination. All four HOME assisted units must have rents, hereafter called "Low HOME rents," which are no greater than:

   a. Thirty percent of the tenant's monthly adjusted income; or
   b. Thirty percent of the annual income of a family whose income equals 50% of the median income, hereafter called "Low HOME rents."

If utilities are not included in the rent, an allowance must be made using the City of Las Cruces' established utility allowance levels.

C. Rent Increases. Any rent increases for any of the HOME assisted units must be approved by the City prior to implementation of the increase.

D. Set Aside Units. The four HOME assisted units are designated as floating units. The HOME units shall be set aside and rented to qualified tenants as follows:

Bedroom Size	Number of Units	Rent Type	Rent Level
1 Bedroom	2	Low	$727
2 Bedroom	2	Low	$873

The Owner must maintain this configuration of HOME assisted units within the Real Property throughout the term of this Agreement.

E. Tenant Selection and Re-Certification. The Sponsor and Owner shall undertake the initial review of income eligibility of prospective tenants for the HOME assisted units. In determining income eligibility, the Sponsor and Owner acknowledge that the City must examine the source documents evidencing the prospective tenant's Annual Gross Income. All documentation including, but not necessarily limited to, a tenant's application, verifications, proposed rent and lease terms shall be submitted to the City's Housing & Neighborhood Services Administrator or administrating department or successor or assigns, for final approval before the Sponsor and Owner enter into a lease with a prospective tenant. The Sponsor and Owner acknowledge that the City must keep documentation verifying the income eligibility of tenants. The City shall use its best efforts to grant such approval within seven (7) business days after receipt of the tenant application from the Sponsor and Owner.

During the Affordability Period, in accordance with 24 CFR §92.252(h), the Sponsor and Owner shall re-verify tenant eligibility

annually with similar (source) documentation as submitted at initial lease-up. This information must be maintained in the tenants' files and made available for review by the City.

F. Lease Provisions. Each household in a HOME assisted unit will have an executed lease with the Sponsor and Owner which is in compliance with 24 CFR Part 92.253.

G. Property Standards Requirements. The Project will meet all Uniform Physical Condition Standards, or other physical property standards regulated by the U.S. Department of Housing and Urban Development, and local building code requirements for the duration of this Agreement.

4. Reporting Requirements

The Sponsor and Owner shall report, in writing, at least quarterly during the construction phase of the Project, regarding the status of construction. Upon issuance of the Certificate of Occupancy by the City of Las Cruces, the Sponsor and Owner shall submit annual reports by the last business day of July. These reports shall include, but not be limited to, the financial statements for the Project, and, for the HOME assisted units, a certified rent roll showing household size, tenant's race and ethnicity, whether the occupant is a female head of household, date of execution of the occupants current lease, adjusted gross annual income, and rental rates.

5. Term

The term of this Agreement shall commence and the restrictions set forth herein shall automatically commence to apply, on the day and time that the Mortgage securing permanent financing for the residential apartment complex on the Real Property is recorded in the Office of the County Clerk of Dona Ana County, New Mexico. This Agreement and the Restrictive Covenants set forth herein shall automatically terminate at the 30th anniversary of the Project Activity close-out date in HUD''s Integrated Disbursement and Information System (IDIS).

6. Covenants Running with Real Property

This Agreement shall be and constitute covenants running with the Real Property during the term of this Agreement and shall be enforceable by the City by legal and equitable action, including an action for injunctive relief.

7. Binding Effect

Upon execution of this Agreement by the Sponsor and Owner, the terms, conditions and covenants of this Agreement shall be binding upon and inure to the benefit of the parties and of their representatives.

Signed on this _____ day of _____, 20__

PROJECT OWNER:

Pedrena Apartments LLC

By: Pedrena-TDC Associates LLC,
a New Mexico limited liability company, its Managing Member

By: Thomas Development Co.,an Idaho corporation, its Managing Member

By: _____
Thomas C. Mannschreck, President

By: Pedrena- NIHC Associates LLC,
A New Mexico limited liability company, its managing Member

By: Northwest Integrity Housing Co.,
An Idaho nonprofit corporation, its Managing Member

By:
By: _____
Rick Sullivan, Executive Director

Date: _____

ATTACHMENT "K"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The certification set out below is a material representation upon which reliance is placed by the City of Las Cruces and the U.S. Department of Housing and Urban Development ("HUD") in awarding the Loan. If it is later determined that he Sponsor and Owner knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or the HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The Sponsor and Owner will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. The Sponsor and Owner certify that it will provide a drug-free workplace by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sponsor and Owner's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. The Sponsor and Owner's policy of maintaining a drug-free workplace;
3. Any available drug counseling, rehabilitation and employee assistance programs; and
4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

C. Making it a requirement that each employee engaged in the performance of the Loan be given a copy of the statement required by paragraph "A".

D. Notifying the employee in the statement required by paragraph "A" that, as a condition of employment under the Loan, the employee would:

1. Abide by the terms of the statement; and
2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

E. Notify the City's Housing & Neighborhood Services Section and/or HUD in writing within ten (10) calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every Loan Officer or other designee on whose Loan activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected Loan.

F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement or other appropriate agency.

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).

2. The Sponsor and Owner shall insert in the space provided on the attached “Place of Performance” form the site(s) for the performance of work to be carried out with the Loan funds (including street address, city, county, state, zip code and total estimated number of employees). The Sponsor and Owner further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement; it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised “Place of Performance” form.

PLACE OF PERFORMANCE

FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Name of Subgrantee: Pedrena Apartments LLC
Thomas Development Company

Program Name: Pedrena Apartments

Date: _____

The Borrower shall insert in the space provided below the site(s) expected to be used for the performance of work under the Loan covered by the certification:

Place of Performance (includes street address, city, county, state, zip code for each site):

801 W. Farney Lane, Las Cruces, NM 88001

Check ____ if there are work places on file that are not identified here.

Pedrena-TDC Associates LLC
Thomas Development Co.

By:

_____
Thomas C Mannschreck, President

_____
Date

Pedrena-NIHC Associates LLC
Northwest Integrity Housing Co.
By:

_____
Rick Sullivan, Executive Director

_____
Date

ATTACHMENT "L"

SECTION 3 CLAUSE

A. The work to be performed under this Agreement is on a project providing direct Federal financial assistance from the Department of Housing and Urban Development ("HUD") and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns that are located in or owned in substantial part by persons residing in the area of the Project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual agreement or other disability that would prevent them from complying with these requirements.

C. The Sponsor and Owner will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, the name and location of the persons taking applications for each of the positions, and the anticipated date the work shall begin.

D. The Sponsor and Owner will include this Section 3 Clause in every subcontract for work in connection with the Program and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sponsor and Owner is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Sponsor and Owner will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the agency has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD issued there under prior to the execution of the Agreement shall be a condition of the Federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its subrecipients, and its successors, and assigns to those sanctions specified by the HOME Loan Agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement for default and debarment and suspension from future HUD-assisted contracts.

Pedrena-TDC Associates LLC
Thomas Development Co.

By:

_____ _____
Thomas C Mannschreck, President Date

Pedrena-NIHC Associates LLC
Northwest Integrity Housing Co.
By:

_____ _____
Rick Sullivan, Executive Director Date

ATTACHMENT "M"

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE
FOR CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246

In carrying out this Agreement, the Sponsor and Owner and its contractors and subcontractors shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The Sponsor and Owner shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Sponsor and Owner shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The Sponsor and Owner shall state in all solicitations or advertisements for employees placed by or on behalf of the Sponsor and Owner that it is an Equal Opportunity or Affirmative Action employer.

Pedrena-TDC Associates LLC
Thomas Development Co.

By:

_____
Thomas C Mannschreck, President

_____
Date

Pedrena-NIHC Associates LLC
Northwest Integrity Housing Co.
By:

_____
Rick Sullivan, Executive Director

_____
Date

ATTACHMENT "N"

CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Sponsor and Owner shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Pedrena-TDC Associates LLC
Thomas Development Co.

By: _____ _____
Thomas C Mannschreck, President Date

Pedrena-NIHC Associates LLC
Northwest Integrity Housing Co.

By: _____ _____
Rick Sullivan, Executive Director Date

ATTACHMENT "O"

Note to all applicants/respondents: This form was developed with Nuance, the official HUD software for the creation of HUD forms. HUD has made available instructions for downloading a free installation of a Nuance reader that allows the user to fill-in and save this form in Nuance. Please see http://portal.hud.gov/hudportal/documents/huddoc?id=nuancereaderinstall.pdf for the instructions. Using Nuance software is the only means of completing this form.

Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2502-0608
(exp.04/30/2020)

1a. Grantee Name & Address (including City, County, State, Zip Code, Telephone No. & email address)

1b. Rental Assistance Contract Number

1c. No. of Units

1d. Entity Responsible for conducting Outreach and Referral (check all that apply)

☐ Grantee ☐ Service Provider ☐ Other (specify)

Entity Name, Contact Person and Position (if known), Address (including City, County, State & Zip Code), Telephone Number & Email Address

1e. If the outreach is performed by any other entity other than the Grantee, explain how the Grantee will monitor their activities to ensure compliance with affirmative fair housing outreach requirements. Enter "N/A" in the field below if not applicable.

1f. To whom in the Grantee's office should approval and other correspondence concerning this AFHMP be sent? Indicate Name, Address (including City, State & Zip Code), Telephone Number & E-Mail Address.

2a. Affirmative Fair Housing Marketing Plan

Plan Type: Please Select Plan Type

Date of the First Approved AFHMP:

Reason(s) for current update:

2b. Outreach Start Date

Grantees should not begin accepting applications prior to conducting the marketing and outreach activities identified in the approved AFHMP.

Date Outreach will begin (xx/xx/xxxx) ☐

Date Grantee will begin accepting applications (xx/xx/xxxx) ☐

Note: Only Fiscal Year 12 Demonstration Grantees are permitted to accept applications prior to conducting marketing and outreach activities identified in the approved AFHMP.

3a. Target Areas (check one): ☐ **Statewide** ☐ **Other (specify)**

☐

3b. Target Population(s)

☐

3c. Is all or some of the Target Population(s) covered by a Settlement Agreement? **No** ☐ **Yes** ☐

3d. Demographics of Target Population(s)

(check all that apply)

☐ White ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American

☐ Native Hawaiian or Other Pacific Islander ☐ Hispanic or Latino

☐ Families with Children (under age 18) ☐ Other ethnic group, religion, sex, etc. (specify) ☐

3e. Data Source(s) used to obtain the demographic characteristics.

4a. Identify the demographic group in the target population(s) that are least likely to apply.

4b. For each demographic group in the target population(s) that are least likely to apply, provide a description of how the program will be marketed to eligible individuals in the target population(s).

5a. Fair Housing Poster

The Fair Housing Poster must be prominently displayed in all offices/locations in which rental activity takes place (24 CFR 200.620(e)). Check below all locations where the Poster will be displayed.

☐ Rental Office ☐ Grantee Office ☐ Model Unit ☐ Other (specify)

5b. Affirmative Fair Housing Marketing Plan

The AFHMP must be available for public inspection at all rental offices/locations (24 CFR 200.625). Check below all locations where the AFHMP will be made available.

☐ Rental Office ☐ Grantee Office ☐ Model Unit ☐ Other (specify)

5c. Project Owner Compliance to display Fair Housing Poster and the AFHMP

Explain how you will ensure that every project owner will prominently display the Fair Housing Poster and AFHMP.

6. Evaluation of Marketing Activities

Explain the evaluation process you will use to determine whether your outreach activities have been successful in attracting individuals in the target population(s) who are least likely to apply, including who will be responsible for conducting this evaluation, when this evaluation will be conducted and how the results of this evaluation will inform future marketing activities.

7. Additional Considerations. Is there anything else you would like to tell us about your AFHMP to help ensure that your program is marketed to eligible persons in the target population(s) who are least likely to apply for the program? Please attach additional sheets, as needed.

8. Review and Update

By signing this form, the grantee agrees to implement its AFHMP, and to review and update its AFHMP in accordance with the instructions to item 8 of this form in order to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (see 24 CFR Part 200, Subpart M). The Grantee also certifies that training will be provided to staff/entities that provide outreach to target population(s) for the purpose of enrollment in the 811 PRA program. Training will consist of affirmative fair housing outreach requirements and the Fair Housing Act, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act and the American with Disabilities Act. I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (See 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Signature of person submitting this Plan & Date of Submission (mm/dd/yyyy)

Name (type or print)

Title & Name of Company

For HUD-Office of Housing Use Only

Reviewing Official:

Signature & Date (mm/dd/yyyy)

Name (type or print)

Name

Title

For HUD-Office of Fair Housing and Equal Opportunity Use Only

☐ Approval ☐ Disapproval

Signature & Date (mm/dd/yyyy)

Name (type or print)

Title

24-044

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:**	October 16, 2023
Drafter:	Leeann DeMouche	**Department:**	Financial Services
Program:	Administration	**Line of Business:**	Administration

Title:	**A RESOLUTION TO ADOPT A FEE STRUCTURE ASSOCIATED WITH MUNICIPAL COURT INDIGENT DEFENSE SERVICES.**

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

PURPOSE(S) OF ACTION:

Adopt a fee structure for Municipal Court Indigent Defense Services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

This Resolution is on behalf of the Municipal Court. Financial Services, in conjunction with Municipal Court, is requesting a new fee structure and increased cost for court-appointed legal services for Indigent Defense Services. As noted in the Municipal Court Indigent Defense Services Audit performed by the City Internal Audit Office on February 16, 2023 (A2022-01), the Municipal Court lacked documented policies and procedures related to the appointment of attorneys and the billing payment process for indigent defense services.

On June 3, 1990, Council passed Resolution 90-008 authorizing the city to pay attorneys $150 to represent indigent defendants in Municipal Court. This Resolution established an allowable cost for attorneys on a per-case basis. This rate has not changed by Resolution.

Staff is recommending following Internal Audit's recommendation, which is to adopt a similar fee structure as outlined in NMSA State Statute 31-16-8: Court assigning counsel under the Indigent Defense Act. Municipal Court is recommending that:

1) proceedings that are terminated prior to trial a sum fixed by the court less than one dollar ($1.00) nor more than three hundred dollars ($300);
2) trial in the court and, where appropriate, filing notice of appeal, a sum fixed by the court at not less than one dollar ($1.00) nor more than four hundred dollars ($400);
3) for services in postconviction remedy proceedings in the municipal court, a sum fixed by the court at not less than one dollar ($1.00) nor more than one hundred fifty dollars ($150); and
4) for services in prosecuting any appeal or review in the district court, court of appeals, or the supreme court, a sum fixed by the court at not less than one dollar ($1.00) nor more than five hundred dollars ($500).

Staff recommends that the rates go into effect on January 1, 2024.

SUPPORT INFORMATION:

Exhibit "A" Rates for Indigent Defense Services

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
Finance Select Committee

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"; the Resolution will pass and the City will establish a fee structure for Indigent Defense Services.
2. Vote "No"; the Resolution will not pass and the City will continue paying indigent defense services at the current rate.
3. Vote to "Amend"; Council will need to provide direction to staff.
4. Vote to "Table"; Council will need to provide further direction to staff.

REFERENCE INFORMATION:
New Mexico Statues Annotated (NMSA) § 31-16-8 Payment of cost, expenses and attorney fees.

RESOLUTION 24-044

A RESOLUTION TO ADOPT A FEE STRUCTURE ASSOCIATED WITH MUNICIPAL COURT INDIGENT DEFENSE SERVICES.

The City Council is informed that:

WHEREAS, June 3, 1990, Council passed Resolution 90-008 authorizing an allowable cost of $150 per case basis for attorneys representing indigent defendants in Municipal Court; and

WHEREAS, on February 16, 2023, the City Internal Audit Office performed an audit on the Municipal Court Indigent Defense Services (A2022-01), stating that the Municipal Court lacked documented policies and procedures related to the appointment of attorneys and the billing payment process for indigent defense services; and

WHEREAS, per the audit performed, Internal Audit is recommending that the Municipal Court adopt a fee structure similar to New Mexico Statues Annotated (NMSA) § 31-16-8 Payment of cost, expenses, and attorney fees; and

WHEREAS, the Municipal Court is making a recommendation to the Council to adopt a new fee structure that will adequately compensate the attorneys for time spent in the representation of indigent defendants; and

WHEREAS, it is in the best interest of the citizens of the city of Las Cruces that the amount paid to attorneys for the representation of indigent defendants be increased.

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

(I)

THAT the City hereby adopts a fee structure associated with Municipal Court Indigent Defense Services, as shown in the fee structure in, Exhibit “A”, attached hereto and made part of this Resolution.

(II)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: Becki Graham

Seconded by: Tessa Abeyta

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

Exhibit “A”

MUNICIPAL COURT INDIGENT DEFENSE SERVICES RATES

RESOLUTION #
DATE APPROVED xx/xx/xx
EFFECTIVE DATE: 01/01/2024

Municipal Court is recommending the following rates for court assigned counsel for indigent defense services and shall reimburse counsel for direct expenses the court determines to have been properly incurred by them and shall pay to counsel fees:

1) proceedings that are terminated prior to trial a sum fixed by the court less than one dollar ($1.00) nor more than three hundred dollars ($300);

2) trial in the court and, where appropriate, filing notice of appeal, a sum fixed by the court at not less than one dollar ($1.00) nor more than four hundred dollars ($400);

3) for services in postconviction remedy proceedings in the municipal court, a sum fixed by the court at not less than one dollar ($1.00) nor more than one hundred fifty dollars ($150); and

4) for services in prosecuting any appeal or review in the district court, court of appeals or the supreme court, a sum fixed by the court at not less than one dollar ($1.00) nor more than five hundred dollars ($500).

3048; Council Bill 24-006

City Council Action and Executive Summary

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

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	October 16, 2023	**Adopted:**	November 6, 2023
Drafter:	Erika Jaquez	**Department:**	Financial Services
Program:	Treasury	**Line of Business:**	Revenue Management

Title: **AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO 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.**

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

PURPOSE(S) OF ACTION:

Authorize issuance of debt.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Charter authorizes City Council to borrow funds. The New Mexico Finance Authority (NMFA) has instituted a program for financing public projects and equipment. As part of the program, City Council is required by NMFA to authorize the submission of the application. The proposed action will allow the Fire Department to finance the acquisition of

A proposed resolution approved at the October 16, 2023, City Council meeting authorized City staff to submit an application for financial assistance from NMFA for equipping fire stations and acquiring fire trucks and fire equipment for the City's fire department.

Approval of this Ordinance authorizes the execution and delivery of a loan agreement between the City and NMFA. The City would borrow up to $5,600,000 to finance the acquisition of fire trucks and fire equipment, equipping fire stations, and pay the related debt issuance costs (Series 2023A). The revenue pledged to finance the project would come from a subordinate lien on the City's state-shared gross receipts tax distribution.

Due to the timing of the bond approval scheduling with NMFA, the attachments, and ordinance will not be included in the staff report until the *Second Reading* occurs on November 6, 2023. NMFA prices the loan, Bond Counsel prepares the final documents incorporating the final terms upon receipt of the debt service schedule verified by the City's Municipal Advisor. Clean and redlined copies of the final

bond ordinance are then provided in the agenda packets for the meeting at which the final adoption is scheduled.

PLAN(S):

Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and will allow the City to accept the loan from NMFA and proceed with the acquisition of fire trucks and equipment and equipping fire stations.
2. Vote "No"; this will not approve the Ordinance and will not allow the City to accept the loan from NMFA and use this funding mechanism to finance the acquisition of fire trucks and equipment and equipping fire stations.
3. Vote to "Amend"; this could delay the execution and delivery of the loan from NMFA and the acquisition of fire trucks and equipment and equipping fire stations.
4. Vote to "Table"; this could delay the financing opportunity and increase the projected cost of the fire trucks and equipment and equipping fire stations.

ORDINANCE 3048; COUNCIL BILL 24-006

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.

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

The City Council is informed that:

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

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, the City now receives monthly from the Revenue Division of the New Mexico Taxation and Revenue Department from the statewide gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e. the total gross receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the City and other places designated in Section 7-1-6.4 NMSA 1978 (such distributions to the City as further defined herein the ("Pledged Revenues"); and

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

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

WHEREAS, except for the 2014 Bonds, the 2015 Bonds, the 2016 Subordinate Lien Bonds, 2017 Bonds, the 2019 Subordinate Lien Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2020B Subordinate Lien Bonds, the 2022 Subordinate Lien Bonds, and the 2023 Bonds, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Series 2023A Bonds be issued with a subordinate lien, but not an exclusive subordinate lien, on the Pledged State Shared Gross Receipts Tax Revenues subordinate to the lien thereon of outstanding Parity Bonds and on parity with the lien thereon of the outstanding Parity Subordinate Obligations; and

WHEREAS, the proposed forms of this Bond Ordinance, the Bond Purchase Agreement and Intercept Agreement have been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Series 2023A Bonds in a private placement to the New Mexico Finance Authority (the "Purchaser"), as determined pursuant to the Pricing Certificate supplementing this Bond Ordinance, and to delegate authority to the City Manager or City Financial Services Director to execute and deliver the Pricing Certificate to the Purchaser, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Bonds set forth in the Pricing Certificate be within the parameters set forth in this Ordinance; and

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

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

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

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

"Act" means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

"Bond Insurance Policy" means the financial guaranty insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Bond Ordinance" means this City Ordinance No. 3048 adopted on November 6, 2023, as supplemented by the Pricing Certificate.

"Bond Purchase Agreement" means the agreement between the City and the Purchaser providing for the sale of the Bonds by the City and the purchase of the Bonds by the Purchaser pursuant to the terms set forth therein and in the Pricing Certificate.

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

"Bonds" or "Series 2023A Bonds" or "2023A Bonds" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

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

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

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

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

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

"Continuing Disclosure Undertaking" means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser, if required by the Purchaser.

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

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

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

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

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

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

"Hold Harmless Distribution" means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978.

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

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

"Intercept Agreement" means the Intercept Agreement, if any, dated the Closing Date between the City and the New Mexico Finance Authority providing for the direct payment, if required, by the New Mexico Department of Taxation and Revenue to the New Mexico Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Bonds, and any amendments or supplements to the Intercept Agreement.

"Interest Payment Date" means each June 1 and December 1, commencing June 1, 2024 (or such other date specified in the Pricing Certificate).

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

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

"Notice of Sale" means, if the Bonds are sold in a competitive sale, the official notice of sale of the Bonds.

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

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

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

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

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

"Parity Bonds" or "Parity Obligations" means the 2014 Bonds, the 2015 Bonds, the 2017 Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2023 Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues.

"Parity Subordinate Obligations" means the 2016 Subordinate Bonds, the 2019 Subordinate Bonds, the 2020B Subordinate Bonds, the 2022 Subordinate Bonds, the Series 2023A Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.The written repo contract must include the following:

a.Securities which are acceptable for transfer are:

(1)Direct U.S. governments, or

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

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

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

d.Valuation of Collateral

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

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

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

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

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

“Pledged Revenue Fund” means the State Shared Gross Receipts Tax Revenue Fund, continued in Section 16 of this Bond Ordinance.

“Pledged State Shared Gross Receipts Tax Revenues” or “Pledged Revenues” means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i)

1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution to the extent the City receives any Hold Harmless Distribution; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

"Preliminary Official Statement" means the initial disclosure document relating to the issuance and sale of the Bonds, if any.

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

"Purchaser" means the New Mexico Finance Authority or such other purchaser as set forth in the Pricing Certificate.

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

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

"Reserve Fund Insurance Policy" means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund, if any, as provided in the Pricing Certificate in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

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

"State" means the State of New Mexico.

"2014 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014 issued in an original aggregate principal amount of $10,000,000 and authorized by City Ordinance No. 2718 adopted by the City Council on June 24, 2014.

"2015 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015 issued in an original aggregate principal amount of $19,195,000 and authorized by City Ordinance No. 2739 adopted by the City Council on December 1, 2014 and Resolution No. 15-140 adopted by the City Council on February 3, 2015.

"2016 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016" authorized in the original aggregate principal amount of $8,585,000 and authorized by City Ordinance No. 2774 adopted by the City Council on February 16, 2016 and Resolution No. 16-18 adopted by the City Council on March 9, 2016.

"2017 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017" issued in an original aggregate principal amount of $10,570,000 and authorized by City Ordinance No. 2808 adopted by the City Council on May 1, 2017 and Resolution No. 17-187 adopted by the City Council on May 10, 2017.

"2019 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019 authorized in the original aggregate principal amount of $8,870,000 and authorized by City Council Ordinance No. 2894 adopted on August 5, 2019.

"2020 Refunding Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020" authorized in the original aggregate principal amount of $15,435,000 and authorized by City Council Ordinance No. 2912 adopted on February 18, 2020.

"2020A Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A" authorized in the original aggregate principal amount of $7,190,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2020B Subordinate Bonds" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B" authorized in the original aggregate principal amount of $6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2022 Subordinate Lien Bonds" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022" authorized in the original aggregate principal amount of $5,000,000 and authorized by City Council Ordinance No. 3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate executed on August 18, 2022.

"2023 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023" authorized in the original aggregate principal amount of $12,000,000 and authorized by City Council Ordinance No. 3024 adopted on February 21, 2023, as supplemented by the Pricing Certificate executed on March 7, 2023.

"2023A Acquisition Fund" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Improvement Project Acquisition Fund" established by Section 16 of the Bond Ordinance.

"2023A Debt Service Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Debt Service Fund" established in Section 16 of this Bond Ordinance.

"2023A Improvement Project" means (1) the equipping of fire stations and acquiring fire trucks and fire equipment for the City Fire Department and (2) paying Expenses related to the issuance of the Series 2023 Bonds.

"2023 Minimum Reserve" means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2023A Bonds, (ii) the maximum annual debt service on the outstanding Series 2023A Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2023A Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

"2023A Reserve Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Reserve Fund" established by Section 16 of this Bond Ordinance.

Section 2.Ratification. All action heretofore taken (not inconsistent with the provisions of this Bond Ordinance) by the City Council and the officers of the City, directed toward the Improvement Project, the

issuance of the Bonds for the Improvement Project and the sale of the Bonds to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Section 3.Authorization of the 2023A Improvement Project. The 2023A Improvement Project and the method of financing the 2023A Improvement Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the Project as set forth in the Pricing Certificate and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

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

A.The 2023A Improvement Project is needed to meet the needs of the City and its inhabitants.

B.Moneys available for the 2023A Improvement Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the 2023A Improvement Project.

C.The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D.It is economically feasible to defray, in part, the cost of the 2023A Improvement Project by the issuance of the Bonds.

E.The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2023A Improvement Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F.The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds, if any, for the outstanding Parity Bonds and the Parity Subordinate Obligations.

Section 5.Bonds – Authorization, Parameters and Detail.

A.Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue one series of its negotiable, fully registered, revenue bonds to be designated 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, and the issuance, sale and delivery of the Bonds is hereby authorized.

B.Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A. The Series 2023A Bonds shall be issued subject to the following parameters:

(i)The Series 2023A Bonds shall be issued in an aggregate principal amount not to exceed $5,600,000 for the 2023A Improvement Project.

(ii)The net effective interest rate on the Series 2023A Bonds shall not exceed 12% per annum.

(iii)The final maturity of the Series 2023A Bonds shall not be later than fifteen (15) years from the date of issuance.

(iv)The Series 2023A Bonds shall be sold with an underwriting or purchaser’s discount not to exceed 1.00%.

(iv) The Series 2023A Bonds shall be payable solely from, and shall constitute a subordinate lien upon the Pledged Revenues, subordinate to the lien thereon of the Parity Obligations and on a parity with the outstanding Parity Subordinate Obligations.

(v) The Series 2023A Bonds shall be sold to the Purchaser pursuant to private placement with the Purchaser.

(vi)The maximum sale price of the Series 2023A Bonds shall be not more than $5,600,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii)The Series 2023A Bonds shall be in substantially the form set forth in this Ordinance.

C.The City Manager or City Financial Services Director, is hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Pricing Certificate and the Bond Purchase Agreement. The forms of the Bond Purchase Agreement and Intercept Agreement submitted with the adoption of this Ordinance are hereby approved with such changes as are approved by the Delegate consistent with the parameters outlined in this Ordinance.

D.The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of $5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on June 1, 2024 (or such other date as specified in the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

Section 6.Redemption of Bonds.

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

B.Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the

applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph A of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

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

Section 8.Execution and Authentication of Bonds.

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

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

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

Section 10.Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the “Record Date”). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the

payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

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

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

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

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

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

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

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

G.Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration

books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than $50,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

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

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

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

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

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

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

(Form of Bond)

UNITED STATES OF AMERICA
STATE OF NEW MEXICOCOUNTY OF DOÑA ANA
CITY OF LAS CRUCES, NEW MEXICO
SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX
IMPROVEMENT REVENUE BONDS,
SERIES 2023A

Bond No. _____ $_____

INTEREST RATE	MATURITY DATE	DATE OF BOND	CUSIP
% per annum	June 1, _____ , 2023		_____

REGISTERED OWNER: _____
PRINCIPAL AMOUNT: _____

The City of Las Cruces (the "City"), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the "Paying Agent"), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on June 1, 2024 and on June 1 and December 1 of each year (each an "Interest Payment Date") thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of $_____ issued in denominations of $5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A (the "Series 2023A Bonds") issued under and pursuant to City Ordinance No. ____, as supplemented by a Pricing Certificate dated _____ , 2023 (as supplemented, the "Bond Ordinance").

The Series 2023A Bonds maturing on and after June 1, ____, are subject to prior redemption at the City's option in one or more units of principal of $5,000 on and after June 1, ____ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Series 2023A Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered

appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Redemption shall be made upon prior notice mailed to each registered owner of each Series 2023A Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Series 2023A Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

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

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

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

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Series 2023A Bonds

on the Pledged Revenues is an irrevocable and subordinate lien, but not necessarily an exclusive subordinate lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with or senior to the lien on the Pledged Revenues of the Series 2023A Bonds Amounts and securities held in the 2023A Debt Service Fund and 2023A Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Series 2023A Bonds.

The Series 2023A Bonds are issued to provide funds to defray in part the costs of (1) equipping fire stations and acquiring fire trucks and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2023A Bonds.

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

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

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

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

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

CITY OF LAS CRUCES, NEW MEXICO
By_____
Mayor
By_____
City Clerk

(SEAL)

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

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

Date of Authentication:

City Treasurer of the City of Las Cruces,
New Mexico, as Registrar

By_____
Authorized Officer

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

(Form of Assignment)

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

_____ _____

Social Security or Tax Identification No. of Assignee_____

Dated: _____

Signature Guarantee:

_____

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

(End of Form of Assignment)
(End of Form of Bond)

Section 14.Period of 2023A Improvement Project's Usefulness. It is hereby determined and recited that the period of usefulness of the 2023A Improvement Project financed with the proceeds of the Series 2023A Bonds will not expire prior to the final maturity date of the Series 2023A Bonds.

Section 15.Use of Bond Proceeds and Other Funds; Completion of 2023A Improvement Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2023A Improvement Project.

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

B.Acquisition Fund. Proceeds derived from the sale of the Series 2023A Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2023A Acquisition Fund to be held by the trustee for the Purchaser. Until the completion of the 2023A Improvement Project, the money in the 2023A Acquisition Fund shall be used and paid out solely for the purpose of the 2023A Improvement Project in compliance with applicable law.

C.Reserve Fund. No deposit of proceeds of the Bonds, Pledged State Shared Gross Receipts Tax Revenues or other City moneys into the 2023A Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D.2023A Improvement Project Completion. As soon as practicable after completion of the 2023A Improvement Project, and in any event not more than 60 days after completion of the 2023A Improvement Project, any proceeds remaining unspent (other than any amount retained by the City for any 2023A Improvement Project costs not then due and payable) shall be transferred and deposited in the 2023A Debt Service Fund and used by the City to pay principal and interest on the Series 2023A Bonds as same become due.

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

F.Bond Insurance Policy and/or Reserve Fund Insurance Policy. A Bond Insurance Policy and/or Reserve Fund Insurance Policy may be obtained in connection with the issuance of each of the Series 2023A Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the issuer of the Bond Insurance Policy and/or Reserve Fund Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy and/or Reserve Fund Insurance Policy shall be included in the Pricing Certificate.

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

A.2023A Acquisition Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Improvement Project Acquisition Fund" to be maintained by the City or by the trustee for the Purchaser.

B.Pledged Revenue Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Revenue Fund" (the "State Shared Gross Receipts Tax Revenue Fund") to be maintained by the City, into which the City shall deposit the Pledged State Shared Gross Receipts Tax Revenues.

C.2023A Debt Service Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Debt Service Fund" (the "2023A Debt Service Fund") to be maintained by the City or by the trustee for the Purchaser.

D.2023A Reserve Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Reserve Fund" (the "2023A Reserve Fund") to be maintained by the City or by the trustee for the Purchaser.

Section 17.Deposit of Pledged Revenues and Flow of Funds. So long as any of the outstanding obligations payable from the Pledged Revenues shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

A.Payment of Parity Obligations. As a first lien on amounts on deposit in the Pledged Revenue Fund, the City shall pay the of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations payable from the Pledged Revenues as required by the ordinances authorizing the issuance of the Parity Obligations. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Obligations, for the payment of principal of and interest on all series of outstanding Parity Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Obligations.

B. Payment of Parity Subordinate Obligations. Subsequent to the payments required by the outstanding Parity Obligations, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of the Series 2023A Bonds and all other Outstanding Parity Subordinate Obligations or other obligations, if any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Parity Obligations hereafter authorized, issued and payable from the Pledged Revenues, as the same become due. So long as any of the Series 2023A Bonds shall remain outstanding, either as to principal or interest or both, the following

payments shall be made monthly from the Pledged Revenues on a parity with the payments required by the outstanding Parity Subordinate Obligations:

(i)2023A Debt Service Fund Payments. The following amounts shall be withdrawn from the State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Subordinate Obligations), and shall be concurrently credited to the 2023A Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa)Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023A Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2023A Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2023A Bonds then outstanding.

bb)Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023A Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Series 2023A Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2023A Bonds then outstanding.

(ii)Credit. In making the deposits required to be made into the 2023A Debt Service Fund, if there are any amounts then on deposit in the 2023A Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph (aa) above shall be reduced by the amount available in such fund for such purpose.

(iii)Transfer of Money out of 2023A Debt Service Fund. Each payment of principal and interest becoming due on the Series 2023A Bonds shall be transferred from the 2023A Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

(iv)2023A Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2023A Reserve Fund upon the issuance of the Series 2023A Bonds or any time thereafter so long as the Pledged State Shared Gross Receipts Tax Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds and the Parity Subordinate Obligations. If the Pledged State Shared Gross Receipts Tax Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2023A Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months, an amount equal to the 2023A Minimum Reserve will be held in the 2023A Reserve Fund.

After funding the 2023A Reserve Fund in an amount equal to the 2023A Minimum Reserve, no additional payments need be made into the 2023A Reserve Fund so long as the moneys therein shall equal not less than the 2023A Minimum Reserve. The moneys (if any) in the 2023A Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in paragraph (F) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023A Bonds resulting from failure to deposit into the 2023A Debt Service Fund sufficient funds to pay the principal and interest as the same accrue. In the event that the funding of the 2023A Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount of the 2023A Minimum Reserve.

After funding the 2023A Reserve Fund in an amount equal to the 2023A Minimum Reserve, no additional payments need be made into the 2023A Reserve Fund so long as the moneys therein shall equal not less than the 2023A Minimum Reserve. The moneys (if any) in the 2023A Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in subparagraph B(v) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023A Bonds resulting from failure to deposit into the 2023A Debt Service Fund sufficient funds to pay the principal and interest as the same accrue.

(v)Defraying Delinquencies in the 2023A Debt Service Fund and 2023A Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2023A Debt Service Fund is insufficient to pay principal of and interest on the Series 2023A Bonds then due, then an amount shall be paid into the 2023A Debt Service Fund on such date from the 2023A Reserve Fund (if moneys are then on deposit in the 2023A Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2023A Debt Service Fund from the 2023A Reserve Fund, if any, shall be replaced in the Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2023A Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by subparagraph I(i)(aa)(1) and (2) of this Section 17. If, in any month, the City shall, for any reason, fail to pay into the 2023A Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2023A Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the Series 2023A Bonds; provided, however, that any moneys at any time in excess of the 2023A Minimum Reserve in the 2023A Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2023A Reserve Fund shall not be invested in a manner which could cause the Series 2023A Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2023A Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2023A Reserve Fund exceeds the 2023A Minimum Reserve, all amounts in excess of the 2023A Minimum Reserve shall be transferred to the 2023A Debt Service Fund and used to pay principal of and interest on the Series 2023A Bonds.

(vi)Payment of Parity Subordinate Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by subparagraphs B(i), (iv) and (v) of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Subordinate Obligations payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the Series 2023A Bonds and any other outstanding Parity Subordinate Obligations, then the available funds in the Pledged Revenue Fund will be used, first (after payment of the Parity Obligations), on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Subordinate Obligations, for the payment of principal of and interest on all series of outstanding Parity Subordinate Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Subordinate Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Subordinate Obligations.

(vii)Termination Upon Deposits to Maturity. No payment shall be made into the 2023A Debt Service Fund or the 2023A Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2023A Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2023A Debt Service Fund and the 2023A Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2023A Debt Service Fund and the 2023A Reserve Fund may be used as provided below.

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

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

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

B.Investment of Moneys. Moneys in the 2023A Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C.Reserve Fund. Moneys, if any, in the 2023A Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2023A Reserve Fund, value the 2023A Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2023A Reserve Fund. If, upon any valuation, the value of the 2023A Reserve Fund exceeds the 2023A Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2023A Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Series 2023A Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2023A Reserve Fund may be used to pay the final installments of principal and interest on the Series 2023A Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Series 2023A Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Series 2023A Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the 2023A Reserve Fund and deposited into the 2023A Debt Service Fund to prevent a default on the Series 2023A Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2023A Reserve Fund to the 2023A Minimum Reserve. Such repayment shall be made as required by Section 17 of this Bond Ordinance.

Section 19.Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2023A Debt Service Fund and the 2023A Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Series 2023A Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Series 2023A Bonds constitute an irrevocable and subordinate lien, but not an exclusive subordinate lien on the Pledged Revenues, subordinate to the lien thereon of the outstanding Parity Obligations and additional Parity Obligations, if any, hereafter authorized to be issued and payable from Pledged Revenues, and on parity with the lien thereon of

the outstanding Parity Subordinate Obligations and additional Parity Subordinate Obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues.

Section 20.Additional Obligations Payable from Pledged Revenues.

A.Parity Obligations. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Parity Obligations in accordance with the ordinances authorizing the issuance of the outstanding Parity Obligations.

B.Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2023A Bonds.

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

Section 21.Additional Parity Subordinate Obligations Payable from Pledged Revenues.

A.Parity Subordinate Obligation Test. This Bond Ordinance shall not prevent the issuance of additional Parity Subordinate Obligations payable from and constituting a subordinate lien upon the Pledged Revenues on parity with the lien of the Series 2023A Bonds. Before any additional Parity Subordinate Obligations are actually issued, it must be determined that:

(1)The City is then current in the accumulation of all amounts which are then required to be on deposit in 2023A Debt Service Fund and 2023A Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2)The Pledged State Shared Gross Receipts Tax Revenues (not including any Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Subordinate Lien Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Obligations, (2) outstanding Parity Subordinate Obligations, and (3) the Parity Subordinate Obligations proposed to be issued.

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

B.Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or City Financial Services Director, that the Pledged Revenues (not including any Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity Subordinate Obligations. The Independent Accountant, City Treasurer or City Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C.Super Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2023A Bonds.

Section 22.Refunding Bonds. The provisions of Section 20 and Section 21 of this Bond Ordinance are subject to the following exceptions:

A.Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding Parity Obligations, or any part thereof, such obligations may be refunded, but only in accordance with the ordinances authorizing the issuance of such Parity Obligations.

B.Limitation Upon Issuance of Parity Subordinate Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Series 2023A Bonds, unless:

(1)The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Series 2023A Bonds; or

(2)The refunding obligations are issued in compliance Section 21 of this Bond Ordinance.

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

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

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

(3)The refunding bonds or other refunding obligations are issued in compliance with Section 20 (in the case of Parity Refunding Obligations) or Section 21 (in the case of Parity Subordinate Refunding Obligations) of this Bond Ordinance.

D.Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph B of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Series 2023A Bonds.

Section 23.Equality of Parity Subordinate Obligations. The Parity Subordinate Obligations from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Subordinate Obligations regardless of whether they are actually issued and delivered or incurred at different times.

Section 24.Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

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

B.Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2023A Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

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

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

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

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

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

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

I.Debt Service Fund and Reserve Fund. The 2023A Debt Service Fund and the 2023A Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

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

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

L.Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, other facts and circumstances relevant to the tax treatment of interest on the Bonds, and making related covenants.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v)

refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds, and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 25.Preliminary Official Statement and Continuing Disclosure Undertaking.

A.Preliminary Official Statement. If required by the Purchaser, the preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Preliminary Official Statement is not required.

B.Continuing Disclosure Undertaking. If required by the Purchaser, the officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 26 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 26.Events of Default. Each of the following events is hereby declared an "event of default":

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

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

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

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

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

Section 27.Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 26 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 28.Duties Upon Default. Upon the happening of any of the events of default provided in Section 26 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 29.Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 30.Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and final Official Statement, and the execution of the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 31.Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition,

this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

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

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

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

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

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

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

Section 32.Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 33.Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 34.Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 35.Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 36.Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 37 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 37.General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on November 6, 2023, relating to the authorization and issuance of the City's Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO 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.

A general summary of the Ordinance is:

The Ordinance authorizes 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 (1) equipping fire stations and acquiring fire trucks and fire equipment for the City Fire Department and (2) paying Expenses related to the issuance of the Series 2023A Bonds; provides that the Bonds will be payable and collectible from the revenues derived from the 1.225% pledged state shared gross receipts tax distributed to the City; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or Financial Services Director to execute and deliver the Pricing Certificate; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.
(End of Form of Summary for Publication)

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS