CITY COUNCIL
AGENDA

Monday, June 5, 2023 at 1:00 PM

Council Chambers

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

CITY OF LAS CRUCES

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LAS CRUCES, NM 88004

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

CONSENT AGENDA

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

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1. OPENING CEREMONIES

1.1. Pledge of Allegiance - Councilor Gandara.

1.2. Pets of the Week.

1.3. Jobs of the Week.

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

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

3. PUBLIC PARTICIPATION

4. ACCEPTANCE OF AGENDA

5. CITY COUNCIL MINUTES

5.1. Work Session of April 24, 2023. 6 - 25
Work Session - Apr 24 2023 - Minutes - Pdf

5.2. Regular City Council Meeting of May 1, 2023. 26 - 38
City Council - May 01 2023 - Minutes - Pdf

5.3. Work Session of May 8, 2023. 39 - 45

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

6.1. RESOLUTION NO. 23-127: A RESOLUTION AUTHORIZING A CONTRACT WITH CONTINENTAL FLOORING COMPANY OF SCOTTSDALE, ARIZONA FOR THE LAS CRUCES CONVENTION CENTER CARPET REPLACEMENT IN AN AMOUNT NOT TO EXCEED $212,982.50 PLUS APPLICABLE TAXES (PROCUREMENT NO. 22-23-046). 46 - 63

Resolution No. 23-127 - Pdf

6.2. RESOLUTION NO. 23-128: A RESOLUTION TO APPROVE A CHANGE ORDER TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MYNATT SPRINGER P.C., OF LAS CRUCES, NEW MEXICO FOR LEGAL SERVICES TO CHANGE THE CONTRACT AMOUNT OF $400,000 TO A NEW CONTRACT AMOUNT NOT TO EXCEED $700,000 (AN INCREASE OF $300,000). 64 - 68

Resolution No. 23-128 - Pdf

6.3. RESOLUTION NO. 23-129: A RESOLUTION TO AWARD AN INDEFINITE COST, INDEFINITE QUANTITY CONTRACT FOR OFFSITE FUEL AND FUEL CARD SERVICES TO BREWER OIL COMPANY OF ALBUQUERQUE, NEW MEXICO, VIA DOÑA ANA COUNTY CONTRACT NO. 23-107, FOR A TERM THROUGH JUNE 30, 2030, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-060). 69 - 115

Resolution No. 23-129 - Pdf

6.4. RESOLUTION NO. 23-130: A RESOLUTION AUTHORIZING AN INDEFINITE COST, INDEFINITE QUANTITY AGREEMENT FOR WORK UNIFORMS WITH BAZAAR UNIFORMS AND MEN'S STORE, LLC, VIA EDUCATION SERVICE CENTER REGION 19 ALLIED STATES COOPERATIVE CONTRACT NO. 21-7420 (PROCUREMENT NO. 22-23-061). 116 - 133

Resolution No. 23-130 - Pdf

7. OLD BUSINESS

7.1. RESOLUTION NO. 23-123: A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE MESILLA VALLEY PUBLIC HOUSING AUTHORITY (MVPHA) FOR THE OAK STREET APARTMENTS IMPROVEMENT PROJECT. 134 - 184

Resolution No. 23-123 - Pdf

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

8.1. **PUBLIC HEARING REQUIRED**. RESOLUTION NO. 23-131: A RESOLUTION APPROVING A CRAFT DISTILLER 1st OFF-SITE LOCATION LIQUOR LICENSE WITH ON PREMISES CONSUMPTION AND PACKAGE SALES WITH PATIO SERVICE TO ICEBOX 185 - 225

BREWING LC, D/B/A ICEBOX DISTILLING COMPANY, LOCATED AT 2260 S. LOCUST STREET, LAS CRUCES, NEW MEXICO 88001.

Resolution No. 23-131 - Pdf

8.2. RESOLUTION NO. 23-132: A RESOLUTION TO APPROVE THE REQUEST FOR PLACEMENT OF A COMMEMORATIVE MEMORIAL IN VETERANS MEMORIAL PARK. 226 - 246

Resolution No. 23-132 - Pdf

8.3. RESOLUTION NO. 23-133: A RESOLUTION REVERSING THE PLANNING AND ZONING COMMISSION'S APPROVAL DECISION REGARDING A SPECIAL USE PERMIT ALLOWING A HELIPAD AT THREE CROSSES REGIONAL HOSPITAL LOCATED AT 2560 SAMARITAN DRIVE, ZONED C-3C (COMMERCIAL HIGH INTENSITY-CONDITIONAL). THE APPEAL WAS SUBMITTED BY MR. GREGORY SHERVANICK. 247 - 286

Resolution No. 23-133 - Pdf

8.4. RESOLUTION NO. 23-134: A RESOLUTION REVERSING THE PLANNING AND ZONING COMMISSION'S APPROVAL DECISION REGARDING A SPECIAL USE PERMIT ALLOWING A CANNABIS DISPENSARY (RETAILER) WITHIN THE REQUIRED BUFFER DISTANCE TO ANOTHER CANNABIS DISPENSARY (RETAILER) LOCATED AT 1602 E LOHMAN AVENUE, ZONED C-2 (COMMERCIAL MEDUIM INTENSITY). 287 - 331

Resolution No. 23-134 - Pdf

8.5. RESOLUTION NO. 23-135: A RESOLUTION APPROVING THE PARKS AND RECREATION DEPARTMENT 2023/2024 FEES AND CHARGES/FACILITY USE POLICY REPLACING AND REPEALING RESOLUTION 19-145. 332 - 398

Resolution No. 23-135 - Pdf

8.6. COUNCIL BILL NO. 23-027; ORDINANCE NO. 3033: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SUBORDINATE LIEN LOAN AGREEMENT AND NOTE BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO AND THE NEW MEXICO ENVIRONMENT DEPARTMENT IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $16,916,853 PLUS ACCRUED INTEREST, AND LOAN SUBSIDY GRANT FUNDS IN THE AMOUNT OF $227,240, TO EXPAND AND IMPROVE THE WASTEWATER COMPONENT OF THE CITY'S JOINT UTILITY SYSTEM; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES OF THE JOINT UTILITY SYSTEM; AND PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND NOTE AND SECURITY THEREFORE. 399 - 506

Ordinance No. 3033 - Pdf

8.7. COUNCIL BILL NO. 23-028; ORDINANCE NO. 3034: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $3,100,000 LOAN AGREEMENT FOR FLOOD CONTROL INFRASTRUCTURE IMPROVEMENT PROJECTS AND PAYING THE COSTS OF 507 - 620

EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

Ordinance No. 3034 - Pdf

8.8. COUNCIL BILL NO. 23-029; ORDINANCE NO. 3035: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $5,100,000 LOAN AGREEMENT FOR STREET IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX. 621 - 733

Ordinance No. 3035 - Pdf

8.9. COUNCIL BILL NO. 23-031; ORDINANCE NO. 3037: AN ORDINANCE AMENDING SECTION 38-53. CONDITIONAL USES AND SECTION 38-54. SPECIAL USE PERMITS OF THE LAS CRUCES MUNICIPAL CODE (LCMC) FOR THE PURPOSE OF ELIMINATING THE 300-FOOT BUFFER BETWEEN CANNABIS RETAILERS/ MICROBUSINESSES AND OTHER CANNABIS RETAILERS/MICROBUSINESSES AND ELIMINATING THE 300-FOOT BUFFER BETWEEN CANNABIS RETAILERS/ MICROBUSINESSES AND SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS. SUBMITTED BY THE CITY OF LAS CRUCES. 734 - 783

Ordinance No. 3037 - 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. 23-032; ORDINANCE NO. 3038: AN ORDINANCE REPEALING CHAPTER 2, SUBDIVISION XV. DOWNTOWN PARKING COMMITTEE OF THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED. 784 - 790

Ordinance No. 3038 - Pdf

10.2. COUNCIL BILL NO. 23-033; ORDINANCE NO. 3039: AN ORDINANCE AMENDING CHAPTER 7.8, ARTICLE I, LOCAL ECONOMIC DEVELOPMENT ACT (LEDA), SECTION 7.8-3.-LEDA PLAN, OF THE LAS CRUCES MUNICIPAL CODE (LCMC) 1997, AS AMENDED AND ADOPTING A LEDA PLAN IN ACCORDANCE WITH THE SAME. 791 - 807

Ordinance No. 3039 - Pdf

10.3. COUNCIL BILL NO. 23-034; ORDINANCE NO. 3040: AN ORDINANCE AUTHORIZING A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND BHD LAND 808 - 836

DEVELOPMENT LLC, FOR THE SALE OF APPROXIMATELY 17.53 ACRES OF MUNICIPALLY-OWNED LAND WITHIN THE LAS CRUCES INNOVATION AND INDUSTRIAL PARK FOR THE PURCHASE PRICE OF $581,700.00, IN ACCORDANCE WITH PROVISION OF LCMC 1997, SECTION 2-1312.

Ordinance No. 3040 - Pdf

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT

City of Las Cruces

MINUTES
Work Session
Monday, April 24, 2023 @ 1:00 PM
City Council Chambers, City Hall

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

ABSENT: Councilor Tessa Abeyta

1. AGENDA ITEM

1.1 PROGRESS REPORT ON REALIZE LAS CRUCES.

David Weir, Deputy Director Community Development introduced the topic.

Erica Craycraft, Consultant with Freese and Nichols gave the overhead presentation.

Councilor Flores asked in the final plan that we are presented with is there going to be an area where you focus on? Or is this just a guideline for that sort of work?

Erica Craycraft said it would be not guidelines. It would be enforceable regulations and it would apply to all new development and say you had an existing structure that was going to expand a certain percentage, they were going to expand 20% there would be different triggers for what regulations might apply to that development.

Councilor Flores asked do you have specific projects that the city Community Development Department would be working with specifically? You did look at infill but say there is a building on that infill property, are codes going to be designed to meet the goal of that development given what is already there?

Erica Craycraft said any development that is existing or that has already started the development process they are allowed to keep doing exactly what they are doing. There is no changes that anyone would have to make to their property if they just continued whatever their use was or whatever their building was. There is no changes that are required until they wanted to redevelop the site or a large addition at that time the new rules would apply.

Councilor Flores asked if there is some infill going on now, they are not going to be bound by these?

Erica Craycraft said correct.

Councilor Flores asked you are not looking at a specific part of the city to design a development?

Erica Craycraft said correct. We are not establishing the design for any one site of the city. It is more about the general form. The regulations are citywide but the different zoning districts apply differently to wherever they are on the map but there is not anything that is parcel specific to a particular development.

Councilor Flores asked what about the missing middle in terms of housing? How would that look like in terms of codification or whatever the rules are? How would that be written? Would there be parts of the city where it would be designated as the missing middle housing?

Erica Craycraft said missing middle housing we would address or we are addressing through zoning. The zoning chapter will have a permitted use chart. It is just the matrix that lists all the districts across the tops and the uses down the side. Examples of the uses would be those housing types like a duplex, triplex, quadplex, cottage court, accessory dwelling unit. We can use that matrix to say these housing types are allowed by right in these districts and so our upcoming effort working through the mapping part of that will be, the map that I am showing on the screen is from Elevate, ours will be more detailed than this but we would say for example that the orange on here I believe it is the Urban Neighborhood is the category there. In this example all of those missing middle types could be allowed by right in that geographic area.

Councilor Flores asked they would be throughout the city wherever there is space that would lend itself for development?

Erica Craycraft said I don't know if we would allow them by right everywhere or if it is going to be more detailed about whether it is more appropriate in the urban areas because it is more walkable to more amenities and services. If we have missing middle in more of the rural areas that gets a little bit harder providing services to the area as far as infrastructure and also being able to walk to different amenities.

David Weir said the other thing that we are trying to do if you see the first bullet when it talks about within each of the character areas, urban, suburban and residential we will have residential zoning district. These neighborhood zoning districts and then mixed use. Like in the residential areas we are going to respect some of the single-family neighborhoods but we anticipate adding more ability to do accessory dwelling units and then in the neighborhoods is ones where you see kind of a mix of uses and so that would be a key area to put some of those missing middle components in. If you are in a rural area it would be more likely that it would be residential in nature but we would also have where there would be some services and some shopping opportunities at a very reasonable scale. Your mixed use would be your area where you would have all those uses from residential to commercial and multifamily. That is

what we are working with the consultants to incorporate. That is one of the key components to Elevate Las Cruces is provide those additional housing opportunities.

Councilor Flores asked you say you are working with consultants, is it Freese and Nichols?

David Weir said yes.

Councilor Flores said this seems to be an overview of making Realize Las Cruces.

David Weir said that is correct. This will become a development standard citywide. This is the tool the city is able to do to implement but the vision and guidelines that we put forward in Elevate Las Cruces. When someone comes into a project we are adopting standards so that they will build to that and contribute to meeting that vision that Elevate Las Cruces sets out.

Councilor Flores asked in terms of the missing middle housing are there going to be any incentives for developers and builders? We talk about homelessness, and we think about someone who is walking down the street with a backpack but there is a lot of people who are also homeless insofar are looking for a home they can buy so is the city going to be working with developers in that regard?

David Weir said that is many fronts that the city is exploring in that manner through the zoning code and land development codes we are providing opportunities for that type of housing to be developed. Some of the other tools that you are utilizing is you recently identified two areas for MRAs. You can collect funds and reinvest in those areas and so that is an incentive that can take place. The other thing is when the city does capital improvements if there is certain areas in town that you are reinvesting in you are making that commitment to the areas. Those are two other prongs that the city can use but the land development code is basically what takes place in the property so it is one allowing missing middle projects to be in the various different zoning districts and then there was in your presentation talking about the infill areas and other incentives to where they provide these certain components they can do more units or dwellings and that is an incentive in itself. We are trying to do with the land use regulations of what we can do incentivize providing those missing middle but we also know we need to compliment those other efforts of the city.

Councilor Corran said I feel like some things even in the last year have changed in terms of public rhetoric and understanding how zoning can affect housing insecurity in particular and a number of other things and it sounds like a lot of things like promoting ADUs and reducing administrative burden that comes to certain types of development which I know ADUs are really interesting study in zoning and setbacks and all of the things that we have constructed to prevent them. I hope that we can continue to push the edges of that and it sounds like you guys are doing that and I appreciate it with a particular emphasis on facilitating increased density and all of the things that you allude to and also in the incentives and zoning codes in particular related to commercial zoning but also mixed use developments that we can look at some of the ways that people are innovating parking conversations. You sort of alluded to this a

little bit but I think we have historically allowed for a lot of parking development or required a lot of parking development and I hope that we can change that dynamic as well. I also appreciate you identifying some of the ways that we are reducing the administrative tax that we put on people that want to make changes in particular going to the DRCs versus going to department heads and I hope that is one of the values that is maintained throughout, and that sounds like that is something that you are really thinking about. Fewer things need to be reviewed across the board by both P&Z and City Council so that we can facilitate change in all of the ways so I really look forward to hearing those things in future conversations in particular how we might facilitate and increase density, reduce parking, and reduce administrative burden.

Erica Craycraft said the parking reductions I didn't really mention it in the presentation, but we do have some by right parking reductions proposed for the infill areas and also looking at the idea of introducing a parking maximum. So, you can't exceed the minimum by a certain percentage or if you do it has to be permeable pavement for example. Very much a work in progress but something we are looking at.

Councilor Bencomo said just a couple of weeks ago we had a meeting with Senator Heinrich and the Home Builders Association who was there and who brought up waiving fees in the infill versus refunding fees and how burdensome that can still be. They still have to pay a ton of those fees upfront and then waiting to get reimbursed. I am wondering if you have had a discussion around which works better and how we can make the just waiving fees upfront go a lot faster. I know that Natalie Green and her department are working on having those funds to make those departments whole but I am curious about those two options.

David Weir said we have dealt with that some with Parks development and some of the incentives but the actual waiving of fees is something that is really outside of this scope but I think there may be opportunities with the MRAs just the way that the impact fees are updated and dealt with but what the code will allow we will have to match those and call out those opportunities as they go forward but it is something that probably won't specifically be addressed in the land development code but it will definitely make provisions.

Councilor Bencomo said we recently spoke with our colleagues in Albuquerque Housing Forward Department there and we talked about some great ideas were that they are implementing to increase affordable housing especially in affordable housing units given since given that we are in a huge housing crisis and shortage. A couple of the things they mentioned were parking requirements and eliminating some of those which I think you are looking at especially infill and then the other one you did briefly mention was around height restrictions. One of the things that they had noted in Albuquerque is that they are giving incentives in terms of height restrictions for people or developers who commit to make 20% of the units affordable housing units and they are giving them an extra floor or two floors. I don't know if this fits in this scope or not but I think the height restrictions are a good way moving forward and eliminating some of those for people who are wanting to build especially in the infill and MRA areas.

Erica Craycraft said we don't currently have anything in the draft that provides an incentive for affordable housing. Our approach has been more like you mentioned the parking reductions, allowing more types of housing in more places but I think that is certainly something we can more look at providing incentives in exchange for affordable housing. Not all cities are necessarily interested in it because you have to monitor over time but that does seem to be a strong priority for Las Cruces so we can certainly look at that.

Councilor Bencomo said there is a lot of conversation around rehab for motels or hotels to become more permanent housing and the zoning changes that need to happen right around the kitchen requirements not eliminating them but reducing the barriers for motel rehab especially when it comes to countertop and induction burners. Is that within this scope?

Erica Craycraft said it is loosely in the scope of this. A lot of what we refer back to is to the building code which regulates a lot of that does have some provisions that relates to what is considered a dwelling unit.

David Weir said typically we have dealt with those issues in the building code, particular kitchen but there are provisions that allow us to as Erica said to provide some attention to that. We also have the existing building code that Mr. Nichols could help with that allows us some latitude in structures that are in the historic areas, but the Construction Industry Department also works with the State and I know there was a lot of discussion and modifying those codes on a state level and I know we would incorporate them at a city level.

Councilor Bencomo said if there is ever space to continue having this conversation as it relates to the intersection of affordable housing and infill zone we would love to have it at the Housing Policy Review Committee. If you wanted to come present there I will work with Natalie Green and David for the opportunity to be able to do that. The home builders sit on that committee, three of us on the council and a bunch of other stakeholders that work in affordable housing I think we would be really interested in having that conversation. I had done some research around cities and states, well one city and state that had moved to eliminate single family zoning. Which I think is a trend starting to pick up given the kind of sprawl that we have seen in Las Cruces especially with single family subdivisions. I think that as many incentives that we provide to create missing middle, affordable housing, multifamily units that we are not centralizing those to any one particular location in the city. I know that we want to work with partners in good faith to move that forward but I am curious about your thoughts on those kinds of policies and if they would be beneficial here?

Erica Craycraft said that is something we could certainly look at more. As I mentioned as a response to an earlier question the different levels of density tend to be appropriate in different locations. As far as infrastructure planning needs and things like and with that said as we work through developing the code if we do want to make some adjustments that would allow say small scale density in all of the districts that would be an easy adjustment to make as we are working through the process but it is not currently set up that way but it could be.

Councilor Bencomo said it is fairly new, its only like Minnesota, Minneapolis, and the State of Oregan who have really done it but I really feel like in the brief reading that I've done around eliminating single family zoning that it could be one piece of the puzzle to ensure that we are increasing housing opportunities for a variety of different kinds of people and families. I had also written on here accessory dwellings working with whatever needs to be done to make sure that we are making neighborhoods more diverse is more important and that we do it now again because who knows when we will be talking about this conversation again. I just feel like if we don't do something in code now to make sure neighborhoods are more diverse, more development that is encouraged for multifamily, for missing middle, those kinds of things, duplexes that it is never going to happen. I just think that we are in a critical moment and can move some of these things forward.

Councilor Graham asked are our recently adopted MRA designations a part of this conversation or are they being considered when we are thinking about other overlays in a way that if we could address some of the potential code obstacles now?

David Weir said they are not specifically called out in this but with the discussion and new zoning district it would definitely compliment the use of an MRA. There is nothing that would be a hurdle as Erica noted and Councilor Corran. There is a concerted effort to make everything administrative or by right that's not if there is an opportunity they don't have to go to the Planning and Zoning Commission or to the city council that it be handled at that staff or administrative level. I think the compliment from an MRA is if they develop plans for adaptive reuse that the zoning is in placed that allows them to utilize that tool to reinvest in those properties and that there is less barriers and potentially less parking less landscaping. The two tools complement each other and that is the intent as we develop both.

Councilor Gandara asked do you have any idea how you are going to bring this back to council? Is it going to be one big plan?

Erica Craycraft said once you receive the draft for your review we would like to share it with you in its entirety because there is so much of it that is interconnected. So, whenever you have the draft if you are looking at it online you can click on a term and it will take you to the definition or it can take you to the reference section. For your review we do envision that you would have the complete draft with plenty of time to review it. Maybe that is something we talk about further whether there are some topics, specific Work Sessions, something so that you have time to review it. We do envision getting you the entire document in advance substantially of that meeting.

Councilor Gandara said that would be helpful but if you could do it topical as well that would be helpful. I continued to be concerned of how it is going to be when you say we are going to give you enough time, I am concerned that it is going to be. What kind of timeframe are you looking at when you say we are going to give you plenty of time?

Erica Craycraft said I would envision at least two weeks.

Councilor Gandara said I think it needs to be more. This is like a 500-900 page document.

David Weir said as you recall when Erica went through the next steps, the anticipation is for the draft to be done in November and December and then there is not an expectation that it would be ready for recommendation from P&Z or adoption from City Council until March. So, there is that three month time span. There is certain points in time that Freese and Nichols can make presentations. Staff will gear up so that we will be available at those open houses that we always do when we adopt them. I am going to use this opportunity also to say that since the council did approve the TAC and you have both technical members and interested parties from neighborhoods, we are hoping that they will be champions for this project and be able to explain the process that took place. Our intent is before we even say it is even a complete draft is to have the TAC review it one time also and have them do that sweep and see if there is any issues that they have. There is intent that it just builds on itself and give those opportunities for people to understand. Our hope is that through the TAC, through the initial review that those points this needs to be explained better than we can focus meetings on that and go forward.

Councilor Gandara said I really appreciate that if you can do that it will go much smoother for us rather than do it all in one time and have a couple of weeks. I have just not found that to be beneficial to us because we are all very busy and we want to give it the most attention that it deserves because you have worked for three years on it now. My colleagues here have had a few questions on things like missing middle, reduction of administrative burden, those things. The trend and pushing to not have that and more specifically have multi family, the duplex, triplex those things. I get concerned that some of those areas or topics aren't things that are being discussed and I don't know how to present those things. I want this to be robust and creative and an innovative way of doing business that is not sort of doing business as usual so how would you have these conversations amongst yourselves to include the TAC? I feel like we are just looking at the document and maybe there is very little thought about some of these other things that might be difficult to bring forward because you might get a lot of pressure or the nature of the topic. I just want to make sure that we are thinking broadly and differently about these things and how I might rest assure that that is happening.

David Weir said one of the slides had the webpage and what we are doing is we get through a TAC review we are putting those sections of the code up. That is always a resource that the council could use to provide to individuals. All the TAC meetings themselves they are generally the first and third Wednesday of the month at 3 in the afternoon. They are open to the public if you had an interested party that could easily attend. The topic can generally be provided at the Planning and Zoning Commission. Their meetings are usually the fourth Tuesday of the month. We also generally schedule Work Sessions with them the second Tuesday of the month as needed. We could always do an outreach for that also. At the point of time that we get the draft done, again we will have those open houses and reaches and staff can be flexible and add additional outreach and engagement at that time. We can use some of the lessons we learned with Elevate and some of the outreach that we did. The city did a

lot of outreach to the schools and opportunities that other public engagements that have taken place.

Mayor Miyagishima said I would be very extremely cautious councilors that you want to put a stop to growth in Las Cruces, you take away single family zoning. The biggest thing that we could look is possible annexation of certain lands and then we can try to help reduce the cost so that developers can provide those more affordable homes, but I think it is fair to say without putting Larry on the spot too much I would think that the majority of his permits for new construction on residential are single family houses.

Councilor Bencomo said I just want to clarify. You may be misunderstanding eliminated single use subdivision it is not eliminating them it is ensuring that they are not the only thing that exist. Subdivisions made of only single-family houses are no longer created and that it is single family houses and duplexes and apartment complexes and not only single family.

Mayor Miyagishima said I apologize councilor that is what PUD is. We usually have a lot of single family, some multi family, some commercial. That is what we are moving into that direction.

Councilor Bencomo asked I wondered if you were having conversations about zoning restrictions and short-term rentals within this scope?

Erica Craycraft said yes, we have some initial standards drafted but I don't recall what they are off the top of my head but as I mentioned in the zoning matrix has what is allowed where and it has a set of conditional standards that may go with certain uses. Short Term rentals are one of those uses that would be specifically addressed.

Councilor Bencomo said I just want to say in the context of this conversation that it is important to me because short term rentals create displacement of a lot of communities. It creates affordability issues for a lot of local residents. I am not saying we shouldn't have them. I think it is important to have zoning restrictions and strong regulations regarding short term rentals. The housing issue is a huge priority for this council, so I just want to make sure that when we are having those conversations they are had with the context of how do we ensure that people are not being displaced and home prices are not being driven up because of short term rentals.

Erica Craycraft said what some cities are doing in response to that is requiring that the owner live on site. You can't have just empty houses taking up waiting for an Airbnb occupant to come in. If somebody who is renting out their extra bedroom or their accessory dwelling unit to help them afford their own mortgage so from that standpoint it can help with affordability but from other standpoints it can definitely hurt.

Councilor Bencomo said thank you for saying that. I just recently started doing some research on my own and once I have something more formal, I will certainly bring it to our Housing PRC for a conversation.

1.2 FISCAL YEAR 2023-2024 BUDGET REVIEW

Leeann DeMouche, Finance Director introduced the topic.

Dr. Monica Torres, Economist gave the overhead presentation.

Jacqueline Rubalcalva, Budget and Grants Administrator continued the overhead presentation.

Luis Vela, Fleet Service Administrator continued the overhead presentation.

Councilor Gandara asked in terms of transitioning your workforce into being able to maintain these vehicles how has that gone?

Luis Vela said we are working with a company out of Arizona called Automotive Training Group and they have sent two trainers already I believe it was in October. We did a safety and familiarization initial. They will come down and train on anything that we have available. As soon as these EVs start funneling in there will be training. They do the training here on site.

Councilor Gandara asked with the electric chargers do we have sufficient or is some of this funding that you are requesting going to be a part of purchasing the chargers sufficient to manage this type of number of fleet that you have here?

Vanessa King, Interim Facilities Management Administrator said there are six locations where our EV chargers will be located throughout the city. Each location will have one dual port so you will be able to charge two vehicles on there. There will be one at the fire station across the street. There will also be another one at LCPD. There will be one here at City Hall and then there will be one over at the Hadley Complex at the Castaneda Building and there will be another one at the East Mesa Public Safety Facility and another one at the airport. These locations were picked from where the vehicles would be located.

Leeann DeMouche continued the overhead presentation.

Srijana Basnyat, Innovations and Strategy Manager continued the overhead presentation.

Cynthia Campo, CIP Analyst continued the overhead presentation.

Barbara DeLeon, Chief Administrative Officer continued the overhead presentation.

Councilor Corran said the Community Cat Program which is something that our council has heard a lot about and hence the inclusion in the budget presentation. The amount that is allocated, part of this big conversation is about spay and neuter surgery and spay and neuter capacity. Is this assuming an increase in capacity, related to increase vet services, is this assuming community projects? What are the assumptions that go into this? I also wondered, I think we are committed to both the

Community Cat Program by collectively by committed to increase capacity in any ways that we can for our community access to spaying and neutering to ultimately put the animal shelter out of business ideally but until then can you comment on that?

Barbara DeLeon said I will definitely make note of this so I can find out what the underlying assumptions are. I know that with respect to the dollar amount we have assumed that we will be able to fill those vacant positions. I don't have the volumetric data with respect to the number of surgeries we are expecting and how that compares to current levels, etcetera. I will get that for the Mayor and council and forward that back to you all.

Councilor Gandara said around the Easter holiday Clint made mention that there is a veterinarian that has come forward and it is in the queue somewhere and they have high hopes for this individual. So, if that happens that will definitely increase the number of surgeries that will be done and what will be done. We have always envisioned what would happen as the new center came on and moving into the old center with surgeries specifically.

Councilor Flores asked the proposed cost for spay and neuter surgeries are almost $100,000 and is there any projection cost once we do have the old building use exclusively for spay/neuter?

Barbara DeLeon asked are you asking for the cost once we start utilizing the facility for spay and neuter services or the cost of operating that facility with medical?

Councilor Flores said both. I guess this is only for the surgeries and not necessarily for the cost of operating the building. Is that a different category?

Barbara DeLeon said I believe that will be a different category. I will make note for both the operating cost for the old facility as it converts to the purpose of being a medical facility as well as any impact on the cost for the spay and neuter surgeries.

Councilor Flores asked in review of the proposed budget did we cover this?

Barbara DeLeon said we did not specifically talk about the cost of that new medical facility or the spay and neuter surgeries.

Jacqueline Rubalcalva continued the overhead presentation.

Councilor Bencomo asked I was not sure what a Safety Specialist with legal was, I was hoping you could provide more details?

Jocelyn Garrison, Acting City Attorney said Safety Specialist work in Risk Management and basically work to mitigate risk throughout the city. Following up with any complaints from anything going on in parks for example, if there is a pothole or if there is wire that is loose, any kind of safety issue.

Councilor Bencomo said I know Housing staff asked for additional staff or at least more funding for the staff that gets paid through federal grants however I was not sure if I saw that person?

Leeann DeMouche said since the Housing is actually moving out of Economic Development into the City Manager's Office, there is I think an MA that is moving over and also the new position for the administrative position will be helping out in that program as well.

Councilor Bencomo asked this Case Manager under Economic Development?

Leeann DeMouche said that is totally different. That is a position in Economic Development that I think Mr. Pili had asked for. I don't think it is related with housing.

Ifo Pili, City Manager said this is the position that we put in as a place holder to discuss, we talked about someone that could help us with our social work. We didn't name it Social Worker, we named it Case Manager. We are still in discussion of how this position is going to be formed but we wanted to plug it in there.

Councilor Bencomo said I just want to make sure that Housing got the staff request that they are wanting. I just spoke with Ifo on Friday and with Natalie and with Community of Hope about a possible expansion to Mano y Mano Program for outreach and doing in the model of Mano y Mano that Community of Hope with this additional funding would hire and pay their clients, Community of Hope clients. It would be a peer to peer program to do outreach for people experiencing homelessness. Just last week I mentioned to Nicole that I wondered what it would look like to do a similar Mano y Mano Program except for outreach and pay people and she was very open to that idea. I think in hand saying the Mano y Mano Program to do outreach peer to peer would be really beneficial to us right now. I don't have a specific number in mind. Obviously we pay folks at least the minimum wage for Mano y Mano which I think is twelve dollars an hour. I would really like to see it included in this fiscal year-round as a pilot program and I think the folks that would know that number best would be Nicole and Natalie but that is something I wanted to raise now that I think it feels appropriate to do so here.

Leeann DeMouche said we have a week or a little bit more to finalize the total budgets so we will work with Mr. Pili to come up with a number for that pilot program and Natalie as well.

Councilor Bencomo said I understand that there is also amendment processes that can happen, right if it does work within the timeline. I understand that is a really big ask and it is very in the weeds type of programming so I understand if it doesn't happen immediately but I just did want to make sure and raise it today but that is something I wanted to advocate for.

Leeann DeMouche said remember that anytime if needed we can bring a resolution for particular programs like this and if it has a budget associated with it we can bring that forward anytime.

Councilor Bencomo asked the CIP Projects, I know this year our City Manager got called up the State Legislature to ask about all this money has gone unused. I am just wondering how we are continuing to approach CIP funds from the Legislature? I know it's not city projects, it's generally and mostly our partners but really wondering if there is a plan on how to push them to use that money?

Srijana Basnyat said I actually don't have an answer for you today. This would be part of where we partner with the Grants Department and overviewing and helping assist with.

Ifo Pili said right now we have a list of those that need to be spent. We have talked about having a committee just like we meet for capital projects that is relative to our bonds we can have a committee that would meet often to look through those. I think keeping an eye on it more closely than we have in the past.

Barbara DeLeon said Sonya and I have actually been discussing how to track and report on all of our projects that have some sort of time constraints associated with them with respect to funding and then keeping track of allowable uses as well. It is not just grants, it is also bonds that we have funds with a certain amount of time period to spend them as well capital outlay. That spans quite a few capital projects and we talked about Srijana and her team help us to track and review those at least quarterly so that we can ensure that we are allocating the resources needed to keep those projects going and keep them on track.

1.3 RESILIENCY STRATEGIES FOR THE FRANCHISE FEE AGREEMENT

Lisa LaRocque, Sustainability Officer gave the overhead presentation.

Mayor Miyagishima asked what amount are you thinking the total amount this 1% would raise?

Lisa LaRocque said about $700,000 to $800,000, it varies every year.

Mayor Miyagishima said I want to focus on number 3, 67% so that is roughly $450,000. Let me just begin by saying I don't like franchise fees. I don't like charging them, but it is a necessity. Right now it is 2% and I really had a hard time but I felt that if we could use or would I be willing to go 1 more percent to allows those in the lower income brackets to save on weather stripping just general basic things that would keep the hot air going out or cold air going out in various different seasons. What would you spend that $450,000 on? It is very vague. When rates go up and council and myself start fielding questions, why did you raise my rates? Things are going up as it is, how exactly am I going to benefit from it is what they are going to ask.

Lisa LaRocque said what we are trying to do is address a larger issue that is facing the low and moderate income communities. One is that they have an extreme energy burden that is disproportionate to the amount that the rest of us pay. The average for the rest of the city is 3% and what low and moderate income residents pay is about 7% or 8% and what energy burden people pay is about 10%-11% of their income so

our goal is to bring down energy burden to a reasonable amount below 6%. That can't be done by just weather stripping or simple actions like that. The other thing that we are addressing that would require more insulation, perhaps window replacement because they have single pane windows and the other thing that is necessary is dealing with thermal comfort. When I talk about thermal comfort, what I mean is there is about 70% of the low and moderate income people have or rely on evaporative cooling and when you rely on evaporative cooling and have a poorly sealed house you are really not effective and you do it during the hottest time of the summer during the monsoon season with the humidity you can only drop your temperatures by 10 and if you are lucky 15 degrees. We are talking about reducing people cooling to 95 day and night and that is a safety risk. Our goal is not modest. Our goal is to provide a safe home for low and moderate income and an affordable bill to be able to spend their time and resources on other things.

Mayor Miyagishima said to be more candid here a heat pump on the average cost is $3,000, small ones. To install is another couple grand if we are lucky $5,000 to install. You take the $450,000 divide that by 5, that is like 90 heat pumps. I have other ways where we can save the money and make sure you are staffed and I will talk with Ifo about it later and I don't want to say it right now, it's not on the agenda. If that is what you are talking about, heat pumps, that is not a whole lot of people. I wanted to focus in on what that money would be used for. I hear what you are saying but I didn't hear anything specific.

Lisa LaRocque said the heat pump is more expensive than $3,000. A heat pump provides both cooling and heating. The rebate can be $12,000 but it is a very efficient system. It is a quarter of the cost of running an air conditioning or heating unit so in the end the cost to the homeowner in the terms of their utility bill is also reduced. What we are trying to do is create a radical change in the quality of life in the homes for these community members who can be exposed to health risks during extreme heat events and paying a disproportionate amount of their income. I feel that the approach that I am describing is more ambitious then what you were anticipating but I hope during this unprecedented time we have so much funding available from the IRA and can tap into the construction industry or develop new construction industry workforce that this would be an opportunity to have this community as I have described bounce forward and benefit greatly from this and not always having to catch up or make tough decisions.

Mayor Miyagishima asked what exactly is your wording for FFA?

Lisa LaRocque said it is the Franchise Fee Agreement.

Mayor Miyagishima asked you were referring to other monies available were you going to comingle this with these other funds?

Lisa LaRocque said you described that El Paso Electric helps, I believe they provide $300 for a rebate for a heat pump so that is small dip into the needed money.

Mayor Miyagishima asked are you saying number 3 is primarily heat pumps and not weather stripping?

Lisa LaRocque said I am talking about weatherization for sure. That is the fundamental step that needs to be taken in housing especially with the insulation in the homes, caulking, two pane windows are minimum for what is needed. In addition to that there is a need for reliable heating and cooling system through what is advocated for as the best method is heat pumps.

Mayor Miyagishima asked do you know approximately what percentage of people that you are referring to, the low to moderate income, what the numbers are in Las Cruces that would qualify?

Lisa LaRocque asked for the Inflation Reduction Act funds or for having their heat pump replaced?

Mayor Miyagishima said the ones you are referring to earlier when you were starting off.

Lisa LaRocque said there are 13,500 people that are low and moderate income and there are 9,500 households that are highly energy burdens.

Mayor Miyagishima said there is roughly 9,500 households you told me would qualify and with the money that we are looking to do would only be for around 90 heat pumps give or take. How many heat pumps do you think $450,000 would purchase?

Lisa LaRocque said I think it would cover about 10,000 to 15,000 homes. Part of the reason that I have not come forward with a specific budget is because I am trying to honor the idea that this is being cocreated with the community. Whether we do an intense job with a few houses or we do a modest job with more houses is up to the community to decide. Whether we hire a contractor or we train those community members themselves is something that the community will have input in. I can tell you that it cost about $30,000 to do a complete retrofit to a house that includes the heat pump and all electric appliances and weatherization. I don't know if all of those houses will need that but that is the total figure for those houses and this was meant to be a revolving fund that we could continue reaching out to more and more houses.

Mayor Miyagishima said I just used a minimal amount of $5,000 for a heat pump and I divided that into $450,000 and I came up with 90. Ninety divided by 9,500 households is less than 1%. One out of 100 is going to get this and that is where I am going to have a hard time saying which of one of the hundred gets it? I think that we are making a little head way that we want to try to reduce and help lower income residents save money, but I don't know if using all of this on 1% of the residents.

Lisa LaRocque said I have a different number of one of the households. We are using this money in conjunction with the Inflation Reduction Act. Go back to that example that it cost $25,000 to up to $31,000 to retrofit a house. The only thing that we would need to retrofit a total house is $6,000, the delta because the IRA rebates and tax

credits and other sources of money from El Paso Electric, from the state and from MFA can contribute to that money. We're not doing 1% we are using this money to bridge the financial needs of the people. We feel that the money that exists from all of those different tax credits, rebates and other programs and other partnerships can provide the lion share of this. That money is just to cover the delta, the amount that is still missing.

Mayor Miyagishima asked I heard you say $6,000 give or take?

Lisa LaRocque said that is if we go the whole way.

Mayor Miyagishima said I thought you said that the full was like $30,000 and with the IRA money it would be another $25,000.

Lisa LaRocque said it would cost about $31,000 to do a complete retrofit. No one has decided that they are going to every piece of the retrofit. If you did it all it would be about $30,000 and with the rebates you would still need about $6,000 more to finish the job.

Mayor Miyagishima said I used $5,000 into the $450,000 and that left me with 90.

Lisa LaRocque said this is not something I am asking for one year, this is something I am asking for several years until a program is established and runs on its own from nonprofit centers or other entities that have adopted this model.

Mayor Miyagishima said I hear you but if we are doing 1% a year in ten years it will be 10%. We are going back to the households that you told me. You had said 9,500 households, if we rounded it down to 9,000 households which sounds about right and we are doing 90 that is 1%.

Councilor Gandara asked how many of those people are living in a single family dwelling, multifamily housing, renters versus owners?

Lisa LaRocque said I can get those figures for you. I would say that at least 50%-60% that are renters and I would say that there is probably in another division that there is about 60%-70% of people that own their homes as opposed to single occupancy homes. The majority home types that we have are single homes.

Councilor Gandara asked would you have a different program, for the multifamily owners?

Lisa LaRocque said this is really a huge challenge as we all know and part of is how do we get in the front of the line to get the money that is out there for the Inflation Reduction Act. We are focusing on the single family housing right now because it is the cleanest beginning for doing this as a model because the problems that we have or the lack of clear guidance that we have or decisions that we have for landlords and renters is really difficult because if we were doing a program that benefited that was

for landlords and renters then we have a whole different legal obligation that we have to go through. Our idea is to focus on that subset of population because there are other entities that are working on multi unit homes such as our housing units.

Councilor Gandara asked these community advocates that you are proposing, I would say you would have this marketing program that you would say were looking for these types of people or types of homes? You would have to be willing to allow these people to come into your home and do an assessment. They would do an assessment and say at the minimum this is what you need, at the max this is what you need and then it will go to this group that would determine or you are saying if you needed a whole 100% retrofit you would approve that?

Lisa LaRocque said having an assessment is an important first step and having someone in the construction industry giving you a break down is another important first step and deciding what is economically feasible is part of the determining factor as to what can be done. The community advocates would be a trusted member of the community that can explain this is what the program is, these are the possible rebates you get, this is how we are going to organize it. This is how you are going to check into the program in coordination with someone in the construction industry. I haven't planned this whole thing out because I don't know if I have the resources to be able to do it but I have enough information to be able to assess the viability of heat pumps and weatherization and technologies and workforce development and all those other sorts of things. So, I have all the pieces of the puzzle, I haven't built the whole puzzle because I don't want to build it myself. I want to build it with the community. I want to be able to listen to what the community is saying in order to be able to figure out how this puzzle should look.

Councilor Gandara said I am just trying to understand what you are asking us. I'm hearing a number of things but it's going to be in partnership with community and I love that, El Paso Electric and all these rebates that are out there but there is going to be a limited amount of money. There is this money out there and you're presenting in the form of a proposal, this is what we want to see happen but if the figures add as Mayor presented are correct, I am too concerned that 1% of this total group gives me some pause so I am feeling at the minimum that we have some minimum. You have to have weatherization, you have to have a heat pump. If you just had that, worked on that, would you be able to serve more people?

Lisa LaRocque said yes.

Councilor Gandara asked what are you asking us today?

Lisa LaRocque said what I am suggesting is that we have a unique opportunity with so much rebate and tax credit that is out there. It is an opportunity to reshape the way we do our programs so that we have an opportunity to develop more workforce that we have community members that are taking the lead to drive this program as opposed to just being the recipients of it and to address very serious problems with resiliency. I am asking you to trust us to use this money wisely with community

cocreating this to be able to take a new look at how we go about making change in the community.

Councilor Gandara said I would be appreciative of seeing those numbers on the low and the moderate you know that would be helpful to me. I think maybe just sifting out a little more and giving us what you might be presenting as a formal proposal to the government on this would be helpful too.

Lisa LaRocque asked the Government?

Councilor Gandara asked there is all this money out there, correct? You're going to make a proposal I am assuming, to them?

Lisa LaRocque said we don't have to make a proposal to them. Any low income person is eligible for $8,000 rebate just for the heat pump. They get $3,200 a year for weatherization. It is just a matter of them being able to submit a request for it.

Ifo Pili said one of the things that is interesting about this proposal as opposed to previous proposals is that it is taking that definitive amount of money which is $700,000-$800,000 and leveraging it for all that is out there. We don't know what is out there, but we know that there is a lot of money out there and to be able to use the $700,000-$800,000. No matter what you do you can only help so many people with $700,000- $800,000. Having a person, having somebody that can direct people to these programs. Having the programs themselves supply an ongoing perpetual support to the program then we can have more structural change in our city. Right now, we don't really know how much we are going to be able to get. Lisa had a spreadsheet that we could share maybe to the council that had potential if we did have those rebates. What it could look like and I know it wasn't shared because these are estimates right now.

Mayor Miyagishima said $700,000, that means that we are getting $1.4 million in right now from the other 2% and to my knowledge it is probably just put into the general fund. If we really want to make a change, why don't we look at dedicating the full 3%, that means moving that 1.4 million into this program, use that extra money. You are telling me we are getting 5 to 1 for every dollar we spend we are going to get 5. If we are going to spend $6,000 the resident will get $30,000 worth of package. So, if there is a consensus for at least to send this back to staff to look at it that way now you are talking 300 houses now, the number is going up and I am feeling a lot better.

Councilor Bencomo said we don't know yet, these are totally estimates, premature I think though appreciated that if this could come back to a PRC. I would suggest the Housing PRC given that there is a lot of conversations about housing, especially low to moderate income housing but TSI could work as well. I am very unclear about what is happening right now.

Councilor Flores said I think it's a great idea but I think you have heard from three or four of us now, that it is an idea. Insofar as adding the one additional sustainability staff person and removing that 11% of FFA, that to me what the EL Paso Electric

franchise fee agreement, I think that you were trying to figure that whatever that percentage is that equates to hiring of 1 staff person. I think that we would be better served if you would let us know who those community advocates would be and then who is the construction manager to implement a scalable LMI retrofit Program and then develop partnerships that advance energy workforce opportunities. It seems to me that everything you have listed is absolutely fabulous. Do you hire someone in the community who knows how to work on getting this done? The other thing about the IRA, it seems to me that is a federal program and it would probably be good to speak to someone from Senator Heinrich's office or Ben Ray Lujan's office in terms of working with other agencies throughout the US. What would that one additional staff person do? Would that person be developing this resiliency program and then advise us the council and City Manager as to points 2,3, and 4 or is there already a community group out there?

Lisa LaRocque said I am trying to have this developed by the community but I want to be able to tell the community that we have a small nest egg to be able to work from. There is an ability to be able to navigate the scale. I realize that I have presented this in a way that is near and dear to my heart as a sustainability person, about worrying about climate change and equity issues. I do have a budget. I have best practices of the best ways to do workforce development, of partnering with community members and doing the construction management. I know different ways that we can have advocates work on this because I have a contractor who has interviewed everybody in the country about what our best practices and lessons learned from them. I have that information as a resource for the community and I want to present it to them and say what is a good fit for you? Is energy burden the most important thing for you or is getting your kid a job the most important thing for you? I feel that it is very important if we are true to putting the front-line community front and center then they need to be at the table and all. We already have 25 people that we brought together and one of the councilors was there as well. So, we are starting that process. It is a ten month process where we are diving into each one of these areas and defining it with them. That is where I am headed. I don't the answers for you at this point.

Councilor Flores said if you have 25 people in the community that will help with the elements 2-4 that would been helpful, the information they have to move forward should this be implemented. Have you spoken to Rene Romo or Senator Heinrich's office?

Lisa LaRocque said both Sylvia Ulloa and Rene Romo attend those meetings.

Councilor Flores said knowing that they are behind it and are well aware of how the IRA functions and is distributed and these other programs that changes everything for me. You said that you know someone in the construction industry who would be able to implement the retrofit program. Do you have people in the energy workforce that you can potentially develop partnerships with?

Lisa LaRocque said there are several different options that are available depending on what the community wants. We could have apprenticeships, internships. We could create a co-op of small businesses that would share engineers and auditors that will

be able to do the program. We have not got into the workforce decision yet but those are all options. I know all the options that are on the table. I don't know which one the community wants to do. There are so many small businesses that have a hard time and navigating because they don't have a licensed electrician on board or they could share one amongst, a co-op is a model that we have. There are other models where we could have internships from the high school construction company or we could have DACC, use it as in internship. These are all ways that we are exploring it, but we want to make sure that every piece of this taps into something that benefits the community.

Councilor Flores asked one more staff person would be focused entirely on this project?

Lisa LaRocque said yes.

Councilor Flores asked what kind of requirements or job expertise would you need for that person?

Lisa LaRocque said it would be someone in the building performance sector.

Councilor Flores said I am thinking that there might be programs out there for people who aren't in that lower level income. There might be programs that work and more people could benefit. It seems to me that the IRA is focusing on people who are paying an exorbitant amount percentage wise of their income for utilities. Is that true?

Lisa LaRocque said the rebates and the tax credits differ between what income level you are so that low and moderate income get the lion's share but the lowest amount is for, any of us could get 30% tax credit but what the benefit is for the low income is they get rebates so they don't have to have a tax liability to be able to benefit from the program and we are doing other outreach efforts. We are hoping to have programs similar to Lush and Lean this fall to step people through. I think that the frontline communities are the ones that I am most concerned about.

2. ADJOURNMENT

2.1

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to Adjourn at 5:10 p.m.

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

Mayor

City Clerk

MINUTES
City Council Meeting

1:00 PM - Monday, May 1, 2023
City Council Chambers, City Hall

The City Council of the City of Las Cruces was called to order on Monday, May 1, 2023, at 1:00 PM, in the City Council Chambers, City Hall, with the following members present:

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

EXCUSED: Councilor Kasandra Gandara and Councilor Tessa Abeyta

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR CORRAN.

1.2 PETS OF THE WEEK.

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

1.3 JOBS OF THE WEEK.

Irene Parra, Economic Development presented Jobs of the Week.

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

Mayor Miyagishima presented Carol Brey and Sonia Saldana with the Mayor's Certificate for Public Service.

Councilor Corran presented Taylene Jacko with a proclamation for Day of Prayer.

Councilor Corran presented Davin Lopez with a proclamation for Economic Development Week.

Councilor Corran presented Anabel Alvarez with a proclamation for Medical Laboratory Professionals Week.

Councilor Corran presented the local Chambers with a proclamation for National Small Business Week.

Councilor Corran presented Alice Carruth with a proclamation for National Tourism and Travel Week.

Councilor Corran presented Judy Berryman with a proclamation for Historic Preservation Month.

Councilor Corran read into the record a proclamation for Jewish American Heritage Month.

Councilor Corran presented Jemez Riders Riding Club with a proclamation for Motorcycle Awareness Month.

Councilor Corran read proclamation for National Bike Month.

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

2.1

There was none from Council or staff.

Mayor Miyagishima said I also have an additional disclosure for the Conflict of Interest for May 1, 2023 as part of our agreement with HUD or the Housing and Urban Development this Conflict of Interest Disclosure is requested regarding the following agencies who are being considered for funding as part of the 2023 Action Plan on the non-consent agenda: Mesilla Valley CASA, Casa de Perengrinos, La Casa, Mesilla Valley Community of Hope, Jardin de los Ninos, Mesilla Valley Habitat for Humanity, Thomas Development Company, La Pinon and Catholic Charities.

3. PUBLIC PARTICIPATION

3.1

Juan Garcia, Member of the Public said I would like to thank LCPD and the City Manager for the recent joint taskforce effort with the New Mexico State Police. as budget planning moves closer, please keep in mind for a need in a very strong police force to keep us safe. During the last City Council meeting Councilor Bencomo accurately stated, “We kicked the solution to another neighborhood” and the Director of Community of Hope stated via email, “What about the rights of people sleeping outside? What about their safety? Just because a person is unhoused does not make them a risk to anybody”. That is basic fearmongering. All the comments were in reference to the eradication of individuals who were performing illegal and unsafe acts and endangering a whole neighborhood, Burn Lake. After careful thinking I want to propose the “Las Cruces in my Backyard” pilot initiative that I am sure the council will support and join with me. The first proposed location is the area directly behind where I currently reside. The objectives, to provide the homeless individuals a safe space to camp in certain neighborhoods throughout the county. Give the homeless the opportunity to stabilize. This would be a thirty-day pilot program with opportunity to extend. The initiative criteria, each resident will allow a maximum of five campers in tents or sleeping bags if space permits in the front or backyard. A hygiene station will be provided next to each encampment. Campers will obey and comply with all ordinances and laws. No fires, trash, panhandling, etcetera bothering the neighbors. Violations will result in immediate removal. Citizens will have no responsibility to the homeless and I would like 2/3 of the city council to join me in participating. I have a diagram of the proposed location which I will provide to you. I also have photo of my residence that I will share with you so that if you are willing to join me you can do so. I know that from time to time individuals think that when I speak about crime that I am

anti homeless, I am not. As I said before I could be homeless tomorrow. So, let's get together and let's show the community if you are really sincere about this and what you are saying that we can do it.

Sarah Smith, Member of the Public said I was very glad to see your agenda item today for referrals to Medication Assisted Treatment also known as the MAT Program for substance abuse. I know that the MAT Program has been successfully used in other states and I wanted to thank you for moving this forward and thanks to Fire Chief Jason Smith for bringing this item forward. As you know Las Cruces has been struggling with increased drug abuse issues as well as the crime and homelessness that often come along with drug abuse. As a mother of two children, I have become increasingly concerned about the fact that drug use has seem to become normalized in our community. In the desert near my family's home we recently found a crack or meth pipe lying on the ground. This is very close to my home and an area where my children and dogs play. I recently saw some homeless people smoking marijuana on the stage of the downtown plaza in the middle of the afternoon. They looked totally at ease even though it is illegal to smoke marijuana in public. Last week our home school group was participating in the city's Youth Service Week so we were cleaning up Apodaca Park. While we were there in two different areas of the park people were smoking marijuana such as we were having to direct the kids away from those areas. Last Thursday my sixteen year old daughter was driving us home from my kids class at the traffic light on the corner of Main and Elks I looked next to me to see the man driving the vehicle next to us smoking crack or meth at the traffic light. This was in the middle of the afternoon and obviously I directed my daughter to let that man pass us since he was driving while doing drugs. This is just a few examples of how normalized drug usage is becoming in Las Cruces. I appreciate that you are implementing this MAT Program to refer people to medication assisted treatment and I hope you will continue to find more solutions to the drug crisis that is plaguing our community.

Tammy Pickering, Member of the Public said you may notice my shirt and formulate an opinion about my intention. I want you to know why I am here. I have seen this city deteriorate in the six years we have moved here. We used to play tennis at Lion's and had no issues when we first moved here. Occasionally we would encounter homeless but really no problems. I used to teach tennis lessons there for LCTPA, over the years it has become a slightly dangerous place. There were recent incidents in the women's restrooms that made it unsafe for us to enter without a racket which doesn't make sense to me. So, I avoid playing there anymore. I talked my parents into moving here three years ago into the Trails West Community because we thought it would be a safe place, after all it is gated. It seemed nice and peaceful and then we started hearing reports of little incidents involving property theft, things taken from their homes, from their places or from their cars and then my dad's cousin who also moved there his two electric bicycles were stolen and they were locked and I get really tired of hearing citizens being accused or being the victims actually being told that it is their fault that their stuff was stolen. It began to feel like something needed to be done. A police representative actually talked to the residents of Trails West and let them know about the problems that they were seeing in addition to the fact that they needed to be more vigilant in community policing themselves and paying attention and that there was a shortage of police officers. These are people that are generally 70 plus years old. Finally, two personal scary incidents later I felt like enough is enough and I can no

longer sit in silent expectation that the city will fix it. I have listened to your arguments that the problem is legislative while I have watched at the same time calling on legislators to defend you. CCIA is not anti-women. We are asking for your help in addressing the crime.

Randy Pickering, Member of the Public said my wife and I as she stated move to Las Cruces in 2017 and over the past two to three years we have noticed an increase in criminal activity. We have personally experienced theft as well as our friends and relatives. I am here because of a recent event in which my wife was almost assaulted. All because she came to the defense of what appeared to be a homeless man getting severely beaten. After the police arrived, we discovered that this person had beaten a man and woman shortly before he was beating on this person. This demonstrates that he was very capable of assaulting my wife. To my knowledge this person was apprehended. I have no idea if this person is back on the street or not nor if he received the help needed to return to society. I think that we can all agree that we want our children, our parents, friends, spouses to feel safe when we go to the grocery store. Due to this event, I started looking at crime rate data. I discovered that New Mexico is the second worse state in the nation for violent crimes. I further noted that Las Cruces had a 27% increase in violent crime in 2022 versus 2021. I have heard this council state loud and clear that that there is a necessity for police reform. Our city is already short staffed on police officers as well as shortage in the Sheriff's Department so I am very concerned that there could possibly be more reductions in the Police Department. As evidence by the recent collaboration between LCPD and New Mexico State Police more police presence and active policing does make a difference. Our officers are under tremendous stress when they answer these calls and go to these situations. Before proceeding with these Work Sessions on Police Reform I would ask, have any of you considered a few days of a ride along with officers. Have you taken time to review the videos where an officer was successful in defusing the situations. I know we all see the videos where things went wrong but how much effort is given to a greater majority of time when things went right. With all this said my request simply boils down to asking this council to proceed with as much and time and energy focused on reducing crime in our city, county, and state as you do focus on the low percentage of bad actors among the good men and women that are doing their best to protect the citizens.

Peter Goodman, Member of the Public said to Randy with all due respect if you look at the figures where they have put in Civilian Police Oversight Boards crime has tended to go down and where there have been the kind of incidents that make some of us feel that is necessary crime has gone up. What you are looking for and which what we are all looking for less crime is not at all inconsistent with having more and more thoughtful ears and eyes on the law enforcement problem. I also want to commend everyone who has spoken. I also want to commend everybody who has spoken so far, the decibel level or the ranker level has gone down wonderfully in the last few months and I wanted to mention one thing from this past weekend when I gathered there was a wonderful event. The Farmer's Market was closed Saturday for that. As I understand it the set up was all done on Friday night and the event didn't start until 2 on Saturday but whoever in the administration was doing that project first of all could have given better notice to the shop keepers in the area that didn't know it was happening whereas the Farmer's Market had told all its vendors and secondly the

Farmer's Market could have gone forward as normal and just quit an hour early. So, I would suggest for next time somebody think about trying to do that.

4. READ CLOSED MEETING STATEMENT

4.1 READ APRIL 17, 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.

1. To discuss pending litigation regarding Melendez v. City of Las Cruces Police Department, D-307-CV-2020-02571, which is closed pursuant to NMSA 1978, Section 10-15-1H(7).

2. To discuss pending litigation regarding City of Las Cruces v. Amerisource Bergen Drug Corporation et al., 2:21-CV-00336 (Civil Action No. :21-00336), which is closed pursuant to NMSA 1978, Section 10-15-1H(7).

5. ACCEPTANCE OF AGENDA

Councilor Yvonne Flores moved, seconded by Councilor Johana Bencomo, to accept the agenda as presented with removal of item 7.1 for discussion.

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

6. CITY COUNCIL MINUTES

6.1 WORK SESSION OF MARCH 27, 2023.

6.2 REGULAR CITY COUNCIL MEETING OF APRIL 3, 2023.

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

7.1 RESOLUTION NO. 23-116: A RESOLUTION TO SUPPORT CITY STAFF IN PROVIDING EDUCATION AND REFERRAL INFORMATION TO CITIZENS REGARDING SUBSTANCE ABUSE TREATMENT OPTIONS WITHIN OUR COMMUNITY

Jason Smith, Fire Chief gave the overhead presentation.

Councilor Corran said I would urge us to think about our contracts with places like the Detention Center are written to emphasize our prioritization of this going forward. I feel critical of the detention centers generally. They don't regularly or routinely provide medication assisted treatment and I would ask that as we negotiate or think about the conversations that happen on an ongoing basis we give and as we pay the detention center that this become part of that and I would expect it given the investment that we do that this would be something that would be included in the detention centers

regular routine protocols. So, I am just going to put that out there as my policy orientation to add on to this or support it.

Councilor Bencomo said I do know that the Governor recently signed Senate Bill 425, which is specifically for County Detention Facility Treatment Programs. Even though I know we recently had the Detention Center come and give us a presentation I would love for them to return and talk to us about how they plan to effectively implement such programs because I think it is critical and now it is law so I think folks are seeing how critical this is. Can you go back to the list of all the partners? This is a great list and I think often and I appreciate everyone that is here and those that couldn't because I think often and I certainly talk about the huge lack of mental health and substance abuse resources that we have in the city. I would love to engage with these providers if you all are interested in a conversation about bolder ideas on overdose prevention and I know that there are models that exist in Canada and New York City around overdose prevention sites and I know that people have a hard time sometimes wrapping their head around what those can look like but I really would love to engage providers if you are interested in having that conversation. I do think that it is the next step for our community and how we do overdose prevention.

Dr. Ned Rubin and I am here as the Chair of the Unified Prevention Coalition of Dona Ana County and clearly, we support and appreciate the resolution today. We would just like to remind you in addition to treatment you have the opportunity to distribute specifically primary prevention material at the same time that the staff and employees at the city are encountering the public. There is not much information about where people can go to get help for the problem but what they might do in their families to prevent problems from occurring down the road. The Unified Prevention Coalition would be happy to help develop and provide the material for the city should you decide to proceed with that in the future.

Councilor Johana Bencomo moved, seconded by Councilor Becky Corran, to Approve Resolution No. 23-116.

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

7.2 RESOLUTION NO. 23-117: A RESOLUTION AUTHORIZING AND APPROVING THE SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.

7.3 RESOLUTION NO. 23-118: A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.

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

8.1 PUBLIC HEARING REQUIRED. RESOLUTION NO. 23-119: A RESOLUTION APPROVING A WHOLESALER LIQUOR LICENSE TO PREMIER DISTRIBUTING COMPANY, LLC, LOCATED AT 380 ALLIANCE DRIVE, LAS CRUCES, NEW MEXICO 88007.

Public hearing began at 2:23 p.m. There was no one for or against. Public hearing ended at 2:24 p.m.

Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to Approve Resolution No. 23-119.

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

8.2 PUBLIC HEARING REQUIRED. RESOLUTION NO. 23-120: A RESOLUTION APPROVING A CRAFT DISTILLER LIQUOR LICENSE TO ICEBOX BREWING LC, D/B/A ICEBOX DISTILLING COMPANY, LOCATED AT 2825 W. PICACHO AVENUE, LAS CRUCES, NEW MEXICO 88007.

Public hearing began at 2:25 pm. There was no one for or against. Public hearing ended at 2:26 pm.

Councilor Yvonne Flores moved, seconded by Councilor Becki Graham, to Approve Resolution No. 23-120.

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

8.3 RESOLUTION NO. 23-121: A RESOLUTION ADOPTING FUNDING PRIORITIES AND ALLOCATIONS TO VARIOUS LAS CRUCES NON-PROFIT ORGANIZATIONS FOR FISCAL YEAR 2024 (FY24) TO PROVIDE HEALTH-RELATED PUBLIC SERVICES NEEDS AND AUTHORIZING THE INCORPORATION OF THE FUNDING AMOUNTS INTO THE CITY'S FY24 BUDGET.

Kevin Wilson, Housing Development Coordinator gave the overhead presentation.

Councilor Bencomo said this is a bit problematic and I think it would prove more problematic in issues of quorum and those kinds of things. I am wondering if there is room to revamp this committee and if that could be possible?

Kevin Wilson said I do believe that we have done that with other committees and if we could look outside of the normal parameters of selecting members it might be easier to fill the vacancies with concerned and devoted citizens.

Councilor Bencomo said this is what I will do in my council comments, I will make comment about how to go about changing this committee.

Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to Approve Resolution No. 23-121.

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

8.4 RESOLUTION NO. 23-122: A RESOLUTION APPROVING THE 2023 ACTION PLAN AS PART OF THE 2021-2025 CONSOLIDATED PLAN FOR THE CITY OF LAS CRUCES. THE RESOLUTION AUTHORIZES CITY STAFF TO SUBMIT THE 2023 ACTION PLAN TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND INCORPORATE NECESSARY AGREEMENTS WITH OUTSIDE PARTNERING AGENCIES.

Cynthia Villanueva, Management Analyst Housing and Neighborhood Services gave the overhead presentation.

Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to Approve Resolution No. 23-122.

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

9. ACTION ITEM

9.1 CHANGE OF TIME FOR THE MAY 15, 2023, REGULAR MEETING FROM 1:00 P.M. TO 9:00 A.M.

Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to change the time of the May 15, 2023, Regular Meeting from 1 p.m. to 9 a.m.

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

10. BOARD APPOINTMENTS

10.1 RANDY R RANKIN

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Appoint Randy R Rankin to the Affordable Housing Advisory Committee.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham

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

11. 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).

11.1 <u>COUNCIL BILL NO. 23-025; ORDINANCE NO. 3031</u>: AN ORDINANCE APPROVING A ZONE CHANGE FROM A-2 (RURAL AGRICULTURAL DISTRICT) TO C-3C (COMMERCIAL HIGH INTENSITY-CONDITIONAL) FOR PROPERTY LOCATED AT 4003 TELLBROOK ROAD. SUBMITTED BY PROPERTY OWNERS RAYLYN AND LEZLIE WILCOX.

Council agreed to bring it forward.

11.2 <u>COUNCIL BILL NO. 23-026; ORDINANCE NO. 3032</u>: AN ORDINANCE APPROVING A PLANNED UNIT DEVELOPMENT (PUD) CONCEPT PLAN AMENDMENT UPDATING AND ALTERING THE BOUNDARIES OF THE MESILLA VALLEY COMMUNITY OF HOPE (MVCH) PUD. THE PROPOSED PUD CURRENTLY ENCOMPASSES 8.01 ± ACRES AND IS LOCATED AT 999 W AMADOR AVENUE. THE AMENDMENT WILL INCORPORATE NEWLY ACQUIRED PROPERTY FOR A TOTAL OF 16.59 ± ACRES, AS WELL AS INCORPORATE THE NEWLY ADOPTED MASTER PLAN THAT WAS DEVELOPED FOR THE MVCH CAMPUS.

Council agreed to bring it forward.

11.3 <u>COUNCIL BILL NO. 23-027; ORDINANCE NO. 3033</u>: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SUBORDINATE LIEN LOAN AGREEMENT AND NOTE BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO AND THE NEW MEXICO ENVIRONMENT DEPARTMENT IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $16,916,853 PLUS ACCRUED INTEREST, AND LOAN SUBSIDY GRANT FUNDS IN THE AMOUNT OF $227,240, TO EXPAND AND IMPROVE THE WASTEWATER COMPONENT OF THE CITY'S JOINT UTILITY SYSTEM; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES OF THE JOINT UTILITY SYSTEM; AND PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND NOTE AND SECURITY THEREFORE.

Council agreed to bring it forward.

11.4 <u>COUNCIL BILL NO. 23-028; ORDINANCE NO. 3034</u>: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $3,100,000 LOAN

AGREEMENT FOR FLOOD CONTROL INFRASTRUCTURE IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

Council agreed to bring it forward.

11.5 COUNCIL BILL NO. 23-029; ORDINANCE NO. 3035: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $5,100,000 LOAN AGREEMENT FOR STREET IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

Council agreed to bring it forward.

12. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12.1 MAYOR MIYAGISHIMA

I just want to give a shoutout to Visit Las Cruces for putting on Mira Las Cruces. That was really nice. It was a great event.

12.2 COUNCILOR FLORES

I would like to report on the Health PRC and that was held on April 11th and Athena Huckabee was the main presenter there and it was a very good presentation. It was very thorough and it was complimented by Chief Smith's presentation today and so far as drug abuse solutions.

The Animal Services Center of the Mesilla Valley had its budget review, and we won't be approving it till the next meeting. On April 13th it was a Thursday Visit Las Cruces celebrated the unveiling of the mural on one of its walls and the artist is Anahy Nunez and I encourage all of you to go and see it. The beauty of it depicts who we are as a community and of course it shows our beautiful Organ Mountains.

At the Health PRC of April 5th there was a resolution that was prepared on the Los Amigos Project. We thoroughly discussed the Occupational and Health and Wellness Survey for employees here in the city and I think that the meeting was pretty much taken up by that topic and the concern is to assure that our employees here at City Hall feel safe.

The Las Cruces Community Schools, we met on April 20th. We usually meet at 1:30 at one of the Community Schools but we did meet on April 20th from 5-7 p.m. at Lynn Middle School. The goal of the Community Schools nationally is for all schools in the United States to become Community Schools because children thrive when the entire community is involved.

The Advisory Board met on April 20th. Advanced Air is the airline providing commuter service between our airport here in Las Cruces and Albuquerque. There are two flights a day. The flight each way I believe is $85.

The South Central Rapid Transit District met on April 26th and we approved the third quarter financials. I would like to say kudos to David Armijo who came to us from California and he and Mayor Pro Tem, Sharon Thomas worked very hard to make sure we had this South Central Regional Transit District to connect southern New Mexico and provide service to support areas that don't have a very good public transportation service.

Our Sister City Delegation from Nienburg was here last week and I was able to meet them one day and join them on a walking tour of downtown. The tour guide was Chris Faivre from the Economic Development Department, and he gave a lot of history and the fact that the Rio Grande Theatre is a National Historic Building and it is the only theatre in the U.S. that is adobe and two story.

I too was at the celebration on Saturday. I am the liaison to the City Art Board and they had an Art Chalk Contest and there were ten entries and the public was able to vote. We had almost 700 people voting on the art and for those of you that weren't there you really missed a beautiful event. The thing that is important about Mira that I want to share with you is in our Economic Policy Review Committee the head of the New Mexico True, they actually met with us through Zoom and I wanted to know how much our tourist dollars contribute to the economy and the head of that New Mexico True was supposed to get back to us. They sponsored the whole thing and they had media there covering it and they spoke with me about how they had media specialists to see how they could promote the city of Las Cruces.

12.3 COUNCILOR CORRAN

The Transit Advisory Board met about two weeks ago. We saw some updated statistics as to the increasing ridership of both Roadrunner Transit and Paratransit that we offer for the city that is currently experiencing a fare free holiday through June. I do want to point out to my colleagues that experiment has resulted in increased ridership of our transit and it is on the way up. Part of the fare free initiative is to also survey riders to see what benefits this has brought to them so folks who ride public transit please take a moment to complete the survey that will be available for you and share how Las Cruces Public Roadrunner Transit is helping you at this moment. We also saw a preview of what the city buses will look like, the new electric buses that should be arriving around July. We don't have a place to charge them just yet.

Tomorrow, the Airport Master Planning process is actually in a public comment period and the Transportation Sustainability and Infrastructure Committee will be hearing the latest Airport Master Plan information and we did confirm that anyone can come even

councilors because it has been properly messaged. Tomorrow at 8:30 on the second floor.

12.4 COUNCILOR BENCOMO

Ifo if you could work with staff on perhaps bringing some proposals to us for the HHS Committee. I would suggest maybe 5 At-large members and of course revisiting the conversation of stipends for all of our committee members. I think Housing staff can provide some proposals to how to revamp this committee.

The last thing I will say is that over the weekend I read this Instagram post on El Paso Matters. The El Paso and Las Cruces area has the 14th worst ozone pollution in the country per the New American Lung Association report. I don't necessarily have solutions I just wanted to lift up that this was a pretty startling report that really impacts the quality of life for members of the borderlands.

12.5 COUNCILOR GRAHAM

I want to start with my biggest shoutout of 2023 and I am looking at you Christine Rivera. It is Municipal Clerk's Week and I have a couple of words here that I got from the very helpful Municipal Clerk's Week website. I want to read a quick quote from one of the first textbooks, "no other office in municipal service has so many contacts. It serves the Mayor, the City Council, the City Manager, and all administrative departments without exception. All of them call upon it almost daily for some service or information". I am going to add to that our community, residents because the clerk is so often a link between the city, the council, and the people that we are here to serve. You serve everyone with kindness, professionalism, with absolute brilliance and I have never collaborated with you on working with a resident that I haven't heard anything but glowing reports. We all appreciate you but I want to again express my personal gratitude to you. I just want to give you some very well deserved recognition.

The only other thing I have is on Wednesday the 3rd and Wednesday the 10th, 17th and 24th each of those nights I am going to be spending 5-7 p.m. at Munson Senior Center and I'm going to experiment a little bit with the alternative to the typical community meeting and just kind of have an open space. I want to invite anyone from District 3 if you have questions. You have concerns. You just want to chat. The first two are going to be really open ended and if I see any patterns in request or concerns then we can talk about having something a little more structured, same time and same place.

Mayor Miyagishima said a few weeks ago Kfox asked me about Proposition K in El Paso. Some group wanted me to take this to the City of Las Cruces, to you all and so what I did was just a quick little run down. They want $8 billion dollars to buy El Paso Electric. If we were to borrow $8 billion dollars using 3 ½ % interest for 20 years the payment was $46 million a month. That is half a billion a year. I took El Paso Electric's income and it doesn't really even cover the payment. So, for 20 years it would cost $3.5 billion just in interest and it basically went away and so now I see they are now in El Paso. I just wanted you to know why I said that. It makes no financial sense.

13. CITY MANAGER REPORT

13.1 IFO PILI

Maybe just a response to Mr. Goodman's Mira Las Cruces. I did get an email just to let you know VLC did collaborate with the Farmer's Market and their administrators about 9 months and that is why they created a mini farmer's market there. That was their choice. They chose to have that there up until the end of the evening and have it on Sunday instead. They were notified. They did promote it on social media and took advantage and I think it was a real benefit to the all the businesses there.

I do want to recognize Visit Las Cruces as you have. Thank you for recognizing them as well. It was the first year for our Visit Las Cruces team and our hope is to continue with that.

Ikani Taumeopeau, Assistant City Manager said the early estimates right now are about 2,000 people throughout the day, but they will continue to get estimates of traffic flow. Also, we had 15 social publicmedia influencers that were there that had a great time. Our Visit Las Cruces gave them a tour throughout our space here and they are going to be sharing their positive experiences very soon and Rochelle will make sure to pass it along when that happens.

14. ADJOURNMENT

14.1

Councilor Yvonne Flores moved, seconded by Councilor Johana Bencomo, to Adjourned at 3:06 p.m.

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

Mayor

City Clerk

MINUTES
Work Session
Monday, May 8, 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, ASCMV introduced the Pets of the Week.

2. JOBS OF THE WEEK

2.1

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

3. AGENDA ITEM

3.1 LAS CRUCES NEIGHBORWOODS PROGRAM.

Shannon Horst, Executive Director of Tree New Mexico gave an overhead presentation.

Councilor Flores said you said that the homeowner then becomes responsible for the care of the tree and then makes an agreement with the City to continue caring. What happens when the house is sold to someone else who doesn't have the wherewithal?

Shannon Horst said the homeowner commits before the tree goes in the ground and we do have some challenges with rental units but we have been able to work out where the renter agrees to care for it. If the household changes hands, I think there's a 5 year initial agreement. If a tree gets good care in the first 3 years, it's mostly

going to flourish. Usually the neighborhood that comes together for that planting will continue monitoring those trees.

Councilor Flores asked you provide training and funds?

Shannon Horst said if there's a community group that wants to get their own program up and running we have a certain amount of support for our time and travel to be with a community and help them create the structure and do a pilot planting. We can also help a community group apply for funds.

Councilor Gandara asked what sort of conversations have you had with Parks & Rec and what do you need from Council?

Craig Fenske, Volunteer with the NeighborWoods Program said we have about 20 people who meet regularly. We discussed a grant group to address the IRA Grant for Urban and Community Forestry that has a June 1 deadline. It has sizable dollars that could help us do a 5 year demonstration grant with NeighborWoods. We would like the city to be a partner in that grant. We approached the Dona Ana County Soil and Water Conservation District to be the fiduciary agent.

Councilor Gandara asked would you need help with the technical writing?

Craig Fenske said yes. We would appreciate the expertise of the city.

Councilor Gandara said Council is supportive of this tree idea. Is this something that we're able to have grants help us navigate and apply for?

Ifo Pili, City Manager said if it's necessary, yes.

Craig Fenske said the more players we have, the more likely we are to be successful.

Councilor Gandara said I don't think we need another entity to be the fiduciary. I think the city could gladly take that on. This is a priority for me.

Councilor Abeyta said I'm not sure that our grants department is fully staffed at this moment and considering that that's a very short turnaround time and competing priorities so I'm just curious on how that looks.

Ifo Pili said we'll look and see what our staff situation is. From my understanding, we're pretty close to where we need to be.

Shannon Horst said the text part of the grant is fairly short but the number of various things you have to verify and document will be the place where you might get slowed down.

Councilor Graham said I'm hoping that you'll be in contact with Public Works. We want the trees to live out their lives where they're planted originally, especially in areas where we're slated for some road redevelopment.

Shannon Horst said we look for areas that are readily plantable. If an area is slated for a lot of hard landscape redevelopment, you would push it off until a later date when that part was done because the trees won't survive that.

Councilor Flores asked do you go to areas that are being developed to plant trees?

Shannon Horst said we have had a couple of conversations with developers about coming in as a community was being developed. We have done some work with HOAs. We would love more opportunities to do that type of work.

Councilor Flores asked do you see any opportunities here that you could transfer that skill from the Albuquerque area?

Shannon Horst said we haven't been working long enough in Las Cruces to do that. We want to make sure the first pilot planting is really successful.

3.2 NEW MEXICO LEGISLATIVE UPDATE.

Larry Horan, Lobbyist gave an overhead presentation.

Mayor Miyagishima asked on the Mesquite Historical District, what was that for?

Larry Horan said Representative Lujan came forward with that request.

Mayor Miyagishima said I was wondering if that was to reduce Lohman from Main Street to Solano from 4 lanes to 3.

Councilor Gandara said this is specifically for a lighting study and some wayfinding signs.

Larry Horan continued the overhead presentation.

Councilor Bencomo asked can you clarify a little more on junior money? Is it for more programmatic things?

Larry Horan said that's correct. It's flexible but it can't be for ongoing.

Councilor Bencomo asked on the policing database, is it up to the municipality to report to the database?

Larry Horan said that's information that has to be reported to DPS through the board that will be responsible for discipline and certification.

Councilor Bencomo asked do you foresee us having to pass any local process for implementing this?

Larry Horan said I don't believe you'll have to pass anything. The only thing in the legislation that you're required to implement if you have not is a use of force policy.

Councilor Bencomo said housing bills, I don't think any of them passed.

Larry Horan said no but there is funding in the budget for funding.

Councilor Bencomo asked when do you expect the airport funding and when do you expect we'll have guidance on that?

Larry Horan said I would think hopefully by July 1st.

Councilor Abeyta said we're going to be getting more of the details within the next month. I'll be Ruidoso Thursday for the aviation conference and we're going to get a little bit of information there. We're also going to hear from panelists. We continue to advocate for Las Cruces to make sure we retain a large portion of that funding but this is going to be a priority for the Municipal League to run this type of bill yearly.

Councilor Corran asked I'm curious if there are any specific policies that you see that might come back that we should be tracking on?

Larry Horan said tax reform is always something we need to pay attention to, gross receipts tax. I think there's going to be a continued push by the government for changes to healthcare and expansion of services. Also the hydrogen hub idea.

Councilor Abeyta said I think education about pyramiding will be very important. The municipal league now has a tracker system on what this type of tax changes does to communities. The impact to Las Cruces would have been $7 to $10 million and make sure that we're advocating for a way for solvency.

Mayor Miyagishima said regarding the reduction in GRT, it would be nice if the state reduced their portion and left ours alone.

Larry Horan said that was our recommendation, if you want to reduce it just reduce it at the state level. The second way to do it was to increase that so they would have an ongoing stream from that. The other issue with increasing 1.225, some cities were treated differently so it wasn't quite across the board a good fix.

Mayor Miyagishima asked do you remember what the change in capital gains was?

Larry Horan said I will find out for you.

3.3 EAST LOHMAN DEVELOPMENT UPDATE.

David Weir, Deputy Director of Community Development gave an overhead presentation.

Councilor Bencomo asked has the cleanup been officially completed?

Adrienne Widmer, Utilities Director said most of it has been cleaned. There is one particular cell that still needs to be done that is currently owned by the BLM.

Councilor Bencomo asked is BLM responsible for the cleanup?

David Weir said either BLM or whoever they transfer the property to would be responsible.

Councilor Bencomo asked do we know what their deal is?

David Weir said I do not.

Mayor Miyagishima said the BLM land is extremely valuable, if they would be willing to give it to us to add to our master plan.

Councilor Bencomo asked has anyone approached them?

Mayor Miyagishima said no, I haven't.

Councilor Bencomo asked do we have height restrictions here?

David Weir said we would have to establish those standards. It will go through that public process.

Councilor Bencomo said there has been a lot of advocacy to assure that there is affordable housing. On the health pieces, are we making an assumption or have we gathered good information that there is a need for that particular designation?

David Weir said that was stated through the feedback that we got in this area. Another thing that was a part of this project was a real estate analysis that was done and identified it as a use that would do well at this particular site. The plan itself is conceptual and there is some flexibility for a variety of uses to take place.

Councilor Bencomo asked on who we partner with, is that going to be an RFP?

David Weir said that is the intent. We are using the term "request for qualifications."

Mayor Miyagishima said the area where they're talking about health, I think that is going to be commercial. I suggested that the city never sell that but to lease it so it has income that comes into the city indefinitely. I think if you look at the price that they're going to charge on the other side not only does that enhance the attractiveness of the area but to be able to have your doctor's office right there.

Councilor Flores said I ask that we keep all income levels for housing. If the city hires a developer, would they have to go by that blueprint?

David Weir said the plan identified means to provide a variety of housing and also provided instructions on how you could do that. The city owns that property so as they enter into development agreements, we have say in how the mix of that housing will take place and what we want to market that to.

Councilor Flores asked as far as that #5 area, is that BLM land?

David Weir said no, that area is across the street at the corner of Roadrunner and Sonoma Ranch.

Councilor Flores asked would it be possible to talk to BLM about purchasing that land for the missing middle?

David Weir said staff will investigate that. The concept of all these areas was to make sure there would be housing for the whole socioeconomic strata of Las Cruces. It may be more advantageous for the city to focus on the areas we've already identified for housing and use for more intensive uses so we can generate more funds.

Councilor Flores asked how are we going to assure that the plan that people voted on will be implemented?

David Weir said this plan has been adopted by city council and it is in compliance with the Elevate Las Cruces plan. Before we turn it over to anyone else to utilize, we can put conditions on how it should be developed. City Council is the body that places the zoning on the property so you will see those design standards before they come forward. You have a lot of influence and control over the development of the property.

Councilor Flores asked can you guesstimate how long it would take to start the building?

David Weir said I would estimate if we can get a developer that within a year you will start seeing construction.

4. ADJOURNMENT

4.1

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Adjourn at 2:35 p.m.

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

Mayor

City Clerk

23-127

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:**	June 5, 2023
Drafter:	Donny Prosise	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION AUTHORIZING A CONTRACT WITH CONTINENTAL FLOORING COMPANY OF SCOTTSDALE, ARIZONA FOR THE LAS CRUCES CONVENTION CENTER CARPET REPLACEMENT IN AN AMOUNT NOT TO EXCEED $212,982.50 PLUS APPLICABLE TAXES (PROCUREMENT NO. 22-23-046).**

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

PURPOSE(S) OF ACTION:

To authorize a contract for carpet replacement at the Las Cruces Convention Center.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces Convention Center located at 680 East University Avenue in Las Cruces is due for a carpet replacement. This project is being funded by the Convention Center Fee surplus revenue, funds that can only be used to improve the Convention Center. The existing carpet will be removed and disposed of, and new carpet will be installed in exhibit halls, ballrooms, meeting rooms, lobby, and office areas in the original structure, to match the existing carpet layout from the 2019 expansion.

In March 2023, the City's Purchasing Program issued Invitation to Bid No. 22-23-046, resulting in the receipt of two (2) bids in April 2023. The bids were reviewed and evaluated, and the Public Works Department is recommending an award to Continental Flooring Company of Scottsdale, Arizona in the amount of $212,982.50 plus New Mexico gross receipts tax.

SUPPORT INFORMATION:

Exhibit "A" - 22-23-046 LCCC Carpet Replacement - Continental Flooring Co

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: 440,542 **AVAILABLE AMOUNT:** 440,542 **EXPENDITURE AMOUNT:** 212,982.50 plus NMGRT

Funding Source(s):
20440002-721080

Overall Budget Impact:
No overall budget impact. Funds are available.

Does this action amend the Capital Improvement Plan (CIP)?
☐ Yes
☒ No

Does this action align with Elevate Las Cruces?
☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will authorize the contract for the Las Cruces Convention Center carpet replacement in an amount of $212,982.50 plus NM GRT with Continental Flooring Company of Scottsdale, Arizona.
2. Vote "No"; this will deny the authorization to contract for the replacement of the Las Cruces Convention Center carpet, which may adversely affect operations.
3. Vote to "Amend"; this could modify the resolution, and City Council will need to provide direction to staff.
4. Vote to "Table"; this could delay authorization of the contract for the Las Cruces Convention Center carpet replacement, which may adversely affect operations.

RESOLUTION 23-127

A RESOLUTION AUTHORIZING A CONTRACT WITH CONTINENTAL FLOORING COMPANY OF SCOTTSDALE, ARIZONA FOR THE LAS CRUCES CONVENTION CENTER CARPET REPLACEMENT IN AN AMOUNT NOT TO EXCEED $212,982.50 PLUS APPLICABLE TAXES (PROCUREMENT NO. 22-23-046).

The City Council is informed that:

WHEREAS, the Las Cruces Convention Center located at 680 East University Avenue in Las Cruces is due for carpet replacement; and

WHEREAS, this project is being funded by Convention Center Fee surplus revenue; and

WHEREAS, the existing carpet will be removed and disposed of, and new carpet will be installed in exhibit halls, ballrooms, meeting rooms, lobby, and office areas in the original structure, to match the existing carpet layout from the 2019 expansion; and

WHEREAS, in March 2023, the City's Purchasing Program issued Invitation to Bid No. 22-23-046, resulting in the receipt of two (2) bids in April 2023; and

WHEREAS, the bids were reviewed and evaluated, and the Public Works Department is recommending an award to Continental Flooring Company of Scottsdale, Arizona in the amount of $212,982.50 plus New Mexico gross receipts tax.

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

(I)

THAT the Resolution authorizing a contract for Las Cruces Convention Center carpet replacement to Continental Flooring Company of Scottsdale, Arizona, attached hereto as Exhibit "A" and made part of this Resolution, in the amount of $212,982.50 plus New Mexico gross receipts tax is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"

22-23-046
LCCC Carpet
Replacement

SERVICE AGREEMENT

THIS AGREEMENT made and entered into on this ____ day of June, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called “CITY” and Continental Flooring Company, of 9319 N. 94th Way, Suite 1000, Scottsdale, Arizona 85258, hereinafter called “CONTRACTOR”.

1. PROJECT DESCRIPTION
Las Cruces Convention Center carpet replacement.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY’S Invitation to Bid No. 22-23-046 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 $212,982.50, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

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

5. DEVOTION OF ADEQUATE TIME
CONTRACTOR will devote the necessary hours each week to the performance of project that are 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 through August 31, 2023. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

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

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within 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 at least the following insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain the same insurance during the life of the subcontracted work:

1. Commercial General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, products and completed 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.

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: Rochelle Miller-Hernandez
With Copies to:	Purchasing Manager
TO CONTRACTOR:	Continental Flooring Company 9319 N. 94th Way, Suite 1000 Scottsdale, AZ 85258 ATTENTION: Christopher L. Coleman

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.

CONTINENTAL FLOORING COMPANY

BY: _____
Christopher L. Coleman
President

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

5/5/23
_____
City Attorney

22-23-046
LCCC Carpet
Replacement

EXHIBIT A

SERVICES

Replacement of the existing carpet within the Convention Center in accordance with the specifications contained herein. Please reference Attachment A for a floorplan of the facility.

1. Furnish all labor, materials, tools and equipment necessary to remove existing carpeting and install new carpeting as indicated and/or specified herein.
2. Move furniture as needed to complete the project.
3. Remove and dispose of existing carpet. Approximately 4,850 SY. Preserve existing cove base and wood base.
4. Prepare substrate for application of new carpet as needed.
5. Install Mohawk – Insurgent Modular Carpet – 24” x 24” using Flexlok Tabs in Exhibit Halls 1 and 2, Ballroom 1 and 2, Meeting Rooms 1 – 6, and Lobby Areas. Various colors. New carpet to match existing carpet layout from the 2019 Convention Center Expansion. Color and pattern to be approved by the Las Cruces Convention Center. Approximately 4,400 SY.
6. Install Mohawk – Reckless Modular Carpet – 24” x24” using Flexlok Tabs for office areas, approximately 450 SY.
7. This is a turn-key project which must be completed prior to July 1, 2023.
8. All surplus material to be turned over to the Las Cruces Convention Center, minimum 10% extra material to be ordered and turned over to the Las cruces Convention Center for maintenance.

City of Las Cruces®

INVITATION TO BID

TITLE	BID #	DUE DATE/TIME
Las Cruces Convention Center Carpet Replacement Project	**22-23-046**	**April 4, 2023 / 2:00 p.m.**

Bid Submitted by: Continental Flooring Company
(Company)

BIDDING CONDITIONS

Unless otherwise stated in the bid document, the following conditions apply.

1) Bidders are advised that all bids are subject to the legal requirements as provided for in the City of Las Cruces (City) Procurement Code, Chapter 24 Las Cruces Municipal Code (LCMC), 1998 available on the City's website: https://www.municode.com/library/nm/las_cruces/codes/code_of_ordinances?nodeId=PTIIMUCO_CH24PRCO
   a) Preference will be given to bidders residing within New Mexico and/or Las Cruces, NM, in accordance with §13-1-21 & §13-4-2, NMSA, 1978, of the State of New Mexico Statutes, and Section 24-100, LCMC, 1998, of the City Procurement Code.
   b) Whenever bid specifications are for supplies or materials consisting of recycled content goods and non-recycled content goods, bids submitted for recycled content goods shall receive a 5% preference pursuant to §13-1-21, NMSA, 1978.
   c) The application of multiple preferences shall be limited to ten percent (10%).
   d) Whenever federal funds that are subject to the U.S. OMB "Common Rule" and involved in the purchase of goods/services by the City, the preferences stated within this section are not applicable.
   e) DIRECT CONTACT WITH CITY ELECTED OFFICIALS OR CITY STAFF DURING THE BID PROCESS (from Public Notice through Award), OTHER THAN PURCHASING SECTION STAFF, WILL RENDER THE BID NON-COMPLIANT AND UNACCEPTABLE FOR AWARD.
   f) Bidder agrees to comply with all City, State and Federal rules and regulations.
   g) Bidder is responsible for complying with criminal laws prohibiting bribes, gratuities and kickbacks.

2) Bids must:
   a) be submitted typed or in ink on **UNALTERED City bid forms** for bid to be considered.
   b) be complete with required information.
   c) be signed by an authorized representative.
   d) be submitted separately and labeled as such when submitting more than one bid.
   e) state the manufacturer BRAND/MODEL NUMBER offered on all items along with brochures and specifications.
   f) include samples at no cost for evaluation purposes when required by the bid specifications or otherwise requested by the City.
   g) include a request for return of samples, by the supplier, otherwise samples shall become the property of the City after 60 days. (Bidders must arrange for and absorb the cost of any sample return.)
   h) be submitted in PDF format via e-mail to bidclerk@las-cruces.org with the bidder's company name, bid number and title, and due date/time in the subject line of the message.
   i) be received by the City Purchasing Section in the Bid Clerk e-mail inbox by the specified due date and time. Late bids shall not be accepted.

3) Pricing shall:
   a) state the UNIT PRICE and EXTENDED AMOUNT for each item or service offered. UNIT PRICES GOVERN ANY ERRORS IN THE EXTENSION and shall be stated F.O.B. - Destination; Prepaid Full Freight Allowed
   b) exclude any applicable taxes.
   c) be effective for 45 days.

4) Questions:
   a) MUST be submitted in writing and emailed to bidclerk@las-cruces.org referencing the bid number and title.
   b) will be accepted only up to one week prior to the bid due date/time.

5) Addenda:
   a) Any changes or clarifications to bid requirements will be made via written addendum when required. Verbal understanding shall not be binding.
   b) In the event an addendum is received by a bidder after a bid is submitted, the bidder must acknowledge receipt of the addendum by notice to the Bid Clerk via email or mail.
   c) If an addendum changes a bid already submitted, a revised bid must be sent and clearly marked REVISED.
   d) Failure to acknowledge receipt of an addendum may result in the bid being non-compliant.

6) The City reserves the right to:
   a) determine responsible bidders and responsive bids.
   b) accept and award compliant bids based on the lowest:
      i) Individual Unit Price, or
      ii) Grouped Unit Price, or
      iii) Lump Sum Unit Price; whichever is deemed most beneficial to the City.
   c) determine and waive minor technicalities in the bid form or requirements not affecting price, quality, quantity, or delivery of items or services sought.
   d) negotiate an extension of effective price dates.
   e) change the quantity of bid items within their effective price date.
   f) reject any or all bids partially or wholly.

7) It is the City's intent to award bids within 45 days of the bid due date.
   a) Bidders may obtain bid results by contacting the Bid Clerk at bidclerk@las-cruces.org.
   b) The contract terms/conditions resulting from this bid solicitation may be extended by the awarded contractor to other public entities in compliance with the laws and regulations of those public entities. The City is not subject to any obligation or responsibility regarding such extension.

Bid Form

Receipt of Addenda Nos. None is hereby acknowledged. (Where none received, place '0' in this space.)

Payment Terms: Net 30 Days Bidder guarantees delivery of items within 60 days

Pricing for this bid is effective through 6/30/23 (price agreements are effective for one year from date of award)

NM Tax & Revenue Department Combined Reporting System (CRS) # 02-027744-00-0

Current NM Secretary of State Business ID # 1530419 (corporations only)

Current CLC Business Registration # N/A (for businesses residing within Las Cruces city limits)

NM Resident Certificate from NM Tax and Revenue Department enclosed ____ Yes X No

NM Resident Veteran Certificate from NM Tax and Revenue Department enclosed ____ Yes X No

Federal Employer / Tax Identification # 86-0369902 (mandatory for all respondents)

In compliance with the Bid Specifications, Bidding Conditions, and Purchase Order Terms and Conditions, I, the undersigned, offer and agree to furnish any or all items upon which prices are offered at the price set opposite each item, to the City within the time specified.

I (we) 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 Register Rules and Regulations.

COMPANY NAME & ADDRESS:

Continental Flooring Company
9319 N. 94th Way, Suite 1000
Scottsdale, Arizona 85258
800-825-1221
Phone
866-553-8892
Fax

Christopher L. Coleman, President
Typed or Printed Name of Authorized Representative & Title

Signature

4/3/2023
Date

Stevew@continentalflooring.com
Email

CITY OF LAS CRUCES

Las Cruces Convention Center Carpet Replacement Project

I. Introduction

The Las Cruces Convention Center located at 680 East University Avenue in Las Cruces, is built on land owned by New Mexico State University and leased to the City of Las Cruces. The site is located at the southwest corner of the intersection of University Avenue and El Paseo Road/Union Ave. in Las Cruces, New Mexico.

This bid is for the replacement of the existing carpet within the Convention Center in accordance with the specifications contained herein. Please reference Attachment A for a floorplan of the facility.

1. Furnish all labor, materials, tools and equipment necessary to remove existing carpeting and install new carpeting as indicated and/or specified herein.
2. Move furniture as needed to complete the project.
3. Remove and dispose of existing carpet. Approximately 4,850 SY. Preserve existing cove base and wood base.
4. Prepare substrate for application of new carpet as needed.
5. Install Mohawk – Insurgent Modular Carpet – 24" x 24" using Flexlok Tabs in Exhibit Halls 1 and 2, Ballroom 1 and 2, Meeting Rooms 1 – 6, and Lobby Areas. Various colors. New carpet to match existing carpet layout from the 2019 Convention Center Expansion. Color and pattern to be approved by the Las Cruces Convention Center. Approximately 4,400 SY.
6. Install Mohawk – Reckless Modular Carpet – 24" x24" using Flexlok Tabs for office areas, approximately 450 SY.
7. This is a turn-key project which must be completed prior to July 1, 2023.
8. All surplus material to be turned over to the Las Cruces Convention Center, minimum 10% extra material to be ordered and turned over to the Las cruces Convention Center for maintenance.

II. Bid Items

1. Remove and dispose of existing carpet. Preserve existing cove base and wood base.
2. Install Mohawk – Insurgent Modular Carpet – 24" x 24" using Flexlok Tabs in Exhibit Halls 1 and 2, Ballroom 1 and 2, Meeting Rooms 1 – 6, and Lobby Areas. Various colors. New carpet to match existing carpet layout from the 2019 Convention Center Expansion. Color and pattern to be approved by the Las Cruces Convention Center.
3. Install Mohawk – Reckless Modular Carpet – 24" x24" using Flexlok Tabs for office areas.

ITEM	DESCRIPTION	EST QTY	BRAND / MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
1.	Remove and dispose of existing carpet	4,850 SY	N/A	$3.15	$15,277.50
2.	Install carpet in Exhibit Halls 1 and 2, Ballroom 1 and 2, Meeting Rooms 1 – 6, and Lobby Areas.	4,400 SY	Mohawk – Insurgent Modular Carpet	$42.10	$185,240.00
3.	Install carpet in office areas	450 SY	Mohawk – Reckless Modular Carpet	$27.70	$12,465.00

(REQUIRED) TOTAL BID $ 212,982.50

PRICE INCREASES:
All prices quoted shall be firm and fixed as bid for one year of the agreement. Pass-through price adjustments will be accepted after one year and on an annual basis thereafter provided said adjustments(s) are submitted in writing with thirty (30) calendar days' advance notice and are accompanied by written documentation of the manufacturer's price increase. Price adjustment requests shall be sent to the named buyer.

PRICE DECREASES:
If the offeror receives any cost decrease from the supplier of the goods sold to the City through a contract resulting from this request, the offeror shall notify the City within 24 hours of such decrease and pass such decreases to the City immediately.

WAGE RATES:
State of New Mexico Wage rates are hereby attached as part of this document. The decision from the New Mexico Department of Labor and any modifications thereto noted in the contract shall apply. Whenever a difference exists between the minimum wage rates shown under **Wage Rate Decision No. DA-23-0575-A** from the New Mexico Department of Labor and any modification thereto noted in the contract, the higher wage rate shall govern.

INSURANCE REQUIREMENTS:
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, products and completed 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.

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

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

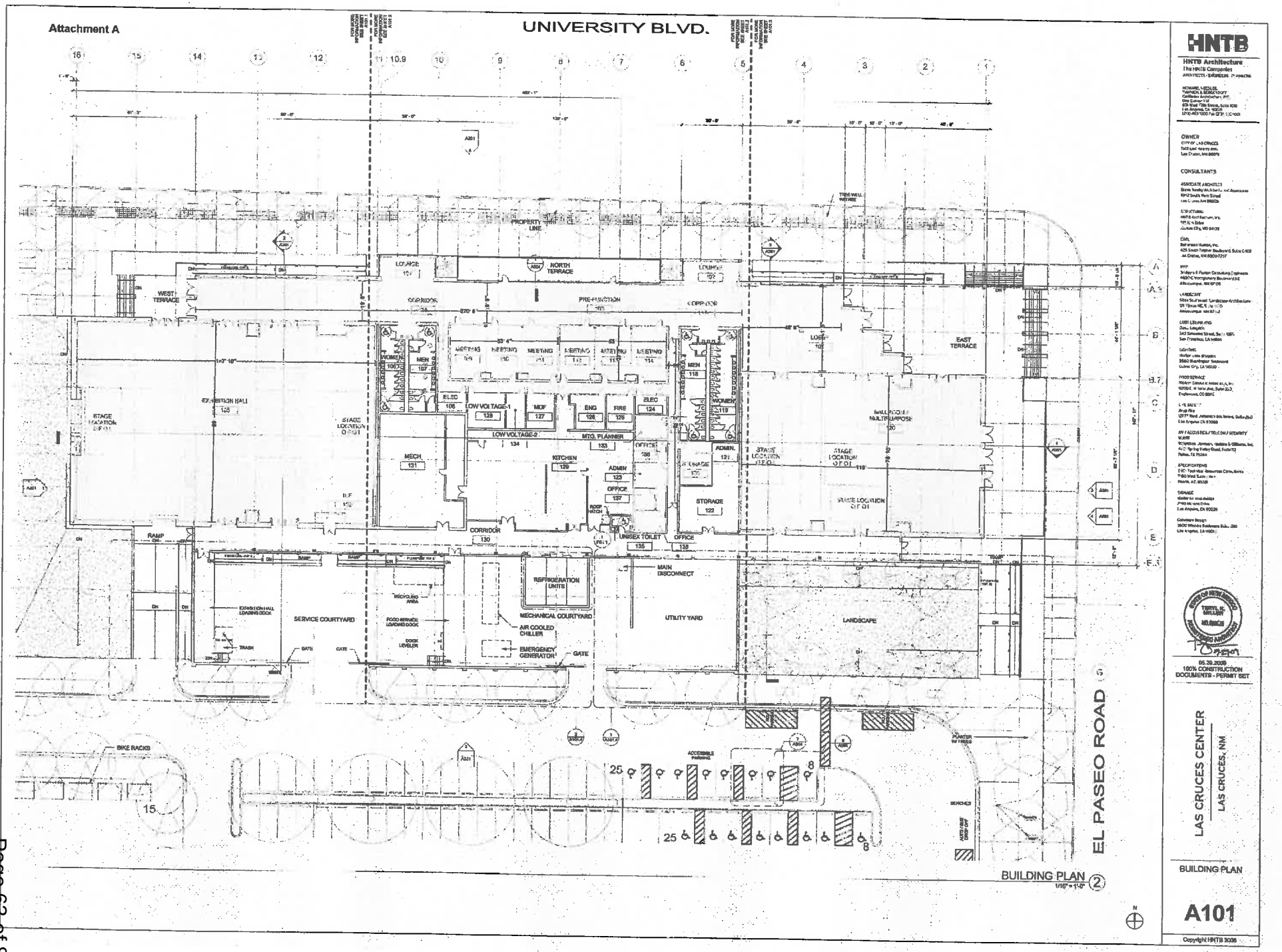
BONDING:
Bonding requirements shall be consistent with the City of Las Cruces Procurement Code (Sec. 24-227).

1. Contract performance and payment bonds.
   A. When a construction contract is awarded in excess of $50,000.00, the following bonds or security shall be delivered to the city and shall become binding on the parties upon the execution of the contract:
      i. A performance bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, in an amount equal to 100 percent of the price specified in the contract; and
      ii. A payment bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the CONTRACTOR or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.

2. Copies of bond forms. Any person may request and obtain from the city a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

3. Authority to require additional bonds. Nothing in this subsection shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (A)(1) of this section.

Attachment A



HNTB Architecture
The HNTB Companies

OWNER
CITY OF LAS CRUCES

CONSULTANTS

05.29.2009
100% CONSTRUCTION DOCUMENTS - PERMIT SET

LAS CRUCES CENTER
LAS CRUCES, NM

BUILDING PLAN

A101

Copyright HNTB 2008

23-128

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:**	June 5, 2023
Drafter:	Alicia Hernandez	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION TO APPROVE A CHANGE ORDER TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MYNATT SPRINGER P.C., OF LAS CRUCES, NEW MEXICO FOR LEGAL SERVICES TO CHANGE THE CONTRACT AMOUNT OF $400,000 TO A NEW CONTRACT AMOUNT NOT TO EXCEED $700,000 (AN INCREASE OF $300,000).**

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

PURPOSE(S) OF ACTION:

To approve a change order for a legal services contract.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 6, 2020, the City of Las Cruces and Mynatt Springer P.C. (formerly known as Mynatt Martinez Springer, P.C.) entered into an Existing Contract Services Agreement via State of New Mexico General Services Department Contract No. 20-350-4905-0022 for legal services. The contract amount was not to exceed $400,000.

The City Attorney requires specialized legal representation services including consultation and evaluation of, and representation in, any matters including but not limited to the defense of litigation on a case-by-case basis when assigned by the City Attorney.

The representation requires expertise and specialized knowledge of the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29 NMSA 1978 Sections 1983 and 1988 of the Civil Rights Act, the New Mexico Human Rights Act, Section 28-1-1 to 28-1-15 NMSA 1978, the Fair Pay for Women Act, Sections 28-23-1 to 28-23-6 NMSA 1978, the Whistleblower Protection Act, Sections 10-16C-6 NMSA 1978, the Inspection of Public Records Act, Sections 13-2-1 to 14-2-12 NMSA 1978, the Public Peace, Health Safety, & Welfare State Ethics Commission Act and any other cases as assigned where the City does not possess the capability to represent these matters in house.

The City Attorney's Office has three (3) Senior Assistant City Attorney positions that are vacant and the level of litigation filed against the City of Las Cruces requires the outsourcing of cases.

Due to the ongoing need for legal services, the Legal Department is requesting a change order to the contract with Mynatt Springer P.C. to increase the authorized contract amount from $400,000 to an amount not to exceed $700,000, an increase of $300,000, for the fiscal year 2023, as outlined in Exhibit "A".

SUPPORT INFORMATION:
Exhibit "A" - 20-21-099 Legal Services - Mynatt - Amendment 2

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
$1,500,000	$412,000.00	$300,000

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 a change order for an increase of $300,000 to the contract amount for the contract between the City and Mynatt Springer P.C.
2. Vote "No"; this will not approve the Resolution authorizing a change order for an increase of $300,000 to the contract amount for the contract between the City and Mynatt Springer P.C., which may adversely affect City operations.
3. Vote to "Amend"; this could modify the Resolution, and City Council will need to provide alternative direction to staff.
4. Vote to "Table"; this could delay the change order, which may adversely affect City operations.

REFERENCE INFORMATION:
Legal Services

RESOLUTION 23-128

A RESOLUTION TO APPROVE A CHANGE ORDER TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MYNATT SPRINGER P.C., OF LAS CRUCES, NEW MEXICO FOR LEGAL SERVICES TO CHANGE THE CONTRACT AMOUNT OF $400,000 TO A NEW CONTRACT AMOUNT NOT TO EXCEED $700,000 (AN INCREASE OF $300,000).

The City Council is informed that:

WHEREAS, the City entered into an agreement with Mynatt Springer, P.C. (formerly known as Mynatt Martinez Springer, P.C.) to provide professional legal services for the City's general litigation on March 6, 2020 via State of New Mexico General Services Division contract no. 20-350-4905-0022 for legal services; and

WHEREAS, the original contract amount for this agreement was $75,000; and

WHEREAS, Amendment 1 was approved on January 20, 2021 to increase the contract to $400,000; and

WHEREAS, due to the ongoing need for legal services, the Legal Department is requesting a change order to the contract with Mynatt Springer P.C. to increase the authorized contract amount from $400,000 to an amount not to exceed $700,000, an increase of $300,000 for fiscal year 2023.

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

(I)

THAT the Resolution authorizing the change order to the legal services contract dated March 6, 2020 between the City and Mynatt Springer P.C., of Las Cruces, New Mexico, to change the contract amount of $400,000 to an amount not to exceed $700,000 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 day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

CITY OF LAS CRUCES

AMENDMENT NO. 2

20-21-099 LEGAL SERVICES

This amendment, made this _____ day of June, 2023 by and between the CITY OF LAS CRUCES and MYNATT SPRINGER, P.C. of P.O. BOX 2699, LAS CRUCES NM 88004 (CONTRACTOR).

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 March 6, 2020, the parties hereby agree as set forth below:

Paragraph 3, now reads:

In consideration for the satisfactory delivery of services, the CONTRACTOR shall be compensated pursuant to the cost terms of the NMGSD Professional Services Contract #20-350-4905-0022 in an amount not to exceed $700,000. Cost of delivered services shall be paid by CITY within 30 days upon receipt of undisputed invoice.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated March 6, 2020 between the parties is hereby ratified and confirmed.

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

MYNATT SPRINGER P.C.

BY: _____
Bradley A. Springer
Partner

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

5/5/23
City Attorney

Revised: January 2023

23-129

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:**	June 5, 2023
Drafter:	Suri Molina	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION TO AWARD AN INDEFINITE COST, INDEFINITE QUANTITY CONTRACT FOR OFFSITE FUEL AND FUEL CARD SERVICES TO BREWER OIL COMPANY OF ALBUQUERQUE, NEW MEXICO, VIA DOÑA ANA COUNTY CONTRACT NO. 23-107, FOR A TERM THROUGH JUNE 30, 2030, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-060).**

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

PURPOSE(S) OF ACTION:
To purchase offsite fuel and fuel card services for Fleet Services via an existing contract.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces Fleet Services Line of Business (Fleet) purchases and stocks fuel for City-wide use. Fleet's current fuel storage tanks located on Hadley have been out of service since April 7, 2023. Fleet is unable to stock sufficient onsite fuel to meet customer demand. To ensure the continuity of City services, Fleet seeks to contract locally with Brewer Oil Company of Albuquerque, New Mexico for the purchase of offsite fuel and fuel card services via Doña Ana County Contract No. 23-107.

The indefinite cost, indefinite quantity price agreement will be for a term through June 30, 2030, as outlined in Exhibit "A", subject to approved budget appropriations.

SUPPORT INFORMATION:
Exhibit "A" - 22-23-060 Offsite Fuel and Fuel Card Services - Brewer Oil Co

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: 2,700,000.00 **AVAILABLE AMOUNT:** 701.00 **EXPENDITURE AMOUNT:** TBD

Funding Source(s):
60640002-751100

Overall Budget Impact:
Purchases will be made on an as-needed basis subject to approved budget appropriations.

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 an indefinite cost, indefinite quantity price agreement for offsite fuel and fuel card services to Brewer Oil Company of Albuquerque, New Mexico, for a term through June 30, 2030.
2. Vote "No"; this will deny the Resolution, which may adversely affect City operations.
3. Vote to "Amend"; this could modify the Resolution, and City Council will need to provide alternative direction to staff.
4. Vote to "Table"; this could delay the agreement, which may adversely affect City operations.

RESOLUTION 23-129

A RESOLUTION TO AWARD AN INDEFINITE COST, INDEFINITE QUANTITY CONTRACT FOR OFFSITE FUEL AND FUEL CARD SERVICES TO BREWER OIL COMPANY OF ALBUQUERQUE, NEW MEXICO, VIA DOÑA ANA COUNTY CONTRACT NO. 23-107, FOR A TERM THROUGH JUNE 30, 2030, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-060).

The City Council is informed that:

WHEREAS, the City of Las Cruces Fleet Services Line of Business (Fleet) purchases and stocks fuel for City-wide use; and

WHEREAS, Fleet's current fuel storage tanks are out of service; therefore, Fleet is unable to stock enough fuel to ensure continuity of services; and

WHEREAS, Fleet seeks to contract with Brewer Oil Company of Albuquerque, New Mexico for the purchase of offsite fuel and fuel card services via Doña Ana County Contract No. 23-107 for a term through June 30, 2030.

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

(I)

THAT the Resolution awarding an indefinite cost, indefinite quantity price agreement for offsite fuel and fuel card services to Brewer Oil Company of Albuquerque, New Mexico for a term through June 30, 2030, 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 day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"

CITY OF LAS CRUCES

EXISTING CONTRACT PURCHASE AGREEMENT

DOÑA ANA COUNTY
CONTRACT NO. 23-107

OFFSITE FUEL AND FUEL CARD SERVICES

Pursuant to terms and conditions of DOÑA ANA COUNTY Contract No. 23-107, BID No. 22-0044 dated September 19, 2022, between DOÑA ANA COUNTY and BREWER OIL COMPANY (CONTRACTOR), as amended and incorporated herein by reference, the City of Las Cruces (CITY) and CONTRACTOR hereby agree on this _____ day of June, 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 (24).

2. In a satisfactory and proper manner, the CONTRACTOR shall deliver product and perform services pursuant to DOÑA ANA COUNTY Contract No. 23-107, 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 DOÑA ANA COUNTY Contract No. 23-107 for a term through June 30, 2030.

4. In consideration for the satisfactory delivery of products and services, the CONTRACTOR shall be compensated pursuant to the cost terms of DOÑA ANA COUNTY Contract No. 23-107. Cost of delivered product and 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.

BREWER OIL COMPANY

BY: _____
Terry Calhoun
Sales Manger

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

5/16/2023
City Attorney

Revised: May 2023

Tracking No. 23-173

DONA ANA COUNTY REQUEST FOR SIGNATURE

TO: Fernando Macias, County Manager **Contract/Grant No.** New 23-107

THRU: Management Level Reviewer

FROM: Erika Enriquez, Fleet Administrator **Phone:** 575-647-7122

DATE: 9/19/22

SUBJECT: Signature Request – New Contract with Brewer Oil Company

Request

Attached is a new contract for Brewer Oil Company for fuel card and off site fuel services for the county and Fleet Department, your signature is requested.

Financial Impact

This is an indefinite quantity contract obligated by purchase order only for the delivery of items and services as requested by the Fleet Department.

Background

Contract# 15-075 expired on August 31,2022. New contract is based on Bid# 22-0044 for fuel card and off site fuel services.

Recommendation

Recommend signature to award based on the procurement process and County requirements.

INTERNAL REVIEWS FOR PROCESSING

DEPARTMENT	**Department please complete this section for Finance Review and Approval.** Document Type: Contract ☐ Grant ☐ Other ____ Accounting String: 60020-30012-73110-300 Req. or PO No. R0162476 Amount $182,000 Restricted Funds: Yes ☐ No ☐ Grant/State Appropriation No. ____
FINANCE	Reviewed and Approved: Erik Aguilar Date: 9/21/22
PURCHASING	Bid/RFP # 22-0044 Authority: BOCC date approved 9/13/2022 NTE $100K ____ NMSA Exemption ____ Reviewed and Approved: Date: 9/22/2022
LEGAL	Reviewed and Approved : Date: 9-27-2022
REVIEWER NOTES:	

Finance Form revised 4.6.21

RECEIVED SEP 27 2022 JC

CONTRACT # 23-107
Effective Date: 9/27/22

DOÑA ANA COUNTY CONTRACT FOR GOODS AND SERVICES

This Contract is entered into between Doña Ana County, hereinafter referred to as the "County," and "Contractor" described below, collectively the "Parties", to provide services on behalf of Doña Ana County.

Contractor Legal Name: Brewer Oil Company

Services Summary Description: Off-Site Fuel and Fuel Card Services

Initial Period of Performance shall be through: June 30, 2023

Pre-GRT, Total Annual Charges to this contract may not exceed: Indefinite Quanity

This Contract complies with New Mexico and County procurement requirements as follows:

☐ RFP # _____, ☐ Under $100,000/yr **or** ☐ BOCC approval date _____

☑ Bid # 22-0044 , ☐ Under $100,000/yr **or** ☑ BOCC approval date 9/13/2022

☐ "Qualified" Professional Service, Under $60,000 annually. Qualifications attached.

☐ Three Written Quotes under $60,000 annually. ☐ Quotes under $20,000 annually.

☐ Other: Revenue; non-financial MOA; or _____

No services shall be rendered nor shall any goods be provided until this contract has been executed by all parties, regardless of the indicated effective date.

NOTICES: All correspondence regarding this contract shall be sent to:

Doña Ana County Government	Contractor: Brewer Oil Company
Department: Fleet Services	ATTN: Terry Calhoun
ATTN: Gabriel Silva, Fleet Manager	Title: Sales Manager
Street: 845 N. Motel Blvd	Street: 2701 Candelaria N.E.
City, State, Zip: Las Cruces, NM 88001	City, State, Zip: Albuquerque, NM 87107
Phone: 575-647-7119	Phone: 505-506-5310
Fax: 575-647-7625	Fax:
Cell:	Cell: 575-915-6068
Email: gabrielsi@donaanacounty.org	Email: tcalhoun@breweroil.com

ARTICLE 1 - SERVICES AND/OR GOODS TO BE PROVIDED: For RFP or Professional Services contracts, the Contractor shall provide services to the County on matters relating to the contractor's specialized areas of expertise as defined in this Contract and its referenced or incorporated Attachments. Negotiated fees are fixed for the first year. Price adjustments thereafter are subject to review and written determination on an individual contract basis.

For Sealed Bid / Indefinite Quantity contracts, the Contractor shall have the item(s) or service(s) available, as defined in this contract, on an "as ordered" basis. No funds are obligated under Sealed Bid / Indefinite Quantity contracts. Funds for Sealed Bid / Indefinite Quantity contracts are obligated by purchase orders on an "as needed" basis. Prices are fixed for the first year of a Sealed Bid / Indefinite Quantity contract. Thereafter, in the event of a product cost increase an escalation request will be reviewed by the County on an individual basis. Escalation requests are only to compensate for an actual cost increase and will not be considered for an increase in profit margin.

All Contractors shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this contract.

ARTICLE 2 - CONTRACT DOCUMENTS: The Contract shall be comprised of this contract document, its Attachments and all documents referenced herein. As applicable, the Contract shall also include all Proposal or Bid documents, including the Contractor's responses, Reference Specifications, Special Conditions, Technical Specifications, Standard Details, any addenda thereto, and all negotiation records, all of which are incorporated herein and made a part of the Contract.

In instances where there exists a conflict between any of the Contract documents described above, this Contract plus attachments hereto, negotiation records, the County's solicitation documents, and the Contractor's response to the solicitation, in that order, shall control the interpretation of the parties' respective rights and obligations.

ARTICLE 3 - PERIOD OF PERFORMANCE: The period of performance of this Contract shall commence effective date **or date of last signature**, whichever is later, and continue through the Initial Period of Performance date detailed above. If stipulated in a formal Proposal or Bid solicitation by the County, this Contract may be renewed for up to seven (7) additional years, not to exceed a total of eight (8) years.

ARTICLE 4 - PLACE OF PERFORMANCE: The Contractor shall provide the required services or goods for Doña Ana County when and where appropriate or as required by the County.

ARTICLE 5 - COST AND PAYMENT: The Contractor shall be paid for services rendered satisfactorily per the negotiated fee(s) and payment schedules incorporated hereto in applicable attachments, including Attachments A and B. All payments will be in arrears. Payment shall be made per request upon receipt of a detailed invoice that shall include description of work completed or goods delivered pursuant to the deliverable(s) agreements and measures of attainment of this contract for the period covered by the invoice. The invoice submitted shall note the purchase order number and this Contract number and may be delivered to the Department contact specified in "Notices" above. The County shall pay to the Contractor the New Mexico Gross Receipts Tax on labor and services only as levied on the amounts invoiced and payable under this contract. The Contractor will pay the New Mexico Gross Receipts Tax levied on the amounts payable under this contract and remitted to them by Doña Ana County to the appropriate state agency.

ARTICLE 6 - AMENDMENTS: This Contract shall not be altered, changed, or amended except by written instrument signed by both parties.

ARTICLE 7 - ASSIGNMENT: The Contractor shall not assign nor delegate specific duties as part of this Contract nor transfer any interest nor assign any claims for money due or to become due under this Contract without the written consent of the County.

ARTICLE 8 - BINDING EFFECT OF CONTRACT: Both Parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding upon the administrators, assigns, successors, and transferees of the contracting parties.

ARTICLE 9 - COMPLIANCE WITH GOVERNING LAW: This Contract shall be construed in agreement with New Mexico law. The Contractor shall keep fully informed of and shall also comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed, or the work, or which in any way affect the conduct of the work. By way of illustration, but not of limitation, the Contractor shall comply with laws relating to employment eligibility including: the Immigration Reform and Control Act of 1986 (Public Law 99-603) and the Immigration Act of 1990 (Public Law 101-649) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, that will perform any labor or services under this Contract. The Contractor shall comply with all federal statutes relating to non-discrimination including, but not limited to: Title VI and VII of the Civil Rights Act of 1964 (Public Law 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended [20 U.S.C.A. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)], which prohibits discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1967 (Public Law 90-202), as amended; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts, especially 45 CFR Part 80 (relating to race, color, and national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

ARTICLE 10 - CONFIDENTIAL INFORMATION: Any confidential information, not subject to disclosure under the Inspection of Public Records Act, given to or developed by the Contractor, its officers, directors, employees, agents, or sub-consultants in the performance of this Contract will be kept confidential and will not be made available to any individual, organization, or other entity by the Contractor without prior written approval of the County.

ARTICLE 11 - CONFLICT OF INTEREST: The Contractor warrants that it presently has no interest and shall not acquire any interest during the term of this Contract which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall immediately be brought to the attention of the County and appropriate action acceptable to the County shall be taken. The Contractor's failure to inform the County of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the County.

ARTICLE 12 - CONFLICTS OF LAW: If any provision of this contract conflicts with governing federal or state law or County ordinances, then that law or ordinance shall supersede the conflicting provision of this contract.

ARTICLE 13 - HIPAA COMPLIANCE: As applicable, the parties agree to comply with the provision of the Health Insurance Portability and Accountability Act of 1996, and related regulations, as amended ("HIPAA") in the event the Contractor receives patient records or information (Protected Health Information as defined by HIPAA).

ARTICLE 14 - INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:

Non-Governmental Entity The Contractor shall hold harmless, indemnify and defend the County and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, attorneys fees, costs or actions of any kind resulting from or related to the Contractor's intentional acts, errors or omissions in the Contractor's performance under this contract. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract, acts, errors or omissions to act occurring during the term of this contract.

Governmental Entity: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Any liability incurred in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, 1978 § 41-4-1 et. seq. and its amendments, where applicable.

ARTICLE 15 - INDEPENDENT CONTRACTOR: Nothing in this Contract is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the Contractor as an agent, representative, or employee of the County for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County. Contractor is an independent contractor of the County. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the County and shall not bind the County in any respect.

ARTICLE 16 - INSURANCE: For the duration of the contract and until all work specified in the contract is completed, the Contractor shall maintain in effect current Certificates of all insurance as required below and comply with all limits, terms and conditions stipulated therein. The County shall be named as an additional insured as stipulated. Contractor's who are required to provide Certificate(s) of Insurance, must provide a new current Certificate(s) no less than annually. As applicable, work under this contract shall not commence until evidence of all required insurance is provided to the respective County Department for inclusion with this Contract. All insurance shall be written to conform to the requirements stipulated. Evidence of such insurance shall consist of a completed certificate of insurance, signed by the insurance agent for the Contractor and returned to the County attesting that all required insurance is in effect. If for any reason any material change occurs in the coverage during the course of the contract such change will not become effective until 30 days after the County has received written notice of such change.

Required Insurance: As specified in the **RFP, BID documents or Attachment A.**

ARTICLE 17 - KEY PERSONNEL: The Contractor shall identify all key personnel assigned to the performance of this Contract in Section II, Attachment H of this Contract. Contractor shall notify the County in writing of any changes to key personnel for inclusion in the official Contract File in the County Purchasing Department.

ARTICLE 18 - MEDIATION: In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the County and the Contractor, the Parties agree that prior to filing any court action to enforce the Contract or rights under the Contract, they will use the services of a mediator. The mediator shall either be certified as a mediator or shall have experience as a mediator. The parties shall mutually agree upon the choice of mediator. In the event the Parties have not agreed to a mediator within three days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the Court or other professional association, and the Parties shall use a striking process until a mediator is agreed upon. Each party shall be responsible for their respective mediation costs.

ARTICLE 19 - MERGER OF PRIOR CONTRACTS: This Contract incorporates all the conditions, contracts, agreements, and understandings of the Parties concerning the subject matter of this Contract. All such conditions, understandings, and agreements have been merged into this written Contract. No prior condition, contract, agreement, or understanding, verbal or otherwise, shall be valid or enforceable unless embodied in this Contract, either explicitly or by reference.

ARTICLE 20 - NON-APPROPRIATION: The County's obligation to make payment under the terms of this Contract is contingent upon its appropriation of sufficient funds to make those payments and the NM Department of Finance's (DFA) final approval of the County's budget. If the County does not appropriate sufficient funds or DFA does not approve the County's final budget, this Contract will terminate upon written notice of that effect to the Contractor. The County Board's determination that sufficient funds have not been appropriated, through Board of County Commissioners or DFA action, is firm, binding, and not subject to review.

ARTICLE 21 - NON-WAIVER OF RIGHTS: No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no customer or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

ARTICLE 22 - NOTICE TO PROCEED OR COMMENCEMENT OF WORK: It is expressly understood that this Contract is not binding upon the County until approved and signed by the County and, further, that the Contractor shall not proceed with its obligations until the Contract has been signed by all Parties.

ARTICLE 23 - PARAGRAPH HEADINGS: Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

ARTICLE 24 - PERSONAL LIABILITY: No elected or appointed official, employee, servant, agent, or law enforcement officer of the County shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

ARTICLE 25 - PROCUREMENT CODE: The Procurement Code, § 13-1-25 through § 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks. Pursuant to the above, it is unlawful for any Contractor to engage in bribery, offering gratuities with the intent to solicit business, or offering or accepting kickbacks of any kind. All other similar act(s) of bribes, gratuities, and/or kickbacks are likewise prohibited.

ARTICLE 26 - PROPRIETARY INFORMATION: All documents, writings, electronic formats, drawings, designs, specifications, notes, project manuals, or related documents and other work developed in the performance of this Contract by the Contractor shall become the sole property of the County whether the activity for which they are developed is implemented or not. The Contractor shall provide the County with a complete set of all such proprietary information as requested by the County, but no later than the effective termination date of the contract. Contractor is strictly prohibited from reproducing, duplicating or printing any such proprietary information in any format for personal or monetary recognition, use or gain without the advance written permission of the County.

ARTICLE 27 - RECORD KEEPING AND AUDITS: The Contractor shall compile, maintain, and make available for inspection all records relating to the services to be provided under this Contract. These records shall be subject to inspection by the County or designated auditor. The County shall have the right to audit billings both before and after payment; payment under this Contract shall not foreclose the right of the County to be reimbursed any excessive or illegal payment amounts made to the Contractor during the term of this Contract. Pursuant to State of New Mexico General Records Retention requirements, Contractor will retain all original, source and supporting documents and records related to this contract for a minimum of six (6) years after the ending date of this contract.

ARTICLE 28 - RELEASE: The Contractor, upon final payment of amounts due under this Contract for work completed and accepted by the County, releases the County, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The Contractor agrees not to bind the County to any obligation not assumed in this Contract by the County, unless the Contractor has express written authority from the County Manager to do so, and then only within the limits of the expressed written authority.

ARTICLE 29 - SEVERABILITY: If any clause or provision of the Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either Party can no longer reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either Party, the Contract may be voided and no damages shall accrue to either party.

ARTICLE 30 - SOVEREIGN IMMUNITY:

Non-Governmental Entity: By entering into this Contract, the County and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

Governmental Entity: By entering into this Contract, the County and the Governmental Entity Contractor do not waive sovereign immunity, do not waive any defense and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, supra.

ARTICLE 31 - SUBCONTRACTING: This Contract is based on the personal skills and reliability of the Contractor as known by the County at the time of execution of this Contract. The Contractor shall not subcontract out or hire any new employee to perform any portion of the services to be performed under this Contract without the prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department. The written approval shall minimally include disclosure of the name of the individual(s) to be hired or contracted, a statement of the individual(s) qualifications and a justification of the request to hire or subcontract.

ARTICLE 32 - TERMINATION: Either party may terminate this contract for convenience, in whole or in part, by providing written notice to the other party thirty (30) days prior to termination. In the event of contract termination, the Contractor shall be paid for work completed to the date of termination. In no event shall the dollar amount to be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).

a. Where a Party to this Contract has committed a major breach that is capable of remedy, the Party who is not in breach may serve a written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of two weeks.

b. The County and Contractor shall have the right, such right being exercised at their absolute discretion, to terminate this Contract, in writing, if a major breach has been committed that can not be remedied. Further, the Parties may terminate this contract, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

ARTICLE 33 - THIRD PARTY BENEFICIARY: It is agreed between the Parties executing this Contract that it is not intended by any of the provisions of this Contract to create on behalf of the public or any member thereof the status of third party beneficiary nor to authorize anyone not a party to the agreement to maintain a suit based upon this Contract.

ARTICLE 34 - WAIVER: Any waiver by the County of any breach of any covenant, term, condition, or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent County from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

ARTICLE 35 - DUPLICATE ORIGINALS: This document shall be effective when signed by both parties below or in counterpart, and phtotcopy, facsimile, electronic or other copies shall have the same effect for all purposes of an ink-signed original.

SIGNATURES:

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized representatives.

DOÑA ANA COUNTY:

Fernando R. Macias
County Manager

Date: 9/27/22

Brewer Oil Company

Terry Calhoun
Sales Manager

Date: 9-16-22

* * * * * * * *

Contractor's NM Taxation and Revenue Department ID Number:_____

The following Attachments and Addenda have been reviewed and approved by the County Contract Officer or approved designee:

Document Name	Approved	Comments	Notes
Attachment A - Scope of Work			Required all Contracts
Attachment B – Cost per Unit Service			Required all Contracts
Attachment C – Contribution Disclosure			Required all Contracts
Attachment D – Related Party Disclosure			Required all Contracts
Attachment E – Debarment Certification			Required all Contracts
Attachment F - Non Collusion Affidavit			Required all Contracts
Attachment G – Insurance Certificates			By Attachment A Specifications
Attachment H – 1. Business License(s) 2. Professional Licenses 3. Staff Resumes	JMW 9/22/2022		1. Required All Contracts 2. Required Licensed Professionals 3. Required all contracts
Attachment I – Procurement Method			Purchasing Dept. Determines
Attachment J - Other			Purchasing Dept. Determines

Section I, Appendix A
Title VI Plan Compliance

Title VI Policy Statement

Doña Ana County is committed to compliance with Title VI of the Civil Rights Act of 1964, 49 CFR, part 2, and all related regulations and directives. Doña Ana County assures that no person shall on the grounds of race, color, national origin, gender, age, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity under any Doña Ana County program, activity or service.

Prohibited discrimination may be intentional or unintentional. Seemingly neutral acts that have disparate impacts on individuals of a protected group and lack a substantial legitimate justification are a form of prohibited discrimination. Harassment and retaliation are also prohibited formsof discrimination.

Examples of prohibited types of discrimination based on race, color, national origin, sex, disability, or age include: Denial to an individual any service, financial aid, or other benefit; Distinctions in the quantity, quality, or manner in which a benefit is provided; Segregation or separate treatment; Restriction in the enjoyment of any advantages, privileges, or other benefits provided; Discrimination in any activities related to highway and infrastructure or facility built or repaired; and Discrimination in employment.

CONTRACTOR COMPLIANCE:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by THE Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of the 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be

determined by the New Mexico Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to Doña Ana County or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the contractor's non-compliance with the nondiscrimination provisions of this contract, Doña Ana County will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating or suspending the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as Doña Ana County or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request Doña Ana County to enter into any litigation to protect the interests of Doña Ana County. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

CONTRACTOR COMPLIANCE WITH STATUTES AND AUTHORITIES:

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et. seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), {prohibits unfair treatment of persons displaces or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, {29 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, {29 U.S.C. § 794 *et seq.),* as amended, {prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),*(prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and Ill of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your program (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (U.S.C. 1681 *et* seq.

ATTACHMENT A

Brewer Oil Company

INSURANCE, SCOPE OF SERVICES, ADDITIONAL TERMS

I. INSURANCE

Contractor shall provide a current Certificate of Insurance (COI) documenting coverage specified below and naming the County as Additional Insured (AI) as indicated below. Contractor is required to maintain a current COI on file with the County Purchasing Department for the life of this contract. This contract requires the following minimum insurances:

	Standard Insurance	**Limits Not Less Than**
X	Commercial General Liability (AI)	$1,000,000/$2,000,000
	Automobile Liability	$1,000,000/$2,000,000
X	Worker's Compensation as required by State Law	As required by Law
	Excess/Umbrella	$5,000,000
	Professional Liability / Errors & Omissions	$1,000,000/$2,000,000
	Cyber Liability	$1,000,000/$3,000,000
	Property	$5,000,000
X	Other legally required of the employer or for the contractor's occupation / profession.	As required by Law
	Specialized Insurance	
	Inland Marine	$1,000,000
	Garage Keeper's Liability	$50,000
	Medical and Clinic Liability under the Federal Tort Claims Act (FTCA)	$1,000,000
	Pollution	$1,000,000/$3,000,000
	Other / Specify:	

II. SCOPE OF SERVICES

Doña Ana County government enhances the health, safety, and quality of life for all residents as determined by law and community interests. Services are provided through innovative leadership and teamwork in a fair, respectful and professional manner.

In support of this mission, Contractor shall provide off-site fuel and fuel card services in accordance with Contractor response to Doña Ana County's Request for Proposals (RFP) 22-0044 for specified services, hereby incorporated by reference into this contract.

A. Specifications

1. <u>Facility Location</u>:
   At least one facility within 5-mile radius of 2033 E. Griggs Avenue, Las Cruces, NM.

2. **Billing Reports**

   Electronic Fuel Interface (Excel, CSV) be sent to Doña Ana County Fleet Department (see example below) bi-weekly, monthly or as requested

TRANSACTION DATE/TIME	CARD DESCRIPTION	CARD NUMBER	GALLONS	BILLED PRICE	ODOMETER	REFERENCE NUMBER	SITE	PRODUCT	DRIVER NAME	<--- HEADER NOT ON THE EFI (EXAMPLE ONLY)
1/16/2012 9:38	UHT-8	7749994	19	2.812	85411	5401	5223	44	F. GUADERRAMA	

3. **Monthly Invoices.**

   Minimally, Monthly Invoices shall be separated by Department and vehicle and include the following in a PDF format:

   a. Vehicle ID
   b. Fuel Site Location
   c. Transaction Time/Date
   d. Driver/Operator Name (NOT PIN)
   e. Odometer Reading
   f. Miles per Gallon
   g. Type/Grade Fuel
   h. Number of Gallons
   i. Price per Gallon
   j. Total Fuel Cost

4. **Fuel Cards**

   Contractor will provide fuel cards (at no cost) as requested by the Fleet Department as follows:

   a. Initial cards
   b. Replacement cards
   c. New vehicle cards
   d. Provide overnight shipping of fuel cards when requested
   e. Provide a PIN (personal identification number)
   f. Minimum 4 digits for each driver/operator as required
   g. Provide list of PINs associated and driver names to Doña Ana County Fleet Department
   h. Each PIN must be isolated by department
   i. Cards shall be same size and durability as a normal credit card
   j. Cards shall be resistant to tampering or modifications

5. **Fuel Requirements:**

   a. Unleaded Regular 86 Octane or higher
   b. Premium / Supreme, 91 Octane or higher
   c. Diesel, Ultra Low Sulfur

6. **Facility Requirements:**
   a. At least 2 unleaded pumps
   b. At least 1 diesel pump.

7. **Facility Access Requirement:**
   Facility must be able to accommodate a Class 8 truck-semitrailer combination up to 80 feet long, and gross combination weight up to 80,000 lbs.

8. **Available at one or more of the Las Cruces facilities:**
   a. B5
   b. Diesel Exhaust Fluid (DEF)
   c. Bulk Fuel Overhead Rack

9. **Additional Facility Locations:**
   a. More than one facility in Las Cruces
   b. One or more facilities in Albuquerque
   c. One or more facilities in Santa Fe
   d. One or more facilities in El Paso

B. Delivery of Services

This contract is an Indefinite Quantity Contract. Contractor shall provide off-site fuel and fuel card services as requested by the Doña Ana County Fleet Department. No purchases are obligated by this contract; purchases are obligated by purchase order only. Delivery of items and services shall be confirmed as received upon the Fleet Department's approval for each specific invoice. on an as needed basis.

C. Deliverables and Reporting Requirements

Delivery of items will be by request of the County Fleet Department and confirmed as received upon department approval of the specified invoice.

Invoices detailing dates of service, description of service, and cost per unit shall be submitted to the following:

Gabriel Silva, Fleet Manager
845 N. Motel Blvd
Las Cruces, NM 88007
gabrielsi@donaanacounty.org
Telephone: (575) 647-7120

D. Contract Evaluation

The Fleet Manager and/or designated staff will monitor the contract and invoices on a regular basis throughout the term of the contract to ensure compliance with established contract requirements and status regarding the use of allocated funds. Contract evaluation shall consist of review of each of the specified deliverables throughout the term of the contract. Periodic review and an annual written evaluation will be conducted per County and Purchasing Department policies and procedures.

III. ADDITIONAL TERMS AND CONDITIONS

A. **Automated Clearing House:** Contractor agrees to accept ACH (Automated Clearing House) payments for invoices submitted and approved by the County and will complete and submit any required documents to implement the ACH process.

B. **Existing Contract:** In accordance with NMSA 13-1-129 of Procurement Code, Contractors are hereby notified that other government entities within the State of New Mexico, or as otherwise allowed by their respective governing directives, may contract for the goods or services included in this procurement document with the awarded contractor. Contractual engagements accomplished under this provision shall be solely between the awarded vendor and the contracting government entity with no obligation by Dona Ana County.

C. **Pre-existing or Proprietary Information**: Notwithstanding any other provision of this Agreement between the Contractor and the County or any provision of the scope of work, work assignments, work authorizations, or any amendment issued hereunder, all of the Contractor's pre-existing or proprietary information, documents, materials, computer programs, or software developed by the Contractor outside of this Agreement shall remain the exclusive property of Contractor.

ATTACHMENT B

Brewer Oil Company

TOTAL COST, PAYMENTS, UNIT VALUE OF SERVICE

I. **TOTAL CONTRACT NOT TO EXCEED $ Indefinite Quantity**

II. **PAYMENT SCHEDULE**

Payments will be made in accordance with Section I - Article 5 of this Agreement.

III. **COST PER UNIT OF SERVICE PROCURED:**

BID SCHEDULE

ORGANIZATION NAME: Brewer Oil Co

BID PRICE SCHEDULE

Payments will be made in accordance with Article 5 – Section I of this Agreement.
(Purchasing Department must approve any other financial agreements in advance)

The amount indicated below shall be the proposers per gallon markup on the unbranded **rack price as quoted in the OPIS New Mexico report each Wednesday** and will remain constant for the term of the contract:

FUEL TYPE	Proposed Markup PER GALLON per OPIS Unbranded rack rate – Wednesday rate reports	Notes
REGULAR UNLEADED 86 Octane or Higher	+ .0900 cents / gal	ex tax
PREMIUM / SUPREME 91 Octane or Higher	+ .0900 cents / gal	ex tax
ULTRA LOW SULFUR DIESEL	+ .0900 cents / gal	ex tax
B5 with possibility of gradual increase to B20 BIODIESEL	+ .0900 cents / gal	ex tax
Diesel Exhaust Fluid (DEF)	Cost per gal. $ .50 over cost	

Signature

5-27-22
Date

JUSTIFICATION FOR UNIT VALUE OF SERVICE CALCULATIONS:
Pursuant to DAC Bid # 22-0044

ATTACHMENT C
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THE, THEIR FAMILY MEMBER, OR T HEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"**Applicable public official**" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"**Campaign Contribution**" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"**Family member**" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

"Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: **Board of County Commissioners: Lynn Ellins, Diana Murillo, Shannon Reynolds, Susana Chaparro, Manuel Sanchez; Assessor Leticia Duarte Benavidez; Clerk Amanda López Askin, Ph.D.; Probate Judge Diana Bustamante; Treasurer Eric L. Rodriguez; Sheriff Kim Stewart.**

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made To: _____

Contribution Made By: _____

Name and Relationship to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

_____ _____
Signature Date

_____
Title (position)

--OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

_____ 5-27-22
Signature Date

Sales Manager
Title (Position)

ATTACHMENT D
RELATED PARTY DISCLOSURE

1. Are you indebted to or have a receivable from any member of the Board of County Commissioners; elected county officials, administration officials, department heads, and key management supervisors with the County of Doña Ana?

Yes ___ No ✓

2. Are you , or any officer of your company related to any member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors of the County of Doña Ana and have you had any of the following transactions to which Doña Ana County was, is to be, a party?

	Yes	No
Sales, Purchase or leasing of property?		✓
Receiving, furnishing of goods, services or facilities?		✓
Commissions or royalty payments		✓

3. Does any member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors with the County of Doña Ana, have any financial interest in your company whether a sole proprietorship, partnership, or corporation of any kind that currently conducts business with the County of Doña Ana?

Yes ___ No ✓

4. Did you, your company, or any officer of your company have an interest in or signature authority over a bank account for the benefit of a member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors with the County of Doña Ana?

Yes ___ No ✓

5. Are you negotiating to employ or do you currently employ any employee, officer or family member of an employee or officer of County of Doña Ana?

Yes ___ No ✓

The answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

Signature of Owner or Company President: C Brewer **Date** 5/27/22

(Print Name and Title): C. BREWER PRESIDENT

ATTACHMENT E
DEBARMENT CERTIFICATION

Certification Regarding

Debarment, Suspension, and Other Responsibility Matters

Offeror certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three year period preceding this proposal been convicted of, had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any offenses; and

4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. Under 18USC Sec. 1001, a false statement may result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

Terrence D Calhoun — Sale, Manager

Print Name of Authorized Representative — Title

5-27-22

Signature of Authorized Representative — Date

ATTACHMENT F

NON-COLLUSION AFFIDAVIT

STATE OF Texas)
County OF El Paso)

Terence DeCalhoun (name) being first duly sworn, deposes and says that he/she is (title) Sales Manager of (organization) Brewer Oil Co.

who submits herewith to the County of Doña Ana, a proposal:

That all statements of fact in such proposal are true:

That said proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That said Proposer has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the County of Doña Ana, or of any Proposer of anyone else interested in the proposed contract; and further,

That prior to the public opening and reading or proposal, said Proposer:

1. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal
2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said Proposer or anyone else would submit a false or sham proposal, or that anyone Shall refrain from proposing or withdraw his proposals;
3. Did not in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal price of said Proposer or of anyone else, or to raise or fix any overhead, profit or cost element of their proposal price, or of that of anyone else;
4. Did not directly or indirectly, submit his proposed price or any breakdown thereof, or the contest thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association organization, proposal depository or to any member or agent thereof, or to any individual of group of individuals, except that County of Doña Ana, or to any person or persons who have a partnership or other financial interests with said Proposer in his business.

By: _____

Title Sales Manager

SUBSCRIBED and sworn to before me this 27 day of May, 2022.

Notary Public: _____

My Commission Expires: 10-26-24

PETTE CAMARGO
NOTARY PUBLIC
STATE OF TEXAS
ID # 5591[illegible]

ATTACHMENT G
INSURANCE CERTIFICATES
(Attach certificates, as required behind this page)

See Attachment A. I. For Requirements

BREWOIL-01 ERODRIGUEZ1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/19/2022

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 License # 0757776 HUB International Insurance Services (SOW) 313 N Canyon Street Carlsbad, NM 88220	CONTACT NAME: Elvira Rodriguez PHONE (A/C, No, Ext): (575) 323-6030 FAX (A/C, No): E-MAIL ADDRESS: elvira.rodriguez@hubinternational.com
	INSURER(S) AFFORDING COVERAGE — NAIC #
	INSURER A: Mountain States Indemnity Company — 10177
INSURED Brewer Oil Co. 2701 Candelaria NE Albuquerque, NM 87107	INSURER B: Food Industry Self Insurance Fund
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

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			CPO9177522	3/31/2022	3/31/2023	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:						Limited Polluti	$ 100,000
A	AUTOMOBILE LIABILITY							
	X ANY AUTO						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	OWNED AUTOS ONLY / SCHEDULED AUTOS			CAO9177522	3/31/2022	3/31/2023	BODILY INJURY (Per person)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 5,000,000
	EXCESS LIAB CLAIMS-MADE			CXO9177522	3/31/2022	3/31/2023	AGGREGATE	$ 5,000,000
	DED RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N	N/A		0946A	1/1/2022	1/1/2023	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RFP #22-0044

CERTIFICATE HOLDER	CANCELLATION
Dona Ana County 845 N. Motel Blvd Las Cruces, NM 88007	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

ACORD 25 (2016/03)

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ATTACHMENT H

Attach Copies of the following items, as applicable pursuant to the Contractor's Profession and Scope of Work, behind this page:

1. **Current Business License**
2. -

CITY OF LAS CRUCES
P.O. BOX 20000
LAS CRUCES, NEW MEXICO 88004

2023 - 3

Type
Business Registration License - WHOLESALE

Number
1690-21-

Issue Date
02/02/2022

Expires
3/30/2023

**** NOTICE ****

This license becomes null & void if ownership, business name or address is changed. Licensee must apply within 10 days of such changes for transfer. Fees may apply. All applicable building & zoning regulations pertaining to business location must be followed.

Business Name: Brewer Oil Co.
105 N COMPRESS
Las Cruces,

***** POST THIS CERTIFICATE IN A CONSPICUOUS PLACE*****

STATE OF NEW MEXICO

TAXATION AND REVENUE DEPARTMENT

RESIDENT BUSINESS CERTIFICATE

Issued to: **BREWER OIL CO**

DBA: **BREWER OIL CO**
2701 CANDELARIA RD NE
ALBUQUERQUE, NM 87107-1954

Expires: **16-Jul-2024**

Certificate Number:

L1862268336

Stephanie Schardin Clarke
Cabinet Secretary

THIS CERTIFICATE IS NOT TRANSFERABLE

ATTACHMENT I
ATTACH PROCUREMENT DOCUMENTATION

Check One

_____ **Professional Service Determination** (Purchasing Issues)

_____ **Sole Source Determination** (Purchasing Issues)

_____ **Written Quotes** (Department Provides)

22-0044 **RFP #** (See Page 1 Section I)

_____ **Bid #** (See Page 1, Section I)

_____ **Other**

ATTACHMENT J – OTHER

Resumes

1. Terry Calhoun – Sales Manager
   30 plus years in the fuel/lubricant business. Currently leads the fleet card business as well as the Wholesale division for Brewer Oil. He has extensive knowledge of the fleet card business and has been responsible to migrating the Brewer system to the Intevacon platform allowing for real-time controls.

2. Kim Flores – Outside Sales/Dealer Representative
   Ms. Flores has 15 years experience in the fuel business. She has attended multiple industry training seminars and conferences. She is very familiar with fuel supply issues, transportation, and supplier relations. Kim is locally based and lives in Las Cruces.

3. Juan Martinez – Las Cruces Warehouse Manager
   Juan has over 5 years experience with Brewer Oil and is very familiar with fuel supply and logistics.

4. Gary Hofmann – Accounts Receivable Manager
   Mr. Hofmann has over 30 years in the retail fuel business. Prior to his employment with Brewer Oil, he worked for Fuelman Fleet Cards. He is also very familiar with our fleet card program.

References Form

Provide information below for no fewer than three (3) businesses you have supplied with the same or similar goods or services during the past year. Complete all information requested and sign the authorization to contact form below.

NAME OF YOUR ORGANIZATION: Brewer Oil Co.

RFP # 22-0044 RFP TITLE: Off Site Fuel & Fuel Card Service

Offeror Statement: I provide the following references for the above RFP and by my signature below authorize the County to contact those listed for inquiry regarding my company, personnel and products.

REFERENCE # 1
Business Name: Albuquerque Bernalillo Water Phone: 505.289.3344
Contact Name: Ami Magallanes Email: amagallanes@abcwua.org
Products and or Services provided include: Fuel Cards / Lube / Bulk Fuel
Total Cost: $ _____ No. of Years Contracted: 2013 – June 2022

REFERENCE # 2
Business Name: Albuquerque Public Schools Phone: 505.880.3989
Contact Name: Royce Binns Title: Exec Director Email: royce.binns@aps.edu
Products and or Services provided include: Fuel Cards & Lubes
Total Cost: $ _____ No. of Years Contracted: 8

REFERENCE # 3
Business Name: SCSWA Phone: 575.528.3800
Contact Name: Terri Del Ferraro Title: Purchasing Mgr Email: tdelferraro@las-cruces.org
Products and or Services provided include: Fuel Cards
Total Cost: $ _____ No. of Years Contracted: _____

Signature | Sales Manager (Title) | 5-27-22 (Date)

About Brewer Oil Company

Brewer Oil Company was founded by Don Brewer and has been operating in New Mexico since 1958. When he returned from service in the military he opened his first service station in Artesia, New Mexico. Since that time, we have grown into the premier lubricants, chemicals and fuels supplier with 3 warehouses (Las Cruces, Albuquerque and Artesia) serving virtually the entire state of New Mexico, Greater El Paso area and Southern Colorado.

Many of our competitors offer products that meet the specifications as defined, however, Brewer Oil is a Chevron 1st Source Lubricants Marketer and within the last 2 years, has become the Valvoline Lubricants Distributor in New Mexico and West Texas. Brewer is pleased to bring the two most respected lubricant brands to match your needs with a complete inventory of the highest quality products available from both Chevron and Valvoline. *Moreover, our new Valvoline distributorship has provided Brewer Oil with additional opportunities due to Valvoline's relationship with Cummins, a global power leader in diesel engine manufacturing.* Brewer Oil Company is also the local source for Pyroil Chemicals and Air One Diesel Exhaust Fluid.

In addition to supplying quality products to our customers, we have the ability to provide continuing education to our customers regarding product development technology; whether it is with engine oils, coolants or chemicals. Our supplier relationships offer our customers the support and technical assistance from the experts in the lubricants industry.

Since Don Brewer ran his first Artesia service station, the focus has always been on a commitment to growth, based on a *solid foundation of service, community and reliability*. We pride ourselves on *offering solutions, not excuses*. Now, more than 50 years later, the Brewer family continues that commitment, along with the experience and integrity that allows us to provide the most dependable and efficient service to every one of our customers.

Kim Flores
Sales Representative
Brewer Oil Company

Mandatory Response Form

Proposal Agreement to Provide Required Items

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE PROPOSAL

Offeror must sign each of the below items indicating contractual agreement to comply with the specified RFP item if awarded this contract. Offeror may also indicate higher performance than the minimum requirement specified. Failure of Offeror to agree to any item below may affect the Evaluation Team's determination of Proposal Compliance. Requirements for each of the below items are all specified in the referenced item number of Section II of the RFP.

REVIEW CAREFULLY BEFORE SIGNING.

Item Reference – All Items are Found in Section IV of the RFP	*Signature Verifies Offeror's Agreement to Comply with all Requirements of the Referenced Item and, as applicable with Offeror's written RFP Responses for that Item*
II.A MANDATORY ITEMS:	
II.A.1.	
II.A.2.	
II.A.3.	
II.A.4.	
II.A.5.	
II.A.6.	
II.A.7.	
II.B. –NON-MANDATORY	
II.B.1.a.	
II.B.1.b	
II.B.1.c.	
II.B.1.d.	
II.B.2.a.	
II.B.2.b.	
II.B.2.c.	
II.B.2.d.	
II.B.2.e.	

SECTION C

NARRATIVE RESPONSE

Mandatory Specifications

Section 2.A.

1. Facility Location: All 7 of our locations are within a 5 mile radius of 2033 E. Griggs Avenue, Las Cruces. However, the closest facility is Nacho Shell at 2512 E. Lohman which is 1 mile.

2. Billing Reports: Brewer Oil Company can provide Electronic Fuel Interface with an Excel or CSV format through the on-line software used with our card lock processor. Dona Ana County can also run these reports using the online portal.

3. Monthly Invoices: Our invoices provide the following information and are generated on a bi-weekly basis and emailed to whomever is designated by customer:
   a. Card Number
   b. Description assigned
   c. Date
   d. Time
   e. Product
   f. Quantity
   g. Price
   h. Amount
   i. Site Transaction Occurred
   j. Transaction Number
   k. Driver Name
   l. Odometer Number
   m. Miles incurred since last fueling transaction
   n. Miles per gallon
   o. Average cents per mile achieved

4. Fuel Cards: Brewer Oil Company will provide fuel cards at no cost to DAC Fleet Department as follows:
   a. Initial cards
   b. Replacement cards
   c. New vehicle cards
   d. Cards are same size and durability as a normal credit card
   e. Cards are resistant to tampering or modifications
   f. 4 digit PINs (Personal Identification Number) can be automatically assigned by a computer process or Fleet Department can assign PIN. For example, PINs can be assigned in accordance with an employee number. This would be elected by Fleet Department upon award of contract. A list of each card description, driver and PIN will be provided to Fleet Department.

5. Fuel Requirements: Below is a list of locations (within a 5 mile radius) which accept our fleet fueling card and the products available:
   a. Brewer Fleet Fueling – 950 W. Amador
      Unleaded Regular, 86 Octane or higher, On Road ULSD
      Diesel, Ultra Low Sulfur Dyed (off road), DEF
   b. Holiday Chevron – 2645 S. Valley
      Unleaded Regular, 86 Octane or higher
      Premium/Supreme, 91 Octane or higher
   c. Nacho Shell – 2512 E. Lohman
      Unleaded Regular, 86 Octane or higher
      Premium/Supreme, 91 Octane or higher
   d. Country Club Shell – 2901 N. Main
      Unleaded Regular, 86 Octane or higher
      Premium/Supreme, 91 Octane or higher
      Diesel, Ultra Low Sulfur
   e. Triviz Chevron – 3040 N. Main
      Unleaded Regular, 86 Octane or higher
      Premium/Supreme, 91 Octane or higher
   f. University Shell – 1305 S. Solano
      Unleaded Regular, 86 Octane or higher
      Premium/Supreme, 91 Octane or higher
   g. Brewer Bulk Plant – 202 South Compress
      Unleaded Regular – 86 Octane or higher
      ULSD On Road Diesel (overhead fill available)
      ULSD Off Road/Dyed Diesel (overhead fill available)

6. Facility Requirements: Facility at 950 W. Amador, Las Cruces (within a 5 mile radius) multiple UNL, On Road Diesel, Off Road Diesel, and DEF (diesel exhaust fluid) dispensers

7. Facility Access Requirements: Facility at 950 W. Amador, Las Cruces (within a 5 mile radius) can accommodate a Class 8 truck-semitrailer combination up to 80 feet long and gross combination weight up to 80,000 lbs. Additionally, this location does not have a retail site associated with it, so this type of unit can easily fuel without the liability of pedestrians/consumer traffic being in the passageway of the unit pulling in or out of the site. This location is also equipped with satellite diesel dispensers which allow for the simultaneous filling of truck saddle tanks.

Non-Mandatory Specifications

Section 2.B.

1.a. All facilities with Diesel, Ultra Low Sulfur (See Section 2.A. #5) are inventoried with B5 ULSD. Brewer Oil prefers to purchase this product with a major refiner due to warranties provided on such. Currently, the B20 ULSD blend supply with a major refiner in our market area is very minimal. We cannot speak to why this is so. However, if the supply increases and there becomes a greater demand for B20 ULSD within the Las Cruces market, Brewer Oil will continue to be a leader in our industry providing products that our customers need or want.

1.b. The facility at 905 W. Amador, Las Cruces has Diesel Exhaust Fluid (DEF) that can be dispensed at the diesel fueling positions.

1.c. Brewer Oil does not have BQ9000 Accreditation as we are not bio fuel manufacturers. However, we source our bio diesel from major refiners who are BQ9000 Accredited.

1.d. Brewer Oil has a Bulk Fuel Overhead Rack at our warehouse location at 202 S. Compress Rd., Las Cruces. The products supplied at this rack are:

Regular Unleaded, 86 Octane or higher
Diesel, Ultra Low Sulfur
Dyed Diesel (Off-Road Equipment Only), Ultra Low Sulfur

This Bulk Fuel Overhead Rack is a full service fueling rack for any unit requiring fuel to be loaded from the top into a fuel storage tank located on the unit. This eliminates liability for personnel when having to fill from a standard fuel dispenser, (which may include personnel climbing and reaching on top of a truck), as well as environmental hazards (fuel spills).

2.a. Brewer Oil Company has more than one facility in Las Cruces.

2.b. Brewer Oil Company has more than one facility in Albuquerque.

2.c. Brewer Oil Company has more than one facility in Santa Fe.

2.d. Brewer Oil Company has one facility in the El Paso area, located at 1025 Wall Street, El Paso, TX 79915

2.e. The Brewer Oil Fleet Card is not accepted with any national vendors.

3. Bulk Fuel

a. Our Bulk Fuel site in Las Cruces is located at 202 Compress Rd., Las Cruces. It has three (3) 10,000 gallon capacity above ground fuel tanks for storage of Unleaded Regular, Ultra Low Sulfur Diesel and Ultra Low Sulfur Dyed Diesel (for Off-Road Equipment Only). This facility is used by our own fuel delivery equipment and service trucks. It is a full service site, with Brewer Oil employees performing the task of dispensing fuel through overhead loading rack 'arms' into the fuel storage tanks on the service units. Brewer Oil employees and the customers using this loading rack are required to wear hard hats and observe safety procedures while doing so.

b. Brewer Oil Company has various methods to assist government agencies with their fueling needs during emergency response;
   1) Brewer Oil Company has multiple sources of fuel supply in New Mexico, Texas and Arizona. In cases where the supply points within our market area are unable to source fuel, we have gone outside of the area to continue to provide product for agencies during emergency response.
   2) Brewer Oil Company has multiple types of bulk fuel delivery trucks. We have assisted agencies by placing these units at emergency response sites to provide large quantities of fuel when needed over hours/days. An hourly rate can be negotiated at such time, but has not been specified to quote within this bid response.

   These are specific circumstances we can speak to having experience with. However, due to our vast resources and tools within our industry, we have the flexibility to assist a government agency's particular fueling needs/requirements in emergency response.

4. Fuel Card Administration

Brewer Oil has over 150 current fuel card customers ranging from 400 cards to 3 cards. Some of our larger government users are Albuquerque Bernalillo County Water Authority, Albuquerque Public Schools, and South Central Solid Waste. We produce and distribute new cards within 72 hours of the written request but typically have the cards produced and ready within 24 hours. Through our online, real-time, portal, customers are able to manage their own accounts, run reports, and view invoices.

4. Experience with Government Entities

Brewer Oil Company has provided bulk fuel to numerous government entities within the State of New Mexico on the city, county, and state level. We have also been contracted to provide delivery services to other fuel suppliers to assist in the bulk fuel contracts they may have with any agencies.

5. Additional Information

a. Brewer Oil Company has been operating in New Mexico since 1958. It started as one gas station in Artesia, New Mexico and has grown throughout the state with 3 (three) bulk fuel and lubricant warehouses, bulk fuel delivery fleet and fleet card fueling within our retail and unmanned fueling sites. Brewer Oil has Lubricant Marketer contracts with Valvoline and Retail Marketer contracts with Marathon, Chevron, and Shell.

   Our bulk fuel gallon sales have grown due to our customer service and multiple supply sources providing our customers with flexibity in pricing and delivery resources they need.

   Our fleet card program has grown with more businesses and government agencies opting out of owning and managing their own fuel inventory and all the requirements needed to do so. Companies with large semi-tractor trailers find it helpful to fuel large equipment without having to go to a truck stop.

BREWER OIL
2701 CANDELARIA RD NE
ALBUQUERQUE, NM 87107

Phone: (505) 884-2040

INVOICE #	6106524
INVOICE DATE	04/15/2022
DUE DATE	05/15/2022
TOTAL DUE	$ 10,720.62
TERMS	Net 30
ACCOUNT #	15520115

DONA ANA COUNTY ROAD
2033 E GRIGGS
LAS CRUCES, NM 88001

CONTAINS TRANSACTIONS FOR THIS REPORTING PERIOD: 04/01/2022 - 04/15/2022

PRODUCT		QUANTITY	BASE PRICE	FEDERAL TAX	STATE TAX	OTHER TAXES	TOTAL
Clear Diesel		2,707.871	$10,591.02	$8.50	$0.00	$0.00	$10,599.52
DEF		58.525	$121.10	$0.00	$0.00	$0.00	$121.10
	Total	2,766.396	$10,712.12	$8.50	$0.00	$0.00	$10,720.61

Transaction Detail for Customer 15520115 - DONA ANA COUNTY ROAD

DATE	TIME	AUTH#	LOCATION	DRIVER	MISC PROMPTS	ODOM	MILES	MPG	PRODUCT	QTY	NET PRICE	TAXES	TOTAL AMOUNT
83447 - 11012													
04/04	13:01	10604421307	AMADOR FLEET	Flores Dennis		100259	0		Clear Diesel	21.035	4.005240	0.066050	$84.25
04/04	13:04	10604421308	AMADOR FLEET	Flores Dennis		100259			DEF	0.338	2.069000	0.000000	$0.70
						Miles:	0		Total Fuel:	21.035			$84.25
									Total Non-Fuel:	0.338			$0.70
												Card Total:	$84.95
83457 - 12007													
04/06	07:13	10604441441	AMADOR FLEET	Delgado Danny		152892	0		Clear Diesel	22.344	4.005240	0.070160	$89.49
						Miles:	0		Total Fuel:	22.344			$89.49
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$89.49
83462 - 13022													
04/08	06:48	10604461632	AMADOR FLEET	Barela Jaime		97227			DEF	5.360	2.069000	0.000000	$11.09
04/08	06:50	10604461631	AMADOR FLEET	Barela Jaime		97227	0		Clear Diesel	26.700	3.860240	0.083838	$103.07
						Miles:	0		Total Fuel:	26.700			$103.07
									Total Non-Fuel:	5.360			$11.09
												Card Total:	$114.16
87669 - 15006													
04/05	12:58	11004431386	AMADOR FLEET	Belanger Thomas		124784	0		Clear Diesel	55.825	4.005240	0.175291	$223.59
04/05	13:01	11004431387	AMADOR FLEET	Belanger Thomas		124784			DEF	7.730	2.069000	0.000000	$15.99
						Miles:	0		Total Fuel:	55.825			$223.59
									Total Non-Fuel:	7.730			$15.99
												Card Total:	$239.58
87670 - 15007													
04/06	10:11	11204441460	AMADOR FLEET	Gonzalez Ignacio		133744	0		Clear Diesel	72.075	4.005240	0.226316	$288.68
						Miles:	0		Total Fuel:	72.075			$288.68
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$288.68

Transaction Detail for Customer: 15520115 - DONA ANA COUNTY ROAD

DATE	TIME	AUTH#	LOCATION	DRIVER	MISC PROMPTS	ODOM	MILES	MPG	PRODUCT	QTY	NET PRICE	TAXES	TOTAL AMOUNT
87806 - 16014													
04/05	13:09	11204431390	AMADOR FLEET	Banegas		79810	0		Clear Diesel	74.870	4.005240	0.235092	$299.87
04/05	13:11	11204431393	AMADOR FLEET	Banegas		79810			DEF	2.874	2.069000	0.000000	$5.95
04/08	11:30	11004461653	AMADOR FLEET	Banegas		80067	257	7.1	Clear Diesel	36.121	3.860240	0.113420	$139.44
04/08	11:32	11004461655	AMADOR FLEET	Banegas		80067			DEF	0.986	2.069000	0.000000	$2.04
04/13	12:26	11004511982	AMADOR FLEET	Banegas		80344	277	4.9	Clear Diesel	56.174	3.860240	0.176386	$216.85
04/13	12:29	11004511983	AMADOR FLEET	Banegas		80344			DEF	2.132	2.069000	0.000000	$4.41
						Miles:	534		Total Fuel:	167.165			$656.16
									Total Non-Fuel:	5.992			$13.40
												Card Total:	$668.56
90211 - 17015													
04/05	06:37	11004431347	AMADOR FLEET	Amador Willie		116776	0		Clear Diesel	101.221	4.005240	0.317834	$405.41
04/05	06:41	11004431349	AMADOR FLEET	Amador Willie		116776			DEF	12.476	2.069000	0.000000	$25.81
04/11	06:34	11004491770	AMADOR FLEET	Moreno Jose		117274	498	5.4	Clear Diesel	93.072	3.860240	0.292246	$359.28
04/11	12:55	11004491806	AMADOR FLEET	Moreno Jose		117780	506	5.0	Clear Diesel	21.010	3.860240	0.065971	$81.10
						Miles:	604		Total Fuel:	215.303			$846.79
									Total Non-Fuel:	12.476			$25.81
												Card Total:	$871.60
90255 - 17017													
04/01	12:05	11204391151	AMADOR FLEET	Flores Dennis		94270	0		Clear Diesel	74.091	4.005240	0.232846	$296.75
04/06	10:52	11204441464	AMADOR FLEET	Flores Dennis		94510			DEF	1.933	2.069000	0.000000	$4.00
04/06	10:56	11204441465	AMADOR FLEET	Flores Dennis		94510	240	5.1	Clear Diesel	46.769	4.005240	0.146855	$187.32
04/12	13:04	11204501909	AMADOR FLEET	Flores Dennis		94814			DEF	2.885	2.069000	0.000000	$5.97
04/12	13:06	11204501910	AMADOR FLEET	Flores Dennis		94814	304	5.5	Clear Diesel	55.219	3.860240	0.173388	$213.16
						Miles:	544		Total Fuel:	176.079			$697.23
									Total Non-Fuel:	4.818			$9.97
												Card Total:	$707.20
90279 - 17032													
04/07	08:08	10704451545	AMADOR FLEET	Ferrales Manuel		74362	0		Clear Diesel	28.939	3.860240	0.090868	$111.71
04/13	13:46	10704511976	AMADOR FLEET	Ferrales Manuel		74807	445	11.5	Clear Diesel	38.860	3.860240	0.122020	$150.01
						Miles:	445		Total Fuel:	67.799			$261.72
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$261.72
90280 - 17033													
04/01	06:44	11004391112	AMADOR FLEET	Alvarado Anastacio		54552	0		Clear Diesel	24.640	4.005240	0.077370	$98.69
04/07	06:40	10804451521	AMADOR FLEET	Alvarado Anastacio		64897	10345		Clear Diesel	32.013	3.860240	0.100521	$123.58
04/13	06:41	10804511949	AMADOR FLEET	Alvarado Anastacio		65094	197	7.2	Clear Diesel	27.476	3.860240	0.086275	$106.06
						Miles:	10542		Total Fuel:	84.129			$328.33
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$328.33
90281 - 17034													
04/12	12:47	10704501907	AMADOR FLEET	Bofanger Thomas		66508	0		Clear Diesel	26.874	3.860240	0.084364	$103.74
						Miles:	0		Total Fuel:	26.874			$103.74
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$103.74
90325 - 17016													
04/07	12:33	11204451576	AMADOR FLEET	Burciaga David		88643	0		Clear Diesel	68.213	3.860240	0.214189	$263.32
04/07	12:35	11204451577	AMADOR FLEET	Burciaga David		88642			DEF	2.395	2.069000	0.000000	$4.96
04/12	06:26	11204501851	AMADOR FLEET	Burciaga David		88903	260	9.8	Clear Diesel	26.505	3.860240	0.083477	$102.62
						Miles:	260		Total Fuel:	94.718			$365.94
									Total Non-Fuel:	2.395			$4.96
												Card Total:	$370.90
90335 - 17036													
04/01	07:14	10804391119	AMADOR FLEET	Franzoy		56490	0		Clear Diesel	11.767	4.005240	0.036948	$47.13

Transaction Detail for Customer: 15520115 - DONA ANA COUNTY ROAD

DATE	TIME	AUTH#	LOCATION	DRIVER	MISC PROMPTS	ODOM	MILES	MPG	PRODUCT	QTY	NET PRICE	TAXES	TOTAL AMOUNT
90335 - 17036													
04/06	07:14	10504441442	AMADOR FLEET	Franzoy		56679	189	11.4	Clear Diesel	16.528	4.005240	0.051898	$66.20
04/08	06:27	10804461628	AMADOR FLEET	Franzoy		566694	509415		Clear Diesel	19.310	3.860240	0.060633	$74.51
04/12	09:02	10804501872	AMADOR FLEET	Franzoy		57092	0		Clear Diesel	15.971	3.860240	0.050158	$61.66
						Miles:	509664		Total Fuel:	51.579			$249.53
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$249.53
90336 - 13001													
04/05	13:05	11004431389	AMADOR FLEET	Burciaga David		113714	0		Clear Diesel	24.474	4.005240	0.076848	$98.02
04/05	13:07	11004431391	AMADOR FLEET	Burciaga David		113714			DEF	1.685	2.069000	0.000000	$3.90
						Miles:	0		Total Fuel:	24.474			$98.02
									Total Non-Fuel:	1.685			$3.90
												Card Total:	$101.92
90369 - 17024													
04/01	06:22	10804391109	AMADOR FLEET	Herrera Ernest		75743	0		Clear Diesel	31.047	4.005240	0.097438	$124.35
04/12	06:31	10804501852	AMADOR FLEET	Herrera Ernest		76275	532	13.3	Clear Diesel	40.708	3.860240	0.127823	$157.14
						Miles:	532		Total Fuel:	71.755			$281.49
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$281.49
94687 - 20014													
04/06	06:25	10804441434	AMADOR FLEET	Rodriguez Mike		37623	0		Clear Diesel	28.008	4.005240	0.087945	$112.18
						Miles:	0		Total Fuel:	28.008			$112.18
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$112.18
94742 - Unit 20013													
04/01	06:59	11204391113	AMADOR FLEET	Gomez Gerardo		16059	0		Clear Diesel	18.803	4.005240	0.059041	$75.31
04/04	07:39	11204421260	AMADOR FLEET	Gomez Gerardo		16167	98	4.9	Clear Diesel	20.005	4.005240	0.062816	$80.12
04/04	07:42	11204421261	AMADOR FLEET	Gomez Gerardo		16167			DEF	2.424	2.069000	0.000000	$5.02
04/05	06:41	11204431350	AMADOR FLEET	Gomez Gerardo		16280	113	5.5	Clear Diesel	20.454	4.005240	0.064226	$81.92
04/07	06:41	11204451522	AMADOR FLEET	Gomez Gerardo		16375	95	7.0	Clear Diesel	13.643	3.860240	0.042839	$52.67
04/08	06:40	11204461629	AMADOR FLEET	Gomez Gerardo		16477	102	4.6	Clear Diesel	22.005	3.860240	0.069096	$84.94
04/12	07:14	11204501855	AMADOR FLEET	Gomez Gerardo		16581	104	3.4	Clear Diesel	30.321	3.860240	0.095208	$117.05
04/12	07:17	11204501856	AMADOR FLEET	Gomez Gerardo		16581			DEF	2.729	2.069000	0.000000	$5.65
						Miles:	512		Total Fuel:	125.231			$492.01
									Total Non-Fuel:	5.153			$10.67
												Card Total:	$502.68
97439 - AUX-18019													
04/04	07:14	11204421254	AMADOR FLEET	Holguin Robert		4311	0		Clear Diesel	63.641	4.005240	0.199833	$254.90
04/14	06:18	11004522026	AMADOR FLEET	Holguin Robert		2532	0		Clear Diesel	66.426	3.790340	0.198578	$251.78
						Miles:	0		Total Fuel:	130.067			$506.68
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$506.68
97440 - AUX-19020													
04/11	06:00	10804491763	AMADOR FLEET	Perez Arturo		5263	0		Clear Diesel	68.311	3.860240	0.214497	$263.70
						Miles:	0		Total Fuel:	68.311			$263.70
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$263.70
97441 - AUX-19006													
04/05	06:06	10804431342	AMADOR FLEET	Dominguez Richard		4339	0		Clear Diesel	82.052	4.005240	0.257643	$328.84
04/11	06:00	10804491762	AMADOR FLEET	Dominguez Richard		4356	17	0.2	Clear Diesel	82.001	3.860240	0.257483	$316.54
						Miles:	17		Total Fuel:	164.053			$645.38
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$645.38

Transaction Detail for Customer: 15520115 - DONA ANA COUNTY ROAD

DATE	TIME	AUTH#	LOCATION	DRIVER	MISC PROMPTS	ODOM	MILES	MPG	PRODUCT	QTY	NET PRICE	TAXES	TOTAL AMOUNT
97442 - AUX-18011													
04/04	07:36	10604421256	AMADOR FLEET	Barela Arturo		17805	0		Clear Diesel	68.585	4.005240	0.215357	$274.70
04/14	07:09	10704522029	AMADOR FLEET	Barela Arturo		4875	0		Clear Diesel	69.170	3.790340	0.217194	$262.18
04/14	07:11	10704522031	AMADOR FLEET	Barela Arturo		4875			DEF	2.607	2.069000	0.000000	$5.39
						Miles:	0		Total Fuel:	137.755			$536.88
									Total Non-Fuel:	2.607			$5.39
												Card Total:	$542.27
97443 - AUX-13022													
04/04	07:37	10504421258	AMADOR FLEET	Barela Jaime		838	0		Clear Diesel	62.319	4.005240	0.195682	$249.60
04/07	08:02	10704451543	AMADOR FLEET	Barela Jaime		856	18	0.3	Clear Diesel	62.404	3.860240	0.195949	$340.89
						Miles:	18		Total Fuel:	124.723			$490.49
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$490.49
97444 - AUX-17036													
04/06	07:10	10504441439	AMADOR FLEET	Franzoy		87912	0		Clear Diesel	67.703	4.005240	0.212587	$271.17
04/08	06:25	10804461627	AMADOR FLEET	Franzoy		87976	64	1.0	Clear Diesel	66.358	3.860240	0.206364	$256.16
						Miles:	64		Total Fuel:	134.061			$527.33
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$527.33
97448 - AUX-17034													
04/06	09:27	10604441454	AMADOR FLEET	Galaz Jerry		17034	0		Clear Diesel	55.213	4.005240	0.173369	$221.14
04/12	12:56	10704501908	AMADOR FLEET	Belenger Thomas		56508	49474		Clear Diesel	57.552	3.860240	0.180713	$222.16
						Miles:	49474		Total Fuel:	112.765			$443.30
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$443.30
97449 - AUX-17032													
04/07	08:17	10704451546	AMADOR FLEET	Ferrales Manuel		17032	0		Clear Diesel	97.582	3.860240	0.306407	$376.69
04/13	11:51	10704511977	AMADOR FLEET	Ferrales Manuel		17032	0		Clear Diesel	37.535	3.860240	0.117860	$144.89
						Miles:	0		Total Fuel:	135.117			$521.58
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$521.58
97450 - AUX-17024													
04/14	07:44	10804522033	AMADOR FLEET	Herrera Ernest		0	0		Clear Diesel	62.817	3.790340	0.197245	$238.10
						Miles:	0		Total Fuel:	62.817			$238.10
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$238.10
97451 - AUX-18017													
04/07	08:16	10604451512	AMADOR FLEET	Moreno Jose		23020	0		Clear Diesel	70.073	3.860240	0.228029	$270.50
						Miles:	0		Total Fuel:	70.073			$270.50
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$270.50
97454 - 20024													
04/01	12:52	11604391162	AMADOR FLEET	Moreno Jose		11689	0		Clear Diesel	42.546	4.005240	0.133594	$170.47
04/08	06:48	10704461630	AMADOR FLEET	Amador Willie		11950	261	5.9	Clear Diesel	44.408	3.860240	0.139441	$171.43
04/11	11:30	11004491794	AMADOR FLEET	Amador Willie		12376			DEF	9.771	2.069000	0.000000	$20.22
04/11	11:34	11004491795	AMADOR FLEET	Amador Willie		12376	426	7.6	Clear Diesel	56.325	3.860240	0.176861	$217.43
						Miles:	687		Total Fuel:	143.279			$559.37
									Total Non-Fuel:	9.771			$20.22
												Card Total:	$579.49
97493 - TR-458													
04/12	13:34	11204581914	AMADOR FLEET	Gonzalez Ignacio		205044	0		Clear Diesel	81.677	3.860240	0.256466	$315.29
						Miles:	0		Total Fuel:	81.677			$315.29
									Total Non-Fuel:	0.000			$0.00
												Card Total:	$315.29

23-130

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:**	June 5, 2023
Drafter:	Lisa Padron	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION AUTHORIZING AN INDEFINITE COST, INDEFINITE QUANTITY AGREEMENT FOR WORK UNIFORMS WITH BAZAAR UNIFORMS AND MEN'S STORE, LLC, VIA EDUCATION SERVICE CENTER REGION 19 ALLIED STATES COOPERATIVE CONTRACT NO. 21-7420 (PROCUREMENT NO. 22-23-061).**

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

PURPOSE(S) OF ACTION:
To authorize a contract for work uniforms.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
Several departments within the City of Las Cruces (City) provide their employees with work uniforms pursuant to City Manager Policy (CMP) #1.7 - Uniform Policy. The City's annual expenditure for work uniforms applies to both blue-collar and white-collar workers. To minimize costs, it is in the best interest of the City to standardize uniform style and quality to distinctly identify employees as representatives of the City in the performance of their duties.

Purchasing is requesting authorization to enter an indefinite cost, indefinite quantity agreement with Bazaar Uniforms and Men's Store, LLC, as shown in Exhibit "A". Each department will budget its uniform purchases. The term of this contract shall coexist with the ESC Region 19 Allied States Cooperative Contract No. 21-7420 for a term through October 31, 2025.

SUPPORT INFORMATION:
Exhibit A - 22-23-061 Work Uniforms - Bazaar - Legal Approved

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 action will approve the Resolution authorizing an existing contract purchase agreement for work uniforms via ESC Region 19 Allied States Cooperative Contract No. 21-7420.
2. Vote "No"; this action will not approve the Resolution and City Council will need to provide Staff with alternative direction.
3. Vote to "Amend"; this action could modify the Resolution based on direction by City Council to Staff.
4. Vote to "Table"; this action could delay the City Department's ability to provide employees with the work uniforms pursuant to CMP #1.7.

RESOLUTION 23-130

A RESOLUTION AUTHORIZING AN INDEFINITE COST, INDEFINITE QUANTITY AGREEMENT FOR WORK UNIFORMS WITH BAZAAR UNIFORMS AND MEN'S STORE, LLC, VIA EDUCATION SERVICE CENTER REGION 19 ALLIED STATES COOPERATIVE CONTRACT NO. 21-7420 (PROCUREMENT NO. 22-23-061).

The City Council is informed that:

WHEREAS, several departments with the City of Las Cruces (CITY) provide their employees with work uniforms pursuant to City Manager Policy (CMP) #1.7 - Uniform Policy; and

WHEREAS, the City's annual expenditure for work uniforms applies to both blue-collar and white-collar workers; and

WHEREAS, to minimize costs, it is in the best interest of the City to standardize uniform style and quality to distinctly identify employees as representatives of the City in the performance of their duties; and

WHEREAS, the term of the contract will coexist with the ESC Region 19 Allied Stated Cooperative Contract 21-7420.

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

(I)

THAT the indefinite cost, indefinite quantity Existing Contract Purchase Agreement for work uniforms is hereby awarded to Bazaar Uniforms and Men's Store, LLC, of El Paso, Texas as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

City of Las Cruces

EXISTING CONTRACT PURCHASE AGREEMENT

EDUCATION SERVICE CENTER REGION 19 ALLIED STATES COOPERATIVE CONTRACT NO. 21-7420

WORK UNIFORMS, SHOES AND RELATED

Pursuant to terms and conditions of Education Service Center (ESC) Region 19 Allied States Cooperative Contract No. 21-7420, RFP No. 21-7420 dated November 1, 2021, between the ESC Region 19 Allied States Cooperative and Bazaar Uniforms and Men's Store, LLC (CONTRACTOR), as amended and incorporated herein by reference, the City of Las Cruces (CITY) and CONTRACTOR hereby agree on this _____ day of May, 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. 25-4.

2. In a satisfactory and proper manner, the CONTRACTOR shall deliver work uniforms pursuant to ESC Region 19 Allied States Cooperative Contract No. 21-7420, 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 ESC Region 19 Allied States Cooperative Contract No. 21-7420.

4. In consideration for the satisfactory delivery of work uniforms, the CONTRACTOR shall be compensated pursuant to the cost terms of ESC Region 19 Allied States Cooperative Contract No. 21-7420. Cost of work uniforms 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.

BAZAAR UNIFORMS AND MEN'S STORE, LLC

BY: _____
Christopher Joseph
Owner

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

5/18/23
City Attorney

Attachment A

EDUCATION SERVICE CENTER REGION 19 ALLIED STATES COOPERATIVE
RFP AWARD SUMMARY

RFP TITLE:	Work Uniforms, Shoes and Related – ESC Region 19 Allied States Cooperative
RFP NUMBER:	21-7420
RFP OPENING DATE:	September 14, 2021
CONTRACT TERM:	November 1, 2021 - October 31, 2022, with 3 annual extension options. **(Extended by Region 19 until October 31, 2023)**
FUNDING SOURCE:	Various
RFP's ISSUED:	214
RESPONSES:	5
ADVERTISEMENT DATES:	El Paso Times – August 16, 2021 & August 23, 2021
RECOMMENDED FOR AWARD:	**A & A Custom Engravers (Carrion Enterprises)** **Bazaar Uniforms and Men's Store LLC** **David's Apparel Inc.** **Spark Multinational, LLC** **Work Wear Safety Shoes (Northern Imports)**
TOTAL (estimated)	**$5,000,000.00/year**

EXPLANATIONS:

Award of this solicitation will enable ESC Region 19 - Allied States Cooperative (ASC) to establish a contract with vendor(s) for Work Uniforms, Shoes and Related for those procurements made with federal, state or local funds. Evaluation and award recommendation were based on 50% pricing, 25% reputation/references, and 25% financial capabilities. The awarded vendors' pricing and information can be found on the Award Detail spreadsheet.

SPECIFICATIONS, PREPARATION AND EVALUATION PROVIDED BY:

Rebecca Hernandez – ESC Region 19

Andrea Amiri – ESC Region 19

Renae Lawrence - ESC Region 19

Special Conditions

1. Delivery will be part of this solicitation and delivery cost should be provided with response.
2. Vendors must deliver products no later than 21 consecutive days after receipt of order unless otherwise stated and approved.
3. Vendors must coordinate and measure for uniforms on site at the member's facility if requested.
4. Cooperative members may provide patch samples with order if necessary.
5. Any mention of brand specific items is for reference only and should not be considered exclusive.
6. This RFP allows for up to ten percent (10%) of the total contract to be purchased with non-listed items.

Approved By: _____ **Date:** _____
Dr. Armando Aguirre **September 27, 2021**

Company Name...	Bazaar Uniforms and Men's Store LLC
Company Contact...	Christopher Joseph
Company Address...	2430 East Yandell Dr, El Paso, TX 79903
Contact Email Address...	cjoseph29@yahoo.com
Company Phone Number...	(915) 544-7340
Company Website...	HTTP://www.bazaaruniforms.net
S&H included in pricing...	Yes
S&H (expedite fees)...	No.
Products/Services Provided...	Uniforms and Tactical Gear.. Boots, belts, holsters and body armor
Areas Served...	Texas and Southern New Mexico
Price Link...	Price Link

Line #	Description	Mfgr	Mfgno	QTY	Unit
1	Polo Shirt 100% Cotton Herringbone Fashion Jacquard Collar with Welts Wood Tone 3 button Clean Finished Placket Extended Tail with Side Vents One Shirt Pocket Reference: SanMar K420P or equivalent			1	
1.1	Small			1	$14.29
1.2	Medium			1	$14.29
1.3	Large			1	$14.29
1.4	XL			1	$14.29

			Company Name...		Bazaar Uniforms and Men's Store LLC
1.5	2X			1	$15.29
1.6	Upcharge for 3X or Larger			1	$16.99
	Brand/Model:				Port Authority K420P
2	Long Sleeve Industrial Shirt 65/35 Poly Cotton Poplin Two Button Through Pocket Regular Long Sleeve Pin Stripe Banded Collar Reference: RedKap SP14EX or equivalent			1	
2.1	Small			1	$13.99
2.2	Medium			1	$13.99
2.3	Large			1	$13.99
2.4	XL			1	$13.99
2.5	2X			1	$16.59
2.6	Upcharge for 3X or Larger			1	$16.59
	Brand/Model:				RedKap SP14EX
3	Industrial Work Pants 65% Polyester/ 35% Cotton Jean Style Waist Band Front Back Pocket Reinforced Seam Stitching Solid Brass Zipper Reference: RedKap PT20 or equivalent			1	
3 ALT1	Industrial Work Pants65% Polyester/ 35% CottonJean Style Waist BandFront & Back PocketReinforced Seam StitchingSolid Brass ZipperReference: RedKap PT20 or equivalent SIZES 44-54 WAIST SIZE	RED KAP	#PT20 44-54 WAIST SIZE	1	
	Brand/Model:				
3 ALT2	Industrial Work Pants65% Polyester/ 35% CottonJean Style Waist BandFront & Back PocketReinforced Seam StitchingSolid Brass ZipperReference: RedKap PT20 or equivalent SIZING OVER 56 WAIST SIZE	RED KAP	#PT20 56-60 WAIST SIZE	1	
	Brand/Model:				
3.1	All Sizes			1	$13.89

				Company Name...	Bazaar Uniforms and Men's Store LLC
	Brand/Model:				PT20 Industrial Work Pant
4	Long Sleeve Work Shirt 65% Polyester 35% Combed Cotton Two Button Through Pocket Button Front - Regular Long Sleeve Pin Stripe Two Piece Lined Sewn In Stays Collar Reference: RedKap SP10CW or equivalent			1	
4.1	Small			1	$13.99
4.2	Medium			1	$13.99
4.3	Large			1	$13.99
4.4	XL			1	$13.99
4.5	2X			1	$15.79
4.6	Upcharge for 3X or Larger			1	$15.79
	Brand/Model:				Redkap SP10CW
5	Long Sleeve Work Shirt 65% Polyester 35% Combed Cotton Two Button Through Pocket Button Front - Regular Long Sleeve Solid Two Piece Lined Sewn In Stays Collar Reference: RedKap SP14WH or equivalent			1	
5.1	Small			1	$10.99
5.2	Medium			1	$10.99
5.3	Large			1	$10.99
5.4	XL			1	$10.99
5.5	2X			1	$11.49
5.6	Upcharge for 3X or Larger			1	$11.49
	Brand/Model:				Redkap SP14WH

				Company Name...	Bazaar Uniforms and Men's Store LLC
6	Long Sleeve Work Shirt 100% Polyester Pleated Pocket with Scalloped Edge Button Front - Regular Long Sleeve Cross-Stitched Shoulder Strap w/ Functional Button Banded Dress Collar Reference: Tact Squad 8002 or equivalent			1	
6.1	Small			1	$21.99
6.2	Medium			1	$21.99
6.3	Large			1	$21.99
6.4	XL			1	$21.99
6.5	2X			1	$23.99
6.6	Upcharge for 3X or Larger			1	$23.99
	Brand/Model:				Tact Squad 8002
7	Short Sleeve Smock 80% Polyester/ 20% Cotton Two Lower French Hem Pockets Button Front - Regular Short Sleeve Cuffed Sleeve Wrinkle Resistant One Piece Lined Notched Lapel Reference: RedKapTP23 or equivalent			1	
7.1	All Sizes			1	$16.29
	Brand/Model:				RedKap TP23
8	3/4 Sleeve Smock 80% Polyester/ 20% Cotton Two Lower Patch Pockets Button Front - Regular 3/4 Sleeve Wrinkle Resistant One Piece Lined Notched Lapel Reference: RedKapTP31 or equivalent			1	
8.1	All Sizes			1	$17.99
	Brand/Model:				Redkap TP31
9	Work Jacket 65% Polyester/ 35% Cotton Two Position Cuffs Patch Pocket on Sleeve Heavy Duty Brass Zipper Adjustable Tabs at Waistband Reference: DickiesTJ15 or equivalent			1	

					Company Name... Bazaar Uniforms and Men's Store LLC
9 ALT1	CornerStone - Duck Cloth Work Jacket #J763 SIZE: XXL	CORNER STONE	J763	1	
	Brand/Model:				
9 ALT2	CornerStone - Duck Cloth Work Jacket #J763 SIZES: XXXL	CORNER STONE	J763	1	
	Brand/Model:				
9 ALT3	CornerStone - Duck Cloth Work Jacket #J763 SIZES: 4XL	CORNER STONE	J763	1	
	Brand/Model:				
9 ALT4	CornerStone - Duck Cloth Work Jacket #J763 SIZES: 5XL	CORNER STONE	J763	1	
	Brand/Model:				
9 ALT5	CornerStone - Duck Cloth Work Jacket #J763 SIZES: 6XL	CORNERSTONE	J763	1	
	Brand/Model:				
9.1	All Sizes			1	$31.99
	Brand/Model:				Dickies TJ15DN
10	Industrial Cargo Pants Poly/Cotton Blend Wrinkle Resistant Hidden Zipper Cargo Pocket Flap Free Back Welt Pocket Metal Tack Button Reference: Dickies2112372 or equivalent			1	
10 ALT1	Red Kap Industrial Cargo Pant #PT88 WAIST 44	RED KAP	PT88	1	
	Brand/Model:				
10.1	All Sizes			1	$20.99
	Brand/Model:				Dickies 2112372 Cargo Pants

					Company Name... Bazaar Uniforms and Men's Store LLC
11	Polo Shirt 50/50 Poly/Cotton Blend Button Front Lined Placket Rib Knit Collar Single Front Pocket Reference: RedKap SK52 or equivalent			1	
11 ALT1	CornerStone Select Snag-Proof Tipped Pocket Polo6.6-ounce snag-proof polyesterDouble-needle stitching throughoutTag-free labelFlat knit collar and cuffs with tipping3-button placketDyed-to-match buttonsOpen hem sleevesSide vents	CORNER STONE	CS415	1	
	Brand/Model:				
11.1	All Sizes			1	$20.99
	Brand/Model:				Redkap SK52
12	MensLined Team Jacket Poly Cotton Blend Knit Collar, Cuff Waistband Slash Front Pockets Heavy Duty Brass Zipper Reference: DickiesJTC2 or equivalent			1	
12 ALT1	Red Kap Team Style Jacket with Slash Pockets SIZE XXL	RED KAP	CSJT38	1	
	Brand/Model:				
12 ALT2	Red Kap Team Style Jacket with Slash Pockets SIZE XXXL	RED KAP	CSJT38	1	
	Brand/Model:				
12 ALT3	Red Kap Team Style Jacket with Slash Pockets SIZE XXXXL	RED KAP	CSJT38	1	
	Brand/Model:				
12 ALT4	Red Kap Team Style Jacket with Slash Pockets SIZE XXXXXL		CSJT38	1	
	Brand/Model:				
12 ALT6	Red Kap Team Style Jacket with Slash Pockets SIZE 6XL	RED KAP	CSJT38	1	
	Brand/Model:				
12.1	All Sizes			1	$33.99

				Company Name...	Bazaar Uniforms and Men's Store LLC
	Brand/Model:				Dickies JTC2
13	Mens Plain Toe Service Oxfords Black Leather Upper Sidewall Stitch Extra Grip Outsole Slip Resistant Certified Reference: Grabber 1120 or equivalent			1	
13 ALT1	(HI Gloss Uniform Oxford)Mirror finish easy care Poromeric uppers, oil resistant EVA sole, steel shank, Goodyear welt construction, lightweight and removable cushion insole	Rothco	5250	1	
	Brand/Model:				
13 ALT1	Mens Plain Toe Service Oxfords	DR. SCHOLL'S HARRINGTON II	E8176M2001	1	
	Brand/Model:				
13.1	All Sizes			1	$57.99
	Brand/Model:				Tact Squad S220 Uniform Oxford Shoe
14	6" Maximum Heavy Duty Work Boots Full Grain Leather Upper Fully Lined Moisture Wicking Fabric Oil Resistant Rubber Outsole Steel Toe Rated Electrical Hazard Protection Rated Reference: Dickies DW7024 or equivalent			1	

			Company Name...		Bazaar Uniforms and Men's Store LLC
14 ALT1	6" Maximum Heavy Duty Work Boots	TEGOPRO	TEGOPRO T10416	1	
	Brand/Model:				
14.1	All Sizes			1	$82.99
	Brand/Model:				Rocky 6167
15	Uniform Embroidery Patches			1	
15.1	Name Patch			1	$3.50
15.2	Organization Patch			1	$5.00
15.3	Name Embroidered			1	$2.50
15.4	Organization Embroidered			1	$4.50
16	Percent Discount Off Items Not Listed Above			1	25.0%
17	Percent Discount Off Walk-In Location			1	
17.1	% Discount off Stocked Items			1	10.0%
	Store Front Address				2430 East Yandell Drive El Paso, TX 79903
	Store Hours				8:30 to 5:00 Monday-Friday 9:00 to 3:00 Saturday

23-123

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:**	June 5, 2023
Drafter:	Ray Burchfield	**Department:**	City Manager's Office
Program:	HOUSING & NEIGHBORHOOD SERVICES	**Line of Business:**	Housing & Neighborhood Services

Title: **A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE MESILLA VALLEY PUBLIC HOUSING AUTHORITY (MVPHA) FOR THE OAK STREET APARTMENTS IMPROVEMENT PROJECT.**

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

PURPOSE(S) OF ACTION:
Approve CDBG Agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City) has received program funds from the United States government under Title I of the Housing and Community Development Act of 1974 which created the Community Development Block Grant (CDBG) Program. The CDBG Program provides the City the opportunity to administer a federally funded program in accordance with the goals of the City's 2021-2025 Consolidated Plans which address low-income areas and residents' community development needs.

On May 4, 2020, City Council approved Resolution No. 20-153, thereby adopting the Program Year 2020 Action Plan. The 2020 Action Plan outlines how the City's CDBG funds will be spent. The 2020 Action Plan allocated $300,000 in Action Plan 2020 funding to Mesilla Valley Public Housing Authority (MVPHA) for this project. The MVPHA has been awarded $305,853 in American Rescue Plan Act (ARPA) funds through the City.

MVPHA owns and operates the 22-unit complex in Las Cruces, New Mexico. The Mesilla Valley Community of Hope, a local non-profit social services agency, partners with the MVPHA on this project and provides on-site case management, free transportation, and nutrition support services. The complex is currently occupied and the majority of the tenants are Veterans Assistance Supportive Housing (VASH) recipients. The resident selection criteria will include a preference for active duty or retired US Military Veterans. This project will provide funding to improve accessibility

In order to comply with CDBG regulations a CDBG agreement and a Land Use Restriction Agreement between the City and MVPHA, as shown in Exhibit "A," is required to be executed.

SUPPORT INFORMATION:

Exhibit A - CDBG Agreement MVPHA Oak Street Rehab FINAL EDITS SIGNED BY CA

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan, 2016-2020 Consolidated 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:
$300,000.00	$300,000.00	$300,000.00

Funding Source(s):

Community Development (FUND 2000) 20453020-721080-12016

Overall Budget Impact:

Funding is budgeted for FY2023

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 approve the CDBG grant agreement between the City and MVPHA.
2. Vote "No"; this will not approve the Resolution and will not approve the CDBG grant agreement.
3. Vote to "Amend"; this would modify the Resolution based on City Council's direction and then vote "Yes" on the amended Resolution.
4. Vote to "Table"; this would delay the Resolution and would require further direction from City Council.

REFERENCE INFORMATION:

Resolution No. 20-153

RESOLUTION 23-123

A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE MESILLA VALLEY PUBLIC HOUSING AUTHORITY (MVPHA) FOR THE OAK STREET APARTMENTS IMPROVEMENT PROJECT.

WHEREAS, the City of Las Cruces (City) has CDBG program funds from the U.S. Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974, which created the Community Development Block (CDBG) Program; and

WHEREAS, the CDBG Program provides the City the opportunity to administer these federal funds in accordance with the City's adopted Consolidated Plan to address community development needs in low-income area or for low-income residents; and

WHEREAS, on May 4, 2020, the Las Cruces City Council approved Resolution No. 20-153, adopting the 2020 Action Plan, which outlined how CDBG funds will be expended; and

WHEREAS, the 2020 Action Plan allocated $300,000.00 in CDBG funds to MVPHA for the Oak Street Apartments Improvement project; and

WHEREAS, in order to comply with CDBG regulations, a CDBG grant agreement between the City and MVPHA is required to be executed.

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

(I)

THAT the CDBG grant agreement between the City of Las Cruces and the Mesilla Valley Public Housing Authority, as shown in Exhibit "A," attached hereto and made a part of this Resolution, is hereby approved.

(II)

THAT the Assistant City Manager as the official representative of the City, in accordance with Resolution 21-147, is hereby authorized to execute the CDBG Grant Agreement with MVPHA on the City's behalf.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

Exhibit A

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE MESILLA VALLEY PUBLIC HOUSING AUTHORITY (MVPHA) FOR THE OAK STREET APARTMENTS IMPROVEMENT PROJECT

THIS AGREEMENT is entered into this ____ day of May, 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 Mesilla Valley Public Housing Authority (MVPHA), a non-profit agency, whose mailing address 926 S. San Pedro St., Las Cruces, New Mexico 88001 (hereinafter called the "Sub-recipient"), under CDBG Grant Number **B-20-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 #20435020-721080-12016; IDIS Activity # 1308.

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 2016-2020 Consolidated Plan, including the 2020 Action Plan, approved by City Council Resolution R-20-153 which includes funding for this project in the amount of **$300,000.00** for FY 2022-2023; 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

_X___ 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: Homeless persons (i.e. Presumed Benefit); or low-income veterans;

____ 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).

___ 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 Oak St Rehabilitation 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 rehabilitation of the Oak Street Apartments at 3350 Oak Street, in the City of Las Cruces. This project will Improve site accessibility by repairing and/or replacing concrete walkways and stairs and resurfacing the parking lot. The exterior of the building/s will get new paint/stucco. New exterior lighting to improve site security and new flooring in the kitchens, new cabinets and remodeled bathrooms, and other eligible improvements as identified during the project. The scope of activity includes contract procurement, construction, and management oversight, completion, and all reporting requirements. The renovated spaces (hereinafter known as the "premises"), are 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 total project cost is estimated to be at least $600,000. The CDBG Grant will cover 50% or a total of $300,000 and American Rescue Plan Act funds in the amount of $305,853 will provide the 50% match that is required per the 2016-2020 and 2021-2025 City of Las Cruces Consolidated Plans.

2. Program Type: Public Facility Improvements
Program Title: Oak St Apartments Improvements

3. Program Management: The program will be managed by the MVPHA management team. 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 2022.

Activity

MVPHA operates a program called the Oak St Apartments which provides 20 1-bedroom and 2 efficiency apartments for low-income persons, primarily Veterans through the VASH program.

D. Staffing

The program grant will be managed by the Executive Staff 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. Term of the Agreement

This Agreement shall start on the Effective date of this Agreement which is the date of the last person to sign or May 15, 2023, or the date on which the United States Department of Housing and Urban Development releases funds to the City for Grant B-20-MC-35-0002, whichever is later. The period of performance will continue for Eighteen (18) months after the Effective date of the Agreement.

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 18 months thereafter are eligible for payment. The term of this Agreement and the provisions herein shall not be extended unless deemed necessary by the grantee. Such an extension, for a maximum or 12 months, may be granted by the City's Assistant City Manager 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
PY2020 CDBG	Oak Street Apartments Improvements, includes construction, engineering, procurement.	$300,000.00
	TOTAL	**$300,000.00**

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.

Indirect costs cannot be charged to this Agreement.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed **$300,000.00**. 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 Sub-recipient's 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 Sub-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, including all phases of the competitive bid process (see Attachment "A," Section II). Disbursement of funds will be to the Sub-recipient for reimbursement of payment of approved invoices submitted and verified by the Sub-recipient in accordance with applicable CDBG regulations, including Davis-Bacon and Related Acts. 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 City Manager's Office City of Las Cruces P.O. Box 20000 Las Cruces, NM 88004 Phone: (575) 528-3094 E-mail: rburchfield@las-cruces.org	Juan Olvera, Executive Director Mesilla Valley Public Housing Authority 926 S. San Pedro St., Las Cruces, NM 88001 Phone: (575) 528-2007 E-mail: jolvera@mvpha.org

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 52. 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, or the scope of work of 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

The City may terminate this Agreement at any time for convenience on behalf of the City 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. 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 reasonable cause to believe the Sub-recipient is in noncompliance with any applicable rules or regulations, the City may withhold said Agreement's funds in 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 City 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 City 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 let 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 Sub-recipient will conduct at least 2 employee interviews monthly and include them with each request for payment to the Grantee.

d. The Sub-recipient is 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 Sub-recipient, who will then 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 Sub-recipient receives a pay request from the Prime Contractor, and before payment is made, the Sub-recipient must deliver a copy of the request to the Grantee, as well as all currently due Certified Payrolls. At that time, the Grantee, after certifying that the Contractors are in compliance with the Davis Bacon Act, will fax to the Sub-recipient a completed Davis Bacon Compliance Certification form. 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", 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 all attachments to this agreement 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 City.

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.

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 "D" 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 NEXT PAGE

IN WITNESS WHEREOF, the parties hereto do mutually execute the Agreement as of the date first written:

Mesilla Valley Public Housing Authority

_____
Signature

Juan Olvera
Printed Name

Executive Director
Title

_____
Date

CITY OF LAS CRUCES

_____
Ikani Taumoepeau, Assistant City Manager

APPROVED AS TO FORM:

4/26/23
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

4. 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

ATTACHMENT "A"

COMMUNITY DEVELOPMENT BLOCK GRANT AND AMERICAN RESCUE PLAN ACT FUNDING
LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEEMENT, dated as of _May___, 2023, is by and between the Mesilla Valley Public Housing Authority (MVPHA), (the Owner), and the City of Las Cruces, a New Mexico municipal corporation.

WITNESSETH:

WHEREAS, the Owner acquired the property for use as Low-Income Housing. The property identified as the Oak Street Apartments 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, MVPHA applied for and has been awarded City of Las Cruces for Community Development Block Grant (CDBG) funds from Program Year 2020 in the amount of $300,000 and also applied for and has been awarded by the City of Las Cruces $305,853 in American Rescue Plan Act (ARPA) funding for the Oak Street Apartments Improvement project 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 May_____, 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 regulations at 2 CFR 200.311, Use of Real Property, require that standards of the use of the property apply from the date ARPA funds are first spent for the property, and;

WHEREAS, the Owner, under this Agreement, intends, declares and covenants in perpetuity the use and occupancy of the Property shall be and are covenants running with the Project land shall be binding upon current owner and 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 Manager's Office, 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
City Manager's Office
700 N Main St.
Las Cruces, NM 88001

To the Owner: Mesilla Valley Public Housing Authority
Juan Olvera, Executive Director
926 S. San Pedro Street
Las Cruces, NM 88001

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.

SIGNATURES ON THE NEXT PAGE

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.

MESILLA VALLEY PUBLIC HOUSING AUTHORITY

By:_____

Its: Executive Director

State of New Mexico)
City of Las Cruces) ss.
County of Dona Ana)

This instrument acknowledged before me this _____day of _____, 2023 by Juan Olvera___ of _Mesilla Valley Public Housing Authority___ its Executive Director_____.

_____ (SEAL)
Notary Public

My commission Expires:_____

CITY OF LAS CRUCES

By:_____ _____
Date

Its: Assistant City Manager

State of New Mexico)
City of Las Cruces) ss.
County of Dona Ana)

Corporate Acknowledgment

This instrument acknowledged before me this _____day of _____, 2023 by _____Assistant City Manager of the City of Las Cruces, A New Mexico municipal corporation, on behalf of the municipal corporation.

_____ (SEAL)
Notary Public

My Commission Expires:_____

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 Manager' 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 City Manager's Office 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 Manager's Office 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: Mesilla Valley Public Housing Authority

Program Name: Oak St 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:

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 _ Mesilla Valley Public Housing Authority, 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: __Mesilla Valley Public Housing Authority _____

Title of Person Authorized to Sign this Form: _Executive Director_____

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 2 CFR 200

Protests received by a Federal agency other than those specified above will be referred to the City.

Company Name's: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date:_____

Signature:_____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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BIDDER'S CERTIFICATION OF ENERGY CONSERVATION AIR QUALITY AND CLEAN WATER COMPLIANCE

Company/Organization Name: Mesilla Valley Public Housing Authority

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: Mesilla Valley Public Housing Authority _____

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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RETENTION AND INSPECTION OF RECORDS

A. Mesilla Valley Public Housing Authority, 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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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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: Mesilla Valley Public Housing Authority

Title of Person Authorized to Sign this Form: Executive Director

Date: _____

Signature: _____

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23-131

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:**	June 5, 2023
Drafter:	Valerie Uribe	**Department:**	Legal
Program:	Administration	**Line of Business:**	Applicant/Owner

Title: **A RESOLUTION APPROVING A CRAFT DISTILLER 1ST OFF-SITE LOCATION LIQUOR LICENSE WITH ON PREMISES CONSUMPTION AND PACKAGE SALES WITH PATIO SERVICE TO ICEBOX BREWING LC, D/B/A ICEBOX DISTILLING COMPANY, LOCATED AT 2260 S. LOCUST STREET, LAS CRUCES, NEW MEXICO 88001.**

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

PURPOSE(S) OF ACTION:

Approval of a liquor license.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for a Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service must be accompanied by a resolution of the City Council approving of and consenting after a public hearing.

Icebox Brewing LC, d/b/a Icebox Distilling Company., applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC") for a Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service. The location for the license is at 2260 S. Locust Street, Las Cruces, New Mexico 88001. ABC granted preliminary approval on April 6, 2023.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval letter from ABC. A public hearing to review this issue is scheduled during the regular City Council meeting to be held on Monday, June 5, 2023, beginning at 1:00 p.m. Notice of this public hearing was published in the *Las Cruces Sun News* on May 5, 2023, and May 19, 2023.

Council may approve or disapprove the Craft Distiller 1st Off-Site Location Liquor License with On Premises Consumption and Package Sales with Patio Service. However, Council's disapproval must be based on substantial evidence that the transfer of the license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.

Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of Alcoholic Beverage Control may give final approval of the license.

SUPPORT INFORMATION:

Exhibit "A". Alcohol and Gaming's Letter and application.
Attachment "A". Notice of Intent to Approve in the Las Cruces Sun News.
Attachment "B". Traffic Impact Report from the Traffic Engineering Section.
Attachment "C". Fire and Safety Compliance Report from the Las Cruces Fire Department.
Attachment "D". Liquor License Impact Report (Zoning) from Development Services.
Attachment "E". Criminal Activity Report for the Las Cruces Police Department.
Attachment "F". Business Registration Report from Community Development Services.
Attachment "G". New Mexico Regulation and Licensing Department Waiver Extension Request Approval.

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 of and consent to the approval of a Craft Distiller 1st Off-Site Location Liquor License with On Premises Consumption and Package Sales with Patio Service and the Alcohol Beverage Control will continue with the application process.
2. Vote "No" this must be based on substantial evidence that the transfer and change of the license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend" this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table" this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

RESOLUTION 23-131

A RESOLUTION APPROVING A CRAFT DISTILLER 1ST OFF-SITE LOCATION LIQUOR LICENSE WITH ON PREMISES CONSUMPTION AND PACKAGE SALES WITH PATIO SERVICE TO ICEBOX BREWING LC, D/B/A ICEBOX DISTILLING COMPANY, LOCATED AT 2260 S. LOCUST STREET, LAS CRUCES, NEW MEXICO 88001.

The City Council is informed that:

WHEREAS, Icebox Brewing LC, d/b/a Icebox Distilling Company, located at 2260 S. Locust Street, Las Cruces, New Mexico 88001, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC") for a Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service; and

WHEREAS, ABC granted preliminary approval for a Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service by letter dated April 6, 2023; and

WHEREAS, pursuant to law, the application for a Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service must be accompanied by a resolution of the Las Cruces City Council approving of and consenting to the approval after a public hearing upon reasonable notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable notice setting forth the required information concerning the public hearing. The City Council has considered the Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service, and it has determined that the approval of same is not detrimental to the public health, safety, or welfare of the City of Las Cruces.

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

(I)

THAT the Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service to Icebox Brewing LC d/b/a Icebox Distilling Company., located at 2260 S. Locust Street, Las Cruces, New Mexico 88001, as evidenced by ABC's letter and the application attached hereto as Exhibit "A", is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Phillip Sanchez, Interim Director

April 6, 2023

Certified Mail No.: 7022 1670 0002 1180 6430

RECEIVED
APR 17 2023
CITY CLERKS OFFICE

City of Las Cruces
Christine Rivera, CMC
PO Box 20000
Las Cruces, NM 88004

Lic. No. /Appl. No.:
Name of Applicant: Icebox Brewing, LC
Doing Business As: Icebox Distilling Company
Proposed Location: 2260 South Locust Street, Las Cruces, New Mexico 88001

The Director of the Alcoholic Beverage Control Division (ABC) has reviewed the referenced Application and granted **Preliminary Approval.** It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

Notice of the Public Hearing required by the Liquor Control Act **shall be given by the governing body by publishing a notice** of the date, time, and place of the hearing **twice during the 30 days prior to the hearing** in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted.** The notice shall include:

(A) Name and address of the Applicant/Licensee;
(B) The action proposed to be taken;
(C) The location of the licensed premises.

In addition, if the Local Option District has a website, **the Notice shall also be published on the website.**

While the law states that "within forty-five **(45)** days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement.

With that in mind, when a local governing body receives a liquor license application from ABC, that governing body has a couple of options:

1) Hold a hearing on the license application within the statutory time frame of forty-five (45) days, as required by the Liquor Control Act, and comply with all other statutory and regulatory procedures and notify ABC of your decision within thirty (30) days of the hearing;
2) Request from ABC an extension of time, past the forty-five (45) days, designating how much additional time will be needed to conduct the hearing in compliance with all statutory and regulatory procedures. After the extension is granted and the hearing is held, notify ABC of your decision within thirty (30) days of the hearing;

ABC has no preference in the option you choose.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

THE APPLICANT IS SEEKING A CRAFT DISTILLER 1ST OFF-SITE LOCATION LIQUOR LICENSE WITH ON PREMISES CONSUMPTION AND PACAKGE SALES WITH PATIO SERVICE

Within thirty (30) days after the Public Hearing, the governing body shall notify ABC of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. **If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.**

If the Governing Body disapproves the issuance or transfer of the license, it shall notify ABC within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to ABC with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,

Charmaine Martinez
Admin Law Judge | Hearing Officer
NM Regulation & Licensing Department
Alcoholic Beverage Control Division
Phone: (505) 476-4804 Fax: (505) 476-4595
Email: Charmaine.Martinez2@rld.nm.gov

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of the Zoning Statement
4. Copy of the Floor Plan

NMRLD
NEW MEXICO REGULATION & LICENSING DEPARTMENT

RECEIVED
FEB 27 2023
ALCOHOL & GAMING DIVISION

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Andrew Vallejos, Director

Craft Distiller and Off-Site Location Application | $200.00 Application Fee, non-refundable

ABC USE ONLY: Application Fee $ 200 Received on: 2.27.23 Receipt No. _____

License Fee $ _____ Received on: _____ Receipt No. _____

Application Number: _____ Local Option District: _____

Check appropriate boxes:

Application is for ☐New License | ■Off-Site Location – ■1st, ☐ 2nd, ☐3rd | Master License Number Pending

Applicant is ☐Individual ■Limited Liability Company ☐Corporation ☐Partnership (General/Limited)

NAME OF APPLICANT: Icebox Brewing LC

D/B/A Name to be used: Icebox Distilling Company Business Phone No: 575-526-7129

Mailing Address: 2825 West Picacho Ave., Las Cruces NM 88007

Email (required) brian@iceboxbrewing.com

Physical location where license is to be used: 2260 South Locust St., Las Cruces NM 88001
(Include street number / highway number / state road, city, state, and zip code)

County: Dona Ana

Contact Person: Brian Weidauer **Phone #:** 575-644-8016 **Email:** brian@iceboxbrewing.com

I, (print name) Brian Weidauer, as (title) Manager / Resident Agent being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form before a Notary Public.

Signature of Applicant: _____ Date: 2/17/2023

Notary Public Use Only: (State of New Mexico, County of Dona Ana
SUBSCRIBED AND SWORN TO before me this 17th day of February, 2023
By: Brian Weidauer Notary Public: _____
Date my Commission Expires: 5/25/25

ESTEPHANIE JIMENEZ
NOTARY PUBLIC
STATE OF NEW MEXICO
COMMISSION # 1117792
COMMISSION EXPIRES: 05-25-2025

Local Option District Use Only: Local Governing Body of _____ City, County, Village

Public Hearing held on _____ 20_____ Please check one: ☐ Approved ☐ Disapproved

Signature of City/County Official: _____ Title: _____

Alcoholic Beverage Control Division Use Only: ☐ Approved ☐ Disapproved, _____

Signed by Director: _____ Date: _____

Revised 7.2021

Premises Location, Ownership, and Description | NMSA §60-6B-10 | Page 2

1. The land and building which is proposed to be the licensed premises is: **(check one)**

☐ Owned by Applicant, copy of deed/document attached

☑ Leased by Applicant, copy of lease/document attached

☐ Other (provide details): _____

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s): **Matthew Hechter**

B. Date and Term of Lease: **February 1, 2023 - 2 year term**

3. Premises location is Zoned (example C-1, see Zoning Statement): **Zoned C-1**

Zoning Statement attached, ☑ **Yes** ☐ **No** Must be obtained from the Local Government, listing the proposed location by address, Type of Zone, state whether alcoholic beverages are allowed at proposed location, and if applicable, whether packaged sales, patio service and/or manufacturing is allowable. If there is no zoning in the proposed location, attach Statement from the local government, indicating there is no zoning.

4. **Distance* from nearest Church**: (Property line of church to closest point of licensed premises—shortest distance)

Name of Church: **University United Methodist Church** Miles/feet: **525 ft.**

Address/location of Church: **2000 South Locust St., Las Cruces NM 88001**

5. **Distance* from nearest School**: (Property line of school to closest point of licensed premises—shortest distance)

Name of School: **University Hills Elementary School** Miles/feet: **338 ft.**

Address/location of School: **2005 South Locust St., Las Cruces NM 88001**

6. **Attach Detailed Floor Plan**, must include the Total Square Footage of premises; List nearest cross street; Show which direction is North; Show each level (floor) where alcoholic beverages will be sold or consumed, exterior walls, doors, and interior walls; Patio Area with type of barrier used; Highlight Bonded Areas. The floor plan should be no larger than 8½ x 11 inches and must be labeled with designated areas highlighted, which will reflect the proposed Licensed Premises.

7. Type of Operation: ☐ Hotel ☐ Lounge ☐ Package Grocery ☐ Racetrack

☐ Restaurant ☑ Craft Distiller ☐ Small Brewer ☐ Winery ☐ Wholesaler

☐ Other (specify): _____

***NOTE**: If the distance is beyond 300 feet, but less than 400 feet, and the Applicant does not admit that the location is within 300 feet and requests a waiver from the LOD, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.

City of Las Cruces

STATEMENT OF ZONING

The property located at 2260 S Locust St, and having a Map Code Number or Parcel ID Number of R0214725, in Las Cruces, New Mexico, is zoned as follows:

C-1 (Commercial Low Intensity)

Comments: The C-1 district facilitates and encourages development of those uses that generate small-scale retail and service activities within a neighborhood area. A *Cafe, Cafeteria, Coffee Shop, Restaurant, etc.* with the sale of beer, wine and distilled spirits for onsite consumption is a permitted use, within the C-1 zoning district, provided all requirements as prescribed for liquor establishments by the State of New Mexico are met. Drive-up, Pick-up & Delivery, and Outdoor services are prohibited within the C-1 zoning district.

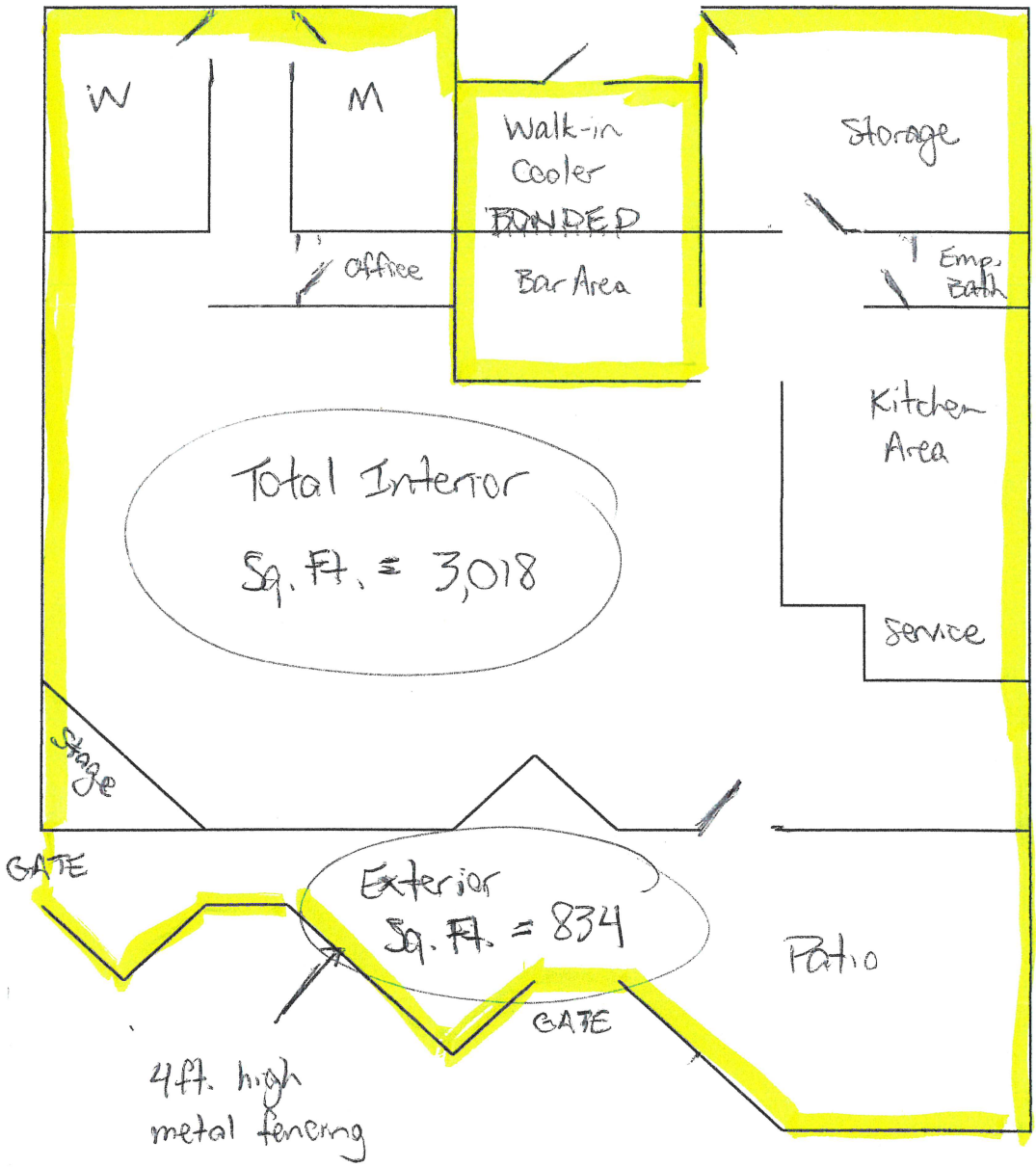
The above described property located in the City of Las Cruces, New Mexico, has been reviewed and found to be zoned as indicated above in accordance with the Las Cruces Zoning Atlas. Accordingly, I do hereby approve and issue this Statement of Zoning.

February 22, 2023
Date

Kyle D. Metzgar
Kyle Metzgar
Planning Technician Sr.

Please be advised that the information presented on this document is taken from the City of Las Cruces Zoning Atlas. Nothing shall prevent the City of Las Cruces from amending this information if review of the Zoning Ordinance shows the Atlas to be in error.

Icebox Brewing Company
2260 South Locust St.
Las Cruces, NM 88001



WYOMING AVE →

← WYOMING AVE

PARKING LOT

NORTH

← S. LOCUST ST. →

Text of Ad: 04/19/2023

NOTICE OF INTENT TO APPROVE

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of A Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service to Icebox Brewing, LC d/b/a Icebox Distilling Company located at 2260 S. Locust Street, Las Cruces, New Mexico, 88001.

The Public Hearing will be held as part of the regularly scheduled meeting of the City Council on Monday, June 5, 2023, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. If passed, the Director of Alcoholic Beverage Control of the State of New Mexico Regulation & Licensing Department may approve the issuance of the license.

Witness my hand and seal this the 18th day of April 2023.

Christine Rivera, MS, CMC
City Clerk
#5673831, Sun News
May 5, 19, 2023

City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

MEMORANDUM

To: Jocelyn Garrison, Interim City Attorney

From: Gary Skelton, P.E., Civil Engineer Associate **Initials:** GS

Date: April 25, 2023

Subject: Traffic Investigation Report – Craft Distiller and Off-Site Location Application

2260 S. Locust Street – Icebox Distilling Company

As requested, Traffic Engineering has completed a traffic investigation for the Icebox Distilling Company located at 2260 S. Locust Street in Las Cruces, New Mexico. The following information is submitted for review:

- Icebox Distilling Company is located on the west side of Locust Street at the corner with Wyoming Avenue. According to the Mesilla Valley MPO Interactive Traffic Flow Map, the most current traffic volume is approximately 5,660 vehicles per day on Locust Street and 920 vehicles per day on Wyoming Avenue near this location.

- The Mesilla Valley MPO classifies both Locust Street and Wyoming Avenue as collector roads near the subject location. Locust Street primarily serves commercial and educational facilities, while Wyoming Avenue serves primarily single-family and multi-family residences in the area of interest.

- The subject property is a commercial facility that has a single driveway access located on the west side of Locust Street and two driveways located on the south side of the property along Wyoming Avenue. Existing trees located on the property near the driveways on both Locust Street and Wyoming Avenue will need to be kept trimmed to maintain the clear sight triangles at each of the driveways. No other operational problems are currently known at the driveways.

- The speed limit along Locust Street is 35 mph and the speed limit on Wyoming Avenue is 25 MPH near the subject property.

The approval of a Craft Distiller and Off-Site Location Application at this location does not appear to adversely impact traffic operations along this roadway segment. Feel free to contact me at 575-541-2561 if additional information is needed.

Valerie Uribe

From: Michael Landavazo
Sent: Tuesday, May 2, 2023 9:58 AM
To: Valerie Uribe; Jose Leos; Mark Dubbin; Jason Smith
Cc: Jennifer Lucero
Subject: RE: Icebox Brewing LC, d/b/a Icebox Distilling Company Craft Distiller 1st Off-Site Liquor License
Attachments: Inspection LCC-2023-0000164.pdf

Here is a copy of their last fire inspection. Everything is good and up to date. We approve from our end.

Please let me know if you need anything else

Michael Landavazo
Fire Marshal
Las Cruces Fire Department
575-528-4251
City of Las Cruces
P.O. BOX 20000 • LAS CRUCES, NM 88004

From: Valerie Uribe <vuribe@lascruces.gov>
Sent: Tuesday, May 2, 2023 8:33 AM
To: Jose Leos <jleos@las-cruces.org>; Michael Landavazo <mlandavazo@las-cruces.org>; Mark Dubbin <MDubbin@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>
Cc: Jennifer Lucero <jenlucero@las-cruces.org>
Subject: FW: Icebox Brewing LC, d/b/a Icebox Distilling Company Craft Distiller 1st Off-Site Liquor License

Good morning,

Could I please get the approval/report as soon as possible for the above liquor license.

Thank you,

From: Valerie Uribe
Sent: Monday, May 1, 2023 8:40 AM
To: Jennifer Lucero <jenlucero@las-cruces.org>; Valerie Uribe <vuribe@lascruces.gov>; Adam Ochoa <aochoa@las-cruces.org>; Adrian Arias <aarias@las-cruces.org>; Bobbie Munoz <romunoz@las-cruces.org>; Christina Abeyta Corella <cabeyta@las-cruces.org>; Cody Haver <chaver@las-cruces.org>; Daniel Balderrama <dbalderrama@las-cruces.org>; Elena Sanchez <ESanchez@las-cruces.org>; Gary Skelton <gskelton@las-cruces.org>; Jackie Baylon <jdelmuro@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Katherine Harrison Rogers <krogers@las-cruces.org>; Kendle Arellano <kmcclurg@lascruces.gov>; Sean Mullen <smullen@las-cruces.org>; Kyle Metzgar <kmetzgar@las-cruces.org>; Mark Dubbin <MDubbin@las-cruces.org>; Miguel Dominguez <midominguez@las-cruces.org>; Soogyu Lee <sglee@las-cruces.org>; Hector Terrazas <hterrazas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Michael Landavazo <mlandavazo@las-cruces.org>
Subject: FW: Icebox Brewing LC, d/b/a Icebox Distilling Company Craft Distiller 1st Off-Site Liquor License

Good morning, all,

A reminder that these reports/approvals are due by tomorrow 5/2.

Thank you!

From: Valerie Uribe
Sent: Tuesday, April 18, 2023 12:44 PM
To: Adam Ochoa <aochoa@las-cruces.org>; Adrian Arias <aarias@las-cruces.org>; Bobbie Munoz <romunoz@las-cruces.org>; Christina Abeyta Corella <cabeyta@las-cruces.org>; Cody Haver <chaver@las-cruces.org>; Daniel Balderrama <dbalderrama@las-cruces.org>; Elena Sanchez <ESanchez@las-cruces.org>; Gary Skelton <gskelton@las-cruces.org>; Jackie Baylon <jdelmuro@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Katherine Harrison Rogers <krogers@las-cruces.org>; Kendle Arellano <kmcclurg@las-cruces.org>; Sean Mullen <smullen@las-cruces.org>; Kyle Metzgar <kmetzgar@las-cruces.org>; Mark Dubbin <MDubbin@las-cruces.org>; Miguel Dominguez <midominguez@las-cruces.org>; Soogyu Lee <sglee@las-cruces.org>; Hector Terrazas <hterrazas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jennifer Lucero <jenlucero@las-cruces.org>
Subject: Icebox Brewing LC, d/b/a Icebox Distilling Company Craft Distiller 1st Off-Site Liquor License

Good afternoon,

Attached please find an application from Icebox Brewing LC, d/b/a Icebox Distilling Company seeking a Craft Distiller 1st Off- Site Location Liquor License With On- Premises Consumption and Package Sales with Patio Service at 2260 S. Locust Street, Las Cruces, New Mexico 88001.

Please provide reports no later than May 2, 2023.

Thank you,

Valerie Uribe
Senior Legal Assistant/Legal Department/City Attorney's Office
Direct (575) 541-2020, Main (575) 541-2128, Email vuribe@las-cruces.org
700 N. Main Street, Suite 3200, Las Cruces, NM 88001

City of Las Cruces®
LEGAL DEPARTMENT

This message is from a legal office and is confidential and/or attorney-client privileged. If you receive a copy of this email in error, please delete it, retain no copies, and call our office immediately (575-541-2128).



Las Cruces Fire Department

Fire Inspection Results

New Business Registration Inspection Inspection Result

Status	Inspected by	Completed at
Completed	Michael Danner	02/16/2023 00:00:00

Business Address	Suite	City	State	Zip
2260 LOCUST ST	--	LAS CRUCES	NM	88001

Business Name	Building Type
Icebox Brewhouse	353 - Retail Store

Item	Result	Remarks
Combustible waste and materials storage acceptable	Pass	
Code		
IFC - 315.1 - General - Storage shall be in accordance with Sections 315.2 through 315.5 .		

Item	Result	Remarks
Appliances, heating devices and other ignition sources acceptable	Pass	
Code		
IFC - 305.1 - Clearance from ignition sources - Clearance between ignition sources, such as luminaires, heaters, flame-producing devices and combustible materials, shall be maintained in an approved manner.		

Item	Result	Remarks
Address posted, visible and on curb	Pass	

Code
IFC - 505.1 - Address identification - New and existing buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall not be spelled out. Each character shall be not less than 4 inches (102 mm) high with a minimum stroke width of 1 / 2 inch (12.7 mm). Where required by the fire code official , address identification shall be provided in additional approved locations to facilitate emergency response. Where access is by means of a private road and the building cannot be viewed from the public way , a monument, pole or other sign or means shall be used to identify the structure. Address identification shall be maintained.

Item	Result	Remarks
Fire lanes, hydrants, FDC accessible and unobstructed	Pass	
Code		
IFC - 912.1 - Installation - Fire department connections shall be installed in accordance with the NFPA standard applicable to the system design and shall comply with Sections 912.2 through 912.7 .		

Item	Result	Remarks
Electrical systems/compoenents safe	Pass	
Code		
IFC - 605.1 - Abatement of electrical hazards - Identified electrical hazards shall be abated. Identified hazardous electrical conditions in permanent wiring shall be brought to the attention of the responsible code official. Electrical wiring, devices, appliances and other equipment that is modified or damaged and constitutes an electrical shock or fire hazard shall not be used.		

Item	Result	Remarks
Sprinkler System serviced / tagged	N/A	
Code		
IFC - 903.1 - General - Automatic sprinkler systems shall comply with this section.		

Item	Result	Remarks
Fire extinguishers tagged, mounted, appropriate size and number	Pass	
Code		
IFC - 906.1 - Where required - Portable fire extinguishers shall be installed in all of the following		

locations:
1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies. Exception: In Group R-2 occupancies, portable fire extinguishers shall be required only in locations specified in Items 2 through 6 where each dwelling unit is provided with a portable fire extinguisher having a minimum rating of 1-A:10-B:C.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 3315.1 .
5. Where required by the sections indicated in Table 906.1 .
6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official .

Item	Result	Remarks
Exits unobstructed and open	Pass	
Code		
IFC - 1001.1 - General - Buildings or portions thereof shall be provided with a means of egress system as required by this chapter. The provisions of this chapter shall control the design, construction and arrangement of means of egress components required to provide an approved means of egress from structures and portions thereof. Sections 1003 through 1030 shall apply to new construction. Section 1031 shall apply to existing buildings. Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code .		

Item	Result	Remarks
Exit and emergency lights operable	Pass	
Code		
IFC - 1008.1 - Means of egress illumination - Illumination shall be provided in the means of egress in accordance with Section 1008.2 . Under emergency power, means of egress illumination shall comply with Section 1008.3 .		

Item	Result	Remarks
Storage of hazardous materials appropriate and MSDS available	Pass	
Code		
IFC - 5003.1 - Scope - The storage, use and handling of all hazardous materials shall be in accordance with this section.		

Item	Result	Remarks
Remainder of building and / or areas not previously addressed acceptable	Pass	

Item	Result	Remarks
Range hood, appliances, vents, roof clean and free of grease	N/A	

Item	Result	Remarks
Hood suppression system serviced/tagged	N/A	
Code		
IFC - 904.12.6.2 - Extinguishing system service - Automatic fire-extinguishing systems shall be serviced at least every six months and after activation of the system. Inspection shall be by qualified individuals, and a certificate of inspection shall be forwarded to the fire code official upon completion.		

Item	Result	Remarks
All grease producing appliances under hood	N/A	
Code		
IFC - 609.1 - General - Commercial kitchen exhaust hoods shall comply with the requirements of the International Mechanical Code .		

Item	Result	Remarks
Fire extinguisher within 30 feet of cooking appliances / Class K if hood system present	N/A	
Code		
IFC - 904.12.5 - Portable fire extinguishers for commercial cooking equipment - Portable fire extinguishers shall be provided within a 30-foot (9144 mm) distance of travel from commercial-type cooking equipment. Cooking equipment involving solid fuels or vegetable or animal oils and fats shall be protected by a Class K rated portable extinguisher in accordance with Section 904.12.5.1 or 904.12.5.2 , as applicable.		

Inspection Signatures

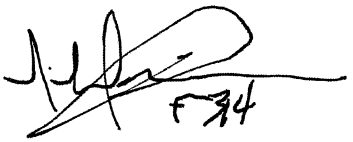
Occupancy Contact Signature

Unable to sign:

Fire inspection form was completed at the fire station.

Ben Wood
575-680-8804
brian@iceboxbrewing.com

Inspector Signature



Michael Danner
mdanner@las-cruces.org

City of Las Cruces

MEMORANDUM

To: Jocelyn Garrison, City Attorney

From: Kyle Metzgar, Senior Planning Technician **Initials:**

Date: May 2, 2023 **File #:** M-23-040

Subject: Liquor License Impact Report, Icebox Brewing LC

Attached, please find the Liquor License Impact Report for a Craft Distiller 1st Off-Site Location with On-Premises Consumption and Package Sales with Patio Service Application from the Community Development Department at 2260 S. Locust St. If you have any questions, please contact me at (575) 528-3064.

Kyle D. Metzgar

Kyle Metzgar
Planning Tech Sr

3-15-23
Date

cc: David Weir, AICP, Chief Planning Administrator **Initials:**
Katherine Harrison-Rogers, AICP, Senior Planner **Initials:**

City of Las Cruces
Community Development Department

LIQUOR LICENSE IMPACT REPORT

Liquor License Application

Icebox Distilling Company
2260 S. Locust St.
(Craft Distiller and Off-Site Location Application)

May 2, 2023

LIQUOR LICENSE IMPACT REPORT

Icebox Distilling Company
2260 S. Locust St.

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location:	2260 S. Locust St.
Applicant:	Icebox Brewing LC
Business Name:	Icebox Distilling Company

LAND USE AND ZONING INFORMATION:

Subject Property Zoning: C-1 (Commercial Low Intensity)
(See attached Statement of Zoning and Vicinity Map)

Subject Property Current Land Use:

Adjacent Land Uses	Zoning	Land Use
North	R-3	Apartments
South	C-1	Commercial
West	R-3	Apartments
East	R-2	Apartments

DISTANCE REQUIREMENTS:

Greater than 300 feet to a school:	YES
Greater than 300 feet to a church:	YES
Greater than 300 feet to a military installation:	YES

TRAFFIC AND ACCESS INFORMATION:

Roadway:	S. Locust St.
Classification:	Collector
Number of Lanes:	2
Site Access:	2
Nearest Intersection:	S. Locust St. and Wyoming Ave.

PARKING REQUIREMENTS:

The 2001 Las Cruces Zoning Code, as amended, requires one (1) automobile space for every five (5) seats and one (1) bicycle parking space for every one thousand (1000) sq. ft. of Gross Floor Area (GFA), if only outdoor seating only (1) automobile space for every 100 sq ft of Gross Floor Area (GFA) and 1 bicycle parking space for every two thousand (2000) sq ft of Gross Floor Area (GFA) for a restaurant in this zoning district. A restaurant with On-Premise Consumption and Package Sales is a permitted use provided all requirements as prescribed for liquor establishments by the State of New Mexico are met.

IMPACT ANALYSIS:

The applicant is requesting a Craft Distiller 1st Off-Site Location Liquor License with On-Premises Consumption and Package Sales with Patio Service. The subject property is located on S. Locust St., a collector roadway as designated by the Mesilla Valley Metropolitan Planning Organization (MPO), that is designed to provide access from local streets through neighborhoods to arterials used for short trips within a small geographical area rather than across the region. The subject property is zoned C-1 (Commercial Low Intensity) which permits this use and uses related to it. In terms of a transportation and land use perspective, this seems to be an appropriate location and request.

City of Las Cruces

STATEMENT OF ZONING

The property located at 100 N. Main St., and having an Account ID Number of R0242602, in Las Cruces, New Mexico, is zoned as follows:

DDC (Downtown Development Code)

Comments: The purpose of this section and the zoning districts defined herein is to accommodate government facilities, retail, office, residential, and other similar uses in the downtown area of the city with appropriate height, yard, and intensity standards to allow for a higher density and intensity of development.

The Downtown district consists of higher intensity mixed-use buildings that accommodate retail, offices, institutional, and residences. The thoroughfares have wide sidewalks with street trees and buildings are set close to the sidewalks.

A public celebration with a liquor license is a permitted use within this zoning district provided that all requirements prescribed for liquor establishments by the State of New Mexico are met.

The above described property located in the City of Las Cruces, New Mexico, has been reviewed and found to be zoned as indicated above in accordance with the Las Cruces Zoning Atlas. Accordingly, I do hereby approve and issue this Statement of Zoning.

May 2, 2023
Date

Kyle D. Metzgar
Kyle Metzgar
Planning Technician Sr

Please be advised that the information presented on this document is taken from the City of Las Cruces Zoning Atlas. Nothing shall prevent the City of Las Cruces from amending this information if review of the Zoning Ordinance shows the Atlas to be in error.

ZONING MAP



C-1 –

C-2C –

R-2 –

R-3 –

Notification Map



FID	ACCOUNTNUM	PARELNUM	MAPCODE	NBRHD
23585	R0214725	4.00914E+12	4-009-136-061-422	O08
23582	R0214691	4.00914E+12	4-009-136-049-225	O08
23583	R0214701	4.00914E+12	4-009-136-052-417	O08
14910	R0214750	4.00914E+12	4-009-136-070-436	O08
23588	R0214774	4.00914E+12	4-009-136-077-410	M07
23590	R0214782	4.00914E+12	4-009-136-081-418	M07
14908	R0214716	4.00914E+12	4-009-136-058-443	O08
14911	R0214760	4.00914E+12	4-009-136-073-444	O08
33381	R0214650	4.00914E+12	4-009-136-037-423	O08
23592	R0214800	4.00914E+12	4-009-136-088-406	M07
23593	R0214803	4.00914E+12	4-009-136-089-416	M07
14915	R0214664	4.00914E+12	4-009-136-041-443	O08
23586	R0214744	4.00914E+12	4-009-136-067-395	M07
14909	R0214733	4.00914E+12	4-009-136-064-454	O08
14912	R0214770	4.00914E+12	4-009-136-076-452	O08
23577	R0214619	4.00914E+12	4-009-136-028-426	O08
33432	R0214816	4.00914E+12	4-009-136-093-406	M07
23587	R0214764	4.00914E+12	4-009-136-074-391	M07
23581	R0214669	4.00914E+12	4-009-136-042-398	O08
33437	R0214832	4.00914E+12	4-009-136-097-414	M07
23591	R0214791	4.00914E+12	4-009-136-085-392	M07
23576	R0214605	4.00914E+12	4-009-136-024-410	O08
14914	R0214660	4.00914E+12	4-009-136-040-460	O08
23727	R0221443	4.00914E+12	4-009-136-107-435	M07

SCHOOLDIST	TAXAREA	OWNERNAME	CAREOFNAME
2	2IN_NR	PARRA RICHARD S & MARLANE D TR	
2	2IN_R	HINDES BROOKS E & TANI L	
2	2IN_R	EDGE CAPITAL IV LLC	
2	2IN_NR	BUTLER LAND COMPANY LLC	
2	2IN_R	CLAWSON ROBERT JOE & MARTHA JO	
2	2IN_R	LEVELDALE WEST LLC	
2	2IN_R	LGI LAS CRUCES LLC	
2	2IN_NR	MONTBROS LLC	
2	2IN_R	HINDES BROOKS & TANI L	
2	2IN_R	FOREMAN HAROLD W & CAROL K TR	
2	2IN_R	LEVELDALE WEST LLC	
2	2IN_R	CULBERSON RANCHES INC	
2	2IN_R	ALVAREZ ELOY & TERRI	
2	2IN_NR	GREEG RENTALS LLC	
2	2IN_NR	MONTBROS LLC	
2	2IN_R	CORRAL JESUS & LAURA TELLEZ	
2	2IN_R	CHAVEZ BENJAMIN & DEBBIE	
2	2IN_R	GREER SARA T	
2	2IN_NR	ALBO ALBERT S	
2	2IN_R	PETERSON REBECCA L TRUSTEE	
2	2IN_R	DEMIRJIAN JOHN	
2	2IN_R	GABALDON MICHELLE	
2	2IN_R	HARDER MARTEN J TRUSTEE	
2	2IN_R	CAT II LLC	

MAILADDR1	MAILADDR2	CITY	STATE	ZIP
3101 BOWMAN ST		LAS CRUCES	NM	88005
2463 CONCHAS LANE		LAS CRUCES	NM	88011
1324 6TH NW		ALBUQUERQUE	NM	87102
PO BOX 398		MESILLA PARK	NM	88047-0398
2255 THOMAS DR		LAS CRUCES	NM	880015239
PO BOX 550		LAS CRUCES	NM	88004
5203 SINGER ROAD		LAS CRUCES	NM	88007
2460 S LOCUST STE A		LAS CRUCES	NM	88001
2463 CONCHAS LANE		LAS CRUCES	NM	88011
2245 THOMAS DR		LAS CRUCES	NM	88001-5239
PO BOX 550		LAS CRUCES	NM	88004
PO BOX 130		LORDSBURG	NM	88045-0130
2290 THOMAS DR		LAS CRUCES	NM	88001
1557 MONTE VISTA AVE		LAS CRUCES	NM	88001-5731
2460 S LOCUST STE A		LAS CRUCES	NM	88001
725 ROUND HILL DR		MERCED	CA	95348
2235 THOMAS DR		LAS CRUCES	NM	88001
2280 THOMAS DR		LAS CRUCES	NM	88001
1085 THUNDERBIRD LANE		EL PASO	TX	79912
1720 NE SUNSET LN		GRANTS PASS	OR	97526
2270 THOMAS DR		LAS CRUCES	NM	88001
PO BOX 336		MESILLA PARK	NM	88047
141 STOCKBRIDGE LN		OJAI	CA	93023
1804 WYOMING OFFICE		LAS CRUCES	NM	88001

DEEDHOLDER	SITUSADDRS
	2260 LOCUST ST
	1635 WYOMING AVE APT 1-2-3
	2250 LOCUST ST APTS 1-9
	2300 LOCUST
	2255 THOMAS DR
	1805 E WYOMING
	1630 WYOMING
	2320 S LOCUST
	1613-1615-1617-1619 WYOMING AVE
	2245 THOMAS DR
	1815 WYOMING
	1620 WYOMING AVE APTS 1-12
	2290 THOMAS DR
	1557 MONTE VISTA
	2205 & 2207 GARRISON RD
	2235 THOMAS DR
	2280 THOMAS DR
	1500 PANLENER AVE APTS A-B-C
	1825 WYOMING
	2270 THOMAS
	2125-2127-2129-2131 GARRISON RD
	1555 MONTE VISTA AVE APTS 101-212
	1804 WYOMING

SUBNAME	LOT	BLOCK
COLLEGE MESA SUBDIVISION 301	TR A	14
COLLEGE MESA SUBDIVISION 301	PART OF TR A	
COLLEGE MESA SUBDIVISION 301	TR B	
UNIVERSITY HILLS SUBDIVISION	60 PART OF TR B	45
STULL'S COLLEGE HEIGHTS BLK W,PT BLK T,U,V 573	1 W	
UNIVERSITY PLACE 632	1	1
UNIVERSITY HILLS SUBDIVISION	60 PART OF TR B	45
UNIVERSITY PLACE 632	B	
COLLEGE MESA SUBDIVISION 301	1	14
STULL'S COLLEGE HEIGHTS BLK W,PT BLK T,U,V 573	2 W	
UNIVERSITY PLACE 632	2	1
COLLEGE MESA SUBDIVISION 301	LT 34-37 INCL	1
STULL'S COLLEGE HEIGHTS BLK W,PT BLK T,U,V 573	1 U	
UNIVERSITY PLACE 632	60 PART OF TR B	45
UNIVERSITY HILLS SUBDIVISION	60	45
COLLEGE MESA SUBDIVISION 301	2	14
STULL'S COLLEGE HEIGHTS BLK W,PT BLK T,U,V 573	3 W	
STULL'S COLLEGE HEIGHTS BLK W,PT BLK T,U,V 573	2 U	
COLLEGE MESA SUBDIVISION 301	TR C	14
UNIVERSITY PLACE 632	3	1
STULL'S COLLEGE HEIGHTS BLK W,PT BLK T,U,V 573	3 U	
COLLEGE MESA SUBDIVISION 301	3	14
COLLEGE MESA SUBDIVISION 301	1	1
UNIVERSITY PLACE REPLAT NO 2 (BK 15 PG 383 - 8821922)	1	

UNIT	TOWNSHIP	RNGE	SECTION	TRS	TOTALACRES	TOTALSQFT
	23S	2E	21	23S 2E 21	0	13706
	23S	2E	21	23S 2E 21	0	7436
	23S	2E	21	23S 2E 21	0	43942
	23S	2E	21	23S 2E 21	0	14063
	23S	2E	21	23S 2E 21	0	11507
	23S	2E	21	23S 2E 21	0	8649
	23S	2E	21	23S 2E 21	0	18695
	23S	2E	21	23S 2E 21	0	7500
	23S	2E	21	23S 2E 21	0	17765
	23S	2E	21	23S 2E 21	0	9437
	23S	2E	21	23S 2E 21	0	8342
	23S	2E	21	23S 2E 21	0	31500
	23S	2E	21	23S 2E 21	0	12549
	23S	2E	21	23S 2E 21	0	14560
	23S	2E	21	23S 2E 21	0	13750
	23S	2E	21	23S 2E 21	0	16245
	23S	2E	21	23S 2E 21	0	9692
	23S	2E	21	23S 2E 21	0	12304
	23S	2E	21	23S 2E 21	0	70854
	23S	2E	21	23S 2E 21	0	7530
	23S	2E	21	23S 2E 21	0	10674
	23S	2E	21	23S 2E 21	0	28144
	23S	2E	21	23S 2E 21	0	57300
	23S	2E	21	23S 2E 21	0	144184

BLDGVALUE	LANDVALUE	TOTALVALUE	Shape__Area	Shape__Length
103429	47971	151400	1812.1875	173.6192151
143173	25000	168173	977.8046875	127.9157313
453407	131826	585233	5837.113281	312.3827666
128847	49200	178047	1910.28125	175.1692462
119380	25000	144380	1446.398438	154.0478497
107973	25000	132973	1322.019531	144.4581864
605000	25000	630000	2455.679688	203.133425
208093	26250	234343	951.859375	131.5331817
134476	25000	159476	2190.773438	197.7144194
155000	23055	178055	1236.804688	143.1733302
110803	25000	135803	1080.335938	132.404719
276106	81466	357572	4041.441406	257.4105615
94729	25000	119729	1593.433594	164.7626663
161859	47320	209179	2030.578125	182.5701665
9275	48125	57400	1642.332031	159.0343153
134476	25000	159476	2232.796875	198.9465762
121850	25000	146850	1295.425781	146.6446103
150613	25000	175613	1551.425781	172.1424769
0	212562	212562	7915.300781	362.7330464
109776	25000	134776	990.4023438	127.0956273
128508	25000	153508	1400.257813	150.5201539
245339	70360	315699	3510.71875	243.9193856
506336	113410	619746	7469.871094	385.701181
2601546	474805	3076351	18925.09766	721.9268454

DISTANCE
1.01 Feet (approximate)
138.18 Feet (approximate)
153.29 Feet (approximate)
166.63 Feet (approximate)
191.39 Feet (approximate)
192.08 Feet (approximate)
196 Feet (approximate)
251.88 Feet (approximate)
252.9 Feet (approximate)
275.95 Feet (approximate)
281.71 Feet (approximate)
294.58 Feet (approximate)
302.01 Feet (approximate)
325.15 Feet (approximate)
331.81 Feet (approximate)
352.22 Feet (approximate)
354.4 Feet (approximate)
355.64 Feet (approximate)
362.61 Feet (approximate)
363.84 Feet (approximate)
389.51 Feet (approximate)
410.15 Feet (approximate)
440.02 Feet (approximate)
505.82 Feet (approximate)

OWNERNAME	MAILADDR1	CITY	STATE	ZIP
BLEIWEISS GAIL ANNETTE TRUSTEE	221 N MAIN STREET	LAS CRUCES	NM	88001
CLARK RUTH & BOBBY C TRUSTEES	223 W GREENING	LAS CRUCES	NM	88005
CORONADO JOSE R	3863 STONEY BROOK CIR	LAS CRUCES	NM	88005
CORONADO JOSE R & RUBEN CORONADO	125 W GRIGGS AVE	LAS CRUCES	NM	88001
GARCIA R LEO	P.O. BOX 16228	LAS CRUCES	NM	88004
HALL RICHARAD A	1801 SEQUOIA AVE	LAS CRUCES	NM	88005
HOUSE OF PRAISE INC	PO BOX 2527	LAS CRUCES	NM	88004
JOSE R CORONADO	125 W GRIGGS AVE	LAS CRUCES	NM	88001
LAS CRUCES COMMUNITY INVESTORS 1 LLLP	135 RIO WEST BLDG B	EL PASO	TX	79932
NGP VI LAS CRUCES NM LLC	1650 TYSONS BOULEVARD SUITE 200	MCLEAN	VA	22102
POTTER ANGELIKA E	P.O. BOX 606	FAIRACRES	NM	88033
RICHARD ROSEN INC	306 E OVERLAND	EL PASO	TX	79901
ROCKING LAZY R LLC	275 N MAIN ST 201	LAS CRUCES	NM	88007
SOUTHERN RIO GRANDE MENTAL HEALTH FOUNDATION INC	100 W GRIGGS	LAS CRUCES	NM	88001
UNITED STATES OF AMERICA C/O WILLIAM NEIL LANDERS	819 TAYLOR ST STE 12A05	FORT WORTH	TX	76102
UNITED STATES OF AMERICA	1800 MARQUESS	LAS CRUCES	NM	88005

Valerie Uribe

From: Sean Mullen
Sent: Wednesday, April 19, 2023 7:56 AM
To: Valerie Uribe
Subject: RE: Icebox Brewing LC, d/b/a Icebox Distilling Company Craft Distiller 1st Off-Site Liquor License

Approved.

Thank you,

Sean Mullen
Deputy Chief of Administration/Las Cruces Police Department
Direct: 575-528-4101 Main: 575-528-4200, smullen@las-cruces.org
City of Las Cruces
P.O. BOX 20000 • LAS CRUCES, NM 88004

From: Valerie Uribe <vuribe@las-cruces.org>
Sent: Tuesday, April 18, 2023 12:44 PM
To: Adam Ochoa <aochoa@las-cruces.org>; Adrian Arias <aarias@las-cruces.org>; Bobbie Munoz <romunoz@las-cruces.org>; Christina Abeyta Corella <cabeyta@las-cruces.org>; Cody Haver <chaver@las-cruces.org>; Daniel Balderrama <dbalderrama@las-cruces.org>; Elena Sanchez <ESanchez@las-cruces.org>; Gary Skelton <gskelton@las-cruces.org>; Jackie Baylon <jdelmuro@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Katherine Harrison Rogers <krogers@las-cruces.org>; Kendle Arellano <kmcclurg@las-cruces.org>; Sean Mullen <smullen@las-cruces.org>; Kyle Metzgar <kmetzgar@las-cruces.org>; Mark Dubbin <MDubbin@las-cruces.org>; Miguel Dominguez <midominguez@las-cruces.org>; Soogyu Lee <sglee@las-cruces.org>; Hector Terrazas <hterrazas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jennifer Lucero <jenlucero@las-cruces.org>
Subject: Icebox Brewing LC, d/b/a Icebox Distilling Company Craft Distiller 1st Off-Site Liquor License

Good afternoon,

Attached please find an application from Icebox Brewing LC, d/b/a Icebox Distilling Company seeking a Craft Distiller 1st Off- Site Location Liquor License With On- Premises Consumption and Package Sales with Patio Service at 2260 S. Locust Street, Las Cruces, New Mexico 88001.

Please provide reports no later than May 2, 2023.

Thank you,

Valerie Uribe
Senior Legal Assistant/Legal Department/City Attorney's Office
Direct (575) 541-2020, Main (575) 541-2128, Email vuribe@las-cruces.org
700 N. Main Street, Suite 3200, Las Cruces, NM 88001
City of Las Cruces
LEGAL DEPARTMENT

This message is from a legal office and is confidential and/or attorney-client privileged. If you receive a copy of this email in error, please delete it, retain no copies, and call our office immediately (575-541-2128).

Valerie Uribe

From: Jennifer Lucero
Sent: Tuesday, May 2, 2023 10:19 AM
To: Valerie Uribe; Adam Ochoa; Adrian Arias; Bobbie Munoz; Christina Abeyta Corella; Cody Haver; Daniel Balderrama; Elena Sanchez; Gary Skelton; Jackie Baylon; Jason Smith; Jose Leos; Katherine Harrison Rogers; Kendle Arellano; Sean Mullen; Kyle Metzgar; Mark Dubbin; Miguel Dominguez; Soogyu Lee; Hector Terrazas; Jeremy Story
Subject: RE: Icebox Brewing LC, d/b/a Icebox Distilling Company Craft Distiller 1st Off-Site Liquor License

Good morning Valerie,

Please see below for report on Icebox Brewhouse, 2260 S Locust.

Business license is ACTIVE to expire 02/30/2024
There is NO active Liquor license for this location. There is no completed application on Accela.

With regards,

Jennifer Lucero
Permit Technician/Community Development/Permits and Inspections
Direct: 575-528-3095 Office Main: 575-528-3059
Email: jenlucero@lascruces.gov
Customer Online Accela Portal:
https://aca-prod.accela.com/LASCRUCES/Default.aspx
CITY OF LAS CRUCES

From: Valerie Uribe <vuribe@las-cruces.org>
Sent: Tuesday, April 18, 2023 12:44 PM
To: Adam Ochoa <aochoa@las-cruces.org>; Adrian Arias <aarias@las-cruces.org>; Bobbie Munoz <romunoz@las-cruces.org>; Christina Abeyta Corella <cabeyta@las-cruces.org>; Cody Haver <chaver@las-cruces.org>; Daniel Balderrama <dbalderrama@las-cruces.org>; Elena Sanchez <ESanchez@las-cruces.org>; Gary Skelton <gskelton@las-cruces.org>; Jackie Baylon <jdelmuro@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Katherine Harrison Rogers <krogers@las-cruces.org>; Kendle Arellano <kmcclurg@las-cruces.org>; Sean Mullen <smullen@las-cruces.org>; Kyle Metzgar <kmetzgar@las-cruces.org>; Mark Dubbin <MDubbin@las-cruces.org>; Miguel Dominguez <midominguez@las-cruces.org>; Soogyu Lee <sglee@las-cruces.org>; Hector Terrazas <hterrazas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jennifer Lucero <jenlucero@las-cruces.org>
Subject: Icebox Brewing LC, d/b/a Icebox Distilling Company Craft Distiller 1st Off-Site Liquor License

Good afternoon,

Attached please find an application from Icebox Brewing LC, d/b/a Icebox Distilling Company seeking a Craft Distiller 1st Off- Site Location Liquor License With On- Premises Consumption and Package Sales with Patio Service at 2260 S. Locust Street, Las Cruces, New Mexico 88001.

Please provide reports no later than May 2, 2023.

Thank you,

Valerie Uribe
Senior Legal Assistant/Legal Department/City Attorney's Office
Direct (575) 541-2020, Main (575) 541-2128, Email vuribe@las-cruces.org
700 N. Main Street, Suite 3200, Las Cruces, NM 88001



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Valerie Uribe

From: Lopez, Debra, RLD <Debra.Lopez@rld.nm.gov>
Sent: Wednesday, April 19, 2023 10:09 AM
To: Koroneos-Martinez, Charmaine, RLD; Valerie Uribe; brian@iceboxbrewing.com
Subject: RE: [EXTERNAL] Application Icebox Brewing, LC d/b/a Icebox Distilling Company, Craft Distiller 1st Off-Site Location Liquor License

Good morning,

Your request for extension, as outlined below, is hereby granted. Thank your for all that you do.

NMRLD
NEW MEXICO REGULATION & LICENSING DEPARTMENT

Debra Lopez | Deputy Director
New Mexico Regulation and Licensing Department
2550 Cerrillos Road | Santa Fe, NM 87505
PO Box 25101, Santa Fe, NM 87504-5101
Debra.lopez@rld.nm.gov | www.rld.state.nm.us/abc
(505) 476-4551

SERVICE | DEDICATION | INTEGRITY

From: Koroneos-Martinez, Charmaine, RLD <Charmaine.Martinez2@rld.nm.gov>
Sent: Tuesday, April 18, 2023 3:08 PM
To: Lopez, Debra, RLD <Debra.Lopez@rld.nm.gov>
Subject: FW: [EXTERNAL] Application Icebox Brewing, LC d/b/a Icebox Distilling Company, Craft Distiller 1st Off-Site Location Liquor License

Please see the email below.

Please see updated email address below.

NMRLD
NEW MEXICO REGULATION & LICENSING DEPARTMENT

Charmaine Martinez | Hearing Officer
Alcoholic Beverage Control Division
2550 Cerrillos Road | Santa Fe, NM 87505
P.O. Box 25101 | Santa Fe, NM 87504-5101
charmaine.martinez2@rld.nm.gov | https://www.rld.nm.gov/abc/

(505) 476-4804

SERVICE | DEDICATION | INTEGRITY

From: Valerie Uribe <vuribe@las-cruces.org>
Sent: Tuesday, April 18, 2023 12:27 PM
To: Koroneos-Martinez, Charmaine, RLD <Charmaine.Martinez2@rld.nm.gov>
Cc: Brian Weidauer <brian@iceboxbrewing.com>

Subject: [EXTERNAL] Application Icebox Brewing, LC d/b/a Icebox Distilling Company, Craft Distiller 1st Off-Site Location Liquor License

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Good morning,

This email is to inform you that the City of Las Cruces (City) is requesting a waiver/extension from the New Mexico Regulation and Licensing Department, Alcohol Beverage Control (ABC) on the forty-five (45) day requirement to hold a public hearing regarding the an Application for a Craft Distiller 1st Off-Site Location Liquor License with On Premises Consumption and Package Sales with Patio Service for Icebox Brewing, LC D/B/A Icebox Distilling Company located at 2260 South Locust Street, Las Cruces, NM 88001.

The City Attorney's Office received the Preliminary Approval from ABC along with the request April 17, 2023. The forty-five (45) day requirement would mean that the hearing would be held by May 15, 2023. Due to the statutory and regulatory procedures that require the City to publish a Notice of Public Hearing for the license twice before the public hearing with the first notice needing to be published at least (30) days before the public hearing, that date is calculated on April 15, 2023. However, due to publishing deadlines, we are unable to make the deadline.

Therefore, we are requesting an extension to hold a hearing on June 5, 2023, Instead of May 15, 2023, so that we may meet the statutory and regulatory procedures. If you have any questions or concerns, please contact me.

Thank you,

Valerie Uribe
Senior Legal Assistant/Legal Department/City Attorney's Office
Direct (575) 541-2020, Main (575) 541-2128, Email vuribe@las-cruces.org
700 N. Main Street, Suite 3200, Las Cruces, NM 88001

City of Las Cruces
LEGAL DEPARTMENT

This message is from a legal office and is confidential and/or attorney-client privileged. If you receive a copy of this email in error, please delete it, retain no copies, and call our office immediately (575-541-2128).

NOTE: Over the coming months, The City of Las Cruces is transitioning our email domain to lascruces.gov. Please make sure you update your email systems to accommodate my new email address which will end in @lascruces.gov. My current email address will continue to work for a limited time.

23-132

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:**	June 5, 2023
Drafter:	Larry Nichols	**Department:**	Community Development
Program:	Council & Community Support	**Line of Business:**	Council & Community Support

Title: **A RESOLUTION TO APPROVE THE REQUEST FOR PLACEMENT OF A COMMEMORATIVE MEMORIAL IN VETERANS MEMORIAL PARK.**

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

PURPOSE(S) OF ACTION:

Review and act on a request for a memorial in Veterans Memorial Park.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

This case is for action on a Veterans Advisory Board's recommendation to deny locating a memorial for an individual within Veterans Memorial Park. Las Cruces Municipal Code Section 2-576 states that all matters of physical change to Veterans Memorial Park shall be reviewed by the Veterans Advisory Board for recommendation to the Parks and Recreation Department and to the City Council for final determination.

In its January 24, 2023 meeting, Veteran Advisory Board agenda item 8 was Public Participation. Mr. Adrian Gonzales was one of the speakers at public participation. His topic was a request to locate a memorial in Veterans Memorial Park for his daughter. Following Mr. Gonzales's comments, the Veterans Advisory Board discussed the request, and each Board member gave comments. Upon the conclusion of the discussion, a motion was made and seconded. The vote on the motion was unanimous to deny the request to place a memorial for the individual in Veterans Memorial Park.

Mr. Gonzales has had two appearances with the Veterans Advisory Board, one on Nov 22, 2022, and a second on January 24, 2023. He has also met with the Parks and Recreation Department and the City Manager's Office regarding the requested memorial. Initially, Mr. Gonzales had requested a bench with a memorial plaque and a tree planted by the bench in Veterans Memorial Park. Recently, the request was modified for a Butterfly Park Memorial, also proposed in Veterans Memorial Park.

The Parks & Recreation Department offers the community a Memorial Tree and/or Bench Program. When a community member purchases a new tree or park bench, the City of Las Cruces Parks & Recreation Department will work with the individual to assure the planting or installation of a new tree or bench in a park, public space, or along a walking path.

SUPPORT INFORMATION:

Attachment "A"- MINUTES - January 24, 2023
Attachment "B" R 02-002 monument review guidelines

Attachment "C" Memorial Tree and Bench Program Options order form

PLAN(S):
Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:
VAB

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"; Will approve the request to locate a memorial in the Veterans Memorial Park
2. Vote "No"; Will deny the request to locate a memorial in the Veterans Memorial Park
3. Vote to "Amend"; Restate the resolution to include options for the memorial.
4. Vote to "Table"; Will delay acting on the request for the memorial.

REFERENCE INFORMATION:
Goal CL - 3- Accessible Parkland, CL 5.1.

RESOLUTION 23-132

A RESOLUTION TO APPROVE THE REQUEST FOR PLACEMENT OF A COMMEMORATIVE MEMORIAL IN VETERANS MEMORIAL PARK.

The City Council is informed that:

WHEREAS, Mr Adrian Gonzales, the requester, has spoken to the Veterans Advisory Board requesting a memorial for his daughter be located in Veterans Memorial Park; and

WHEREAS, on January 24, 2023, the Veterans Advisory Board (VAB), after conducting a public meeting denied the memorial request by a unanimous vote of 10-0 (three board members absent); and

WHEREAS, the Parks & Recreation Department offers the community a Memorial Tree and/or Bench Program.

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

(I)

THAT the memorial to Ella Gonzalez be allowed in Veterans Memorial Park.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Veterans Advisory Board Minutes January 24, 2023

Date: January 24, 2023 at 9:00 a.m.
Place: City Hall, Council Chambers; 700 N. Main., Las Cruces, NM

Board Members Present:

Karen Woods, Chair - United Military Women of the Southwest (UMWSW)
Victor Eres, Marine Corps League
Sam Bothern, Disabled American Veterans Chapter 10 (DAV)
James Turner, Member at Large Number 1
Daniel Ansbach, Special Forces Association
Rod Gajewski, Vice Chair - Military Order of Purple Heart (MOPH)
Hubert Gay, VVA, Vietnam Veterans of America
Christine Sautter, Military Officers Association of America (MOAA)
Hector Sanchez, Member at Large Number 2 – Student
John Poland, American Legion Post 10

Board Members Absent:

Jesse Addison, Veterans of Foreign Wars Post 3242 (VFW)
Patrick Ramirez, Veterans of Foreign Wars Post 10124 (VFW)
Mike Cano, Member at Large Number 3

City Staff Present:

Larry Nichols, Community Development Director

AGENDA ITEM	*TIME RECORDING*	*DISCUSSIONS/CONCLUSIONS/ RECOMMENDATIONS*	*ACTION TAKEN*
1. Call to Order	10:05	**Chair Woods -** called the meeting of the Veterans Advisory Board to order.	Board acknowledged Pledge by VAB
2. Approval of Agenda	10:08	Agenda reviewed by VAB – motion to accept the agenda for January 24, 2023	VAB unanimously approved
3. Approval of Minutes	10:08	Minutes from November 22, 2022, reviewed by VAB motion to accept the minutes with corrections.	VAB unanimously approved
4. Recognitions	10:08	**Larry Nichols** – announced that agendas will now have an item known as "Veterans Corner" regarding topics for the good of the order.	

5. Elections of Officers	10:11	**Larry Nichols,** *Community Development Director* - Election for the Veterans Advisory Board Chair is Karen Woods. - Christine Sautter is the newly elected vice chair for the Veterans Advisory Board. - Mike Cano was elected to be the Secretary for the Veterans Advisory Board.	Vote taken by Ballot
6. Board Member Reports	10:31	**Victor Eres,** *Marine Corps League* - Month of December they had 9 funerals, one color guard for Martin Luther King - Toys for Tots program distributed toy to over 5,500 children last year - December, they elected a new Commandant, Marine Joe Mendiola **John Poland,** *America Legion Post 10* - Planning for the State's Annual American Legion convention here in Las Cruces - Board of directors for Honor Flight of Southern NM and El Paso, TX., will have another mission to Washington DC April 27th thought April 29th - Will be participating in the 2023 homeless veterans stand down, first meeting will be in February 2nd at FVW 10124 - American Legion Auxiliary celebrated their 98th anniversary on January 16th - Run for the wall coming up in Spring **Christine Sautter,** *MOAA* - had their installation of officers in January and Ms. Sautter was selected president - Will have a table and representatives at the baton Death March registration **Daniel Ansbach,** *Special Forces Association* - nothing to report for this month **Sam Bothern**, *DAV Chapter 10* - nothing to report this month **Hubert Gay,** *VVA, Vietnam Veterans of America* - New Afghanistan, Iraq monument was installed December 22 at the park and will schedule a dedication on May 20th, which is Armed Forces Day	

		Rod Gajewski, *Military Order of Purple Heart (MOPH)* - Park cleanup for February will be American legion post 6917 - Bataan Death March for this year information is online **James Turner,** *Member at Large 1* - Garrison Flag will ceremony for Vietnam Veteran Welcome Home on March 25th **Hector Sanchez** *Member at large 2-Student* - VA will be implementing a new system in March hoping this will be a better system to help veteran students - Staff will be attending the New York City the Department of Defense's Tuition Assistance symposium this year **Karen Woods,** *United Military Women of the Southwest (UMWSW)* - 5th Annual Women Veterans Monument ceremony will be March 18th at 10:00am at Veteran's Park - June 17th hoping to have a youth boxing tournament at the Fraternal Order of Eagles, details are still being worked out **Larry Nichols – updates** - will be the staff liaison for the Veteran's Advisory Board - No changes for meetings location - Military Affairs Committee for the Chamber of Commerce would like to liaise and coordinate with VAB for the Baton Death March - Any recognitions please contact Mr. Nichols - Five volunteers from Historical Preservation Committee will give presentations of the significance and the importance of the memorial memorials at Veterans Memorial Park. Will follow-up with more details. - Larry Nichols will volunteer to give a welcoming address for the Vietnam Run to the Wall	
7. Old Business	11:13	**Updates on Veterans Memorial Parking Lot – Larry Nichols** - 90% complete with design - Construction might start scheduled of March 2023 - Will give more updates to come	
8. Public Participation	11:43	**Adrian Gonzalez** - Would like to have a bench with name of daughter put in Veterans Memorial Park as a memorial. Mr. Gay reminded Mr. Gonzalez that request for memorial was denied from last meeting.	Read into record

		Mr. Gajewski reminded Mr. Gonzalez from last meeting in November they recommended to talk to the city and to find other locations for the honor of daughter. Veterans Advisory Board unanimous voted to deny a request for a non-veteran memorial in the Veterans Memorial Park. **Dale Lawrence,** Vet Center - Will be a briefing on the PACT ACT on February 25th at the Convention Center here in Las Cruces from 9:00am to 1:00pm **Beverly Drum,** First Junior Vice Commander of Chapter 10 - Suggested to put a sign in memory of Mr. Gonzalez daughter **Jeffrey Lee,** - Would like to be part of the VAB board and will like more information	
9. Reminders	11:48	March 25 – Vietnam Veteran Welcome Home March 28 – Next Meeting	
10. Adjournment	11:48	**Karen Woods,** requested motion to adjourn	VAB unanimously approved by voice vote

RESOLUTION NO. 02-002

A RESOLUTION APPROVING A MONUMENT/PLAQUE POLICY FOR VETERAN'S MEMORIAL PARK.

The City Council is informed that:

WHEREAS, on June 18, 2001, the Las Cruces City Council approved Resolution 01-352 providing for the construction of the Veteran's Memorial Park Trail as recommended by the Mayor's Veterans Affairs Committee and the Parks and Recreation Advisory Board. There will be seven sites in remembrance with memorials honoring significant military events. Each site will have a tree, bench, and the special memorial with a monument/plaque, and

WHEREAS, a description of the proposed monument/plaque request will be presented to the City of Las Cruces Parks Superintendent to begin the review process. The description will outline the style type and design; identify whether the plaques will be of a war, battle or individual being recognized; and the dimensions, and

WHEREAS, the request will be reviewed by the Parks Superintendent, the Urban Designer in Community Development and the Landscape Architect. The City's internal committee will submit their comments and recommendations to the Veterans Advisory Committee and the Parks and Recreation Advisory Board. The City Council will have final approval of the proposed monument/plaque. The review will include the financial impact on the City of Las Cruces for the initial installation and for on-going maintenance.

NOW THEREFORE, Be it resolved by the governing body of the City of Las Cruces that:

(I)

THE City Council of Las Cruces approves the Veteran's Memorial Park Monument/Plaque Policy, Exhibit "A", attached hereto and made a part hereof this Resolution.

(II)

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

DONE AND APPROVED this 2nd day of July, 2001.

APPROVED:

Mayor

ATTEST:

City Clerk

Moved by: Tomlin

Seconded by: Valencia

APPROVED AS TO FORM:

Deputy City Attorney

VOTE:

Mayor Rubén Smith	aye
Councillor Frietze	aye
Councillor Mattiace	aye
Councillor Valencia	aye
Councillor Trowbridge	aye
Councillor Tomlin	aye
Councillor Haltom	aye

VETERAN'S MEMORIAL PARK MONUMENT/PLAQUE POLICY

PURPOSE:

To prescribe the procedures and guidelines for the placement of monuments/plaques for the Veteran's Memorial Park Trail.

BACKGROUND:

On June 18, 2001, the Las Cruces City Council approved Resolution 01-352 providing for the construction of the Veteran's Memorial Park Trail. The Mayor's Veterans Affairs Committee recommended that this trail be created. The Parks and Recreation Board subsequently unanimously approved the trail at a special meeting on June 5, 2001.

The trail is eight feet wide and 750 feet in length. The trail starts on the south side of Veteran's Park adjacent to the shelters and meanders through the desert area, terminating at the junction with the walk on Roadrunner Parkway. There will be seven sites in remembrance with memorials honoring significant military events. Each site will have a tree, bench, and the special memorial with a plaque. The path will conform to all applicable specifications of the Americans with Disabilities Act.

PROCEDURE:

1. Requests to set monuments/plaques will be presented to the Parks Superintendent of the City of Las Cruces to begin the review process. A copy of the request will be reviewed by an internal committee made up of the Parks Superintendent, the Urban Designer in Community Development and the Landscape Architect. If approved, the ADA Coordinator will review for compliance.

    A. Requests for the placements will be in writing outlining the style type and design of the monument/plaque. The description will identify whether the monuments/plaques will be of a war, battle or other significant event in military history.

    B. The requestor will indicate whether the request is coming from an individual or group and explain the reason that the request is being made.

    C. The dimensions of the proposed monument/plaque should be identified and there should be an acknowledgment of the funding of the proposed monument/plaque.

REVIEW GUIDELINES:

1. Significance of the proposed monuments/plaques in relation to the theme of Veteran's Memorial Park.

2. The monuments/plaques will denote significant events in military history.

3. The Committee will review the request as to a war, battle, or other significant event in military history. Consideration will be given to what should be placed along the trail as it relates to all stations identified for future monuments/plaques. Individual memorials will not be placed on the trail.

4. The Committee will be sensitive in its review to assure not to offend any individuals or groups.

5. The review will include the financial impact on the City of Las Cruces for the initial installation and for on-going maintenance.

6. The final monument/plaque must comply with City design standards and ADA compliance.

7. The City's internal committee will distribute their recommendation to the Veterans Advisory Committee and the Parks and Recreation Advisory Board.

8. The final approval of the installation will be made by the City Council.

The City Council may, by a majority vote of four or more members at a formal Council meeting, approve the proposed monument/plaque to be placed within the confines of Veteran's Memorial Park.

EXHIBIT B

DRAFT

PARKS AND RECREATION ADVISORY BOARD

The Parks and Recreation Advisory Board Meeting was held on Tuesday, June 05, 2001, at the Service Center Building, Support Services Conference Room.

MEMBERS PRESENT: Dolores Archuleta, Joseph Lopez, Susan Roberts, Sally Kosnick, and Joseph Parker.

MEMBERS ABSENT: John Welch and Michael Hart.

OTHERS PRESENT: Ted Novack, Recreation Manager; Louis Roman, Public Services Director; Lt. Col. USA-Ret. Fred J. Frank; Carlos Madrid, Parks District Supervisor; and Laura Bason, Recording Secretary.

The meeting was called to order at 3:00 p.m. by Board Chair, Dolores Archuleta and she thanked Board Members for attending this emergency Parks and Recreation Advisory Board Meeting.

NEW BUSINESS

VETERAN'S PARK MEMORIAL TRAIL

Lt. Col. Fred Frank stated that currently Veteran's Park has clear, grassy areas. Requests were made by individuals to install memorials in the Park, but they were not suitably planned and were turned down. It was agreed that individual memorials would not be placed in the Park. It was decided that a Memorial Walk in the southern undeveloped area could provide a special feeling of respect and remembrance. With this thought, the walk was planned.

> "A meandering path eight feet wide by approximately 750 feet in length starting at the end of the paved walk at the shelters and meandered through the typical desert area terminating at the junction with the walk on Roadrunner Drive."
>
> "Along the walk, there would be seven sites (flexible) for remembrance with memorials. Each site would have a tree, a bench and the special memorial with a plaque. The first site was designated for Korea, the last site adjacent to Roadrunner, designated Bataan."

"The Bataan Memorial has been funded in Congress, a sculptor has been selected and planning is proceeding."

"The Korean Memorial is on hand awaiting mounting and final preparation of the area."

"Other memorials will be considered."

Lt. Col. Frank asked the Parks and Recreation Advisory Board to approve the design and concept of the Veteran's Park Memorial Trail.

Mr. Joseph Lopez asked if the veteran's group has funds to proceed with this project.

Lt. Col. Frank answered that there are no funds, we have volunteers who donate time and effort and the City helps too.

Mr. Louis Roman stated that the City of Las Cruces is committed to doing the earthwork and the asphalt.

Mr. Lopez stated that this is a wonderful idea.

Ms. Susan Roberts moved to recommend approval of the Veteran's Park Memorial Trail. Mr. Lopez seconded the motion. Motion carried 5-0.

Dolores Archuleta voted YES
Joseph Lopez voted YES
Joseph Parker voted YES
Sally Kosnick voted YES
Susan Roberts voted YES

ADJOURNMENT

With no further business, Ms. Archuleta adjourned the June 05, 2001 Parks and Recreation Advisory Board Meeting at 3:15 p.m.

Laura Bason, CPS
Recording Secretary

DOLORES ARCHULETA, CHAIR

EXHIBIT C

City of Las Cruces

June 5, 2001

Rubén A. Smith, Mayor
City of Las Cruces
P.O.Box 20000
Las Cruces, New Mexico 88004

Dear Mayor Smith:

A quorum was present for a special Parks and Recreation Advisory Board meeting held June 5, 2001, at 3:00 p.m. in the Support Services conference room.

The single item on the agenda was a briefing by LtCol (R) Fred J. Frank, board member of the Veterans Affairs Advisory Board, for approval of a proposed eight feet wide by approximately 750 feet long meandering path (memorial walk) to display memorials at the Veterans Park on Roadrunner Parkway. A drawing of the proposed plan is attached for your information.

The Parks and Recreation Advisory Board voted unanimously to recommend that City Council approve the memory walk proposed by the Veterans Affairs Advisory Board.

If approved, a Korean Memorial plaque will be the first to be dedicated in conjunction with the Korean Memorial Services scheduled for Monday, June 25, 2001, at 10:00 a.m.

The Bataan Memorial, when completed, will also be placed on this memorial walk.

Sincerely,

Dolores C. Archuleta, Chairperson
Parks & Recreation Advisory Board

Attachment

pc: James A. Ericson, City Manager
City Councilors
Mike Johnson, Facilities Director
Louis Roman, Public Service Director
P&R Advisory Board Members
LtCol (R) Fred J. Frank

Veterans Affaires Advisory Board
City of Las Cruces

29 May 2001

The Veterans Memorial Park
Further Development

BACKGROUND: The Veterans Park, a result of great cooperation between the city and Las Cruces contractors was developed over several years with the approval of adjacent property owners and with a major input from the Mayor's Veterans Affairs Committee.

One of the concerns evidenced in the beginning of the planning was requests for installation of memorials for various groups. It was agreed, that individual memorials would not be placed in the park. Subsequently, the question arose again, this time concerning a major memorial for the Bataan Veterans.

Possible sites away from the park were reviewed, but not accepted, and it was agreed that a suitable site for the installation could be developed that would not interfere with the original concept of the design. In this light,it was decided that a Memorial Walk in the undeveloped area abutting on the developed area to the south could provide a special feeling of respect and remembrance.

With this thought, the walk was planned.

THE SITUATION:

A meandering path eight feet wide by approximately 750 feet in length starting at the end of the paved walk at the shelters and meandering through the typical desert area terminating at the junction with the walk on Roadrunner Drive is planned.

Along the walk, there would be seven sites (flexible) for remembrance with memorials. Each site would have a tree, a bench and the special memorial with a plaque. The first site was designated for Korea, the last site adjacent to Roadrunner, designated Bataan

.

THE MEMORIALS: Bataan Memorial has been funded in Congress, a sculptor has been selected and planning is proceeding.

The Korean Memorial is on hand awaiting mounting and final preparation of the area.

Other memorials will be considered

Your attention is invited to the attached plan.

FOR THE CHAIRMAN:

FRED J. FRANK
LtCol USA-Ret
Board Member.

ROADRUNNER PKWY.
WOOD BEAM ARBOR
16' CLASSICAL GAZEBO
WOOD BEAM ARBOR
FLAGPOLES
EXISTING NATURAL AREA
150 ft
Kovacs Memorial
Bataan Memorial
VETERANS MEMORIAL PARK
Memory Walk
Each of the seven memorials will have a plaque, a bench and a tree.
The Walk is approximately 700 ft and is 8 ft wide, initially crushed stone - later asphalt or other paving.

City of Las Cruces

COUNCIL ACTION FORM

For the Meeting of July 02, 2001
(Adoption Date)

TITLE:

A RESOLUTION APPROVING A MONUMENT/PLAQUE POLICY FOR VETERAN'S MEMORIAL PARK.

BACKGROUND, SUPPORT INFORMATION AND COUNCIL OPTIONS (in order):

On June 18, 2001, the Las Cruces City Council approved Resolution 01-352 providing for the construction of the Veteran's Memorial Park Trail as recommended by the Mayor's Veterans Affairs Committee and the Parks and Recreation Advisory Board. There will be seven sites in remembrance with memorials honoring significant military events. Each site will have a tree, bench, and the special memorial with a monument/plaque.

A description of the proposed monument/plaque request will be presented to the City of Las Cruces Parks Superintendent to begin the review process. The description will outline the style type and design; identify whether the plaques will be of a war, battle or individual being recognized; and the dimensions.

The request will be reviewed by the Parks Superintendent, the Urban Designer in Community Development, and the Landscape Architect. The City's internal committee will submit their comments and recommendations to the Veterans Advisory Committee and the Parks and Recreation Advisory Board. The City Council will have final approval of the proposed monument/plaque. The review will include the financial impact on the City of Las Cruces for the initial installation and for on-going maintenance.

(Continue on additional sheets as required)

Name of Drafter: Ted L. Novack, Recreation Manager TLN	Department: Facilities Department	Phone: 541-2505

Department	Signature	Phone	Department	Signature	Phone
Originating Department		2505	Budget		
Legal		541-2128	City Manager		

CAF Rev 6/01

COUNCIL ACTION FORM
Page 2

SUPPORT INFORMATION:

1. Resolution;
2. Exhibit "A", Veteran's Memorial Park Monument/Plaque Policy;
3. Exhibit "B", Draft Minutes from the June 05, 2001 Parks and Recreation Advisory Board meeting;
4. Exhibit "C", Parks and Recreation Advisory Board Chairperson, Dolores Archuleta's, letter to Mayor Smith recommending City Council approval of the Veteran's Memorial Park Trail.

COUNCIL OPTIONS:

1. Approve the Resolution approving the Monument/Plaque Policy for Veteran's Memorial Park.
2. Modify the Resolution. This action would reflect the wishes of the City Council.
3. Do not approve the Resolution. this would disapprove the Monument/Plaque Policy for Veteran's Memorial Park.



Memorial Tree and Bench Program Options

The City of Las Cruces Memorial Tree and Bench Program offers a variety of options the best allows you to honor the memory of a loved one or to honor someone's accomplishments.

Option 1: New Tree Planting

For $250.00: A new tree, suited to the park selected, will be planted in a park in memory of or in honor of a loved one. Price includes tree, labor and irrigation costs.

Option 2: New Bench

A new basic park bench $1,000. will be placed in a local park or along a walking trail in memory of or in honor of a loved one. Price includes bench, labor and installation with a concrete slab.

Option 3: New Bench with Plaque

A custom bench with a name plaque will be placed in a local park or along a walking trail in memory of, or in honor of a loved one. Price options includes all of Option 2, in addition to a personalized plaque that is mounted onto the bench. Price depends on bench selected.

Memorial Tree and Bench Program Request Form

Donor Information:

Name: _____ Date: _____

Address: _____ City/State/Zip: _____

Email: _____ Phone number: _____

Is this an anonymous contribution: _____ Yes _____ No

Preferred Park Location: _____

Which option would you like to select (**please circle one**): Option 1 Option 2 Option 3

For Option 3 only:
(Please check one only) _____ "In memory of..." _____ "In honor of..."

Print name of person to appear on the plaque: _____

Bench # & Cost of Custom Bench Selected _____(attach photo)

Note: Bench orders and installation may take up to six months

Person to notify once dedication is ready (if more than one, please list both):

Name: _____ Name: _____

Address: _____ Address: _____

City/State/Zip: _____ City/State/Zip: _____

Phone: _____ Phone: _____



Mail this form with payment to :
City of Las Cruces
Parks and Recreation Department
PO Box 20000
Las Cruces, New Mexico 88004
(575) 541-2550

Make checks payable to the City of Las Cruces. Credit Card payment options also available at Parks & Recreation Dept. 1501 East Hadley

Provisions & Guidelines

- The City of Las Cruces reserves the right to modify the preferred type of tree and preferred location in order to maintain the original landscape and to allow for the long term growth of the tree.
- Wording on plaques (benches only): Donor may choose either of the following wordings on the plaque, **"In Memory of"** or **"In Honor of"** followed by the name of the individual.
- The City of Las Cruces will not be responsible for any loss or damage that may occur to the tree or plaque and all warranties shall come from the place of purchase.
- All trees will be planted within the next appropriate planting season after purchase. Planting seasons are late Fall and Early Spring and are subject to weather considerations.

PLACE STAMP HERE

City of Las Cruces
Parks & Recreation Department
1501 E. Hadley Ave
Las Cruces, NM 88005

Memorial Tree and Bench Program



The Memorial Tree and Bench Program is a wonderful way for all to celebrate, honor or memorialize a special individual, group or event. With the purchase of a new tree or park bench, the City of Las Cruces Parks & Recreation Department will work with the donor to assure the planting or installing of a new tree or bench in a park, public space, or along a walking trail. In addition, this unique living memorial will also contribute to the beautification of public spaces for the City of Las Cruces to enjoy.

City of Las Cruces
MOUNTAINS OF OPPORTUNITY

23-133

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:**	June 5, 2023
Drafter:	John Castillo	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **A RESOLUTION REVERSING THE PLANNING AND ZONING COMMISSION'S APPROVAL DECISION REGARDING A SPECIAL USE PERMIT ALLOWING A HELIPAD AT THREE CROSSES REGIONAL HOSPITAL LOCATED AT 2560 SAMARITAN DRIVE, ZONED C-3C (COMMERCIAL HIGH INTENSITY-CONDITIONAL). THE APPEAL WAS SUBMITTED BY MR. GREGORY SHERVANICK.**

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

PURPOSE(S) OF ACTION:
Appeal of a Special Use Permit.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
This case is an appeal of an approval decision by the Planning and Zoning Commission on November 15, 2022, involving a Special Use Permit (SUP) request to allow a helicopter pad located at 2560 Samaritan Drive, known as, Three Crosses Regional Hospital. The 2001 Las Cruces Zoning Code, as amended defines a Heliport/Helistop (Section 38-33H) as a use that is not permitted by right and requires a review and approval by the Planning and Zoning Commission to determine the impacts on the surrounding area and is necessary pursuant to Section 38-54 Special Use Permits. When a special use permit process is triggered the proposed use is subject to greater scrutiny in order to determine the appropriateness and impacts the use may have on the surrounding neighborhood. Issues considered often involve impacts that stem from noise, traffic, odor, lighting, etc.

The proposed helipad is to be located at the southeast corner of the hospital's emergency facilities and is to be constructed within a parking island that is a distance of 95 feet away from the emergency facilities. This location provides direct access to the hospital's emergency area and will maintain a helicopter approach from the southwest and north for all medical transport helicopters. The proposed helipad will also be compliant with all Federal Airspace Protection Regulations, including 14 CFR, part 77 and adhere to the Las Cruces Outdoor Lighting Ordinance.

The subject property is within an area that is a mix of zoning districts and within in the Apodaca Blueprint. These districts include R-1a (Single-Family Medium Density), C-3C (Commercial High Intensity-Conditional), O-2C (Office -Professional Limited Retail Service-Conditional), OS (Open Space), and R-1b (Single-Family High Density). The single-family uses with the R-1a and R-1b districts are located to the north and directly east of the proposed helicopter pad. There is an approximate distance of 368 feet from the proposed helicopter pad and the R-1a district that will also have a buffer of proposed open space and future residential development as outlined in the Apodaca Blueprint.

On November 15, 2022, the Planning and Zoning Commission heard the SUP case. Discussion on the request was fairly robust in the context of neighborhood concerns regarding the frequency of flights and noise that would be generated from the use of the helicopter pad. After reviewing the staff report and related materials, and hearing comment from staff, the applicant's representative, and members of the public the Commission made a motion to approve the SUP with a vote of 4-0 (one commissioner absent, two seats vacant). Their approval was based on the finding that granting the Special Use Permit would have no detrimental effect on the surrounding property in the vicinity, as well as the City as a whole.

On November 29, 2022, a member of the general public appealed the decision pursuant to Section 38-13(C) of the 2001 Las Cruces Zoning Code, as amended, citing the following issues that were found in the appeal letter:
1.That 'tainted' and non-verifiable information concerning public engagement was given in the applicant's statement.
2.Based on current and past warranty and special warranty deeds held by the County of Dona Ana, there is a fiduciary relationship between all parcels involved and adjacent to the requested Special Use Permit. Creating a bias narrative about the proposed heliport landing pad and a contradiction to the intent of rezoned properties (Case# 21ZO0500112) to the southwest and north directly in the flight path stated in the project's description section of Case# 22ZO100096.
3.Per Section 38-2 (Purpose and Intent) of the Code presented in the Consistency with Purpose and Intent of the summary, omits several paragraphs concerning the regulations relevant for a (SUP) Special Use Permit. They are paragraphs: G, P, Q under the heading of health, safety, well-being and quality of life. Each of these paragraphs were not considered in this decision although applicable to helicopter landing pad:
G - Avoid the inappropriate development of land, ensure that development proposals are sensitive to natural areas and features, provide adequate protection from and reduce the effects of natural hazards;
P - Reduce noise, glare and odor; and
Q – Mitigate conflicts among neighbors
4.There is a disconnect between the statement presented in summary under Compliance with Elevate Las Cruces Comprehensive Plan. Volume 1 page 20 of the Elevate Comprehensive Plan states:
"The City's resulting vision of sustainability, and supporting policies and actions, reflects Las Crucen's desire to leverage the best of Las Cruces today to create a city that is more livable and prosperous for tomorrow's generations. A Vision of Sustainability the Elevate Las Cruces vision statement has been prepared under the direction of the Comprehensive Plan Advisory Committee (CPAC). Our Vision Components of Our City "We are committed to enhancing our livability, prosperity, and environment for the shared benefit of current and future generations of Las Crucen's in a fiscally and social sustainable manner." According to page 23, 30, 31 (Volume 1) and table 1.4 detailed definitions of the dwellings that are to be built in the area surrounding the heliport landing pad include Suburban, and Urban Place Types. The summary's criteria for decision contradicts these definitions impeding the number and size of dwellings stipulated by this section of Elevate LC.

Pursuant to Section 38-13(G) of the Zoning Code, when an appeal alleges that there is an error in the Commission's decision or determination of the Commission or make any change in a decision or determination of the Commission. Members of the Planning and Zoning Commission shall not participate in an appeal before the City Council of any decision of their Commission. The minutes of the subject Commission meeting are the public record that indicates each Commission member's participation.

SUPPORT INFORMATION:
Attachment "A" - Proposed Site Plan
Attachment "B" - FINDINGS
Attachment "C" -Three Crosses Helipad Staff Report
Attachment "D" - Approved 11-15-2022 P&Z Minutes
Attachment "E" - Appeal Letter

PLAN(S):
Other, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this will approve the Resolution and overturn the Planning and Zoning Commission's decision to approve the SUP.
2. Vote "No", this will deny the Resolution thus affirming the Commission's SUP approval decision
3. Vote to "Amend", this could allow City Council to modify the Resolution and stipulate conditions as deemed appropriate.
4. Vote to "Table", this could allow City Council to table/postpone the Resolution and direct staff accordingly.

RESOLUTION 23-133

A RESOLUTION REVERSING THE PLANNING AND ZONING COMMISSION'S APPROVAL DECISION REGARDING A SPECIAL USE PERMIT ALLOWING A HELIPAD AT THREE CROSSES REGIONAL HOSPITAL LOCATED AT 2560 SAMARITAN DRIVE, ZONED C-3C (COMMERCIAL HIGH INTENSITY-CONDITIONAL). THE APPEAL WAS SUBMITTED BY MR. GREGORY SHERVANICK.

The City Council is informed that:

WHEREAS, the Planning and Zoning Commission (Commission) held a duly- noticed public hearing on November 15, 2022 to consider the Special Use Permit request submitted by Souder Miller and Associates, on behalf of the property owner, LC Medical Assets LLLP, which would allow a helipad at 2560 Samaritan Drive, Three Crosses Regional Hospital, located within an C-3C (Commercial High Intensity-Conditional) zoning district in the City of Las Cruces; and

WHEREAS, after hearing comment from members of the public and considering the staff recommendation of approval, the Commissioners motioned for a vote in the affirmative to allow the development of the helipad for the Three Crosses Regional Hospital; and

WHEREAS, after reviewing the staff report and related materials, hearing comment from staff, the applicant's representative, the applicants, and members of the general public, the Commission made a motion to approve the SUP with a vote of four (4) (one member absent and two vacant seats), based on the finding that granting of the Special Use Permit would have no detrimental effect on the surrounding property in the vicinity, as well as, the City as a whole; and

WHEREAS, on November 29, 2022, an appeal to the decision pursuant to Section 38-13(C) of the 2001 Las Cruces Zoning Code, was submitted for further processing to City Council.

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

(I)

THAT the City Council hereby reverses the decision of the Planning and Zoning Commission of November 15, 2022, for the approval of a Special-Use Permit (SUP) at 2560 Samaritan Drive, Three Crosses Regional Hospital, resulting in the proposed helipad development to not be allowed to operate at this location.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

ATTACHMENT "A"

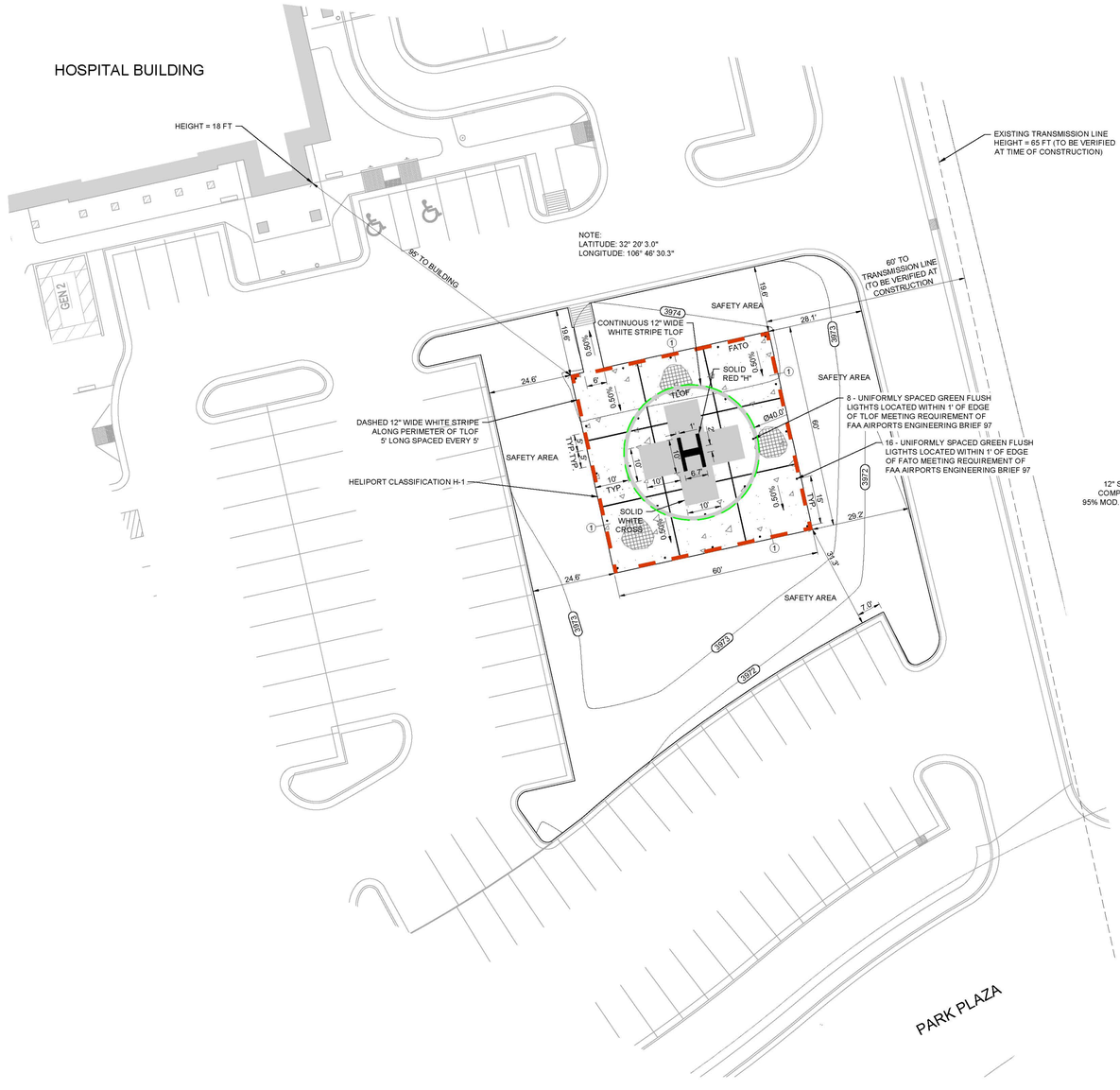
LEGEND

= FATO BOUNDARY

= TLOF BOUNDARY

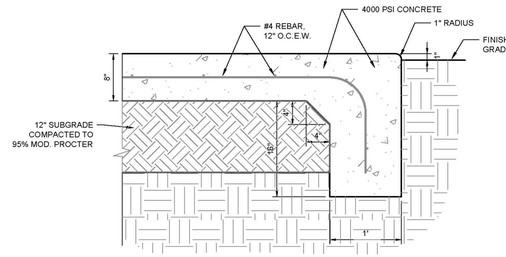
GENERAL NOTES:

- NO FUELING OR MAINTENANCE WILL BE CONDUCTED AT THIS LOCATION. THIS SITE SHALL NOT BE APPROVED FOR FUELING OPERATIONS.
- AN EMERGENCY RESPONSE PLAN SHALL BE PREPARED, APPROVED, AND MAINTAINED BY THE FACILITY PRIOR TO PLACING INTO SERVICE.
- FATO BOUNDARY AS SHOWN ON SHEET
- HELIPORT CLASSIFIED AS H-1 PER HELICOPTER LENGTH
- TLOF BOUNDARY AS SHOWN ON SHEET



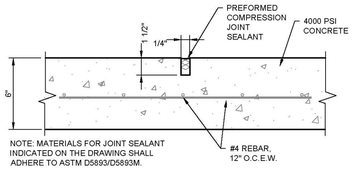
SITE PLAN - HELIPAD LAYOUT

SCALE: 1" = 20'



① CONCRETE HELI-PAD

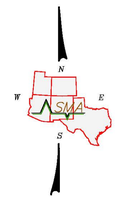
NOT TO SCALE



NOTE: MATERIALS FOR JOINT SEALANT INDICATED ON THE DRAWING SHALL ADHERE TO ASTM D5893/D5893M.

TRANSVERSE CONTRACTION JOINT

NOT TO SCALE



0 20' 40'

SCALE: 1" = 20'

Rev #	Date	Description	By	Chk'd

Souder, Miller & Associates
Engineering • Environmental • Geomatics
3500 Sedona Hills Parkway
Las Cruces, NM 88011
Phone (575) 647-0799 Toll Free (800) 647-0799

THREE CROSSES MEDICAL CENTER LAS CRUCES

THREE CROSSES REGIONAL MEDICAL CENTER, LAS CRUCES NM
HELIPORT FAA EXHIBIT

THIS DRAWING IS INCOMPLETE AND NOT TO BE USED FOR CONSTRUCTION UNLESS IT IS STAMPED, SIGNED AND DATED

Designed	Drawn	Checked
CW	CW	PJP

Date: August 2022

Scale: Horiz: AS SHOWN
Vert: AS SHOWN

Project No: 9329049

Sheet: C-200

© Copyright 2022 Souder, Miller & Associates - All Rights Reserved

P:\9-LCMC Hospital & MOB Site Development (9326166)\CAD\Civil\CIVIL SITE CONSTRUCTION DRAWINGS\HELIPORT CONSTRUCTION DRAWINGS\HELIPORT LAYOUT 04-24-2020(2).dwg AXA

ATTACHMENT "B"

FINDINGS

- The helicopter pad will meet the Las Cruces Outdoor Lighting Ordinance.
- The proposed SUP meets the purpose and intent requirements of Section 38-2 of the 2001 Zoning Code, as amended.
- All applicable requirements as outlined in the 2001 Las Cruces Zoning Code, as amended and those stipulated by the Federal Aviation Administration (FAA) must be adhered to for subsequent operation of the proposed helicopter pad.
- The proposed helicopter pad shall be in accordance with Federal Airspace Protection Regulation, including 14 CRF part 77.
- The Hospital finds a solution to the flight pattern for the helicopter service

Attachment "C"

SPECIAL USE PERMIT

City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

Planning & Zoning Commission 11/15/2022

CASE 22ZO1000096: SPECIAL USE PERMIT

STAFF CONTACT:	John Castillo, (575) 541-2288, jcastillo@las-cruces.org
OWNER:	Las Cruces Hospital Building, LLC
REPRESENTATIVE:	Souder Miller and Associates
DISTRICT:	District #1
SITE ADDRESS:	2560 Samaritan Drive.
EXISTING ZONING:	C-3C (Commercial High Intensity-Conditional)
REQUEST:	Special Use Permit (SUP) to allow a helicopter landing pad for the Three Crosses Regional Medical Center.
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF REQUEST CASE 22ZO1000096: The proposed Special Use Permit (SUP) is to allow for the development of a helicopter pad for the Three Crosses Regional Medical Center, located at 2560 Samaritan Drive. The subject property encompasses ± 10.64 acres and is zoned C-3C (Commercial High Intensity-Conditional).

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

- The helicopter pad will meet the Las Cruces Outdoor Lighting Ordinance.
- The proposed SUP meets the purpose and intent requirements of Section 38-2 of the 2001 Zoning Code, as amended.
- All applicable requirements as outlined in the 2001 Las Cruces Zoning Code, as amended and those stipulated by the Federal Aviation Administration (FAA) must be adhered to for subsequent operation of the proposed helicopter pad.
- The proposed helicopter pad shall be in accordance with Federal Airspace Protection Regulation, including 14 CRF part 77.

PROPOSAL AND LAND USE HISTORY

PROJECT DESCRIPTION:

A Special Use Permit (SUP) is for a use that is not permitted by right in a zoning district but requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. The applicant is seeking approval for the development of a helicopter pad. The special use permit is necessary in order to permit the new helicopter pad as the property that currently zoned C-3C (Commercial High Intensity-Conditional).

The applicant has proposed the location of the new helipad just southeast of the emergency facilities. This location will provide direct access to the hospital and emergency facilities. The helicopter pad will be based on three helicopter models which are the EC-135, EC-125 (AS-350), and the EC-130. According to the applicant, the helipad requirements are: 112.7 x 110.9 feet safety area; 60 x 60 feet final approach/takeoff area (FATO). The safety area is based on the stipulation that lighting will be installed at the perimeter of the touchdown/liftoff (TLOF) and FATO area. A total of twenty-four (24) lights are proposed with eight lights surrounding the TLOF and sixteen lights surrounding the FATO.

The approach to the proposed helipad by the medical transport helicopters is from the southwest and north, over vacant property and commercial development, with minimal impacts to the adjacent residential lots. The 2001 Zoning Code, Section 38-33H, specifies that helicopter pads/helistops shall be in accordance to the Federal Airspace Protection Regulations, including 14 CFR, part 77 and adhere to the Las Cruces Outdoor Lighting Ordinance.

LAND USE HISTORY:

The property was originally zoned R-1a, a portion of which was master planned and subdivided into several parcels and rezoned to C-3C and R-4C (Commercial High Intensity-Conditional & Multi-Dwelling High Density and Limited Retail and Office-Conditional) in 2013 under Ordinance 2689. In March of 2022 the remaining 75 acres of vacant property underwent a zone change that would closely follow the adopted master plan for the area.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Elevate Las Cruces Comprehensive Plan	Yes
Purpose and Intent of the Code: Section 38-2	Yes
Criteria for Decisions: Section 2-382	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

The property is located within the Apodaca Blueprint master planned area that is largely vacant/undeveloped land with a multitude of zoning classifications. East of the master planned area is a well-established single family residential neighborhood. The Apodaca Blueprint calls out the subject property as part of the medical district where a hospital and its associated uses are permitted.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:
The property is located in an area designated as an Urban Neighborhood Place Type and is specifically identified as a Town Center as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. Urban Neighborhoods include a variety of residential housing types at medium-to-high densities and areas of supporting neighborhood commercial development. Town Centers include a mix of residential and non-residential land uses that collectively create a vibrant and walkable activity center. Town Centers support institutional, cultural, employment, shopping and entertainment uses.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the proposed Special Use Permit:

- Community Environment:
  - Goal CE-3: Centers and Corridors – Support community growth through concentrated development at activity centers and along key corridors.
    - Policy CE-3.2 – Allow for a mix of development type and intensity along major thoroughfares that reflects surrounding urban, suburban, and rural contexts.
  - Goal CE-4: Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.

- Community Prosperity
  - Goal CP-1: Ready Workforce – Develop a strong and educated workforce that supports and expanding local and regional economy.

  - Goal CP-4: Diversification - Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.
    - Policy CP-4. - Support efforts to be regionally and nationally competitive in regard to retaining and growing businesses, jobs, and students.

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

The regulations relevant to the proposed SUP include:

A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
B. Encourage innovations in land development and redevelopment.
C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
D. Encourage mixed land uses to decrease the length of trips for work and/or shopping and encourage the consolidation of trips and alternative modes of travel.
L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
M. Foster a more rational relationship between different land uses for the mutual benefit of all.
N. Conserve the value of buildings and land.

CRITERIA FOR DECISIONS

Per Section 2-382: In considering all requests, the Planning and Zoning Commission shall review the comprehensive plan, future land use plan, and other applicable plans and codes and determine whether the request will:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth and development of the community;
- Impairment of the public health, safety or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, design standards and other companion codes.

Based upon a review of the proposal and applicable regulations and policies, City Staff did not consider any of the criteria as a significant concern in context to the proposed request. Additionally, several comprehensive plan goals, policies and actions support the proposal in that the policies speak to provisions for mixed-use neighborhoods, expanding economic opportunities to remain competitive both regionally and nationally, and locating business along key corridors and major thoroughfares. The use must also meet all Federal Airspace Protection Regulations, including 14 CRF Part 77. As such, the proposed use will be in harmony with the purpose and intent of the 2001 Zoning Code, as amended and the Elevate Las Cruces Comprehensive Plan and follow all regulations of the Federal Aviation Administration (FAA) as per the Advisory Circulation No. 150/5390-2C.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR CURRENT USE:

The subject property is currently zoned C-3C and is 10.64 ± acres. The property is currently being used as the Three Crosses Regional Medical Center. At the time of construction, the site met all required development standards and building codes. The proposed Helicopter pad will not cause any non-conformities on the property.

SITE SUITIBILITY FOR PROPOSED USE:

A SUP is required to follow all procedures of Section 38-54A of the 2001 Zoning Code, as amended. The SUP will allow for a helicopter pad on the subject property. The proposed use will be in keeping with the property and provide increased hospital and emergency facility services in the vicinity. The site should serve the proposed use well in that it was developed as a commercial building with all necessary access, parking, and related development requirements in place at the time of its construction. Furthermore, the applicant sought a community meeting to inform the neighborhood of the development of a helicopter pad, as well as, sending out notification through mail and email.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas and sewer already serve the site and are adequate for the proposed use. Main Street is designated as an arterial roadway and Samaritan Drive is designated as a collector roadway serving as an access point to the subject property.

FLOOD PLAIN:
The subject property is not located within the Flood Zone.

STAFF AND PUBLIC COMMENTS

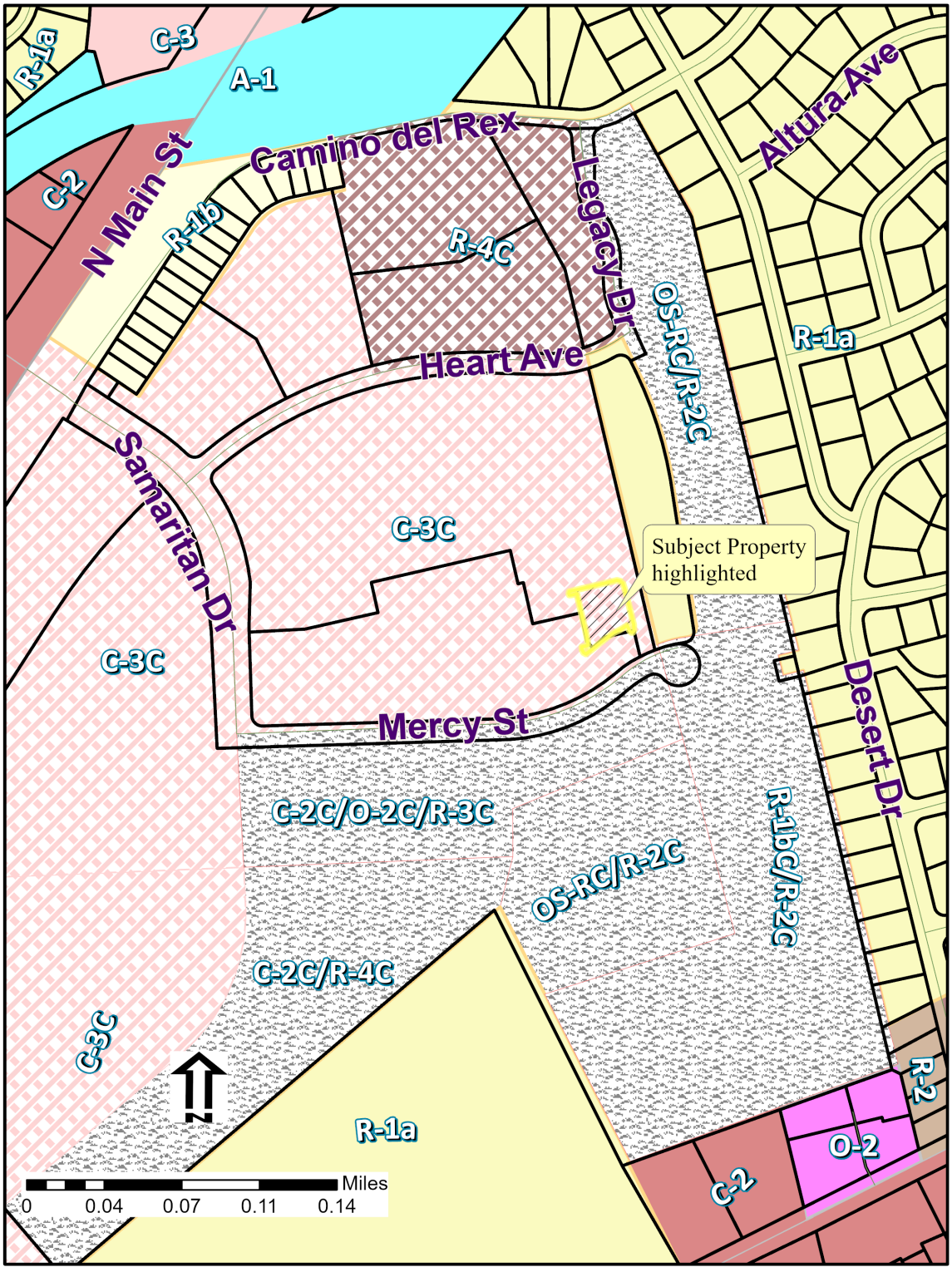
PUBLIC NOTIFICATION AND INPUT: Notice of a Public Hearing was mailed to all property owners within 500 feet of the subject property. To date, there has been three inquiries into the proposed development of the helicopter pad. Two phone calls that were in opposition of the proposed development and one was for inquiry purposes. Attached is an email that is in opposition of the proposed development as it will be located near an established neighborhood. In addition on May 26, 2022 the applicant conducted a public hearing with the adjacent residential neighborhood as per Section 38-10C.

STAFF COMMENTS: The proposed use meets all the requirements for a SUP and will be in accordance with Federal Airspace Protection Regulations, including 14 CRF part 77, the 2001 Las Cruces Municipal Code, as amended, and Chapter 39 Outdoor Lighting Ordinance. As such, staff recommends approval of the SUP.

ATTACHMENTS:
1. Zoning Map
2. Aerial Map
3. Site Plan
4. Development Review Comments

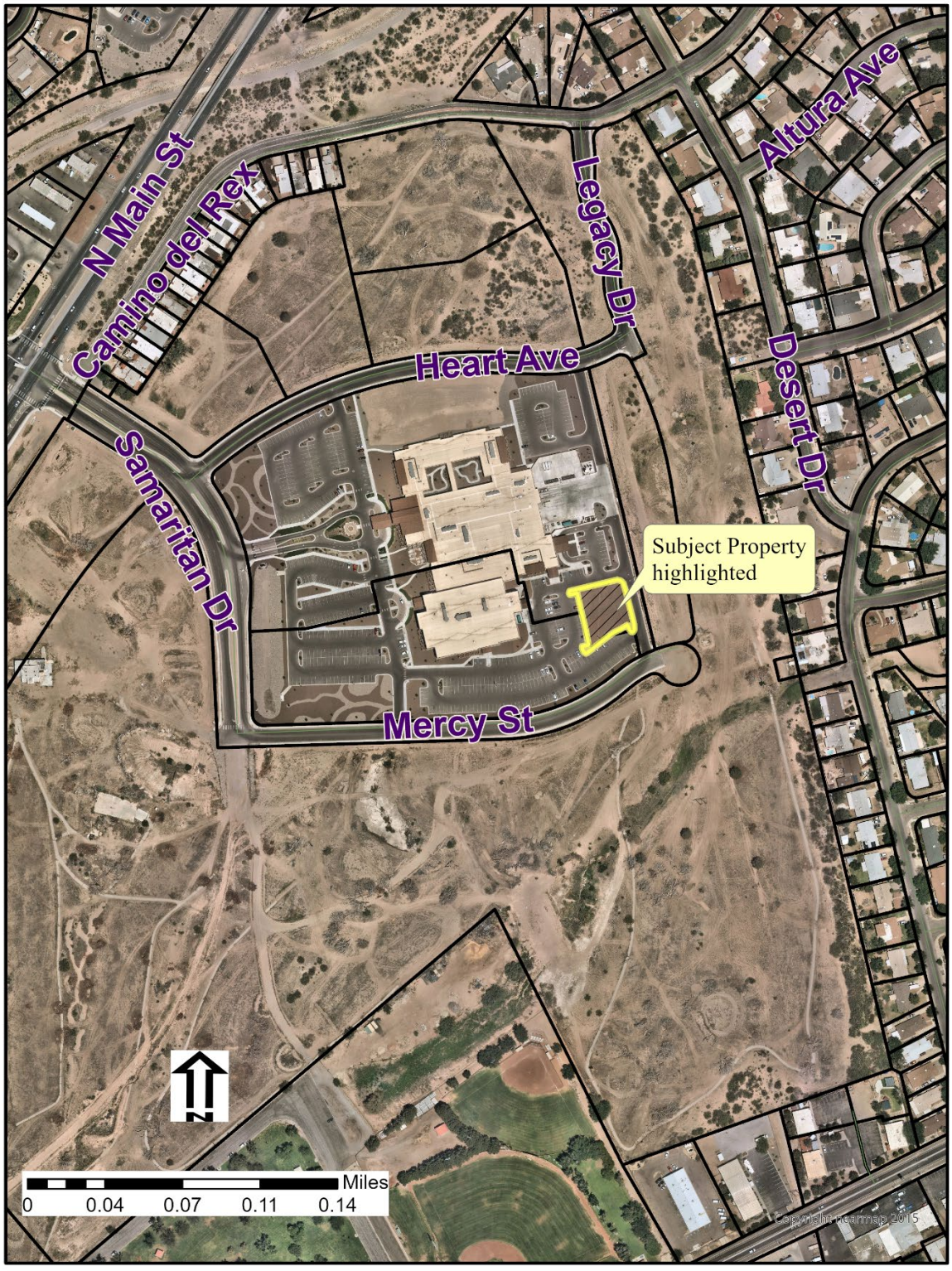
ATTACHMENT 1

Zoning Map



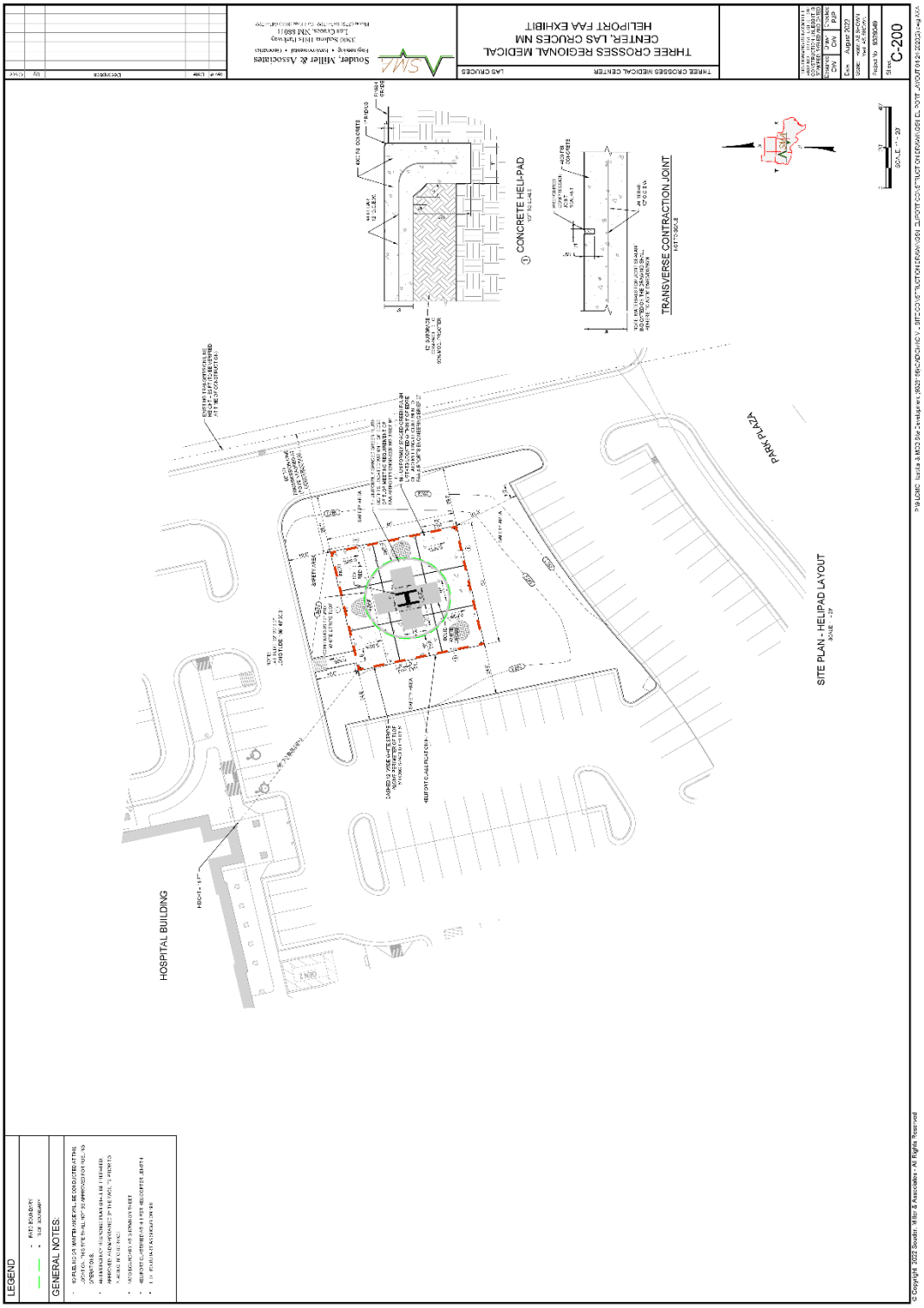
ATTACHMENT 2

Aerial Map



ATTACHMENT 3

Site Plan



ATTACHMENT 4

Department Review Comments

Department: Engineering

Status: YES

Department: Planning

Status: APPROVED

Department: Fire

Status: APPROVED W/ CONTINGENCY:

Department: MPO

STATUS: Not Required

Department: City Utilities

STATUS: APPROVED

Department: Flood Zone

STATUS: NOT REQUIRED

Attachment "D"

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
November 15, 2022 at 6:00 p.m.

BOARD MEMBERS PRESENT:
Scott Kaiser, Vice-Chair
Vanessa Vega, Secretary
Joaquin Acosta, Member
Enrico Smith, Member

BOARD MEMBERS ABSENT:
Luis Armando Guerrero, Chair
James Bennett, Member

STAFF PRESENT:
David Weir, Deputy Director Community Planning
Adam Ochoa, Senior Planner/Building Inspection Supervisor
John Castillo, CLC Planner
Jocelyn Garrison, CLC Senior Assistant City Attorney
Adrian Guzman, CLC Communications

1. CALL TO ORDER (6:00)

Kaiser: Good evening and welcome to the November 15th City of Las Cruces Planning and Zoning Commission. I apologize for the mix up here but we got our fourth member to make a quorum tonight so we are going to get started.

All right, thank you for the folks who were able to bring back from the parking lot. Hopefully we were able to get everybody. I apologize for the confusion and chaos here this evening. But we're going to go ahead and push forward on tonight's agenda.

2. CONFLICT OF INTEREST

Kaiser: So with that, can I get - let's see, do we have any conflict of interest this evening? Hearing none.

3. ACCEPTANCE OF THE AGENDA

Kaiser: Can I get a motion to accept tonight's agenda?

Smith: I make a motion that we accept tonight's agenda.

Vega: I second.

Weir: Mr. Chair. You have a motion in a second for approval of the agenda. I'll take roll. Commissioner Smith.

Smith: Yes.

Weir: Commissioner Acosta.

Acosta: Yes.

Weir: Commissioner Vega.

Vega: Yes.

Weir: And Chair Kaiser.

Kaiser: Yes.

4. APPROVAL OF MINUTES – October 25, 2022

Kaiser: All right. So we have the minutes from the October 25th meeting. Can I get a motion and a second to approve? Or are there any comments rather on the minutes from last month before? Okay, hearing none? can I get a motion?

Vega: I make a motion to approve the minutes from our last meeting.

Smith: I second.

Weir: Mr. Chair. You have a motion and second to approve the minutes. I'll call roll. Commissioner Smith.

Smith: Yes.

Weir: Commissioner Acosta.

Acosta: Yes.

Weir: Commissioner Vega.

Vega: Yes.

Weir: And Chair Kaiser.

Kaiser: Yes.

5. POSTPONEMENTS

Kaiser: All right. We do not have any postponements.

6. PUBLIC PARTICIPATION

Kaiser: So we'll move on to public participation. Is there anybody in the audience who wishes to speak on an item that is not on the agenda tonight? Yes sir. And before you begin just to confirm this as on something that's not on the agenda tonight.

Shervanick: I do.

Kaiser: Okay. All right. Can you please state your name for the record and I'll swear you in.

Shervanick: My name is Gregory Shervanick. S-H-E-R-V-A-N-I-C-K. Mr. Chairman, I would like to address you and the Commissioners concerning a point that took place on January 25, 2022. I would like to read an e-mail, which is a public document that was sent to Mr. Nichols concerning this matter, and provide to the Commission a number of documents. To the recorder, I will give them the full amount of documents listed as attached documents. If you would like copies I have summarily copies for the commissioners. May I speak?

Kaiser: Yes. Let me swear you in before you do. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Shervanick: I do.

Kaiser: All right, I will give you three minutes.

Shervanick: Thank you.

Kaiser: Please go ahead.

Shervanick: November 13, 2022, Director of Las Cruces Community Development, Mr. Nichols, during a review of the files from the Doña Ana Assessor's office and the Doña Ana Clerk's office for account number R1904159 and reception number 22225434 and listed as a property in Las Cruces at 2700 North Main Street, the case number 21ZO050098 and case number 21ZO0500112. These documents appear to be incorrect and are not recognized by the file documents at the Doña Ana County office. I have attached them. At issue would be if the owner described by the case

number 21ZO0500112 was granted a rezoning request for the account and parcel number 4007133268457 was not listed on the instrument and the current owner at the time of application during the January 25, 2022 Planning and Zoning meeting, would there be a problem with current or future development? Since participation when speaking at Planning and Zoning is authorized after an oath of affirmation, as it is administered, are the facts of that case 21ZO0500112 accepted and are in the minutes of the February 22nd meeting of this body. Is the person who was affirmed fulfilling that oath correctly allowed to have the rezoning? Staff recommended list that this action rezoning case number 21ZO0500112 followed Elevate Las Cruces and the strategic plan. If the person that represented themselves as the owner was not accurate, we just changed the rezoning of 2700 North Main Street under the current policies. Attached to the documents to this e-mail are the Doña Ana Assessors page, the Doña Ana Accessors record and reception number. The Doña Ana County detail of demolition for this property, which is incomplete, a warranty deed issued on September 19, 2022. An IPRA (inspection of public records) for public documents was filed on November 13th for other public records with the City Clerk. I'm also asking for those documents. And since they have not been given to me, I cannot tell you what they are. Thank you.

Kaiser: Thank you sir. Appreciate that. And I certainly don't have answers to your questions this evening. It sounds like there's a question about property ownership and applicant mismatch for a rezoning. Does that more or less summarize what I heard? Okay. We'll certainly make sure that staff gets your information and can follow up with that.

Shervanick: Thank you Mr. Chairman. I'm not asking for any resolution or discussion of this item. I am just making it known in a public record, that I believe there's a deviation and an abnormality concerning a rezoning that took place by this body.

Kaiser: Understood. Thank you. Thank you very much. All right. Is there anybody else in the audience tonight that wishes to speak on an item that is not on tonight's agenda? All right. Seeing none.

7. CONSENT AGENDA

Kaiser: We will continue with the consent agenda. We do not have any items

8. OLD BUSINESS

8.1 2560 Samaritan Drive: A request to approve a Special Use Permit (SUP) to allow a helipad that will be associated with the Three Crosses Regional Medical Hospital located on the subject property. The subject property is located at 2560 Samaritan Drive, is zoned C-3C (Commercial High

Intensity-Conditional) and is 10.6 + acres in size. Submitted by Souder Miller and Associates, representative. (Case# 22ZO1000098)

Kaiser: So we will move on to old business and item 8.1, which is a request to approve a Special Use Permit to allow a helipad associated with the Three Crosses Regional Medical Hospital. Staff, please go ahead.

Castillo: Good evening Commission, Mr. Chair. My name is John Castillo. I'm with Community Development. Tonight we have a special use permit at 2560 Samaritan Drive. Currently 2560 Samaritan Drive is home to the Three Crosses Regional Hospital. It is sitting on approximately 10.61 acres. The property is currently zoned C-3C which is a commercial high intensity conditional. The proposed helipad location is a vacant parking lot island on the southeast corner of the facility.

As you can see here from the image this is a zoning map showing where the subject property will be located. This is also an aerial image of the subject property that's highlighted of the placement of the proposed helipad. So tonight's proposal is for a helipad located the southeast corner of the parking facility approximately 95 feet from emergency facilities. It will also have a 60 foot by 60 foot final approach and take off area, as we can see here by the site plan. So the property will conform to all requirements for an SUP or Special Use Permit of a heliport or helistop as outlined in Section 38-54. These requirements are federal airspace protection regulations including 14 CFR Part 77, as well as meeting our outdoor lighting ordinance, and will also be designed and constructed in accordance with the FAA AC 150-5392C.

At the time of this presentation reviews were sent to all relevant agencies and departments, which all supported the proposed SUP. The notice was also sent out to surrounding properties within 500 feet. At the time of this presentation that was built staff did receive two e-mails and a phone call. One e-mail and phone call was concerning the development of the helipad and proximity to the existing neighborhood. The second e-mail was informational, wanting to know about the date and time of the meeting for the helipad discussion. Since then, we have received other e-mails regarding concerned neighborhood residents in the area.

Today, staff recommends approval based upon findings found in the staff report. These findings will be the helipad will meet the Las Cruces outdoor lighting ordinance; the proposed SUP will follow all of the requirements for a Special Use Permit as outlined in Section 38-54 of the 2001 Zoning Code. The proposed SUP meets the purpose and intent requirements of section 38-2 of the 2001 Zoning Code, the proposed helipad will be in accordance with federal airspace protection regulation, and all applicable requirements as outlined in the 2001 Zoning Code as amended, and those stipulated by

the Federal Aviation Administration. Today, your options will be to vote "yes" to approve, vote "no" to deny, vote "yes" with conditions, or vote to table.

Kaiser: All right thank you. Is there any questions from Commissioners? Okay, I have a few questions.

Castillo: Just to interject Mr. Chair. I also do have the applicant's representative here that has a presentation as well if you'd like to hear that.

Kaiser: Okay. Yes, let's do that before I ask my questions. Thank you. And before you get started sir, can I of swear you in? Please state your name.

Pompeo: Paul Pompeo.

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

Pompeo: Yes I do.

Kaiser: Please go ahead.

Pompeo: Good evening, Mr. Chairman and Commissioners. I have a brief presentation. And following that I would be happy to answer any questions you have. I also have with me tonight, John Lanning, who is the CEO of the hospital, and he would like to say a few words after I've finished with my presentation.

Basically, what we have before us is a Special Use Permit to allow for the operation of a hospital helipad. The location is within the boundaries of the operating Three Cross's Regional Medical Center campus. Once again as staff noted in approximately this area here. This heliport is to serve emergency helicopter transport of critically ill patients primarily cardiac trauma in nature. I'd like to point out that transportation by helicopter is both into the hospital and if they're critical more than this hospital can provide service, then there are also flights that go from this hospital to Thomason in El Paso which is our level three trauma facility in this area.

Once again, the proposed helipad will be located in the southeast corner of the medical campus. This location is required as the distance of a helipad to the emergency room, it's within acceptable medical standards for walking distance. Approach to the helipad, and you can see that I've put, denoted in red on this, is the flight path that is on our documents. It's also on the documents that have been submitted to FAA. And I want to speak to that. Approach to the helipad will be from the southwest and departure to the

north. There will be no flight paths into the hospital or out from the hospital eastbound over the existing residential neighborhood.

At this point, I'd like to pause Mr. Chairman and state that I have been made aware of an e-mail that was presented to the planning staff from an adjacent property owner stating that they had observed helicopter traffic flying over that neighborhood. I have talked to Mr. Landing and Mr. Bob Pofahl, who's another developer of this area, they have made it perfectly clear to me that they have reached out to Nat O'Hare and had been in discussions with him about not flying over that neighborhood anymore. So, we have heard it and we believe that we have addressed that.

Basically, as staff pointed out the guiding design document is the US Department of Transportation Federal Aviation Administration advisory circle number 153902C, which is heliport design. And the design of this facility is based on that FAA circular.

FAA notification, as part of the proposed construction activities the US Department of Transportation Federal Aviation Administration, FAA form 4880-1 notice of construction alteration or deactivation of airports is required. Mr. Chairman, what's on your screen is the front page to that packet is in the back so you can see the title, but the document before you is what we have filled out and has been submitted to FAA for the construction this facility.

Also, Mr. Chairman and as provided to staff, SMA reached out to the helicopter air ambulance company, and we've got the exact aircraft model numbers of, and the base of operation of where these helicopters fly out of. What's before you here in the notes is the noise level or decimal levels of what these helicopters would produce on fly over, takeoff, and approach. Obviously, approach has the highest decibel level. The documents below that are smaller in nature are just the data sheets from the specific helicopters that were provided to us so we can show that those match. So this information was provided to staff.

From the chart that was provided, Mr. Chairman, the maximum noise level at the center of the helipad is 95 decibels. The closest corner of adjacent house to the corner of the helipad 480 feet. Calculating the noise propagation, which is the equation listed before you, calculates to a decibel level of 57 decibels at the corner of the closest house to this operating helipad. And we can see from the chart that I provide to the right that it's somewhat down in the allowable noise where we talk about what the different noise levels are so for comparison, Mr. Chairman.

With that, Mr. Chairman, that concludes my presentation. I would be happy to answer any questions the Commission may have. And once again, I would introduce Mr. John Lanning who's the CEO of the hospital.

Kaiser: And before you speak, can you state your name so I can swear even.

Lanning: Sure. John Lanning.

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

Lanning: I do.

Kaiser: Please go ahead.

Lanning: Good evening, Mr. Chairman and Commissioners. I appreciate your time. I just wanted to make the point also in addition to Mr. Pompeo, is we are an acute care hospital licensed in the State of New Mexico, licensed with Medicare and Medicaid, which means that we must operate a 24/7, 365 emergency room. We employ a group of interventional cardiologists who have been in this community for a number of years and have a large patient base and continue to grow that patient base, which, you know really includes you know any of the emergent type cases that come but also elective type stuff. We you know have tried to be good neighbors with all of our neighbors. I've talked to several of the neighbors to our east. We are working as Mr. Pompeo had stated that we are working with Native Air to make sure that they approach from the proper angles. And we have had some complaints that they have come over the east side. So we are working to make sure that that does not happen.

But all that said, I think the important thing to know is that we have some emergent needs for people's lives. Whether it's us shipping them out somewhere or them coming in from some of the surrounding communities that just do not have those services available. So we're here to serve the community. We were very new to the community but we feel like you know we've really gotten off to a good start and we feel like this is very important to us being able to continue to serve the community of Las Cruces.

Kaiser: Thank you.

Lanning: Thank you.

Kaiser: All right, I'll come back to the Commission. Any questions? Please.

Acosta: All right, I just have a question here. Regarding the usage of the helicopter, is it specifically for patients or is there my guess uses on that? And then on

top of that, I just did want to clarify, as far as the specialized services that patients may actually be using here in Las Cruces. Which ones are those if that's the cardiac care if I believe, because I do know we do end up shipping out a lot of people here. So I'm just kind of curious to fill in what medical needs you know this helipad is really serving.

Lanning: Sure. The reason for the helipad is not going to be used for anything other than patient transport. So there's no other uses for that. Primary use that we typically are seeing currently, and I don't know if you guys know this now, but we've had several helicopters land in our parking lot and that's the reason we're addressing some of the flight pattern things. So currently the helicopters are landing in the far southeast corner, where the new helicopter pad is proposed to be. It'll be actually closer to the actual emergency room and closer to the hospital, further away from the homes.

Cardiology could be in some cases, other trauma type cases that may require emergent type transportation. If it's a bad enough orthopedic issue or something like that where somebody has you know broken ribs, punctured lung, whatever, those are types of things that could be transferred into us. Our primary services that we provide right now, we have general surgeons on call, we have orthopedics on call, we have cardiology on call, and several other lesser specialties that maybe are not as much associated with trauma. But those are the primary reasons that we need that. We do have people that walk into our ER or drive into our ER that find out that they have a very severe medical emergency that we may not be able to take care of, and we need to transfer them out. And I can tell you that happened today. We had one that needed to be transferred out today. Thank you.

Kaiser: Any other questions? Okay, so I got a couple of questions. One I think is somewhat been spoken to, but that is certainly the noise component of the helicopter flying in and out of this hospital. Recognize that there's certainly a community and public health need. You know we saw the decibel calculations. I'm not a noise expert so I take that for what it is. So I guess my question around noise perhaps is, you mentioned emergency room's a 24/7 operation, is that the same expectation for the helipad pad that anytime during the day helicopters can fly in? Or is there any consideration to sort of hours of operation with that?

Lanning: The answer that is they can come in any time of the day. We can't control when those emergencies occur and how quickly we need to get them in or out for that matter.

Kaiser: Sure. Okay. And then I imagine there's been some number crunching to understand what the financial impact of this is to the hospital. So any rough

estimate on what you guys are seeing as far as the sort of the weekly usage of this helipad?

Lanning: Currently, we're probably having about two or three landings a week depending on the day obviously.

Kaiser: Okay. Thank you. So along those lines, I happen to live in the neighborhood, I've seen some of the flights come in and out. The one thing that aside from the noise, which we've discussed is the dust, when they come in and land any consideration to how to mitigate that? You know we live unfortunately in a very dusty place so I know there's going to be some impact there, but you've got residents that are you know really backed right up against there and the dust is very fine particles, as we know every spring it gets into the house one way or another, I don't know how. So anything that you can speak to about that issue.

Lanning: Where we're proposing to put the helicopter pad is going to be much closer to the hospital, much further away from the dusty or the unfinished areas of our property. So currently we're landing literally in that southeast corner of the parking lot right up next to all the desert land there. So the helipad will be paved. It'll be you know with I think 60 by 60 foot but within 95 feet of the of the hospital. Whereas now it's probably closer to a couple 100 yards out from the hospital.

Kaiser: Okay. Thank you. And then I think my next question are primarily toward staff or for staff. I guess let's start with the meeting on May 26th with the neighborhood. Could you just speak a little bit more about that meeting? How many people showed up? What kind of conversation did you have? Can you just describe the issues that were discussed in that meeting?

Castillo: Mr. Chair. For point of order. The meeting was preempted by the applicant and their representative. During a preapplication meeting, staff recommended that what we call early notification be sent out to the neighborhood as this may be a topic of concern.

Kaiser: Okay, so I'll redirect that to the applicant then.

Lanning: Yes, we sent out notice to all the households that we were required to send to in that general neighborhood. I can't remember the exact count; I think it was about 15 to 20 people that showed up from the neighborhood. We reviewed the plans for the helipad and what was going on there, but we also were discussing what overall operation has been. There was some misconceptions of what was going to be and I think more concern about what was going to be around the hospital in the future. And we just talked through that. So it was really kind of an open forum conversation about the

growth of the hospital,. what our plans were, and then of course what was going on with the helipad.

Kaiser: Okay, was there any conversation about noise or dust or anything?

Lanning: Not to my recollection. I was there the entire time and that was not discussed. It was more about where the helipad would be, what the flight patterns would be.

Kaiser: Great. Thank you. And then my last question, I think it's my last question, this is definitely for staff. So this Commission earlier this year approved a rezoning for the vacant properties or parcels that are around the hospital. Has there been any consideration to how this particular use might affect that future development? That's obviously a major, major redevelopment opportunity within the City, and I'd hate for us to get five, six years down the road and find out that this isn't all going to work together. So I'm just wondering, has there been any thought or analysis from staff on that?

Castillo: Mr. Chair, Commission. To answer the question, staff is in the process right now working with Souder, Miller and Associates on a master plan proposal for the remainder parcels or the remainder vacant areas of the Old Country Club. So we are working with Souder, Miller and Associates to align the recent zone change and the Apodaca Blueprint together.

Kaiser: Okay, but specifically a helicopter flying in and out. I mean, there's obviously got to be clearances that you know are going to have to be met. You've got power lines on the east with the neighborhood that they just said they're promising not to fly over. You're going to have additional development, basically under that flight path that was shown on the screen tonight. And that rezoning had height requirements, minimum height requirements, and I just want to make sure that we're all looking at this together.

Castillo: Yes. As we get further into the process of the master planning, preliminary plat, and final planning aspects of everything the heliport or the helipad and final approach takeoffs and lift offs will be taken into consideration.

Kaiser: Okay, thank you. All right we will go to members of the public. Can I get a show of hands of who wishes to speak on this items so I can get a head count? I see two hands up. All right we will do three minutes each. I'm going to start with the lady in the blue. If you can please state your name so I can swear to you

St. John: Eva Nevarez St. John. President of Country Club Neighborhood Association.

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

St. John: Yes.

Kaiser: Please begin.

St. John: Well, for one I was not prepared to speak or address this issue. I thought Connie Potter would be here to do so. Personally, I live all the way on that east side, so I've not directly impacted. But hopefully everybody's received her e-mail talking about the flights that she has experienced, which is on a very regular basis, and directly over her home and over the power lines. And I know she's made many efforts to communicate with the CEO of the hospital, with the FAA I believe. I'm not sure who else. Dennis Beedy. I'm not sure who said that is. But nothing has seemed to be able to be effective in causing them to change the flight patterns. When currently the 75 plus acres is vacant and I don't understand why they have to fly over the neighborhood and in that direction.

Also you know personally I would question exactly how many of these patients this small, tiny hospital all of a sudden has a need for so many helicopter flights in and out. How many of these patients are actually served at that hospital and not possibly transported elsewhere? So that's one of my concerns right there. But as far as public meetings you know that's all kind of a scam really, it's just whatever's required, notification given to the, you know whatever's required. And it's, you know we're just told what they're going to do. It really doesn't matter what we say, it doesn't matter what we say to this committee, that's why I'm done with it personally. You know I can challenge you know whatever their presentations are, it doesn't matter. So you know just to say you know it would be nice if there was some respect shown to residents. Like I said this is totally unnecessary. At this point, they have to go over people's houses when they've got 75 vacant acres to go over. So you know I doubt if there's anything you guys will do about it. But it would be nice if there was some restrictions and some requirement for you know basic human decency. You know I personally feel there's, she's even being targeted to a certain extent. You know they have 13 acres before they develop this, they could have figured out a place to put a helipad that wasn't right, immediately adjacent to the properties, you know the existing neighborhood in general, and Connie Potter's house in particular. So, that's my two cents for the public record.

Kaiser: Thank you. All right. And gentlemen would you like to come forward?

Shervanick: Mr. Chairman.

Kaiser: And just restate your name for the record.

Shervanick: My name is Gregory Shervanick. S-H-E-R-V-A-N-I-C-K.

Kaiser: All right. Please begin. You have three minutes.

Shervanick: Thank you. I would like to ask you to deny completely this application. And the reason being that originally, there had been a plan in the early stages of the hospital building where this was discussed. And of course, since it wasn't permitted at that time it is now something that they think they need. Also, according to staff reports, page 2, third paragraph, flights will only take place from the north and southwest. Under suitability of the site I believe this is contrary to all the elements of Elevate Las Cruces except for in the present tense, meaning currently, any future development as the Chairman mentioned concerning the property to the south and east of that, which also is in question based on the rezoning that I asked you about earlier, and that case number, again, is 20ZO0500098. During that discussion with this body Tetra Property Group listed a number of elements for rezoning of those properties. If you allow this to go through, don't allow the future to make a decision on something that you will do tonight based on Elevate Las Cruces, and Elevate Las Cruces does not support this as a future and sustainable item. Thank you.

Kaiser: Thank you. Anybody else from the public who wishes to speak on this item? Seeing none. I will come back to the Commission. Are there any additional questions from the Commission?

Smith: I don't have a question. But I do have a comment to make. I'd like to address the lady that had concerns about whether this Commission you know will even take this seriously. I would just want you to know that we do. We are residents of this City. I've lived here for 24 years. I've lived downtown. And you know I am you know sensitive, very sensitive to anything that happens that affects residents in the City. The City has grown in the 24 years since I've been here. There have been two hospitals built since I've been here. We have people that are moving here from all over the country. Las Cruces is a place that people want to come to, to retire. And one of the draws is you know health, health facilities medical facilities. So you know there will be situations where people need to be flown to a level three trauma center which is in El Paso. And it's been happening you know for years with Memorial Medical Center. I'm sure those helicopters have flown over many residents over the years. I'm understand you know you've lived there for a long time possibly and so you are concerned about how many flights are going to be coming in and out at this hospital. You have stated that it is a tiny hospital, you don't understand why they need it. But there is a need. We have people moving here, and the City has grown. That's why we have another hospital. And these hospitals will be serving our community. There may be a situation with someone in your

neighborhood may need a flight to El Paso. So I just want you to know that we are very concerned about your concerns but at the same time we will sit here and make the best decision for the City and also for the applicant. Thank you.

Acosta: All right, so I'm going to just start with one question. I think probably for the CEO. I just wanted to ask as far as like insurance for that helicopter or the driver or the hospital. Does it cover the surrounding neighborhoods? And how does that work? The second just comment I do want to make in regards to the public is just that in New Mexico as a whole we have 12 hospitals total that are even capable of taking care of STEMIs (ST elevated myocardial infarction), which are like heart attacks. And there's literally inner hospital transport protocol for this kind of stuff. And I do believe that's not even like half of what people are being transported in and out of that hospital for. So guys we need to really make sure people have access to care in this state where we are already rural enough as it is. And for these guys to come in and give us a higher standard of care than we are accustomed to. And they're really shooting to be I believe five star accredited from what I had understood in the past. And I don't know if they're all the way there yet and how that all works, but I do appreciate where they are coming from. And so you guys you know if you're ever having a heart attack and you're in a hospital that can't transport you out and you have to drive 15 minutes to the nearest helipad and your life's on the line, or it's your mom or your grandma, you know that blows my mind. So I would just hope at the very least you know insurance takes care of any sort of surrounding property damage that could ever happen or at least there's a contingency plan there. Other than that, that's my comment. Thank you.

Kaiser: I don't know if the applicant - would you like an answer on the

Acosta: I'll take an answer on the insurance if you do have one thank you.

Lanning: Yes, so we do not operate the helicopter company but they are required to have malpractice insurance and liability insurance. We as well have liability insurance as any business would., but for a hospital obviously for our size we have to have that.

One thing I would like to say is that we are aware that the helicopter company has continued to come over from the east and we are not happy about that. We've set up a meeting with them to talk to them again say, "this needs to stop" even before we have the helicopter pad they're landing in our parking lot. And we want to be good partners or , good neighbors. I've had several discussions with Ms. Potter about this and she and I are on the same page. So I just want to make that known that we're not being obtuse about this, that we are trying to figure out how do we get this to stop.

And we just started discussions in the last month here. So if it continues to happen, if we have to have a meeting with every single pilot that's what we'll end up doing. But yes in terms of malpractice insurance, both entities need to have that in place and liability insurance in place.

Acosta: Thank you.

Kaiser: All right. I just want to echo Commissioner Smith's comments. We definitely take these concerns seriously. And this is no doubt going to be a change for this neighborhood, especially the residents that backup right against the old golf club property. I sincerely recognize how much of a change this is going to be. That being said, we're a growing City. And this is a service that New Mexico desperately needs when you look at health care in this state, and compare it to other places in this country. And so we do hear you. And I think some of the concerns have been addressed by the applicant. I'm encouraged to hear that they have talked to their air operator and their pilots to notify them that they shouldn't be flying in or out over the neighborhood. And so certainly like to thank the applicant for that tonight. But just want to echo Commissioner Smith's comments.

Smith: I've got one more question for the applicant. Is Native Air the only service that can provide this or is there another competitor that possibly could be contracted to perform the service?

Lanning: Currently, they're the main air transport that we have available to us. So we've looked at other options as well. But you know again I feel like we can get them to comply. We just started conversations with them about this when Ms. Potter start giving us more detailed information about the number of times they've flown over their homes.

Smith: Just want to make one more comment. I spent 22 years in the Coast Guard. And I spent several tours on ships where we had helicopters. And often you know weather was a factor in which direction you know how the helicopters would land on our vessels. Has Native Air you know implied that you know they have come in from the east because of weather conditions or are they just basically just been flying in any way they would want to?

Lanning: We haven't gotten that far in discussions. The initial discussions were with their local representative. As a matter of fact she sent a text message to me today wanting to bring her manager by to have some discussions. They did request a route that that was a little bit kind of from the southeast, and we said, no, that's not acceptable. They gave us, I can't remember what the cross street was, but they said can we approach that way. And I just said, no, that's not acceptable. It's still over the homes even though it was a little bit southeast. So I imagine that they're going to want to talk to us

about you know weather conditions and whatnot. But I think you know our stance is we want to be good neighbors. We don't want to be disruptive to people and we want them to come in from the south or the southwest.

Smith: Thank you.

Kaiser: All right. Looking for a motion to approve.

Vega: I'll make a motion to approve item 8.1.

Smith: I second.

Weir: Commission. This is a roll call vote on the approval of the helipad.. Commissioner Smith.

Smith: I vote yes with conditions that the hospital finds a solution to the flight pattern for the helicopter service, if that's permissible by staff

Weir: Commissioner Acosta.

Acosta: I vote yes to approve based on staff recommendation.

Weir: Commissioner Vega.

Vega: I also vote yes based on staff recommendation.

Weir: And Chair Kaiser.

Kaiser: Yes, based on staff recommendation. consistency with Elevate Las Cruces.

Weir: Commissioners. The SUP has been approved.

9. NEW BUSINESS

9.1 1128 S. Solano Drive: A Special Use Permit to allow a cannabis establishment within the required 300' buffer from a single-family zoning district. The 0.232-acre property is zoned C2 (Commercial Medium Intensity) and allows a cannabis retailer. The business footprint is approximately 89 ± feet to the closest R-1a (Single-Family Medium Density) zone. Submitted by Ramon and Monica Vigil, property owners. (Case# 22ZO1000138)

Kaiser: Okay, we are moving on to our second agenda item for the evening. That is item 9.1, a Special Use Permit to allow cannabis establishment within the required 300 buffer from a single-family zoning district.

Banegas: Chair Kaiser and Commissioners. This case is a Special Use Permit request for property located at 1128 South Solano Drive. Vincent Banegas, Interim Planner. It is case 22ZO1000138. Current conditions on the property are as follows, the property is currently zoned C-2, that's our medium intensity commercial district. Originally developed as a small retail service center. It has seen some changes in terms of use but nonetheless it remains within that realm of activity. The property is located just on the west side of Solano just north of the intersection of California and Solano. And we are talking about property that is 0.23 acres in size.

The surrounding property or neighborhood is largely retail office. There's some quasi institutional, in fact the property immediately south is quasi institutional. There's some multifamily and some single-family uses immediately west and northwest of the subject location. And supporting zoning district for those uses are generally the R-1a, R-2, some O-1 which is our office, C-2 and C-3 zoning. The zoning map shown here illustrates the parcel in question. It is outlined in red within the C-2 district. The residential properties, single-family and nature, in terms of zoning are located here. This larger property is actually a multifamily, I believe it's a four plex type development or apartments. This is single-family in terms of use. And even though this has a multidwelling, zoning designation, it is developed as a townhouse style of development, zero lot line, that kind of thing.

Elsewhere on the other side, you do have a significant commercial buffer long Solano Drive before you get to other R-1a zoning on the east side. Showing the aerial, it appears as if they're connected but they are not, there's actually about three, four feet, maybe five foot separation between these two buildings. But again, the area outlined in red is the target property in question. And the cannabis retail activity as indicated by the applicant will take place in this front portion of the building. And if you go from the closest proximity or the footprint along that border, if you drew a line here over to the single-family zoning which goes in the middle of the right-of-way, you're talking roughly about 93 plus or minus feet separation for that required buffer between the building footprint for cannabis and single-family zoning district boundaries. So that represents roughly a 207 foot deviation to that. And so that's why we are coming before this body for a Special Use consideration.

And again some of the other uses in the area here you have another three plex or triplex. Here are those four plex units, two in each of these buildings, and the single-family up above in this area. The further you go west into the property you do have that mixture of residential use from apartments over to your single-family style of development.

So the building was constructed according to county assessor records in 1989. In 1907, the property was created to the Valley View addition subdivision. Those typically created much narrower lots and this property consists of three of those. The property has been zoned C-2 since pre-1970. That's our base year in which we take our zoning designations forward. And the building property as indicated on those maps is immediately adjacent to the R-1a zoning district.

The proposal is to include in terms of product offering cannabis. They currently sell CBD product on site and that has been going on for some time, but they want to introduce cannabis into their product offering. The distance as indicated on that aerial is approximately 93 feet. And again that's the footprint over to the single-family zone. Three hundred feet is required. All of the other buffer distances will be met. And just to, if we can remember, those include distance to other cannabis retailers and school and daycare properties. The use of the cannabis or I should say the inclusion of cannabis into the product offering will require that all CLC and State of New Mexico regulations governing that product be followed.

And here we have just a couple of photos showing the property in question. This is the building right now, obviously as indicated on the window signs, they do sell CBD product. The lower photo just showing the angle, parking located right here along this side property line. And so ingress/egress is right here through this curb cut onto Solano Drive. A couple other shots intended to kind of give you an idea of what's further south of the subject property. And you got a church located immediately adjacent on the south and then some other office and retail activities due south as well as office type uses. And the same thing can be said for properties looking north.

Public notice was sent to surrounding properties following the zoning code provisions, and staff did not receive any input to date. So staff recommends conditional approval. The first item is in your packet and that involves that the business owner shall restripe all parking stalls and install the required bicycle parking per the 2001 Zoning Code. There was a provision in the code that requires them to maintain those facilities. And the second bullet is not in your packet because that was found out today. I was researching a little bit deeper into the landscaping provisions of some of those photos that I showed just a minute ago illustrate there's largely no landscaping except for that beautiful Chinese Pistache on the rear of the property, but nothing in those front landscape areas. So the second condition would require that the business owners reinstall actually all landscaping and irrigation as per the Las Cruces Design Standards. And this is again because the landscape ordinance was in effect prior to construction and development of the property. And we did find in some of the Google images that at least in 2010 there was definite landscaping on the property. And with exception to that one tree everything else is either dead or removed

since then. So those are the two conditions that staff would recommend you consider this evening, evening. I have touched base with the property owners about these two conditions and they are aware, and were already thinking of improving the look of the property, so that's a positive thing. The findings for conditional approval are as follows, except for the distance to single-family zoning district boundaries, all other distance requirements are met. Ingress and egress is from Solano Drive limiting the impact to residential properties due west of the subject property. And there's a significant amount of compatibility in terms of this use to other uses along Solano drive.

38-2 which is the section out of our zoning code was found to be consistent with the proposal. So there's strong meeting of that purpose and intent there. And the requirements outlined in the Zoning Code and those stipulated by the State of New Mexico will be followed as it relates to cannabis uses and the property itself. And I already touched on some of the maintenance issues that need to be addressed. So several goals and policies and actions support the SUP, and those are consistent with the urban neighborhood place type which covers this area. And mixed use neighborhoods, expanding economic opportunities, employment opportunities, things of that nature are what those goals and policies and actions speak to.

So your options this evening, Mr. Chairman, Commissioners is to vote "yes" and approve, you may vote "no" and deny. Please remember that any vote to deny would require new findings of fact in that the ones presented this evening speak to a favorable recommendation or approval action. And then if conditions are desired that you include them in your motion, and again the need for landscaping and the need for maintenance of the parking area,. Those were the two that staff recommended. And that concludes staff's presentation. I'll stand for any questions. The applicants are in attendance if you feel a need to ask them any questions, they'll be available.

Kaiser: Thank you. Are there any questions from?

Acosta: Yes, just a question for staff on just a clarification for the I guess property amendments that you guys were asking about. Just as far as being slightly familiar driving by this particular business. I'm not sure how long they've been open or not. But I guess my question would be why were we not restriping and doing these other things when they initially got zoned? And why are we kind of forcing a cannabis thing for them to you know spend money doing these improvements when particularly I guess driving by it looks fine and looks normal like a functional business and the City has been letting them operate like that in the first place.

Banegas: Mr. Chairman, Commissioner Acosta. That is very good question. I can't give you an answer. In my research on this case one of the other things we typically do, maybe not in 1989, I'm trying to think back, I was around back then but I can't remember what we did. But you know those three properties today we seek to have those replatted into one, but they exist as three separate lots.

In terms of the landscaping when it was originally developed, I have a slide in here if I needed to pull it up that showed landscaping in those front areas. And it appears as if they put the drainage in back which is fine, where the Chinese Pistache is, the tree is, and they have an obligation to improve the parking area, keep it maintained per code. But why they didn't require the landscaping to be reinstalled with this latest business operation, I couldn't tell you. Should have been caught.

Acosta: I guess I kind of find it unfair for this particular instance to be the place that bottlenecks them for doing, you know conducting business as is. I mean if you probably drive by or even look at their Google picks on the business they're selling kratom, hemp flour, CBD, tobacco products, you know, paraphernalia associated with this. And I guess you know to me introducing the THC into that doesn't really change much of what they do. And for that I guess it just seems unfortunate to make it a hard stop for them to have to do some cosmetic beautifying which I totally understand the need for, I just don't know if it has, I just don't see why it has to go with the license application in the first place considering how hard cannabis is for everybody to just get licensed in the first place. But that's a personal opinion.

Kaiser: Any other questions from the Commission? Seeing none. Are there any members from the public who wish to speak on this item? Can I just get a show of hands it there's anyone who wishes to speak? Yes, you in back. Please come forward. And if you could state your name I'll swear you in before you begin.

Rodriguez: Yes, my name is *(inaudible)* Rodriguez. I'm president of CCIA local politics and crime committee. I'm also a local business owner. And I actually spoke, I think it was about a month ago when we had the same kind of discussion in the area. And my main issue, I just wanted to clarify this, is that in Chaparral it was done, it was a Special Use Permit in the middle of a residential neighborhood. There was no commercial real estate or outlet anywhere in the area. And you know part of my job as the president of the local politics and crime committee is to stay abreast with everything. And I found out that in that area the homes lost 30% of their value. And what I'm here today to say is that this is not the same case. This is actual in a residential/commercial area. It's residential, yes, but it's primarily in a commercial area. So you know, pretty much the opposite of what happened in Chaparral. Because it is a commercial area it will boost the value of the

local economy, it should therefore boost the value of the residential area as well. And it's not like we're in need of more commerce and business in Las Cruces. So I just wanted to clarify that. My comments again, what happened in Chaparral were specific to that situation. I went to the property today, took a look at it, and this is an area that does need more economic boosting. The local area I think we would benefit greatly from it. And that's the main thing I wanted to say.

Kaiser: Thank you very much.

Rodriguez: Thank you.

Kaiser: All right. Looking for a motion and a second to approve, and remember there are conditions associated with this.

Vega: So I want to make a motion to approve item 9.1 with the conditions that the owner restrict the parking stalls and install bike parking, as well as update the landscaping and irrigation.

Smith: I second.

Weir: Commissioners, this was a roll call for a vote to approve a Special Use Permit with conditions. Commissioner Smith.

Smith: Yes, based on site visit and staff recommendation.

Weir: Commissioner Acosta.

Acosta: Yes, based on site visit and staff recommendation.

Weir: Commissioner Vega.

Vega: Yes, with the conditional approval as previously noted, based on site visit and staff recommendation.

Weir: Chair Kaiser.

Kaiser: Yes, based on staff recommendation and consistency with Elevate Las Cruces

Weir: Commissioners. The SUP was approved with conditions, four/zero.

10. DISCUSSION

Kaiser: All right. Are there any discussion or staff announcements this evening? Seeing none. Just one quick question for staff. Is the expectation for

December's meeting going to remain on the calendar as is or are we looking to move that up a week?

Castillo: Commission, Mr. Chair. I believe as we discussed during last month's meeting, we should be moving it up a week as well.

Kaiser: Okay. Thank you.

Castillo: So I believe it's a tentative date of December 20th.

Kaiser: Thank you.

11. STAFF ANNOUNCEMENTS

12. ADJOURNMENT (7:00)

Kaiser: All right. Can I get a motion to adjourn?

Smith: I make a motion that we adjourn.

Al I'll second. All in favor?

MOTION PASSES UNANIMOUSLY.

Kaiser: Thank you, everyone. Happy Thanksgiving.

Chairperson

Attachment "E"

Affirmation Document

Let these documents affirm that a person has shown the following documents: United States Passport, New Mexico Driver's License bearing the identical address in the City of Las Cruces that is found on a City of Las Cruces document bearing the same name. Confirming this individual's has the right under Section 38-13C of the 2001 Zoning Code [below] to make an appeal and hereby is to be called 'only' as Amicitia or Appellant.

"*Grounds for Appeal to City Council.* Any person, or any department, commission, board or bureau of the City that is affected by a decision of an administrative official, commission, committee, or board in the administration or enforcement of this Code, or any other resolution, rule or resolution adopted pursuant to NMSA 1978, (3-21-1) through 3-21-12 and NMSA 1978 (3-21A), may appeal such decision to the City Council. Such appeal must be initiated in writing within 15 calendar days after the decision and after all other procedures established b this Code ae been exhausted. Any person that is a party to an appeal may request a "Battershell" due process proceeding in place of the automatic standard due process."

The set of documents (attached) being presented by Amicitia for this appeal of Planning & Zoning Commission's decision Case#22ZO100096 Special Use Permit (SUP) for a property located at 2560 Samaritan Drive are

Affirmation that the appellate (Amicitia) has the right to file an appeal to Las Cruces City Council.

Money Order # 22-017620027 in the amount of $200.00 for the fee associated with the appeal.

The Letter of Appeal as specified by Section 38-13 paragraph *Appellant Responsibility in Appeals.*

Let it be known that these documents attached are being submitted by hand to the Community Development Department prior to the 15 calendar after the findings were delivered to the City Clerk. An emailed copy of these documents has also been sent to the Las Cruces City Clerk.

The Amicitia can be contacted in the following manner:

Phone 1-575-259-0653

Email: lciscity@outlook.com

Amicita gs

For a verification upon oath or affirmation:
This certificate is attached to a 3 page document dealing with/entitled Affirmation Document and dated 11/29/22.

State of New Mexico
County of Dona Ana

Signed and sworn before me on Nov 29, 2022 by Gregory Jesome Shervanick (witness)

DEANNA DUFFY
NOTARY PUBLIC
STATE OF NEW MEXICO
COMMISSION # 1134650
COMMISSION EXPIRES: 06-07-2025

Deanna Duffy
Notary Public
My Commission Expires: 6-7-25

Letter of Appeal submitted to Las Cruces Community Development November 29,2022

This Letter of Appeal is for the Planning & Zoning Commission decision for Case #22ZO1000096 Special Use Permit made on the date of November 15,2022.

On this date, November 29, 2022 a request for an Appeal pursuant to NMSA 1978, (3-21-1) and

NMSA 1978, (3-21A) is here by sought, to have the Las Cruces City Council determine the validly of a Special Use permit (SUP) for a property located at 2560 Samaritan Drive.

The appellant, here by alleges, that errors in determination were made by the Planning & Zoning Commission on November 15,2022 in affirming an application for a Special Use Permit (SUP) for a helicopter landing pad for a property zoned C-3C (Commercial High Intensity-Conditional) at the above location and listed on the November 15,2022 agenda as Case# 22ZO100096.

Below are findings for requesting this appeal.

1. That 'tainted' and non-verifiable information concerning public engagement was given in the applicant's statements.
2. Based on current and past warranty and special warranty deeds held by the County of Dona Ana shows, there is fiduciary relationship between all parcel involved and adjacent to the requested Special Use Permit. Creating a bias narrative about the proposed heliport landing pad and a contradiction to the intent of rezoned properties (case#21ZO0500112) to the southwest and north directly in the flight path stated in the Projects Description section of Case#22ZO100096.
3. Per section 38-2 (Purpose & Intent) of the Code presented in the Consistency with Purpose & Intent of the summary, omits several paragraphs concerning the regulations relevant for a (SUP) Special Use Permit. They are paragraph's: G, P, Q under the heading of health, safety, well-being and quality of life. Each of these paragraphs were not considered in this decision although applicable to a helicopter landing pad.

   G - Avoid the inappropriate development of land, ensure that development proposals are sensitive to natural areas and features, provide adequate protection from and reduce the effects of natural hazards;

   P- Reduce noise, glare and odor; and

   Q- Mitigate conflicts among neighbors. (Ord. No. 2354, § I, 1-22-07)

4. There is a disconnect between the statement presented in summary under Compliance with Elevate Las Cruces Comprehensive plan. (Volume 1) page 20 of the Elevate Las Cruces Comprehensive Plan states:
   ..... "the City's resulting vision of sustainability, and supporting policies and actions, reflects Las Crucen's desire to leverage the best of Las Cruces today to create a city that is more livable and prosperous for tomorrow's generations. A VISION OF SUSTAINABILITY The Elevate Las Cruces vision statement has been prepared under the direction of the Comprehensive Plan Advisory(CPAC). Our Vision Components of Our City " .....We are committed to enhancing our livability, prosperity, and environment for the shared benefit of current and future generations of Las Crucens in a fiscally and social sustainable manner." According to page 23,30,& 31[volume 1] as well as table 1.4 detailed definitions of the dwellings that are to be built in the area surrounding the heliport landing pad include Suburban(page 31), Urban Places(page 33). The summary's Criteria For Decision contradicts these definitions impeding the number and size of dwellings stipulated by this section of Elevate LC.

23-134

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:**	June 5, 2023
Drafter:	John Castillo	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **A RESOLUTION REVERSING THE PLANNING AND ZONING COMMISSION'S APPROVAL DECISION REGARDING A SPECIAL USE PERMIT ALLOWING A CANNABIS DISPENSARY (RETAILER) WITHIN THE REQUIRED BUFFER DISTANCE TO ANOTHER CANNABIS DISPENSARY (RETAILER) LOCATED AT 1602 E LOHMAN AVENUE, ZONED C-2 (COMMERCIAL MEDUIM INTENSITY).**

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

PURPOSE(S) OF ACTION:

Appeal of Cannabis Special Use Permit Approval.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

This case is an appeal of an approval decision by the Planning and Zoning Commission on February 28, 2023 involving a Special Use Permit (SUP) request for the allowance of a cannabis retailer within the prescribed buffer distance to another Cannabis retailer/Microbusiness. As called for in the 2001 Las Cruces Zoning Code, as amended, Section 38-53 Conditional Uses, 38-53G Cannabis Retailer (C-1, C-2, C-3), said use is a conditional use requiring compliance with the 300-foot buffer distance to a Cannabis Retail/Microbusiness. If the distance separation cannot be achieved, a SUP is necessary pursuant to Section 33-34 of the code. The triggering of the special use permit process subjects the request to greater scrutiny in order to determine the appropriateness and impacts the use may have on the surrounding neighborhood. Issues considered often involve impacts that stem from noise, traffic, odor, lighting, etc.

The proposed cannabis location is a 0.215 ± acre lot at the intersection of Lohman Avenue and Lujan Street (1602 E Lohman). This parcel has been zoned C-2 (Commercial Medium Intensity), has been developed prior to 1990, and has been functioning as an auto repair store until 2021. The subject property is along a mixed-use corridor that contains residential and non-residential development. These non-residential land uses including the proposed Cannabis Retail that will front Lohman Avenue serve as a buffer for the residential property that front Kansas Avenue, just south of Lohman Avenue.

On February 28, 2023, the Planning and Zoning Commission heard the SUP case regarding the proposed Cannabis retail establishment. Discussion on the request was a fairly robust conversation in the context of the SUP provisions of the Cannabis zoning regulations as outlined in the 2001 Zoning Code, as amended and the saturation of cannabis retail establishments in the relevant area. After reviewing the staff report, related materials, and hearing comment from staff and members of the public, the Commission approved the SUP with a vote of 3-1 (one commissioner absent, one commissioner attended via phone, two seats vacant). Their approval was based on the finding that granting the Special Use Permit would have no detrimental effect on the surrounding property in the vicinity, as well as the City as a whole.

Pursuant to Section 38-13(G) of the Zoning Code, when an appeal alleges that there is an error in the Commission's decision or determination, the City Council, by a majority of all its members may, after all other other procedures established by the provisions of this Code have been exhausted, reverse or affirm any decision or determination of the Planning and Zoning Commission. Members of the Planning and Zoning Commission shall not participate in an appeal before the City Council concerning any decision of their Commission. The minutes of the subject Commission meeting are the public record that indicates each Commission member's participation.

On March 17, 2023, members of the general public appealed the decision pursuant to Section 38-13(C) of the 2001 Las Cruces Zoning Code, as amended, citing:

1. The violation to Cannabis zoning regulations as outlined in the 2001 Zoning Code, as amended. Stating that approval of the SUP and deviating from the required 300-foot buffer distance will enhance rather than prevent the saturation of cannabis establishments in the relevant area. Also, by allowing this egregious violation of the City of Las Cruces Cannabis zoning rules will set a dangerous precedent within the City. As there have been other cannabis establishments that have opened over a four-month period within one (1) mile of the current cannabis establishment. In addition to this the Governor of New Mexico prior to the legalization of Cannabis discussed that regulations would be put into place to prevent the cannabis market from being overly saturated and that the City of Las Cruces' condition of a 300-foot buffer distance was designed to meet and comply with the Governor's intent.
2. The allowance of the proposed cannabis establishment will create an economic hardship to the adjacent cannabis establishment. Recently there has been an increase of cannabis establishments within the relevant area. This increase in establishments has a direct correlation to a decrease in revenue from this established cannabis retail.

This case was publicly noticed in accordance with the City's notification provisions. The input received was the letter previously discussed and the comments received during the meeting.

SUPPORT INFORMATION:

Attachment "A" - Site Plan for Proposed Cannabis retail
Attachment "B" - FINDINGS
Attachment "C" - Staff Report to P&Z for Case 22ZO1000141
Attachment "D" - 02-28-2023 P&Z Approved Minutes
Attachment "E" - Appeal Letter 3.17.23

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this will approve the Resolution and overturn the Planning and Zoning Commission's decision to approve the Special Use Permit.
2. Vote "No", this will deny the Resolution thus affirming the Commission's Special Use Permit approval decision.
3. Vote to "Amend", this could allow the City Council to modify the Resolution and stipulate conditions as deemed appropriate.
4. Vote to "Table", this could allow the City Council to table/postpone the Resolution and direct staff accordingly.

RESOLUTION 23-134

A RESOLUTION REVERSING THE PLANNING AND ZONING COMMISSION'S APPROVAL DECISION REGARDING A SPECIAL USE PERMIT ALLOWING A CANNABIS DISPENSARY (RETAILER) WITHIN THE REQUIRED BUFFER DISTANCE TO ANOTHER CANNABIS DISPENSARY (RETAILER) LOCATED AT 1602 E LOHMAN AVENUE, ZONED C-2 (COMMERCIAL MEDUIM INTENSITY).

The City Council is informed that:

WHEREAS, Euphoria Group LLC, applicant, submit a request for a Special Use Permit (SUP) to allow a cannabis dispensary (retail) within the designated buffer distance to another cannabis retail/microbusiness boundary; and

WHEREAS, cannabis dispensaries require consideration of 300-foot distances from qualifying schools/daycares, and single-family residential zoning districts pursuant to adopted cannabis regulations; and

WHEREAS, the proposed dispensary is considered a conditional use with the condition requiring compliance to the specific buffer distance, and if compliance cannot be achieved, submittal, review and consideration of the proposed use can be made subject to the SUP process; and

WHEREAS, the subject property is 00.215 ± acres, zoned C-2 (Commercial Medium Intensity); and

WHEREAS, on February 28, 2023, the Planning and Zoning Commission, after conducting a public hearing approved the SUP request by a vote of 3-1 (One Commissioner absent, One Commission attended via phone, Two Commissioner seats vacant); and

WHEREAS, on March 17, 2023, an appeal of the Planning and Zoning Commission decision was submitted to City Council.

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

(I)

THAT The Commission's approval of the SUP at 1602 E Lohman Avenue is hereby reversed resulting in the proposed dispensary not being allowed to operate at this location.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

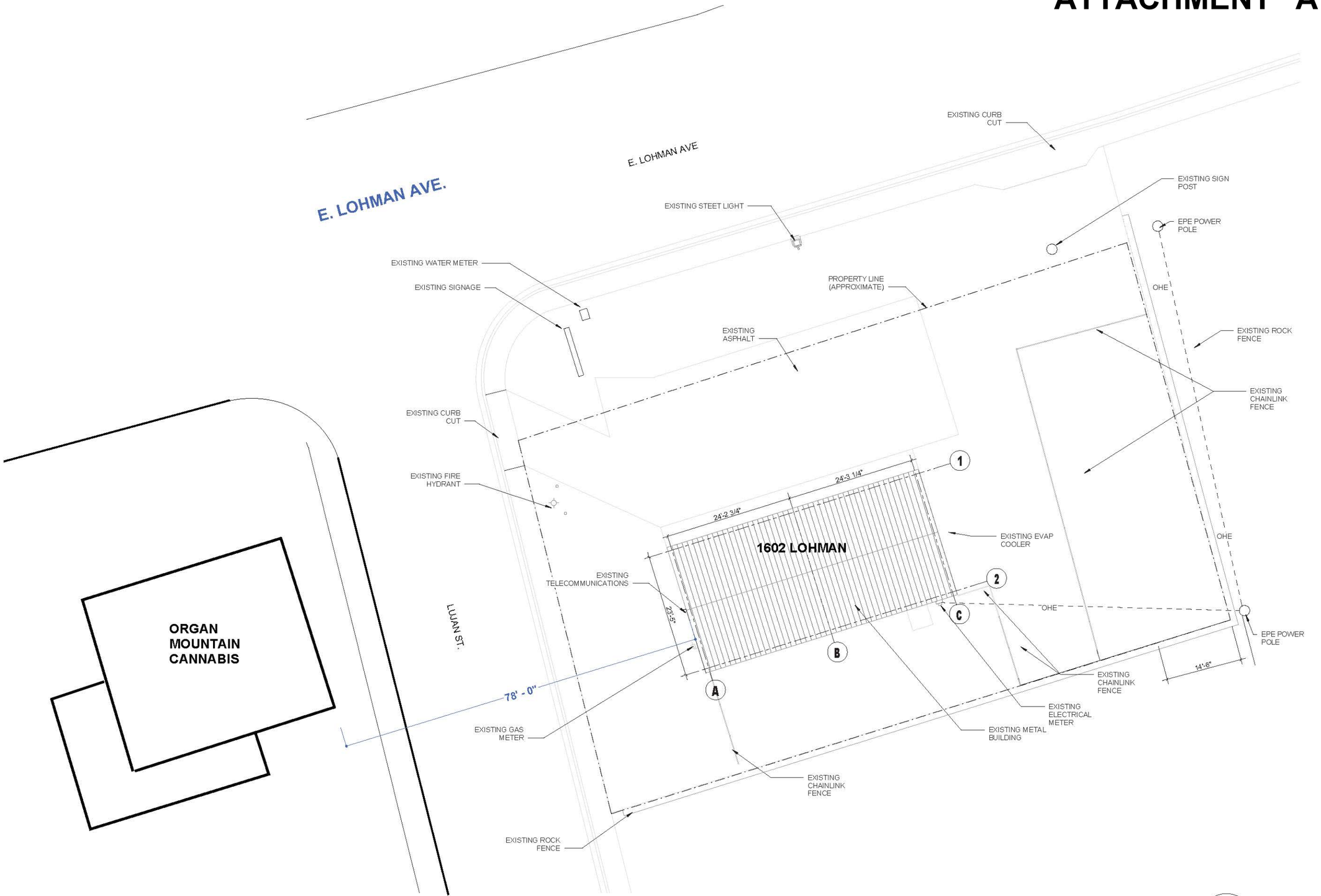
_____

Moved by:

Seconded by:

AYES

NAYS



EXISTING SITE PLAN

NOT TO SCALE

ATTACHMENT "B"

FINDINGS

- The subject property meets the distance separation requirements from any school, nursery/day care, and single-family residential district.
- The subject parcel as it exists is surrounded by commercial/office uses.
- The subject parcel is compatible with several other non-residential properties with frontage along Lohman Avenue.
- The site is designed to attract vehicular business primarily from Lohman Avenue.
- The proposed SUP meets the purpose and intent requirements of Section 38-2 of the 2001 Zoning Code, as amended.
- All applicable requirements as outlined in the 2001 Las Cruces Zoning Code, as amended, and those stipulated by the State of New Mexico must be adhered to for subsequent operation of the proposed business.

Condition:

- The property will be required to complete an administrative replat combining three existing underlying properties into one property before the issuance of a Certificate of Occupancy.

ATTACHMENT "C"

SPECIAL USE PERMIT

City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

Planning & Zoning Commission 02/28/2023

CASE 22ZO1000141: SPECIAL USE PERMIT

STAFF CONTACT:	John Castillo, (575) 541-2288, jcastillo@las-cruces.org
OWNER:	Dennis and Meggie Turner
REPRESENTATIVE:	Euphoria Group LLC
DISTRICT:	District #5
SITE ADDRESS:	1602 E Lohman Avenue
EXISTING ZONING:	C-2 (Commercial Medium Intensity)
REQUEST:	Special Use Permit (SUP) to allow a Cannabis Retail establishment within the required 300-foot buffer distance of another Cannabis Retail establishment.
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF REQUEST CASE 22ZO1000141: The proposed Special Use Permit (SUP) is to allow for a deviation of ± 222 feet to the required 300-foot buffer distance for a Cannabis Retail establishment from another Cannabis Retail Establishment or Cannabis Microbusiness. The subject property encompasses ± 0.215 acres and is zoned C-2 (Commercial Medium Intensity).

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

- The subject property meets the distance separation requirements from any school, nursery/day care, and single-family residential district.
- The subject parcel as it exists is surrounded by commercial/office uses.
- The subject parcel is compatible with several other non-residential properties with frontage along Lohman Avenue.
- The site is designed to attract vehicular business primarily from Lohman Avenue.
- The proposed SUP meets the purpose and intent requirements of Section 38-2 of the 2001 Zoning Code, as amended.
- All applicable requirements as outlined in the 2001 Las Cruces Zoning Code, as amended, and those stipulated by the State of New Mexico must be adhered to for subsequent operation of the proposed business.

Condition:

- The property will be required to complete an administrative replat combining three existing underlying properties into one property before the issuance of a Certificate of Occupancy.

PROPOSAL AND LAND USE HISTORY

PROJECT DESCRIPTION:

The applicant is seeking to open a cannabis dispensary (retail) at a distance of 78 ± feet from another cannabis dispensary. In that the distance is less then the 300-foot distance requirement Special Use Permit (SUP) is required. The building is located at 1602 E. Lohman Avenue and is currently zoned C-2 (Commercial Medium Intensity).

In general terms, a Special Use is a use that is not permitted by right but may be approved upon consideration of potential impacts to the surrounding area by the Planning and Zoning Commission. Impact consideration may include factors related to traffic, development compatibility, mitigation technique implementation, etc. SUP decisions made by the Planning and Zoning Commission are final unless appealed to City Council.

LAND USE HISTORY:

The property is commercially zoned as C-2 (Commercial Medium Intensity). The property was created via the Central Park Tract recorded on August 31, 1969 and is composed of Lots 1-3 of Block 3 of the filed subdivision.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Elevate Las Cruces Comprehensive Plan	Yes
Purpose and Intent of the Code: Section 38-2	Yes
Criteria for Decisions: Section 2-382	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

The property is located along a major thoroughfare and mixed-use corridor. The subject property is encompassed by the C-2 (Commercial Medium Intensity) zoning district. The majority of the surrounding properties are commercial development with some single-family residential dwelling units.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

The property is located in the Regional Commercial Place Type and within a Mixed-Use Corridor as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. The Regional Commercial Place Type is defined by large retail and professional services, however, as it is within the Mixed-Use Corridor, it is supported by a mix of residential and non-residential land uses along roadway or trail corridors. The comprehensive plan has numerous goals, policies and actions that support the proposed SUP. The following is a list of some of the key supporting goals and policies:

- Community Environment:
  - Goal CE-3: Centers and Corridors – Support community growth through concentrated development at activity centers and along key corridors.
    - Policy CE-3.2 – Allow for a mix of development type and intensity along major thoroughfares that reflects surrounding urban, suburban, and rural contexts.
  - Goal CE-4: Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.

        - Policy CE-4.2 – Incorporate employment and shopping nodes into new and redeveloping neighborhoods to provide residents with convenient access to services.
- Community Prosperity
    - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.
        - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
            - Action CP -2.2.2 – Identify and promote places of employment to minimize commutes and increase accessibility to other transportation modes to create a job-housing balance.
    - Goal CP-4: Diversification - Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.
        - Policy CP-4. - Support efforts to be regionally and nationally competitive in regard to retaining and growing businesses, jobs, and students.

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

The regulations relevant to the proposed SUP include:

A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
D. Encourage mixed land uses to decrease the length of trips for work and/or shopping and encourage the consolidation of trips and alternative modes of travel.
L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
M. Foster a more rational relationship between different land uses for the mutual benefit of all.
N. Conserve the value of buildings and land.

CRITERIA FOR DECISIONS:
Per Section 2-382: In considering all requests, the planning and zoning commission shall review the comprehensive plan, future land use plan, and other applicable plans and codes and determine whether the request will:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth;
- Impairment of the public health, safety or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, design standards and other companion codes.

Based upon a review of the proposal and applicable regulations and policies, City Staff did not consider any of the aforementioned criteria as a significant concern in context to the subject request.Additionally, several comprehensive plan goals, policies and actions support the proposal in that the policies speak to provisions for mixed-use neighborhoods, expanding economic opportunities to remain competitive both regionally and nationally, locating business along key corridors and major thoroughfares, and expanding employment opportunities to increase resident economic security. In terms of the proposed use, the business will continue to function as any other retailer selling goods within the City. Operation of the business will be compliant with all applicable zoning and building codes and should not be a detriment to the public's health, safety, and general welfare. The use must also meet all State of New Mexico regulations as they pertain to cannabis sales. As such, the proposed use will be in harmony with the purpose and intent of the 2001 Zoning Code, as amended, and the Elevate Las Cruces Comprehensive Plan.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR CURRENT USE:

The subject property is currently zoned C-2 (Commercial Medium Intensity) and encompasses ± 0.215 acres. A building designed to accommodate retail uses is currently developed on the property. As it sits currently, the property has been vacant since 2021. Any deficiencies found today will be rectified through subsequent permitting and business registration processes as applicable.

SITE SUITIBILITY FOR PROPOSED USE:

A SUP is required to follow all procedures of Section 38-54A of the 2001 Zoning Code, as amended. The SUP will allow for a retail cannabis establishment on the subject property. The proposed use will be in keeping with several other commercial properties in the area. The site should serve the proposed use well in that it will be developed as a commercial building with all necessary access, parking and related development requirements in place. Furthermore, with exception of the buffer distance to another cannabis retail and cannabis microbusiness establishment, all other cannabis related requirements will be met.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas and sewer already serve the site and are adequate for the proposed use. Lohman Avenue is designated as a major arterial roadway and this roadway serves as the primary access to the subject property.

FLOOD PLAIN:

The subject property is not located within the Flood Zone.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notice of a public hearing was mailed to allproperty owners within 500 feet of the subject property. To date, staff has received one phone call in opposition to the SUP for the proposed Cannabis retail establishment.

STAFF COMMENTS:
The proposed use meets all the requirements for a SUP including the distancing requirements from any school, day care/nursery, or single-family residential zoning district. Staff recommends approval with conditions for the SUP.

ATTACHMENTS:
1. Zoning Map
2. Aerial Map
3. Site Plan
4. Request Letter
5. Development Review Comments

ATTACHMENT 1

Zoning Map



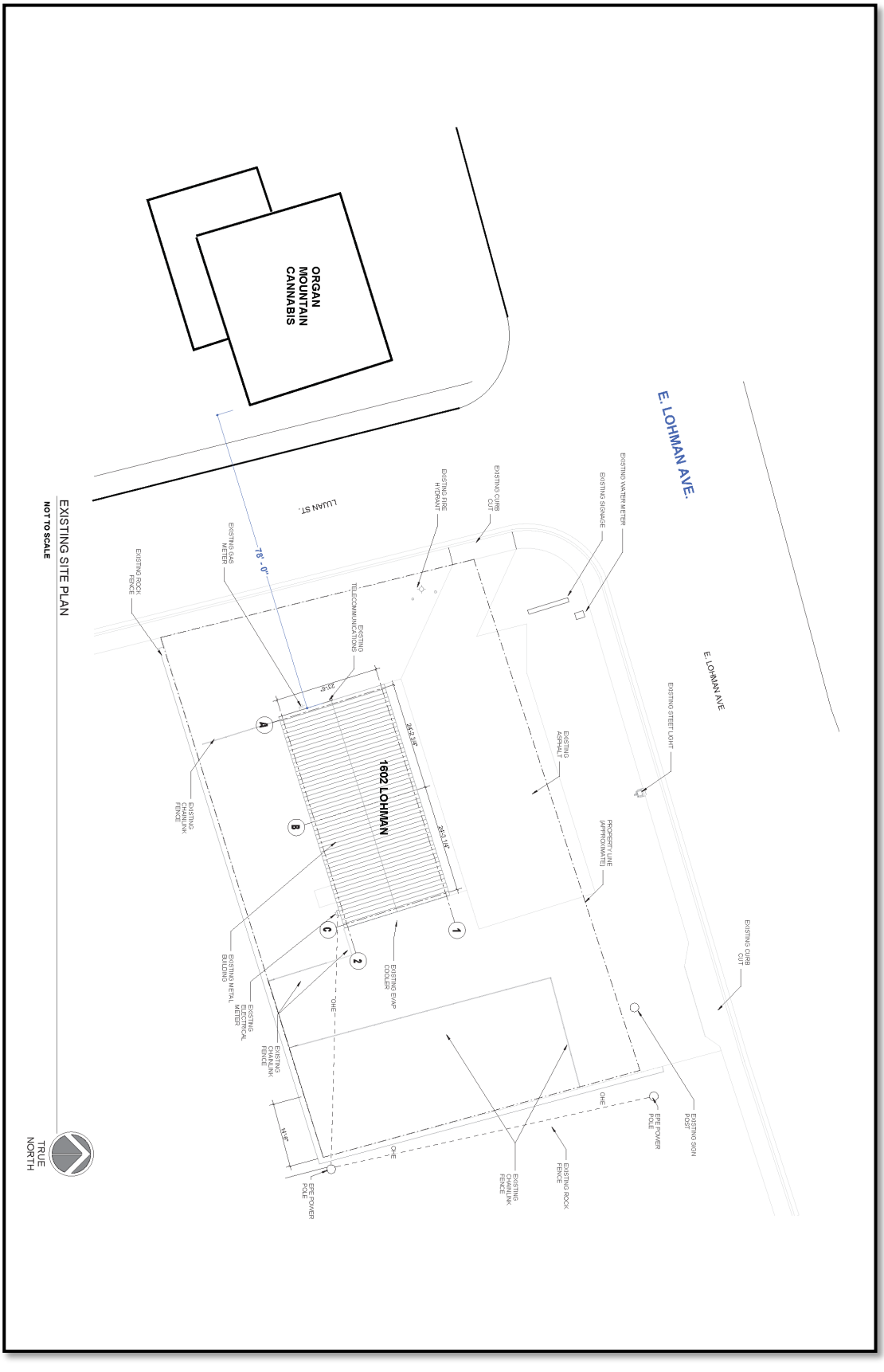
ATTACHMENT 2

Aerial Map



ATTACHMENT 3

Site Plan



ATTACHMENT 4

Request

October 20, 2022

Letter of intent for 1602 E. Lohman, Las Cruces, NM

Our partnership has purchased property at 1602 E. Lohman for the purpose of operating a single cannabis retail establishment. The property is currently within 300 feet of another cannabis retail establishment (Organ Mountain Cannabis, 1590 E. Lohman) and thus we are requesting approval of a special use permit in order to operate our business.

Thank you,

Erica Romero, partner

ATTACHMENT 5

Department Review Comments

Department: Engineering

Status: NOT REQUIRED

Department: Planning

Status: APPROVED

Department: Fire

Status: YES:

Department: UTILITIES

Status: APPROVED

Department: Transportation

Status: NOT REQUIRED

Department: Flood

Status: NOT REQUIRED

ATTACHMENT "D"

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
February 28, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:
Scott Kaiser, Chair
Vanessa Vega, Secretary
James Bennett, Member
Enrico Smith, Member

BOARD MEMBERS ABSENT:
Joaquin Acosta, Member

STAFF PRESENT:
Larry Nichols, Director Community Development Department, CLC
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Christina Abeyta-Corella, CLC Planner
Jocelyn Garrison, CLC Senior Assistant City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening ladies and gentlemen and welcome to the February 28th Planning and Zoning Commission meeting. Before we get started, we do have one Commissioner who wishes to participate via phone tonight, so we do need to make a motion and vote on that. So I'll make a motion to allow Commissioner Vega to participate by phone.

Bennett: I make a motion to allow Commission Commissioner Vega to participate by phone.

Kaiser: And I'll second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Member Kaiser.

Kaiser: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Thank you.

2. CONFLICT OF INTEREST

Kaiser: All right. So we'll move to conflict of interest. Does anyone on the Commission have a conflict of interest this evening? Seeing none.

POSTPONEMENTS

1160 Encino Avenue Variance Request: A variance of ± 19 feet to the required 25-foot secondary front yard setback required for a proposed attached carport located at 1160 Encino Avenue. The property is approximately 0.137 acres in size, zoned R-1a (Single Family Medium Density Residential) and is within Council District #1. Submitted by Mark Torres on behalf of Jo E. Sr. and Mary A. Sellers, property owners. (Case # 22VO0500159)

Kaiser: All right, so we're going to make a slight change to today's agenda before we accept the agenda. At the advice of the City's Attorney's office, we're going to move the postponements up, so we'll take care of that and then we'll approve the agenda with those items removed. We do have two postponements tonight; my understanding is item 6.1 is going to be postponed and 8.1 will also be postponed. So beginning with item 6.1. Do we have a date certain on that or is that?

Banegas: Mr. Chairman, Members of the Commission. Vincent Banegas. We are shooting for next month's regularly scheduled meeting. There's some information that's lacking that we need to receive.

Kaiser: Understood. Thank you. So I will go ahead and make a motion to postpone item 6.1 until the March 28 meeting. Can I get a second?

Bennett: I'll second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Metro Square Final Site Plan: A request for approval of a Final Site Plan known as Metro Square located within the Metro Verde Planned Unit Development (PUD). The proposed subdivision encompasses 7.36 ± acres, is zoned PUD (Planned Unit Development), and is located on the southeast corner of Red Hawk Golf Road and the future development of Prospect Lane. The Final Site Plan proposes 72 mixed-use lots, one tract of land dedicated for drainage and one tract of land dedicated for a park. Submitted by Sierra Norte Development Inc., property owners. (Case # 23ZO3000149)

Kaiser: And our second postponement tonight is going to be item 8.1, and that will be postponed to next month's meeting as well. So I'll go ahead and make a motion to postpone item 8.1 until the March 28th meeting.

Vega: Second.

Baum: Board Member Vega.

Baum: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Thank you.

Kaiser: All right. That does it for our postponements tonight.

3. ACCEPTANCE OF THE AGENDA

Kaiser: So now we'll go ahead and approve tonight's agenda. Can I get a motion and a second?

Bennett: I make a motion to approve tonight's consent agenda.

Smith: Second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

4. ELECTION OF OFFICERS

Kaiser: We are not doing election of officers tonight. We've been advised to continue to push that off until we get a full board.

5. APPROVAL OF MINUTES – January 24, 2022

Kaiser: So we will move on to the approval of the meeting minutes from January 24th. Before we do that, does anybody have a comment or corrections to make? All right, hearing none. I'll go ahead and make a motion to approve the meeting minutes from January 24th.

Smith: Second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

6. POSTPONEMENTS

MOVED TO BEFORE ACCEPTANCE OF THE AGENDA, AS PER City ATTORNEY.

7. PUBLIC PARTICIPATION

Kaiser: Okay, moving to a public participation. Is there anybody in tonight's audience who wishes to speak on an item that is not on tonight's agenda? I have this gentleman right here. Would you please come forward and state your name for the record?

Shervanick: Gregory Shervanick, S-H-E-R-V-A-N-I-C-K, Mr. Chairman.

Kaiser: All right, Mr. Shervanick. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Shervanick: I do.

Kaiser: All right. I will give you three minutes.

Shervanick: Thank you. Mr. Chairman, thank you for allowing me to address you and the Commission and City staff. Since this body handles a variety and many types of issues from the carport to multi story apartments to PUDs based on the City's strategic plans, the ones that you accept or deny guide the City's present tense and future tense ability to grow. I am asking that you ask your City representatives as well as City staff to remand this body's to be recorded verbatim each time it meets. At this particular time it has been removed from being recorded in such a manner and live streamed. And as you saw at the last meeting in January, there were ninety people. And based on the number of anachronisms that we use, it would be fair and transparent to have that record recorded, along with the recording being taken at this time from this microphone. So I ask as citizens and as representatives of our elected officials, that you asked the City staff to remand this body's work, which is never challenged when it gets to City

Council and is needed to move the City forward in every manner, and in the future. Thank you very much.

Kaiser: Thank you, sir.

8. CONSENT AGENDA

8.1 Metro Square Final Site Plan: MOVED TO POSTPONEMENTS

8.2 White Sage at Sonoma Ranch North Phase 1 Replat No. 4: A non-administrative replat known as White Sage at Sonoma Ranch North Phase 1 Replat No. 4 located at 4155 White Sage Arc. The proposed subdivision encompasses 4.014 ± acres and is zoned C-3 (Commercial High Intensity). The subdivision will replat the existing commercial lot into six (6) commercial lots that vary in size from 0.509 ± to 0.947± acres in size. Submitted by Pillar Engineering LLC., representative. (Case # 22CS0500107)

Kaiser: All right, moving to tonight's consent agenda. We now only have one item, that is item 8.2. That was the agenda. So we've got one item on the consent agenda tonight. Looking for a motion to approve tonight's consent agenda.

Smith: I move that we approve tonight's consent agenda.

Bennett: I'll second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

9. OLD BUSINESS

Kaiser: Okay, we do not have any old business.

10. NEW BUSINESS

10.1 1602 Lohman Avenue Special Use Permit Request: A Special Use Permit (SUP) to allow a cannabis dispensary (retailer) less than the required 300-foot buffer distance from another cannabis dispensary (retailer). The subject property is located at 1602 E Lohman Avenue and is zoned C-2 (Commercial Medium Intensity) and is 0.215 ± acres in size. Submitted by Euphora Group LLC, representative. (Case # 22ZO1000141)

Kaiser: So moving on to new business. Our next item is item 10.1, a Special Use Permit at 1602 Lohman Avenue to allow a cannabis dispensary within the required 300 foot buffer distance from another cannabis dispensary. So I will turn it over to staff.

Castillo: Good evening. My name is John Castillo, Planner with the City of Las Cruces. Good evening, Mr. Chair, Commission. Today we're going to be discussing a Special Use Permit located at 1024 South Main Street. This is to allow for a cannabis establishment next to another cannabis establishment.

The current conditions of the property, it's currently zoned C-2 which is our commercial medium intensity. It was originally developed as a small auto truck repair shop. And the property is located at 1602 East Lohman at the corner of Lohman and, I forgot what the other street was. I'm sorry. The property is approximately 0.215 acres in size. The surrounding neighborhood is generally retail and office. There are single-family residential homes within the area, but these were a part of the zoning as they came in.

As we can see here from the zoning map, it is largely C-2. This is an aerial map of the property highlighted in yellow as we can see over here to the left. These are some single-family homes as well as commercial businesses or commercial land uses. So the proposal for this SUP is to sell cannabis within the development of a cannabis retail store that's going to be developed. The buffer distance between the cannabis retail area perimeter and closest cannabis retail area perimeter boundary is approximately 78 feet. According to our municipal code it does require a 300 foot buffer distance. All other buffer distances are to be met between single-family residential zoning districts, as well as schools and daycares.

The proposal will also follow all City of Las Cruces and State of New Mexico regulations governing cannabis related retail activity. As we can see from the photos here, this is the former Maese's Auto Repair store that will now

become the proposed cannabis retail establishment. In the photo, beneath it you can see the existing Organ Mountain Cannabis retailer that's there.

Public notice was sent to surrounding properties within 500 feet. Staff did receive one phone call that was in opposition of the establishment being proposed. All relevant staff reviewed the application and provided any comments. Today staff recommends a conditional approval, as part of this condition the property will be required to complete an administrative replat bringing three properties into one property before the issuance of a Certificate of Occupancy. As it sits right now its legal description is made up of three properties. Previous maps showed that it was just one but those are what we would consider a tax parcel. The findings for approval are going to be, except for the distance to another cannabis retail establishment, proposed use meets all other distance requirements. The subject property is compatible with other fronting properties along Lohman Avenue. The ingress and egress on site through Lohman or Lujan has very little to no traffic impacts to other surrounding commercial uses. And then it meets the purpose and intent of Section 38-2 of the Zoning Code, it will meet all requirements outlined in the Zoning Code and those stipulated by the State of New Mexico will be followed. This also meets the intent and purpose of Elevate Las Cruces Comprehensive Plan, as it's located along a mixed use corridor and located in the regional commercial place type. Today, your options are going to be to vote "yes" to approve, vote "no" to deny, or vote "yes" with conditions, or vote to table.

Kaiser: All right. Thank you. Are there any questions from the Commission?

Smith: I have one question. Just want to confirm that these two businesses aren't connected to each other. Are they two separate businesses?

Castillo: They are two separate businesses.

Kaiser: So you mentioned that there are three parcels that would need to be replatted into one, but looking at the map that's on the screen and in the staff report, it just shows one parcel. Can you just explain that a little bit more?

Castillo: Yes, as this is an older portion of the City that may have come in through, I forget what the subdivision name is, but it was through an older subdivision that was stated in the staff report. It's made up of three lots, lots of one through three of the subdivision due to county tax parcels or being all owned as one property as we share data with the county and vice versa. A lot of these are what we call underlying lot lines or in a sense they would be nonconforming lots and as a new development that's coming and we would bring it into conformity.

Kaiser: Got it. Thank you. And then just to clarify, this is a current vacant property or not vacant but the building itself is …

Castillo: Yes, the business has been, not vacant but hasn't been in use for about three years.

Kaiser: Okay, and is there any other nonconforming status associated with this parcel?

Castillo: With the new business that's coming in, they would have to bring the entire property into conformance. So they would have to provide all development standards such as landscaping, parking requirements, and the rest.

Kaiser: Understood. Thank you. Any other questions from the Commission? Commissioner Vega, did you have any questions?

Vega: No, thank you.

Kaiser: I'll turn to the public now. Is there anybody in the audience who wishes to speak on this item? All right, please come forward. And if you could state your name, I'll swear you in.

Hebert: Yes sir. Sorrel Hebert.

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

Hebert: Yes sir.

Kaiser: I'll give you three minutes. Go ahead.

Hebert: Okay, I'm part owner and here representing Organ Mountain Cannabis, which is located directly next door to. I urge you to vote no on this Special Use Permit. Precedent was already established in October of 2022, by the City Council that you were going to leave the current buffer zone in place. We were one of the first dispensaries that was able to open on April 1st of last year. And it just seems like this would be a step backwards making it a little more difficult for a small business. They already allow unlimited licenses throughout the state. I urge you to keep the buffer zone in place. We are a locally owned small business and this would you know be kind of a devastation. Wouldn't be good for any of the businesses. Yes, we've employed numerous people, paid tons of taxes or collected tons of taxes and we would love to continue to operate in the Las Cruces community. Thank you.

Kaiser: Thank you. Is there anybody else in the audience that wishes to speak on this item tonight? Seeing none. I'm going to actually ask staff to maybe address that comment and the Council's direction or non-direction, as my understanding is the Special Use Permit process is still allowed, correct?

Castillo: Mr. Chair, Commission. The Special Use Permit is still allowed as City Council did not approve to amend the ordinances regarding the conditions set forth.

Kaiser: Thank you.

Nichols: Mr. Chairman, if I may.

Kaiser: Please.

Nichols: Nichols, for the record. We're discovering that, I think at this point in time, we have about 46 cannabis businesses that have business registrations in the City. What we have discovered about businesses going into business, all of those have been in existing structures. Many of them were vacated, not being in use. But what happens with an existing structure you will find many times that if it's in a commercial district, that it will be close to other commercial businesses, or it will be close to a residential neighborhood. Because of that, locating in existing structures has brought about many of these requests for Special Use Permits. And distancing is all part of that. I think you'll recall that there have been several requests for distancing reductions, and I believe nearly every one of them have been granted based on the fact that the businesses are similar to other retail businesses, competing with other retail businesses. As this would pretty much be the case in this condition. Thank you Mr. Chairman.

Kaiser: Okay, are there any other comments from the Commission? I see, this gentleman would like to speak. So I'll go ahead and reopen public comment here. If you can state your name for the record.

Martin: Bret Martin.

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

Martin: I do sir.

Kaiser: I'll give you three minutes. Please go ahead.

Martin: So once again just going back to the precedent was already established by this Council back in October to maintain the buffering zones for the businesses. So I understand that there is a special use in place, and if there

is a special use granted for this business, that is right next door, as the picture showed, right next door to another business, I would like to have a good justification why that Special Use Permit is granted. I do not see why there should be a special use, especially for another business that is the same, does the same retail located right next door, literally right next door to one and another.

So once again, we established our location. We preleased our location for one year prior to opening because of the zoning laws that were in effect. So we didn't get any special treatment. And I would like to have a good justification from this Council if you guys do vote in favor of the special use. I just, I don't see it. And it's especially egregious when the location is right next door to the other location. How was that special? Why is that a special use. It is going to set a dangerous precedent throughout the City and possibly the state that's going to completely inundate the industry with more and more companies coming from out of state. I said, we are locally owned. And we adhere to all the rules that you've established. So I want to get, I would like to have a good justification if it is determined that the special use is going to be granted. Because right now from our perspective, it's going to have nothing but devastating impacts on our business, our new business. That once again we followed all the zoning rules. We followed all the rules to establish ourselves. So we didn't ask for any special treatment, special use. So potential adverse effects on the businesses. I mean it's really, it's kind of hard to comprehend. I mean there could be many potential devastating impacts when you have one retail store located right next to the other one, there's potential for price wars. And then our clientele is going to already decrease. Like we established our store on April 1st, and now there are 10 dispensaries, 10 within a square, a quarter mile radius. It's completely inundated. So and then to consider establishing another retail store right next door to one that's already established that's trying to further establish ourselves, I mean we're not on our feet. We've had to pay a lot, $238,000 this last calendar year to the state and the City. So I just urge you to vote no, because you're setting a dangerous precedent that is going to have negative impacts on the industry, especially for the new businesses who follow the rules and are trying to still establish ourselves. Thank you.

Kaiser: Thank you. Is staff wishing to make a comment or?

Castillo: Mr. Chair, Commission. Just to reiterate as to what Mr. Nichols said, we have already approved several SUPs regarding distance to other cannabis retailers, especially those located along the corner of Wyatt and El Paseo.

Kaiser: Thank you. All right, coming back to the Commission. Any comments, additional questions? I'll just go ahead and give my perspective on this issue. As staff mentioned, this body has unanimously, I'm pretty sure unanimously passed every single Special Use Permit for cannabis retailers

that's come before us. The way I see it, there's a lot of businesses that are very similar. You have restaurants throughout the City, you have restaurants right next door to each other. Some of those restaurants are in the same genre of cuisine. You've got bars that are right next door to each other downtown, they all sell alcohol, some have different beer selections than others but the nature of the reality is, is that you know the market is going to determine you know unfortunately, who stays and who goes. The rules allow us to grant a Special Use Permit in this case to allow the distance variance. And so from my perspective, I don't see this any differently than if it was a restaurant and a restaurant, a bar and a bar, a disco club and a disco club, a bowling alley and a bowling alley. If the rules allow us to grant this request then we're allowed to do that, And like I said this body has in the past already granted these requests over and over again. So that's just my perspective. I'm going to go ahead and look for a motion and a second.

Vega: I make a motion to approve.

Kaiser: I believe we've got a condition here Commissioner Vega.

Vega: *(inaudible)*. I move to approve item 10.1 with the conditional approval and *(inaudible)*.

Bennett: I'll second.

Baum: Board Member Vega.

Vega: Yes.

Baum: I need your reasoning behind that. Thank you.

Vega: Yes, based on staff's recommendations and site visit.

Baum: Board Member Smith.

Smith: I vote no based on the fact that 222 for a variance really skirts the boundary of having a 300 foot buffer. If it was the opposite I think it would be fair to support this this Special Use Permit but I think 78 feet is pretty close. It almost negates us even having a buffer at that point. So I vote no.

Baum: Board Member Bennett.

Bennett: I vote yes based on staff recommendation.

Baum: Chair Kaiser.

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

Baum: Passes three to one.

10.2 1024 S. Main Street Special Use Permit Request: A Special Use Permit (SUP) to allow a cannabis retail establishment within the required buffer distance between said establishment and a single-family residential zoning district boundary. The subject property is ± 0.210 acres in size, located in Council District #4, zoned C-1C (Commercial Low Intensity Conditional), and located at 1024 S. Main Street. Submitted by Victoria Bruce, Co-Owner Bryan's Green Care. (Case # 22ZO1000134)

Kaiser: Okay, now we've got item 10.2, a Special Use Permit to allow cannabis retail establishment within the required buffer distance between the establishment and a single-family residential zoning district. Mr. Banegas, go ahead,

Banegas: Mr. Chairman, Members of the Commission. If I may, Vincent Banegas, Interim Planner. If I could request that the Commission suspend the rules and allow item 10.2 and 10.3 to be heard concurrently. I will do my presentation, then we could unsuspend the rules, and then vote on them independently as you wish.

Kaiser: Okay, do we need a vote on that now? Okay.

Banegas: Yes, to suspend the rules.

Kaiser: I'll make a motion to suspend the rules to allow item 10.2 and 10.3 to be presented concurrently.

Bennett: I'll second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Yes.

Baum: Passes.

Banegas: Mr. Chairman, Members of the Commission. This is two cases dealing with the same property. It's located at 1024 South Main Street. It involves a Special Use Permit for the use of the property, in part anyway as a cannabis dispensary. It is located in relative close proximity to an R-1a zoning district which is a single-family zoning district pursuant to our code. And it also involves a zone change request from the C-1C designation that the property now has, and I'll get into that a little bit. And an attempt to eliminate those conditions that were placed on it previously that would restrict the use of the building in the manner in which the applicant wishes to proceed.

And current conditions are as follows. As indicated, the property is zoned C-1C. I'll show you one of the maps, our zoning map that we typically use on our presentations. It does show a C-! designation that is an error. But regardless, there is some conditions that are applied to the current zoning that is in place. And the conditions that are stipulated talk to the use of the building in terms of a cap for nonresidential use at 600 square feet. And then the remaining square footage to be used for residential purposes. That was carried out pursuant to an ordinance number 587 back in 1985. And what we have in place at this point in time is a map zoning inconsistent with the actual ordinance. I found that by chance just on an offshoot trying to determine what the original zoning was, and that's when I came across that that issue.

The property has also been issued a number of parking variances back in the day. We have in place variances related to the backup and driving aisles, stall width, and the number of stalls overall. Those all pertain to 90 degree parking on site. Those variances run with the land and not with any of the previous businesses or the applicants for those businesses that originally applied for those variances. The property is located on South Main Street, basically between Brown Road and Wyatt Drive and is roughly 0.2 acres in size. It does consist of two full lots, as I understand it pursuant to our parcel maps. Lots one and two, and then I believe there's parts of lot three and 14 that make up the property in question. And there's also an 8.5 foot irrigation channel that separates the R-1a, our single-family zoned properties, from the subject property. There's also some landscaping and an approximate seven foot rock wall, a shed, some fencing, and some additional landscaping that serve as a buffer and screen between the residential portion on the west side and of course the subject property on the east side.

The surrounding neighborhood is office uses, both on the north and south of the subject property. Office and retail exist to the east. And of course, the residential to the west. Zoning that supports those uses include those that are listed below R-1a, O-2C, C-1, C-2, and C-3. CBD is currently sold on the premises, there is an active business license in place,. The applicant has sought to include THC or cannabis into the product offering as part of the business operation. And it is because of this that the Special Use Permit is called into play, and also the need for the rezoning. The distance separation, in this case to the single-family zone, which is part of that irrigation canal, is roughly 12 feet. And as a result of that there's a need to consider the neighborhood impacts per the Special Use Permit provisions pursuant to the code.

Hours of operation, in talking with the applicant, basically 9:00 a.m. to 9:00 p.m. Monday through Saturday. And certainly if I got that wrong, we'll have the applicant speak to that. And 9:00 a.m. to 6:00 p.m. on Sunday. And the reason why I stipulate those hours of operation is we did receive a call from a concerned citizen who was concerned about a 24 hour operation. And they were hoping that that wasn't the case. And I told the individual that I would include this information to allay any fears that the individual had. I also submitted in front of you copies of an e-mail from the same individual that had some additional concerns regarding crime and so forth. But hours of operation was definitely one of them, and that is a current condition at this time.

So here's the zoning map, you can see that our existing zoning map is showing the zoning of the property incorrectly, there should be a C at the backside of that one. So it should be C-1C. But adjacent to the subject property, you have C-1 to the south, O-2C to the north. Further north you have O-1C, further south you have O-2C, C-2C, etc. And then a plethora of commercial designations off to the east. It is this R-1a area that has drawn the need, again for this Special Use Permit issue or consideration.

Aerial view showing the parcel in question outlined in red again. The channel in question basically runs along this backside of the property. along the south side of the property, and then I would imagine connects at the center of Main Street where the irrigation canal exists. And parking is primarily provided in front, and there appears to be some parking, at least historically speaking, in the rear of the property.

So from a historical perspective, the property is part of the Brown Pueblo Addition basically circa 1929. About a year later the building was constructed. Currently based on my measurements using some of the aerial maps provided to staff, I came up with roughly 2,059 square feet of building area, that does not include any of the covered patios, portals, pergolas, whatever you want to refer to those as, it's just the enclosed area

where operation would take place. 1985 as indicated earlier, it was rezoned from R-4 which is a multifamily district in the code at that time, to the C-1C designation we have in place today. The property certainly has been used for office and retail and there's been kind of a flipping of that use in the past history. And it sat vacant for a little over a year until its current occupancy, which is Bryan's Green, I forget the name of the business. Excuse me. Green Care. So they are in place now and selling CBD as previously mentioned.

So, to help with the proposal aspect, I broke out the Special Use Permit side and I'll break out the zoning code side a little bit. But the SUP, the purpose for that is for retail cannabis at the 1024 location. CBD sales will continue on site. And their emphasis is to utilize the entire square footage of the building for all operations. So therein lies, at least going back to the zoning side, a need to clear up some of those conditions. But the SUP is needed for cannabis. The buffer distance between the R-1a zone and the building is approximately 12 feet. And that, of course involves or requires us to examine a neighborhood impacts via the SUP process as a result of that distance. All other buffer distances were met. And of course with the CBD or the cannabis related activity that may occur there, should you approve it, they will follow all CLC and State of New Mexico regulations regarding cannabis retail activity.

In terms of the zone change, I've already mentioned the ordinance in question that changed it to C-1C. Those conditions certainly restrict nonresidential uses and so there is a need to consider elimination of those conditions, hence the zone change. By considering the zone change it'll correct not only the map error, the zoning map error, it'll bring into compliance the map, the ordinance, and of course land use over time that has existed. It's my understanding that there may have been use of the property in its entirety, the building in its entirety for nonresidential uses. So we'll try to correct all that through the zone change aspect.

This is a site plan that I received today, just kind of showing the property in question and I'm pointing to the corners of the property along the basically north side, and point to point down here to circle point there. That is the property in question. The parking exists along the front, that's where variances were granted previously. This is an ADA parking stall. They do have, at least it appears as if there are some parking stalls in the back. That is some angled parking. And we're going to need to take a look at the parking if it does exist back there to make sure it complies with current code. That is part of the reason for the site plan is so that we can work with the applicant and determine what exactly needs to take place, pursuant to code, in order to make operation successful and aligned with current code.

A couple of photos showing the building in question. It's this reddish or orange looking building I guess. I don't know what color I'd call that. But nonetheless you have an enclosed entryway here. None of these canopies, covered patios are part of the square footage in question. It was all the enclosed area that I took into consideration for that 2,059 square foot figure. So again, we will take a look at parking, see how the variances were applied, see what we can make work. Here's another photo looking north, showing some of the other offices and/or nonresidential uses. Shot looking south, there's a couple of property, or at least three or so properties that are also nonresidential in terms of use. And one trying to capture the buffer screen that I mentioned earlier in the presentation. It appears as if that rock wall that exists all along the backside stopping right at this point is roughly seven feet, six and a half, seven feet. They got some landscaping This is a shed located on the backside property that helps with that buffer. So the property itself, at least from the residential perspective, is well buffered, well screened. Access coming from North Main Street, staff didn't see any significant concern in terms of traffic to the residential neighborhood.

Public notice input was sent pursuant to code. I already touched on the fact that I did receive a call and the e-mail that I provided you a copy of both came from the same individual. And hours of operation, safety, crime in the area, that kind of thing were all related concerns, increased pedestrian and auto traffic. But the pedestrian traffic as I understood it was from the perspective of the crime element. That's how I understood the discussion.

So recommendation and findings, this is for both cases, we recommend approval with conditions. You will find that the conditions are being requested on both cases, the SUP and zoning, they are the same. The business property owner shall replat the existing lots that make up the subject property, and what I understood to be lot one and two and parts of three and 14, those should be replatted into one parcel. The same situation exists as the previous case, they're parcels that are underlying lots from long ago and due to common ownership, the county would rather send out one tax bill as opposed to four tax bills and parts thereof, that kind of thing. So they show them as one but they're not platted as one. The business owner shall also provide necessary parking pursuant to the 2001 Zoning Code as amended. And of course, at that time, we will take into consideration any previously approved variances since they run with the land not with the business. Bicycle parking will need to be installed in accordance with code. And landscaping and the required irrigation system will be installed or shall be installed to the extent possible given the build out and configuration of the site. And I say that because as you saw in the photos, there's a lot of asphalt, the building's quite large, so there's limited room for landscaping. All related improvements shall be completed prior to the issuance of a business registration or license if approved. And compliance plan may be used to facilitate completion of improvements. The

findings for both cases are as follows, I'm referencing the ordinance 587. Changing the zoning from R-4 to C-1C and those conditions causing limitations on the use of the building. The zone change seeks to eliminate the conditions regarding use sized to the lowest intensity commercial district possible, in this case the C-1 designation, which will become C-1C if these conditions are attached and City Council agrees with them. But nonetheless there will be different conditions. And then all buffer requirements are met except for the single-family zoning.

Subject property is surrounded by office and retail on the north and south and east side, residential of course exists on the west. The proposed zoning is compatible to several neighboring properties along South Main Street. The ingress and egress is from South Main Street having little or no impacts to the subject residential neighborhood. The channel, the rock wall fencing, landscaping, all provide buffer screens from the subject property to the residential uses which has been determined to be a plus. Variances were approved in 1996 and will be applied to facilitate the parking demand on site. And the requirements outlined in the Zoning Code and those stipulated by the State of New Mexico will be followed to or as applicable. There are several goals, policies, and actions that support both the SUP and the zone change request, all of which are consistent with the Urban Neighborhood Place type which this property falls within. The Urban Neighborhood, as you may recall, seeks to provide a variety of residential housing types at medium to high densities with supporting neighborhood commercial development. Mixed use neighborhoods are some of the items that are identified in those goals, policies, and actions. Expanding economic opportunities, increasing employment, and employment security, etc. And all those elements help support and justify the recommended approval with conditions staff has brought forward. Your options this evening Commissioners are to vote "yes" and approve, vote "no" and deny. If you deny, please provide your findings of facts that differ from staff, in that they all support the request. You can vote "yes" with conditions, or vote to table. And that concludes staffs presentation this evening. I'll be happy to stand for questions. And I am aware that the applicant is in attendance and may have some information to share with you.

Kaiser: Thank you very much. Does the applicant wish to speak? You're not obligated to. Okay. All right. Any questions or comments from the Commission?

Smith: I have a comment to make. I just want to address the e-mail from Ms. Stevenson and her concerns. I'm very familiar with this neighborhood. I've lived right around the corner for almost 24 years, long before cannabis was introduced as businesses in Las Cruces. There was crime and there still is. I was a victim of crime just in December you know when they were stealing catalytic converters. So I just want to just you know help Ms. Stevenson

understand that this business going from CBD to THC should not have an impact on the amount of crime in our neighborhood. Most people will be coming and going you know off Main Street. They'll drive into the parking area and you know make their purchase. And what we've seen and what I've seen personally, with the CBD businesses, that most of them, the customers generally just go inside, make their purchase and leave. It's not like a bar. It's not like a strip club or liquor store. They're not hanging around, and you know consuming their product outside, or I'm not sure *(inaudible)* inside. So I just wanted to address that one aspect from a crime perspective, because 24 years of living around the corner, I'm very, very familiar with crime in that area.

Kaiser: All right. Any other questions? Commissioner Vega, do you have any questions or comments?

Vega: Not at this time. Thank you.

Kaiser: Great. I've got a couple of questions. If you could go back to the conditions slide. Yes, so the landscaping requirements, is that because this is in some way a nonconforming use or what's triggering that particular requirement?

Banegas: Mr. Chairman, Commissioners. That is correct. The property has sat vacant for a year and also has changed use. So because of both those elements that triggers the nonconforming provisions of the Zoning Code.

Kaiser: Okay, but it's currently; they're currently using the building now to sell, so it was vacant until that point. When did they start selling or when did they establish their business? I'm just trying to understand at what point were they no longer vacant?

Banegas: I'll let them. I don't know the date that's listed on the license. But let's see.

Kaiser: Before you answer, I have to swear you and so could you state your name?

Monteverdi: Dominic Monteverdi.

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

Monteverdi: Yes.

Kaiser: Please, sir.

Monteverdi: We started selling CBD if I remember correctly at the beginning of December.

Kaiser: Okay, so very recently.

Monteverdi: Fairly recently.

Kaiser: Okay.

Monteverdi: Yes. We've had our business license, gone through that whole ordeal with the City to be able to sell CBD. And we're just waiting for the SUP to go through so we can just add our inventory is all. So yes, we've been operating, that building we moved into actually at the beginning of November, so we been there a month prior. And then now we've been open for business for at least two and a half months.

Kaiser: Okay. Thank you. That's helpful. So going back to the landscaping requirement then, the way that it's currently written here to the extent possible, wouldn't they need to come into compliance and if they weren't able to meet those requirements would they then need to request a variance or - I'm just a little thrown off by this. Well, they're out of, their nonconforming use and so we're going to make them come into compliance, but we're only going to do it if it works is kind of where I'm getting hung up.

Banegas: Mr. Chairman, Members of the Commission. The way that was written was to address primarily from the Special Use Permit side of things. In looking at the subject property, in fact, this one might be a better, yes. In looking at the subject property all the parking, which, again has some variances attached to it, take up all the front side of the existing asphalt area. In fact, the driving aisle or the backup file has been reduced as part of that variance request. So basically from right-of-way into the property where you see the parking stops there, that's all taken care of in terms of parking. If we put any landscaping there, it's going to cause issues with parking. The only areas really where landscaping can be provided for is in front. Here, there's some small areas over to here, and that is probably about it. That was one of the reasons why we wanted to receive a surveyed plat showing the property as it exists with dimensions, etc, so we could determine how much landscaping they can truly provide. At this point of time, we don't know what that is.

Kaiser: Okay, and should they not meet the requirements that's in the code, would they need to request a variance from that in front of this body or is?

Banegas: The Special Use Permit, if approved, would cover that. Yes, there would be no need to come forth with a variance.

Kaiser: Okay. Thank you. And then I think my last question is related to the replatting. You mentioned parts of lots three and 14. Does that mean,

somebody else owns the other portions of those lots or how is that planning out?

Banegas: Mr. Chairman, Members of the Commission. It's my understanding that the property owner for this property also owns this property. And I'm not quite sure how the underlying lots are oriented, but it appears as if somewhere in this vicinity there's the portions of other lots that make up this whole. So basically, what we're asking is for whatever lots, whatever configuration that exists for the lots that make up the subject property, that they be replatted into one legal lot.

Kaiser: Okay. Just want to make sure we're not making a decision on someone's property that is not represented here in this room so.

Banegas: Mr. Chairman. They are aware. They've been in contact with the property owner on all these conditions.

Kaiser: Got it. Thank you. That's all I have. We will go ahead and, are there any members of the public that wish to speak on this item tonight? All right. Seeing none. I'll come back to the Commission, any final comments or thoughts? All right, looking for a motion.

Banegas: Mr. Chairman. Point of order. If we can unsuspend the rules, motion and the second, vote unsuspending the rules, and then we can.

Kaiser: Okay. Do we need to vote on unsuspending?

Banegas: Yes.

Kaiser: Okay. I'll make a motion to unsuspend the rules so that we can vote on items 10.2 and 10.3 separately.

Smith: I second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Thank you.

Kaiser: Okay, now we will go ahead and take motions for item, agenda item 10.2.

Bennett: I make a motion to approve 10.2 with conditions stated in the packet.

Kaiser: I'll second.

Baum: Board Member Vega.

Vega: *(inaudible)* approval noted by staff.

Baum: Board Member Smith. Sorry.

Vega: *(inaudible)*.

Baum: My apologies. Board Member Smith.

Smith: I vote yes with conditions based on staff recommendation.

Baum: Board Member Bennett.

Bennett: I vote yes based on staff recommendation.

Baum: Chair Kaiser.

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

Baum: Passes four zero. Thank you.

10.3 **1024 S. Main Street Special Use Permit Request:** A zone change from C-1C (Commercial Low Intensity-Conditional) to C-1 (Commercial Low Intensity) for property located at 1024 S. Main Street. The property is ± 0.210 acres and is within Council District #4. Submitted by Victoria Bruce, Co-Owner Bryan's Green Care. (Case # 23ZO0500011)

Kaiser: All right. We will now go to item 10.3. Looking for a motion and a second.

Bennett: I make a motion to approve 10.3 with the conditions stipulated in the packet.

Smith: I second.

Baum: Board Member Vega.

Vega: Yes *(inaudible)*.

Baum: Board Member Smith.

Smith: I vote yes based on staff recommendations.

Baum: Board Member Bennett.

Bennett: I vote yes based on staff recommendation.

Baum: Chair Kaiser.

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

Baum: Passes four/zero.

11. DISCUSSION

Kaiser: Okay, going on to discussion.

12. STAFF ANNOUNCEMENTS

Kaiser: And staff announcements tonight.

Nichols: Mr. Chair. Nichols for the record. I have no staff comment from my desk. I don't know if Adam has anything from his desk.

Ochoa: Adam Ochoa, for the record. No sir, we have nothing for you all tonight. I don't think we've ever introduced our new planner. This is Christina. We will be bringing her before the coliseum here starting next month. She'll be handling most of our variances and infill proposals as well. We're going to groom her as best we can and have her ready for you all. So hopefully everything, I'm sure will work out. We're more than confident that it will, but just want to welcome Christina. And you'll be seeing her in the near future here.

Kaiser: Welcome, Christina. Hopefully, our questions will not scare you away.

Ochoa: That's all we have, sir. Thank you.

13. ADJOURNMENT (7:00)

Kaiser: All right. Go ahead and make a motion to adjourn tonight's meeting. Can I get a second?

Smith: I second.

Kaiser: All in favor.

MOTION PASSES UNANIMOUSLY.

Kaiser: Thank you everyone. Have a good night.

Chairperson

ATTACHMENT "E"

Organ Mountain Wellness LLC.
1025 Hickory Dr., Las Cruces, NM 88005
530.7212139
bret@organmountaincannabis.com

03/17/2023

Community Development Director
City of Las Cruces, NM

Re Case # 22ZO10000141 – Appeal of Special Use Permit Application

Dear Community Development Director
City of Las Cruces, NM:

I write on behalf of Organ Mountain Wellness LLC ("OMW") to appeal the decision of the Planning and Zoning Commission to approve a Special Use Permit ("SUP") to allow a cannabis retail establishment closer than 300' to another operational cannabis establishment, at issue in the above referenced case. The approved SUP violates cannabis zoning rules by enhancing rather than preventing saturation of cannabis establishments in the relevant area and if allowed to proceed will greatly harm OMW's interests. The impact of the SUP will be to allow for a new cannabis establishment within 78 feet of OMW, which is a quarter of the distance established by the applicable regulations. Such a variance from applicable laws and proximity of establishments should be avoided.

Under cannabis zoning rules enacted by the city in 2021, cannabis businesses must be a minimum of 300 feet from other cannabis retailers.

In October of 2022, the Las Cruces City Council voted in favor of leaving the current codes in place after a senior city planner brought a proposed change to the ordinance.

Representatives of OMW attended the SUP case hearing before the Planning and Zoning Commission and implored the Commission to reject this SUP and adhere to the current cannabis zoning rules. OMW also requested that if the commission voted in favor of the SUP that a rational justification be given for the SUP. This justification was requested because of the serious harm the SUP will cause to OMW, who followed all cannabis zoning rules and pre-leased its current retail facility for approximately nine months before opening for business when adult use came into effect on 04/01/2022 under the assumption that the zoning rules will be enforced and its retail store would have the legally required buffer between itself and any future cannabis establishments. OMW reasonably relied on the zoning regulations and intent behind them. OMW's reliance on the zoning regulations factored into its business plans and economic modeling, which will be destroyed by the SUP approving a cannabis establishment to be within

78' of our pre-existing cannabis retail establishment. OMW Finds this to be an egregious violation of the Las Cruces cannabis zoning rules and believes this will set a dangerous precedent within the City as these establishments will be directly adjacent to one another, overly-saturating an already competitive market. This action by the Commission will harm OMW, by preventing OMW from effectively establishing its business despite properly adhering to all zoning rules. The Commission failed to provide an adequate explanation for disregarding the cannabis zoning rules and thus allowing an egregious violation of the 300' buffer established by the Las Cruces City Council. This 300' buffer of the cannabis zoning rules was re-validated in the City Councils October 2022 decision to uphold the current zoning rules. OMW asks that the SUP be reconsidered in light of the above and so that the zoning rules created and re-validated by the City Council are adhered to and re-enforced.

In the last 4 months there have been numerous dispensaries that have opened that are all within 0.5 miles of OMW. Empire Cannabis opened its doors on October 26th and is 0.2 miles from OMW. Top Crop and Outpost Cannabis retails both opened at the beginning of November and are within 0.5 miles of OMW. We have observed a direct correlation in our revenue dropping following the opening of these cannabis establishments, which complied with the applicable zoning requirements. More specifically, our revenue dropped by 30% in November from the average of July thru September 2022, dropped by 42% in January from the previously stated average, and then dropped down by 50% in February 2023 when compared to the average from July thru September 2022.

There are also Hasheesh Recreational Cannabis and GreenGo cannabis establishments that are 0.4 miles away. There are a few more dispensaries that are within 1 mile of our shop. The market is becoming very saturated, and when the Governor first talked about legalizing cannabis in New Mexico she expressed that regulations would be put into place to prevent the market from being saturated. The 300 ft. buffer zoning rule created by the Las Cruces City Council and enforced by law was indisputably designed to meet and comply with the Governor's intent.

We are critically concerned that a new cannabis retail moving in directly adjacent to us (only a quarter of the distance of the 300' zoning buffer) will push us to the point where we won't be able to keep our doors open. It's unfortunate that New Mexico has still not put a limit on the number of licenses they are giving out, but to completely disregard zoning ordinances and the intent behind them preventing saturation should not be tolerated.

At the prior hearing, the Commission provided curious rationale for approving the SUP by comparing it to the restaurant industry and claiming that it is like one restaurant opening next to another. This argument is flawed and inapplicable because the cannabis industry is *not* the same as the restaurant industry. Quite simply, there are no proximity restrictions in place for restaurants, whereas there are for cannabis.

The only other rational provided by the Commission for the SUP was that there aren't any other buildings in Las Cruces zoned for cannabis retail that can accommodate a cannabis store. However, the rationale does not warrant such an egregious transgression from the applicable zoning and buffer requirements. There is plenty of land and new retail buildings under construction in area that can be purchased or leased that *are* zoned for cannabis retail and that would allow the applicant's proposed cannabis enterprise to adhere to the zoning rules without infringing on OMW's rights.

We implore the Commission to reject the SUP and to comply with the 300' buffer requirements which OMW and similar existing establishments relied upon for their businesses. Granting the SUP creates a dangerous precedent for the industry and will indisputably create irreparable harm to OMW, which this Commission has the power to prevent by simply maintaining the rule of law.

Sincerely,

Bret Martin
Organ Mountain Wellness LLC.
1025 Hickory Dr., Las Cruces, NM 88005
530.7212139
Bret@organmountaincannabis.com

23-135

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:**	June 5, 2023
Drafter:	Robert Nunez	**Department:**	Parks & Rec
Program:	Department-Wide	**Line of Business:**	Various Lines of Business

Title: **A RESOLUTION APPROVING THE PARKS AND RECREATION DEPARTMENT 2023/2024 FEES AND CHARGES/FACILITY USE POLICY REPLACING AND REPEALING RESOLUTION 19-145.**

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

PURPOSE(S) OF ACTION:

Approve Parks and Recreation Fees and Charges/Facility Use Policy.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Over the past year, City staff has reviewed the Parks and Recreation Fees and Charges/Facility Use Policy. The policy is intended to establish a standardized approach to assessing fees for the use of City facilities, parks, and participation in recreation programs; for determining which users or groups should pay at what percentage; to keep all fees at a fair market level in order to encourage participation; to strive for a degree of cost recovery; and to lessen the burden on the City and the General Fund.

City Council established a target for cost recovery for recreation programs at as follows:

- Minimal Cost Recovery (0 - 20%) Program examples: Therapeutic, Special Events, Out of School Time programs
- Partial Cost Recovery (70 - 85%) Program examples: Youth Classes or Athletics
- Partial Cost Recovery (33%) Program examples: Aquatics
- Full Cost Recovery (100%) Program examples: Adult classes, Adult Recreation, and Adult Athletics

The policy and fee structure is developed with the goal of achieving the set cost recovery. The proposed fee structure will only increase revenues slightly above current revenues, pending approval of this fee schedule.

The Parks and Recreation Advisory Board reviewed the proposed policy at their regular meeting on April 20, 2023, and sent forward a recommendation to City Council for approval.

City Council is being requested to repeal Resolution 19-145, which approved the 2019/2020 Fees and Charges/Facility Use Policy and approve the 2023/2024 Fees and Charges/Facility Use Policy in accordance with Municipal Code Sec. 20-29.(d)1.

SUPPORT INFORMATION:

Exhibit "A" - Fees & Charges
Attachment "A" - 04-20-23 PRAB Draft Minutes
Attachment "B" - 2019-2020 to 23-24 Redline Fees & Charges

PLAN(S):
City Council Strategic Plan, Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:
Parks & Rec

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?
☐ Yes
☒ No

Does this action align with Elevate Las Cruces?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this will approve the Resolution and approve the Parks and Recreation Department 2023/2024 Fees and Charges/Facility Use Policy.
2. Vote "No"; this will not approve the Resolution, nor the Parks and Recreation 2023/2024 Fees and Charges/Facility Use Policy and the Parks and Recreation Department may not achieve cost recovery rates.
3. Vote to "Amend"; this could delay the Resolution and would require further direction to City staff.
4. Vote to "Table"; this could delay the Resolution and would require further direction to City staff.

RESOLUTION 23-135

A RESOLUTION APPROVING THE PARKS AND RECREATION DEPARTMENT 2023/2024 FEES AND CHARGES/FACILITY USE POLICY REPLACING AND REPEALING RESOLUTION 19-145.

The City Council is informed that:

WHEREAS, the City of Las Cruces Parks and Recreation Department is requesting to repeal Resolution 19-145; and

WHEREAS, the Department continues to receive and solicit input from community members to refine our overall process; and

WHEREAS the policy is intended to establish a standardized approach to assessing fees for the use of City facilities and recreation programs; and

WHEREAS, City Council established a target for cost recovery for the various programs and activities; and

WHEREAS, the policy was developed in an effort to achieve the cost recovery targets set by City Council; and

WHEREAS, the Parks and Recreation Advisory Board reviewed the policy at their regular meeting on April 20, 2023, and sent forward a recommendation to City Council for approval.

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

(I)

THAT Resolution 19-145 is hereby repealed.

(II)

THAT the Parks and Recreation 2023/2024 Fees and Charges/Facility Use Policy attached hereto as Exhibit "A", is hereby adopted.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit A

CITY OF LAS CRUCES
PARKS AND RECREATION DEPARTMENT
FEES & CHARGES/FACILITY USE POLICY

INTRODUCTION

The City of Las Cruces Parks and Recreation Department has the responsibility to establish policy for recovering costs for using the City's parks, recreation facilities and taking part in various recreation programs. This policy is meant to be a guide to Administration, the Parks and Recreation Advisory Board, and the City Council, in developing a fair and consistent fee schedule.

AUTHORITY

The authority to establish appropriate fees and facility use on an annual basis rests with the City Council. The Parks and Recreation Advisory Board shall act in an advisory capacity to the Parks and Recreation Department and to the City Council in the establishment of the policy.

FACILITATION

The Parks and Recreation Section shall develop fees and recommend appropriate uses of parks facilities and participation in recreation programs. The fee will be reviewed annually by staff, the Parks and Recreation Advisory Board, and ultimately approved by the City Council with the adoption of each annual budget.

PURPOSE OF POLICY

The policy is intended to establish a standardized approach to assessing fees for the use of City facilities, parks and participation in recreation programs; for determining which users or groups should pay at what percentage; to keep all fees at a fair market level in order to encourage participation; to strive for a degree of cost recovery; and to lessen the burden on the City and the General Fund.

USER FEES

User fees are established by the City Council. All applicable fees and/or deposits must be paid by cash, credit card, check, or money order, made payable to the order of the City of Las Cruces, a minimum of ten business working days prior to the approved event.

CATEGORIES OF COST RECOVERY

1. MINIMAL COST RECOVERY

Small percentage of direct program costs. Normally 0-20 percent of direct cost:

Program Examples:
- Therapeutic Art
- Special Events
- Aquatics
- Out of School Time Programming (OST)
- Therapeutic Dances

2. PARTIAL COST RECOVERY *

Recreation programs will strive to recover 85 percent of direct program cost.
Program Examples:
- Youth Classes
- Youth Athletics

3. FULL COST RECOVERY *

Recreation programs will strive to recover 100 percent of direct program costs.
Program Examples:
- Adult Recreation
- Adult Classes
- Adult Athletics

**** NOTE:** Addressed in Resolution No. 93-264*

TARGETED COST RECOVERY

Targeted cost recovery for recreation programs is 85-100 percent of direct costs, 33 percent for Aquatics, 85 percent for Youth (not to go below 75 percent), and 100 percent recovery for adult programs and special recreation programs.

DEFINITIONS DIRECT COST

Costs directly associated with providing activities and/or services required for program functionality. Examples: cost for instructor/leader, supplies, materials, building rental, advertising, etc.

FACILITIES

Existing City Parks and Recreation Facilities including recreation centers, tennis and other playing courts, sports fields, swimming pools, and parks. Examples are, but not limited to, the following:

- Meerscheidt Recreation Center
- East Mesa Recreation Center
- Volleyball Court
- Soccer Complexes
- Maag Complex
- Regional Aquatic Center (RAC)
- Triviz Multi-Purpose Path
- La Llorona Park
- Veterans Memorial Park
- Apodaca Softball/Baseball Fields
- Ron Galla T-Ball Fields
- Frank O'Brien Papen Community Center

- Tennis Courts
- Public Pools/Metro Verde Splash Pad/Interactive Fountain
- Harty Complex
- Paz Complex
- Lions Park
- Young Park
- Four Hills Park
- Pioneer Women's Park
- A. Fielder Memorial Safe Haven
- Plaza de Las Cruces
- Archery Range/Remote Control Airport
- WIA Building
- Butterfield Shooting Range

PROGRAMMING HOURS OF OPERATION

In order to provide the most efficient and effective use of Parks and Recreation staff, facilities, and programs, the City of Las Cruces Parks and Recreation Department reserves the authority to change facility hours of operation in accordance with recreation programming. At designated facilities, City of Las Cruces Parks and Recreation staff will be on site only during scheduled recreation programming hours. Any change in programming hours of operation at a designated facility will be posted in advance. Facility hours may be further adjusted based on staffing levels, budget constraints and/or public demands.

SPONSORSHIP OF GROUPS

Groups that meet all criteria as set forth by the Parks and Recreation Advisory Board may be co-sponsored and/or supplementary funded by the City of Las Cruces: (Group sponsorship subject to change).

PARKS AND RECREATION DEPARTMENT GUIDELINES FOR THE DISTRIBUTION OF CITY STIPENDS

Purpose: To provide guidelines and criteria for the distribution of City funding/stipends to local recreational youth leagues or organizations/associations. The funding is intended to be used to lower the cost of participation for local youth participants. This partial funding is to be used to assist with the operational costs of the program/activity. The youth league or organization/association must provide proof of financial need and community benefit.

Well established, financially sound youth/adult leagues, organizations/associations, tournament/traveling teams, and non-local residents will not qualify.

REFUND POLICY

The Parks and Recreation Department will refund fees for the following only:

1. Department cancellation of activity due to low registration.

2. Department cancellation of activity due to inclement weather.

3. Department cancellation of activity due to mechanical malfunctions.

4. Inability of class or league to proceed with activity.

5. A 25 percent service charge assessed prior to the second game or class with no refund to be granted after the second class or game.

6. In cases of emergency, i.e., death or illness, rental fee paid in advance to secure the rental will be refunded. A 25 percent service charge will be assessed to all cancellations other than emergencies of rentals of facilities and parks.

RETURNED CHECK POLICY

There will be a $30.00 service charge on all returned checks as per the City's Finance Department.

PAYMENT PLAN

The Parks and Recreation Department is offering a payment plan to individuals who are unable to pay the full program amount at time of registration. Each individual will be reviewed on a case-by-case basis and a suitable payment plan must be agreed upon by both the individual and the City of Las Cruces. Scholarships may be available through the generous donations of citizens of Las Cruces in accordance with scholarship policy.

Installment/Payment Plan – The department will offer an installment payment plan in order to help accommodate participants and ensure that all citizens have access to programs. Installment/Payment Plan must be approved by a Recreation Program Manager. Payment(s) arrangements must be made prior to participation in any program. Plans may include monthly/quarterly payment plans. The department may request proof of inability to pay or financial hardship and may deny installment payment plan requests. If payment is not received, prior to service delivery, then services may be terminated immediately.

YOUTH SCHOLARSHIP PROGRAM

The City of Las Cruces Parks & Recreation Department will offer program scholarships for qualified children for the fiscal year (July 1 – June 30) or as funds are available. Participation in leisure, recreational, and fitness activities has proven to provide safe, healthy activities, help reduce health risks and issues, and strengthen family and community relations. To instill the value of these benefits, the City of Las Cruces is willing to subsidize program fees for eligible individuals who qualify based on residency, total household income and number of dependents. A strong sense of ownership and pride is developed when the scholarship recipient contributes to the cost of the program.

Applicant(s) may receive a scholarship in the amount $120.00 per fiscal year (July 1 – June 30) per dependent. A maximum of $240.00 per household may be approved per fiscal year. A minimum 50% of program fees must be paid by applicant before scholarship can be utilized. No other discounts may be applied.

Example of approved/exempt programs:

Approved programs: Athletics *(basketball, baseball, football, volleyball, soccer, cheer, etc.)*, After School, Camps, Gymnastics, Swim Lesson, Summer Program

Exempt programs: Fitness Classes, Rentals, Equipment Fees, Special Events, Pass Cards, Daily Pool entry

TRANSFER POLICY

City Parks and Recreation Program transfers are permitted on a space available basis.

AGE CATEGORIES FOR RECREATION PROGRAMS

- Infant 0-2 years of age
- Youth 3-17 years of age
- Adult 18-59 years of age
- Senior 60 and over

SENIORS

The Parks and Recreation Department defines a senior as any individual who is 60 years of age and over. The senior population will be given a 50% discount off of all fees required to participate in our programs with an ID card. Discount does not apply to league participation.

RECREATION FACILITY AGE LIMITS

It is recommended that all children under the age of 18 be under the direct supervision of an adult 18 or older, however the Parks and Recreation Department shall use the information below as a guide for regular open hours at all facilities (pool rules differ):

1. Ages 1-7. Allowed admittance to the facilities (recreation/community) centers under direct supervision of an adult 18 or older, but never allowed in the weight room or group fitness classes. This age group must be accompanied by an adult at all times.

2. Ages 8-11. Must be accompanied by an adult 18 or older in the facilities. This age group is not allowed in the weight room or group fitness classes. Allowed use of the racquetball courts with an adult 18 or older.

3. Ages 12-14. This age group will be allowed access to most areas of the facilities without an adult, except for the weight room (14 and older will be allowed in the weight room with supervision of an adult; some group fitness classes, but not spinning). They will also be allowed use of the racquetball courts without an adult.

4. Ages 15-17. This age group may participate in all group fitness classes. They will be permitted in the weight room (parent/legal guardian must sign a waiver) only under the direct supervision of an adult 18 or older.

5. Ages 18 and over. This age group will be allowed full access to facilities.

6. In swimming pool facilities children ages 8 and under must be accompanied by an adult in the water unless child has passed a designated swim test.

FAMILY DEFINITIONS

Husband, wife, and children, including natural, adopted, foster and stepchildren, living within the same household, also, persons who are not married, including children, who are living in the same household.

ORGANIZATION AQUATIC FEE

1. The Organization or Agency must be non-profit and show financial need:

   a. Verification of non-profit and low-income status (prior year's tax filing)
   b. Letter of Incorporation from State of New Mexico

2. The Organization or Agency must be located within Dona Ana County.

3. Member or clients of the Organization or Agency must reside within the same building.

4. Submit a letter to the Parks and Recreation Director or designee with above documentation requesting discounted punch card or swimming pool pass.

RESTORATIVE POOL/WEIGHTROOM PROGRAM

The City of Las Cruces Parks and Recreation Department is offering use of the aquatic features and Warm Water Pool at the Las Cruces Regional Aquatic Center at a reduced fee for qualifying individuals. Individuals with medical conditions that would benefit from water exercise to enhance, restore, and maintain a person's functional abilities may qualify. Conditions can be acute, transient, or chronic. Individuals and their care-provider(s) will be charged an admission fee of $1.00 per person to use the Aquatic Center's amenities for one hour during any fitness swim session. Individuals participating in this program may be accompanied by their care-provider(s) at an admission fee of $1.00. This is a non-renewable six- month program and does not apply to fitness classes.

Both the participant and care-provider(s) must pay for each session of use at the facility. A doctor's note validating the need for the use of the facility specifying the need for water, land therapy, must be provided at the time of registration.

FREE SWIM

City staff has the authority to offer free swim session admission on a weekly basis for everyone (not to exceed capacity based on New Mexico Environment Department Public Swimming Pool Regulations).

SCHOOL DISTRICT YEAR-END PARTIES

Schools may schedule the Las Cruces Regional Aquatic Facility for end-of-the-year school parties, not to exceed a maximum of 80 students as availability allows (not to exceed capacity based on New Mexico Environment Department Public Swimming Pool Regulations). Adults/Students who plan to swim will pay the daily rate.

FACILITY USE/RENTALS (RECREATION CENTERS)

Facilities refer to East Mesa, Frank O'Brien Papen Center, Meerscheidt Center, A Fielder Memorial Safe Haven, Regional Aquatic Center, WIA building or any other Parks and Recreation facilities. In consideration of the payment of the rental fee and the agreement with the Renter to comply with the Contract, the City of Las Cruces agrees to make space indicated available to the Renter for the dates and times set forth and make available the equipment requested. By signing the Contract, the Renter agrees to the following:

I. Payment

A. Reservations:
- Facility reservations are taken on a first-come, first-served basis. Deadline for arrangements and payment is ten business days prior to the date of usage. Otherwise, the reservation will be terminated.
- Group sports in the gymnasium reservations are taken on a first-come, first-served basis.
- Rentals cannot be used to conduct private business for personal gain unless approved by Parks & Recreation Director.

B. The Renter is responsible for loss or damage to CLC property. If, after inspection, room/facility is not left in a satisfactory condition, clean-up/damage fees will be assessed.

C. Rental Fee: To secure reservation, one hundred percent (100%) of the rental fee is due at the time of the completion of this Contract.

D. Request for Changes: Any requests for changes to this Contract must be agreed upon in writing between the Renter and the City of Las Cruces staff. Requests must be completed no later than two (2) weeks prior to event or by mutual agreement.

E. Cancellation/Refund: If reservation is cancelled by Renter, the City of Las Cruces will retain a 25% cancellation fee. The exceptions to this are injury, illness or in case of emergency or extenuating circumstances.

II. Set-Up, Supervision, Caterers, Decorations, Equipment, Clean-Up, and Closing of Facility

A. Set-Up: Access to the facility for setting up, including caterers set-up, will be during the hours on the face of the Contract ONLY.

The City of Las Cruces provides certain items for use to Renter and/or Caterer such as tables, chairs, and equipment within the facility(s). We do not provide linens, silver, or tableware. The City of Las Cruces staff's sole responsibility is to supervise the facility, the equipment and supply the above listed rental items for space being rented, along with trash cans and liners. The City of Las Cruces will not be responsible for moving, set-up and break-down, including stacking of tables, chairs, and other equipment used during the event.

B. Supervision: Any individual at this event under the age of 18 must be supervised at all times. Any area of the facility that is not under Contract is off limits. Only activities

conducive to the facility will be allowed. If required, security services must be present for the duration of the event. Parking is permitted at the facility. Please obey all posted signs.

C. Caterers: Caterers must have proper licenses and liability insurance coverage. The City of Las Cruces requires that a copy of the Caterer's Certificate of Insurance be made available when final payment is received for catered event.

D. Decorations: The renter shall not (a) cause or permit the facility to be injured, marred, or in any manner defaced or changed; (b) place any nails, tacks, screws or other fasteners into any part of the facility; (c) place or permit to be placed, signs on painted walls in any part of the facility. No decorations such as posters, pictures or banners are to be fastened to walls, woodwork, or curtains inside or out.

E. Equipment: All equipment not owned by the City of Las Cruces and being used by Renter/Caterer must be removed at the conclusion of the event. The City of Las Cruces is not responsible for any lost, stolen, or damaged property.

F. Clean-Up: At the conclusion of any event the facility must be returned to its pre-event condition. All City of Las Cruces equipment must be returned to the original designated areas. All food, beverages, equipment and rented supplies must be removed from the premises immediately after each use of the facility(s) AND NO LATER THAN THE EXIT TIME STATED ON THE FACE OF THIS CONTRACT. Any catering areas used must be cleaned and left in "as found or better" condition. All trash must be removed from the building and placed in an appropriate dumpster. All floors must be swept and/or vacuumed after use of space. Renter will give floors a light mop where needed. Renter must immediately take care of any major spills. If renter is unable to remove spills, the City of Las Cruces will have area(s) professionally cleaned at the renter's expense.

III. Alcohol, Drugs and Tobacco

A. Alcohol: No alcohol or liquor is allowed on City property without prior City Manager approval.

B. Drugs: No illegal drugs are allowed on City property.

C. Smoking: No smoking or vaping, including e-cigarettes, is permitted inside any facility. Any person smoking must be at least 50 feet away from any facility entrance.

D. ANY VIOLATION OF THESE RULES MAY CAUSE THE EVENT TO BE TERMINATED.

IV. Destruction and Damage

A. Damage: If anyone damages the facility(s) during the rental period, the Renter shall be liable for all necessary repairs.

B. Destruction: If the City of Las Cruces facility(s) are destroyed or damaged by fire or any other cause or unforeseen occurrence that shall make the fulfillment of the Agreement impossible, then the rental contract shall terminate, and payments will be returned and Renter waives all rights to any claims against the City of Las Cruces.

V. Facility Use

A. Compliance: Renter agrees that any use of City of Las Cruces facility(s) must comply with all statutes, ordinances, rules, and regulations issued by Federal, State and Municipal governments, including all rules of the Las Cruces Police and Fire Departments. When requested, the Renter shall provide Liability insurance naming the City of Las Cruces, its employees and agents as additionally insured with the limits of $1,000,000. If the City is to be named as additional insured, the insurance company must issue an endorsement stating that the City of Las Cruces is additional insured.

B. License & Payments: Renter agrees to obtain or collect and to pay and deliver to the proper governmental agency or regulating authority, any and all license fees, permits, royalties and taxes required in connection with the use of the facility(s).

C. Hazardous Materials: Renter agrees not to bring on to the premises any material, substance, equipment, or object which is likely to endanger the life of, cause bodily injury to any person or property or which is likely to constitute a hazard.

VI. Responsibility and Indemnity

A. Conduct: The conduct of all event participants while on City of Las Cruces property shall be the responsibility of the Renter. The Renter also accepts all responsibility for any injury to person(s) or property, or loss of or damage to property or theft of personal property on City of Las Cruces premises during the rental period or resulting therefrom. Failure by any individual or group to follow all applicable rules and regulations will be cause for eviction. The City of Las Cruces retains the right to evict objectionable persons from the premises. Repeated violations may result in denial of future reservation requests.

B. Indemnity: The Renter shall release, indemnify, keep and save harmless the City of Las Cruces, its agents, officers or employees from any and all responsibility or liability for any and all damages or injury of any kind or nature whatever (including death) to all persons, whether agents or employees of the Renter or persons attending the event for which the premises have been leased, and to all property damage proximately caused by, incident to, resulting from, arising out of, occurring in connection with, the use of the Renter of the premises. The provisions of this section shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses, including reasonable attorney's fees.

VII. Security

A. Building Security: Different uses of the facility(s) may entail different requirements concerning security. The City of Las Cruces is not responsible for any items left in the facility(s). The Renter will take the necessary precautions to protect personal property and to maintain order during event. ONE PROFESSIONAL SECURITY GUARD PER FIFTY (50) PARTICIPANTS MAY BE REQUIRED. Receipted confirmation of professional security services obtained must be presented at time of final payment.

CONTRACTS TO CONDUCT CITY PROGRAMMING

If the City contracts with any organization to conduct a city-sponsored program, it is the City's responsibility to ensure such activities are carried out by the contractor in compliance with the requirements of the Americans with Disability Act. The following language shall be included in all such contracts entered into by the City.

The Contractor 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.

PERMITTING PROCEDURE

1. Requests for exclusive use of a city-owned park/recreation facility or portion thereof by any individual, group or organization must be submitted in writing to the Department a minimum of ten business days in advance of the requested date and shall contain the reason for the request.

   (Note: Requests for park/recreation facility areas with bathroom facilities, bathroom facilities will remain available for general public use, and not specifically for permitter. Bathrooms are regularly maintained and stocked on daily schedule. If restrooms are inoperable, signage will be placed at restroom and permitter will be notified.)

2. Requests for use of City-owned parking lots adjacent to City-owned parks and recreation facilities must be submitted in writing to the Department a minimum of ten business days in advance of the requested date and shall contain the reason for the request.

3. Requests for use of the city-owned parking lots surrounding Main Street Downtown (Main Street from Picacho Street to Lohman Avenue) must be submitted in writing to Parks and Recreation Department ten business days in advance of the requested date. Uses that compete with established businesses or the Farmers and Crafts Market are prohibited. Because of the proximity to businesses on Main Street Downtown, use of these parking areas shall only be permitted from 7:00 p.m. to 10:00 p.m., Monday through Saturday, or from 9:00 a.m. to 10:00 p.m., Sundays. (Permitting is now being done by Parks & Recreation).

4. Requests for the use of water holding structures like, but not limited to: Las Cruces Dam and Tee Time will need the prior approval of the Public Works Department before a Park/Facility application can be approved and permitted.

5. Permits for exclusive use of City-owned parks, recreation facilities or parking areas will be issued for a period not less than four hours for the established fee, with the following considerations:

a. Permit requests for all parks, pavilions, gazebos, and shelters will be rented for an established fee and time period.

b. The proposed use will not unreasonably interfere with general public enjoyment of a facility.

c. The proposed activity is not anticipated to incite violence, crime, or disorderly conduct.

d. The proposed activity will not entail unusual expense (overtime scheduling) or risk to the City.

e. The facility or portion thereof requested has not previously been reserved.

f. The facility requested is suitable for the activity proposed.

g. The proposed activity will not interfere with the promotion of public health, welfare, and safety of the citizens of Las Cruces.

h. All appropriate paperwork has been completed in full and accepted by the Departments.

i. The individual, group or organization ensures the permitted facility will be left in a clean and acceptable condition.

j. Requests for use of the following parks, but not limited to Apodaca Park, Desert Trails Park, Johnson Park, Klein Park, Women's Pioneer Park, Veterans Memorial Park, and Young Park will require a deposit fee of $250.00. This payment is non-refundable and will be applied to your overall rental fee.

NON-DISCRIMINATION COMPLIANCE

Facility users will not discriminate against any person in access to or participation in any program contemplated by this policy, or in any facility used in connection therewith, on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, age or disability in employment or the provision of services. Facility users will ensure that all programs, services and activities are accessible to an 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, and other impairments, integrated seating and the provision of reasonable modifications and/or accommodations and shall adhere to the City of Las Cruces Communication Policy (if portable toilets are going to be provided, accessible units must also be provided at each bank of standard units).

INSURANCE

The City requires that users of City-owned facilities for special requests, one-time events, athletic leagues, tournament play, and recreational programs provide proof of liability insurance to cover such use of the facilities, with the City of Las Cruces named as an additional insured on the policy, if staff determines that such insurance is necessary. If the City is to be named as

additional insured, then the insurance company must issue an endorsement stating that the City of Las Cruces is additional insured. This proof of insurance will be forwarded to the Parks and Recreation Department upon approval of permit. The amount of this insurance shall coincide with the limitations of the *New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et siq.* If Insurance is not received, event will be cancelled.

SPECIAL EVENTS REQUESTS

Special Event requests must be submitted a minimum of 30 days in advance by filling out a Facility/Park Use Permit Application and turning it into the Department.
The following information /documentation must be submitted along with the Facility/Park Use Permit Application:

1. On annual basis 30 days prior to a special event, submit a detailed financial statement covering funds received and expended for the event's previous year event or program. The City of Las Cruces may also require and audit at the organization's expense in cases where the City of Las Cruces provides funding or direct support.

2. 10 business days prior to a Special Event, submit proof of insurance for the upcoming event for the required amount. If insurance is not submitted, permit will be cancelled.

SPORTS FIELD REQUESTS

Sport field requests for tournament play may be submitted at the November League Meeting, the Wednesday the week before Thanksgiving, for the coming year up to January 15. Sport field requests for league play may be submitted any time after January 15. (If you are a new requestor, sports field requests will be reviewed on a case-by-case basis depending on field availability.)

1. On annual basis 30 days prior to a Sports Event, submit a detailed financial statement covering funds received and expended for the event or league operations to include local, state, regional or national tournaments for the previous year event. The City of Las Cruces may also require an audit at the organization's expense in cases where the City of Las Cruces provides funding or direct support.

2. Tournaments will not be approved if they are in association with league play. For example, submitting a permit for tournament play in order to complete league play will not be approved (masking permits as tournaments to finish league play).

3. If you are a new league (not established) or you are an organization not in "good standing", a 50% payment will be due upfront once permit has been approved. This payment is nonrefundable and will be applied to your overall rental fee. The remaining balance must be paid within one (1) week after the event. All tournaments will require a $250.00 deposit upon approval of permit.

4. 30 days prior to a sporting event, submit proof of insurance for the upcoming event for the required amount.

5. All Organizations, Leagues, and Field Users (including point of contact and league office) that do not reside within City limits will have to pay a Non-Resident Fee and will require a $250.00 deposit upon approval of permit. This payment is non-refundable and will be applied to your overall rental fee. A post office box will not be allowed as proof of local resident.

6. All organizations will be responsible for collection of event camping fees at tournaments.

Definitions:

a. **Tournaments** - A tournament will be classified as a tournament if it carries a minimum of fifteen (15) teams which includes local and outside area participants or leagues. Tournaments must be sanctioned by the local, state, or national sports sanctioning body.
b. **Established Organizations/Leagues** - An organization/league which has utilized City of Las Cruces facilities as an organization/league for three (3) or more years.
c. **Outside League or Organization** - A team, league, or entity outside the immediate umbrella of an established league or organization which is requesting field use to hold a tournament. For example, this could be a team or organization from another association, city, or state.
d. **Good Standing –** An established league or organization that has paid field request fees within the two (2) weeks, after being invoiced after the event. They should have also submitted their insurance requirements thirty (30) days prior to the event and followed permitting guidelines outlined in this policy on a consistent basis. Period of “good standing” = three (3) years or more.

SPORTS FIELD PRACTICE RESERVATIONS

Parks will issue a reservation for a fee to ensure that all City-owned ball fields are made available on an equitable basis to individuals and organizations. This policy applies to all leagues and organizations wanting to use City athletic fields for practice.

Application Process

- Reservations are taken on a first come, first served basis at the Parks and Recreation Administration office located at 1501 East Hadley. Reservations will only be taken during normal business hours: **Monday-Thursday 8 am-5 pm**.
- Reservations will only be taken for the following week only and in person. Teams may not reserve more than two practices per week. One individual may reserve one field for a maximum of two times per week.
- Cancellations for practice times will only be honored due to inclement weather and must be submitted within 24 hours of the cancellation. Practices cancelled by individual will not be refunded.
- Practice fields availability may be limited due to permit reservations, fields blocked for construction and field prep.

Requirements

- All teams will need to be covered by the respective leagues insurance for the amount of one million in liability insurance with the City of Las Cruces attached to the policy

with an endorsement. If team is not covered, a waiver will need to be signed by all users.

- All teams are responsible for policing the area for litter and making sure that the area is clean at all times. If it is determined by the City of Las Cruces Parks and Recreation Department that deterioration of the fields or abuse is present, all practice requests will be ceased at that time.
- Teams will be responsible for monitoring and conducting themselves in a safe manner.

PARKS AND RECREATION ADVISORY BOARD AUTHORITY OVER LEAGUES/ORGANIZATIONS THAT UTILIZE CITY FIELDS AND/OR FACILITIES

Purpose: To provide guidance to local recreational youth/adult leagues or organizations that utilize City fields and/or facilities. To provide an independent, non-biased committee that has the authority to review league/organization procedures, act as an appellate body for player/coach/parent/spectator suspensions, review financial records and recommend (or require) changes to league/organization operations.

Resolution No. (12-072)

FISHING

Fishing will be allowed at Young Park Pond in accordance with New Mexico Game and Fish regulations.

SWIMMING

Swimming is allowed at Laabs Pool, East Mesa Bataan Memorial Pool, Regional Aquatic Center and Las Cruces Natatorium. No swimming is allowed in the Young Park Pond. Splash pads and interactive fountains are not bodies of water in which swimming can be conducted. All posted rules must be followed for safety purposes.

CARNIVALS AND AMUSEMENTS

Requests for conducting Circuses, Carnivals/Amusement Parks and similar businesses must be submitted to the Community Development Department's Permitting Office. If approved, these businesses must then apply for a Park Permit if the activity is conducted at a Parks and Recreation area or facility.

ROLLER SKATING, ROLLERBLADING, SKATEBOARDING, REMOTE CONTROL TRACK, ARCHERY, REMOTE CONTROL AIRPLANES, DRONES

The City of Las Cruces may designate and restrict areas and facilities for these purposes.

GOLFING

No hitting of golf balls allowed on any City Park facility as per *LCMC, Section 20-36*, with the exception of City golf programming.

MOBILE CONCESSIONS/VENDING

Any individual, group, business entity or organization engaged in the sale of food, beverage, or any other merchandise at a public park, Plaza de Las Cruces or public space within the City limits must obtain a permit from the Parks and Recreation Department. Applicant is responsible and required to meet all applicable city, state and health department laws and regulations, including acquiring all necessary permits for food and beverage preparation. All such permits must be provided to the City prior for the issuance of a permit from the Parks and Recreation Department.

I. REQUIREMENTS:

The Parks & Recreation Department reserves the right to permit if vendors are able to provide the following:

1. **BUSINESS LICENSE:** Provide a copy of the required Business license and Registration permit from the City of Las Cruces Business Registration Office.

2. **FOOD SERVICE PERMIT:** Provide a copy of the required permit(s) from the State of New Mexico Health Department.

3. **LIABILITY INSURANCE WITH ENDORSMENT:** Applicant is required to provide the City a copy of proof of liability insurance coverage in the minimum amount of one million dollars ($1,000,000) per occurrence, naming the City of Las Cruces as an additional insured with an endorsement page.

4. **FEES:** Vendor agrees to pay the City of Las Cruces $60 monthly fee. Permits will **ONLY** be issued on a quarterly basis or fraction thereof. Payment shall be made to the City of Las Cruces in full in order to receive a permit for each quarter.

5. TAXATION CERTIFICATE MUST BE ON FILE.

All concession/vendors, to include mobile vendors, must be in good standing at all times. Good standing will be defined as no complaints, regular payment of required fees, and all appropriate documentation on file. The Parks and Recreation Department staff has the right to deny concession/vending permits based on non-compliance. The City may develop a request for proposal to operate all City concession stands on park property.

SPECIAL USE PERMITS (TO INCLUDE, BUT NOT LIMITED TO, MODEL AIRPLANES/MODEL ROCKETS/METAL DETECTING), AND REMOTE-CONTROL CARS

Model Airplanes/rockets, metal detecting, and remote-control cars are recognized as legitimate recreation activities when they are conducted in ways that do not damage the natural and cultural resources of City of Las Cruces park facilities.

A Facility Use Permit is required to use any city park for these activities. Use of metal detectors is limited to park areas only and not in ball field areas. To obtain a Park/Facility use Permit visit the Parks and Recreation Administrative Office at 1501 E. Hadley.

INFLATABLE/PORTABLE PLAY EQUIPMENT

The City of Las Cruces allows inflatable play equipment at designated sites in Young Park, Pioneer Park, Apodaca Park, and Klein Park. Any business that operates/leases party and or event equipment, i.e. jumping balloons, dunk tanks, sporting equipment, etc., in a City park/facility is required to provide proof of general liability insurance in the amount of three million dollars ($3,000,000) per occurrence, with the City of Las Cruces named as an additional insured with an endorsement page.

The amount of the insurance shall coincide with the limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1. This proof of insurance must be forwarded to the Parks and Recreation Department for record keeping. Uninsured businesses may be held personally responsible for injury or damages caused by any uninsured or unauthorized inflatable or portable play equipment.

VEHICLES AND DRIVING IN CITY PARKS

Driving or parking vehicles on the grass or landscaping located in a City park or on City property is prohibited except during events for which a permit has been granted. Driving on park property results in damage to both turf and irrigation sprinkler systems and can result in costly repairs. Items should be hand carried from the street or parking lot to the interior of a park. This is also true for local businesses that offer tents or other large items for party rentals or other activities. In addition, no parking is allowed on the grass surrounding soccer fields and softball/baseball fields. This section does not apply to City vehicles, emergency vehicles or public utility service vehicles.

WELLNESS PROGRAM

The City of Las Cruces has expanded the current workplace Wellness Program by recognizing the value of improving the health and well-being of its employees. The program *is designed to improve employee morale, loyalty, and productivity. Employees have been* provided access to physical fitness classes, the weight room and cardio rooms, nutrition classes, diabetes checks, health fairs, sports, and golf opportunities. Staff will continue to seek ways to increase the benefits for City of Las Cruces employees and their family members.

COMMUNITY GARDENING

The City of Las Cruces offers local citizens use of public property for community gardening activities. Gardeners are encouraged to plant vegetables and other annual plants. All gardening participants must be registered annually. All current gardeners can register for one plot from January 3 until January 31. New gardeners can register for any available plots from February 1 until February 28. Beginning March 1, registered gardeners can request a second plot if available. Registration is accepted at the Parks and Recreation Department, 1501 E. Hadley. Garden plots will be rented on a first-come, first- served basis and for an established fee and time period. Garden sites are:

- Jardin de Esperanza – 341 E. Picacho
- Gomez Community Garden – 2250 S. Espina
- Munson Community Garden – 975 S. Mesquite (program garden)
- Sage Community Garden – 6121 Reynolds Dr.

MEMORIAL TREE AND BENCH PROGRAM

The City of Las Cruces offers a Memorial Tree and Bench Program. The Memorial Tree and Bench Program is a wonderful way for all to celebrate, honor or memorialize a special individual or group. With the purchase of a new tree or park bench, the City of Las Cruces Parks and Recreation Department will work with the donor to assure the planting or installing of a new tree or bench in a park, public space, or along a walking trail. In addition, this unique living memorial will also contribute to the beautification of public spaces for countless generations to enjoy.

WALK OF HONOR BRICK PAVERS

The City of Las Cruces offers the opportunity to purchase personalized quarry tile brick pavers to be used in the construction of a walk of honor for veterans within the City's Veterans Memorial Park on Roadrunner Parkway. Bricks may be purchased at the Parks and Recreation Department for an established fee. Bricks will be ordered quarterly (every three months).

PARK OPENING AND CLOSING HOURS

1. City parks may be open from sunrise to sunset, except for emergencies, permitted special events and in parks where hours are posted differently from those operating under the normal operating time. *Refer to LCMC, Chapter 20, PARKS AND RECREATION ARTICLE II. RULES FOR USE OF PARKS, Section 20-28.*

2. Unidad Park and Butterfield Shooting Range hours of operation are sunrise to sunset. Note: Butterfield Shooting Range will be closed Thursday morning until 3:00 p.m. for maintenance.

3. Splash pad hours will be consistent with similar facilities.

4. Individuals shall not be allowed in any City park during closing times unless authorized by permit.

5. The City Manager has the authority to change opening and closing hours of City parks.

6. Parks and Recreation Department employees or Police employees are not restricted by the opening and closing hours when in performance of their duties.

7. For further information regarding park operations, please *refer to LCMC,* Chapter 20, Section 20-28, available in the City Clerk's Office.

PET OWNER'S RESPONSIBILITIES

The City of Las Cruces requires by *LCMC*, Chapter 1, Section #7-4.a that all pet owners clean up after their pet while they visit our parks and facilities.

In addition, dog owners must have their dogs under their control and on a lead not longer than twelve (12) feet; off leash recreation is provided at the "Off Leash Dog Park":

- 1600 E. Hadley (South of Meerscheidt Recreation Center)
- 3551 Bataan Memorial (North of Animal Service Center)
- 855 Amador Ave. (within Burn Lake Park)

Pet owners will be restricted from bringing their pets to athletic complexes, unless designated as a service animal.

MERCHANDISING, ADVERTISING AND SIGNS

1. Individuals, groups, or organizations, while utilizing City-owned parks and/or facilities, are prohibited from the following unless authorized by the Departments in writing:

    a. Calling to the public attention an article or service for sale or hire.

    b. Posting or erecting any sign on City-owned property unless authorized by the City Sign Code.

    c. Collection of money by an individual, group, or organization from the public for services and/or merchandise where all or some of such monies will be disbursed to an entity, individual, group or organization, will only be authorized by permit. Applicable park rental fees may apply.

2. The Parks and Recreation Department has created advertising opportunities that will develop partnerships with our local business community to increase the visibility of their respective businesses and to ensure the sustainability of offering quality/affordable programs to the citizens of Las Cruces.

    a. Advertisements will be offered through personalized display opportunities at designated Parks and Recreation facilities.

    b. Fees will be established as per City Council Approval.

EXCEPTIONS

There may be requests that are exceptions to this policy. These requests will be reviewed on a case-by-case basis and may require Parks and Recreation Advisory Board, City Manager, or City Council approval.

CITY FEE POLICIES (as established by City Council)

1. Park Facility Fee Waiver for Military Services at Veterans Memorial Park.
2. Official City Sponsored or co-sponsored events as approved by City Council.

CITY OF LAS CRUCES
PARKS AND RECREATION PROGRAMS AND FACILITIES
2023/2024 FEES & CHARGES/FACILITY USE SCHEDULE

I. GENERAL RECREATION PROGRAMS

General Instructions:

Program	Session	Fees/Charges
Fitness/Circuit Training	1 class	$2.00
Fitness Punch Card	30 visits	$60.00
60+ Fitness Punch Card	30 visits	$30.00
MRC Activity Punch Card (not for rentals)	34 visits	$30.00
Indoor Cycling	1 class	$2.00
Adult Dance	8 classes	$40.00
Racquetball Court Rental Pass	6 visits	$20.00
Racquetball	1 hour/court	$ 4.00
Pickleball Court Rental (MPR)	1 hour/court	$10.00
Open Pickleball Session	Per Session	$2.00
Pickleball Net Rental (for onsite use only)	Per Net	$10.00
Racquetball Court Rental	1 hour/court	$10.00
Racquetball/Pickle ball Racquet Rental	1 racquet	$ 1.00
Teen Dance	1 admission	$ 3.00
Teen Splash	1 admission	$ 3.00
Water Cycle Class	1 class	$ 5.00
Water Fitness Class	1 class	$ 2.00
Water Fitness Class Punch Card	30 visits	$60.00
Weight Room – Meerscheidt	Daily Fee	$ 1.00
Weight Room – Regional Aquatic Center	Daily Fee	$ 2.00
Weight Room – Regional Aquatic Center	30 visits	$60.00
Therapeutic Program Dance	1 admission	$ 2.00
Fitness Classes/Lap Swim	1 hour	$ 2.00
Shower Fee	1 each	$ 1.00
Activity ID Card Reprint Fee	ALL	$ 5.00
Towel Fee	1 each	$ 1.00
Copy Fee	Per copy	$ 0.50
Open Session Basketball/Volleyball/Skate	Daily Fee	$ 1.00
Specialty Camps	Half Day Full Day	$50.00 $100.00
Locker Rental	Daily	$0.50
Locker Rental	Weekly	$2.50
Locker Rental	Monthly	$10.00
Locker Rental	Yearly	$120.00
After School Program (Registration will be accepted based on availability)	Per Semester (Fall/Spring)	$100.00
Summer Recreation Program	Per Session	$40.00
Spring/Fall/Winter Camp	Per Session	$20.00

Therapeutic Recreation Programming – Private Entities

A programming fee will be charged for Therapeutic Recreation Program administered activities held at any private entity. The Therapeutic Recreation programming fee will be a minimum of 25 cents per participant/care provider per activity. This fee may vary based on the activity, allowing for a wide range of diversity in venues and opportunities for program participants. The Therapeutic Recreation Program will work with care providing agencies, care providers and participant families to set activity programming fees for more costly and expansive activities. This programming fee will provide a minimal cost recovery and help off-set direct expenses incurred for the facilitation and delivery of such activities.

Sports League Program:

Program	Session	Fees/Charges
Adult Volleyball*	9 games	$250.00
Adult Basketball*	9 games	$465.00
Camp Daily Drop-in Fee		$20.00
Racquetball League	12 games	$12.00
Basketball Coaches Certif.	1 year	$30.00
Officiating Clinic	1 year	$30.00
Youth Sports Leagues (City) - with Jersey** Youth Sports Leagues (City)- without Jersey**	8 games	$50.00/child $40.00/child
Sports Tournament – Adult (City)* Sports Tournament – Youth (City)**		$200.00 $150.00
Non-Traditional Sports Tournaments – Adult* Non-Traditional Sports Tournaments – Youth**		$ 75-$200 $50-150.00
Cheer – with Jersey Cheer – without Jersey	8 classes	$50.00 $40.00
Coach Rental Card		$5.00 per player

* Adult Leagues run at 100 percent recovery of direct cost.
**Youth Leagues run at 85 percent recovery of direct cost.

Pilot Program Process:
The Parks and Recreation Department will have the authority to research and pursue new and innovative services by utilizing new and creative programming or single event activities for all ages and abilities. Staff will set fees based on Council's direction concerning rates of recovery.

Special Events:

Program	Session	Fees/Charges
Youth Running Events/Late Fee	1 race	$15.00/$25.00
Adult Running Events/Late Fee	1 race	$20.00/$25.00
Running Event Series	3 5K races	$30.00
Duathlon/Duathlon Late Fee	1 race	$30.00/$35.00

II. SWIMMING (In the event of pool closures and capacity, open recreation and swim time will be split into two equal sessions. All swimming pools will have split sessions during summer months (Memorial Weekend thru Labor Day).

Community Education Classes:

Program	Session	Fees/Charges
First Aid	4 hrs.	$55.00
CPR-PR		$75.00
Recertification (CPR-PR or First Aid)	One time	$50.00
Recertification (Lifeguard Skills)	One time	$90.00
Home Swimming Pool/Spa Water Safety	1.5 hours	$30.00
Open Water Safety	1.5 hours	$30.00
Home Swimming/Water Safety/Open Water	3 hours	$50.00

- ***Fees subject to current Red Cross pricing***

Daily Fees (Frenger/East Mesa/Laabs):

	Age Group	Fees/Charges
Infant	0-2 years	Free
Youth	3-17years	$2.00
Adult	18-59 years	$2.00
Senior	60+ years	$1.00
Child Watch Fee (Parent/Guardian)	N/A	$1.00

Las Cruces Natatorium Meet & Practice Fees & Amenities

	Fees/Charges		
Amenity/Fee	Non-Profit	Commercial	Non-Residential
25 yd/meter lane for practice	$ 11.00	$ 50.00	$ 17.00
50-meter lane for practice	$ 13.00	$ 50.00	$ 26.00
Swim Meets per hour (scoreboard included)	$175.00	$700.00	$220.00
Starting System per meet	$ 25.00	$100.00	$ 30.00
Dolphin Timers each per meet	$ 15.00	$ 60.00	$ 20.00
Operation Fee for Timing System	$ 30.00 (per operator)	$ 30.00 (per operator)	$ 30.00 (per operator)
Swim Meet Spectator Fee	$ 3.00	$ 3.00	$ 3.00
Touch Pads Each	$ 15.00	$ 60.00	$ 20.00
Swim Meets – Timing System per meet	$500.00	$500.00	$500.00

	Fees/Charges	Fees/Charges	Fees/Charges
School Swim Teams per lane	$ 11.00	$ 11.00	$ 11.00
Staff Fee (Salary/Labor)	$18.00 (2 Lifeguards Reg.) $ 20.00 (1 H. Guard) $ 16.00 Attendee (2)	$ 18.00 (2 Lifeguards Reg.) $ 20.00 (1 H. Guard) $16.00 Attendee (2)	$ 18.00 (2 Lifeguards Reg.) $20.00 (1 H. Guard) $16.00 Attendee (2)

Rentals will be based on overall demand (public use) and safety window of opportunity (amount of daylight). *Swim Team Rentals as per agreement.*

Holidays/Maintenance Closures:

Swimming pools may be closed on City observed holidays with the exception of Memorial Day, Fourth of July, and Labor Day.

LAS CRUCES REGIONAL AQUATIC CENTER

Special Events:

Program	Session	Fees/Charges
Aquatic Special Event	1 event	$5.00 per participant

Daily Fees:

	Age Group	Fees/Charges
Infant	0-2 years	Free
Youth	3-17 years	$3.00
Adult	18-59 years	$4.00
Senior	60+ years	$3.00
Child Watch Fee (Parent/Guardian 18+)	N/A	$1.00

Gift certificates are available for purchase at all swimming pool facilities.

Swimming Lessons:

Program	Levels	Fees/Charges
Infant/Toddler/Preschool/ Level 1 & 2	Beginner	$45.00/8 classes
	Levels 3 & 4 (Intermediate)	$60.00/8 classes
	Levels 5, 6 & 7 (Advanced)	$60.00/8 classes
Lifeguarding (includes books or pocket mask		$200.00/30 hours
Lifeguarding Instructor (LGI) Does not include books		$200.00/26 hours
Water Safety Instructor (WSI) Minimum age 16 years. Does not include books		$200.00/15 hours

Program	Levels	Fees/Charges
Be A Guard WSIA & Guard Start (Working at Pools) Minimum age 15 years. Must have passed Level 3		$95.00/15 hours

Lifeguard Training fee is refundable upon successful completion of certification process and upon hire with the City of Las Cruces (completion of 90 days of service).

Rentals: (Fitness Room) – Weekday operations only.

Amount of Group	Fees/Charges
Fitness Room	$20.00/hr

Rentals: (Party Area)

Area	Fees/Charges
Party Room/Wet *	$100.00/3 hours
Private Use-190 Maximum Capacity, Includes Guards/fees, Friday, Saturday, Sunday only	$400/2 hrs

III. FACILITIES RENTAL

Community Gardens *

	Fees/Charges
Jardin de Esperanza	$15.00/plot
Gomez Community Garden	$15.00/plot
Sage Community Garden	$15.00/plot

*Munson Garden (program)

Meerscheidt, Frank O'Brien Papen Center, East Mesa, A. Fielder Memorial Safe Haven, and WIA Building (weekend rates only and/or after normal business hours):

Rental Area	Fees/Charges
WIA Building	$40.00/hr
East Mesa Multi-Purpose Room Team Rental	$10.00/hr
Multi-Purpose Room/or Dining Room	$40.00/hr
Classroom	$30.00/hr
Auditorium (Frank O'Brien Papen Community Center only)	$60.00/hr
Gym Rentals (Meerscheidt Rec Center only)	$40.00/hr
Sand Volleyball Courts includes use of commercial net system – setup & teardown (Meerscheidt Rec Center Only)	$40.00 per 2hr time period per court
Sand Volleyball Courts (per day) includes non- commercial net only (Meerscheidt Rec Center Only)	$40.00/day per court
Meerscheidt Facility (Entire building-Indoor)	$100.00/hour

Frank O'Brien Papen (weekday operations only):

Rental Area	Fees/Charges
Classroom	$15.00/hr
Dining Room (Kitchen not included)	$30.00/hr
Auditorium (Frank O'Brien Papen Community Center only)	$40.00/hr
Game Room Rental – includes use of equipment	40.00/hr

Meerscheidt Recreation Center (weekday operations only and during normal business hours):

Rental Area	Fees/Charges
Multi-Purpose Room Team Rental	$10.00/hr
Team Practice/Rental Card	$50.00/6 sessions $70.00/8 sessions
Gymnasium – Half Court	$10.00/hr
Gymnasium – Full Court	$20.00/hr
Sand Volleyball Courts – includes non-commercial net only	$10.00 per court

City approved professional security guard services by the renter at a ratio of one guard for every 50 guests (licensed/bonded).

In an effort to reduce staff overtime costs, no rentals will be offered on City Holidays.

The primary focus for Meerscheidt Recreation Center will be sports related activities and programs; and Frank O'Brien Papen Center will be recreational programming, activities, and private rentals. East Mesa & A. Fielder Memorial Safe Haven will primarily be for youth programming.

IV. FUNDRAISING RENTALS

a. Nonprofit organizations that are holding an event / tournament that are not Co-Sponsored by the City of Las Cruces will incur fees.
b. Non-profit / for profit fundraising exclusive use events of an entire park may be assessed a flat fee rate of $1,250.
c. Car shows with exclusive use of park lawn areas will be assessed a flat fee rate of $500 in addition to the rental fees assessed.
d. All rentals requesting exclusive use of park areas will be assessed a fee of $50 per four hours per section of the park requested. An additional $50 fee will be assessed for electrical service and water service. Additional electric panels will need to be coordinated and approved through the City's Facility section. A separate fee will be assessed.

V. MERCHANDISE

Merchandise	Amount Requested	Fees/Charges
Program/Event T-Shirts		
Short Sleeve	Each	$15.00
Long Sleeve T-Shirts	Each	$20.00
Sweatshirts	Each	$25.00
Swim Pant Fee/Youth	Each	$1.00
Goggles	Each	$10.00
Towels	Each	$10.00
Earplugs	Each	$3.00
Nose Clips	Each	$3.00
Headphones	Each	$3.00
Pickleball Ball	Each	$1.00
Swim Cap (Latex)	Each	$3.00
Swim Cap (Silicone)	Each	$5.00
Ziggy Plush	Each	$10.00

VI. MEMORIAL TREES, BENCHES, WALK OF HONOR BRICKS

Item	Fees/Charges
Tree	$500.00 per tree
Bench with Plaque	Range of $2,200.00 – $2,500.00
Bench without Plaque	$1,800.00
Walk of Honor Memorial Brick	$ 35.00 per brick

VII. PARK PERMIT FEE

Facility Requests	Number of Hours/Day Fee	Fees/Charges
Park area/section	4	$ 50.00
Trail area		$ 2.00 per/participant
Parking Lot Fees – half lot	4	$100.00
Parking Lot Fees – entire lot All parking lot rentals will require a Traffic Control Plan (TCP) for the Event from Public Works	4	$200.00

VIII. SPORTS LEAGUES (PER FIELD/COURT/GAME FEE)

Sport/Age Group	Fees/Charges	
	Resident	Non-Resident
Recreational Youth Baseball/Softball/Soccer/Football (Local – 17 years and under)	$0	$0
Select Youth Baseball/Softball/Soccer/Football (Non-Local* – 17 years and under)	$10.00	$20.00
Adult Baseball/Softball	$25.00	$50.00
Adult Football/Soccer	$20.00	$40.00
Senior Softball/Baseball (Local)	$12.50	$25.00
Adult Tournaments (up to 12 hours) 4 Field Complex 3 Field Complex Single fields High Noon #1 – 5 Burn Lake Provencio Van Dame Soldados Apodaca Baseball	 $600.00 $450.00 $150.00 $500.00 $300.00 $300.00 $200.00 $200.00	 $1,200.00 $900.00 $300.00 $1,000.00 $600.00 $600.00 $400.00 $400.00
Youth Tournaments (up to 12 hours) 4 Field Complex 3 Field Complex Single fields High Noon #1 – 5 Burn Lake Provencio Van Dame Soldados Apodaca Baseball	 $200.00 $150.00 $50.00 $250.00 $150.00 $150.00 $100.00 $100.00	 $400.00 $300.00 $100.00 $500.00 $300.00 $300.00 $200.00 $200.00
Field Service Fee Per Game/Per Field (Complete Service)	$ 80.00	$160.00
Field Service Fee Per Field/Per Game (Touch Up)	$ 24.00	$48.00
Service Fees for: Pedestrian Barricades, Temporary Fences, or Goal Transportation	$250.00 each per set up	$500.00 each per set up
Practice Field Fees: Practice space can be reserved for the following fields as available: Paz, Maag, Apodaca Baseball, Apodaca Softball, Burn Lake Provencio/Van Dame.	$10.00 per hr (max 2 hrs per day, max 2 days per week	$20.00 per hr (max 2 hrs per day, max 2 days per week
Tennis Camp, Pickleball, Handball Court Fee (Youth)	$1.00 per court/per 4 hrs	$2.00 per court/per 4 hrs

Sport/Age Group	Fees/Charges	
	Resident	Non-Resident
Tennis Camp, Pickleball, Handball Court Fee (Adult)	$5.00 per court/per 4 hrs	$10.00 per court/per 4 hrs
Tennis, Pickleball, Handball Tournament Fee (Youth) all courts	$25.00 per 4 hrs	$50.00 per 4 hrs
Tennis, Pickleball, Handball Tournament Fee (Adult) all courts	$50.00 per 4 hrs	$100.00 Per 4 hrs

NOTE: Facility Change Fee: Set up $1,000.00, Tear Down $1,000.00

Non-Traditional Sports/Groups	Fees/Charges	
	Resident	Non-Resident
Camping Fees: RV/Trailer Tents	 $10.00 per night $5.00 per night	 $20.00 per night $10.00 per night
Yearly Fee for League/Season BMX Horseshoe Courts (Entire) Horseshoe Courts (Single Court) Skate Park	 $1,000.00 $100.00 per 4 hrs $5.00 per 4 hrs $100.00 per 4 hrs	 $2,000.00 $200.00 per 4 hrs $10.00 per 4 hrs $200.00 per 4 hrs

IX. DOWNTOWN AREA FEES

AREA	Duration	Fee	Duration	Fee
North Section MSD / free general public	4 hours	$ 0	12 hours	$ 0
North Section MSD / rental	4 hours	$50	12 hours	$150
Middle Section MSD / free general public	4 hours	$ 0	12 hours	$ 0
Middle Section MSD / rental	4 hours	$50	12 hours	$150
South Section MSD / free general public	4 hours	$ 0	12 hours	$ 0
South Section MSD / rental	4 hours	$50	12 hours	$150
Parking lot/space Concession/Vendor	Month	$60	Quarter	$150
Parking lot reservation	4 hours	$50	12 hours	$150
La Placita/rental	4 hours	$50	12 hours	$150

X. MOBILE CONCESSION/VENDING FEES

Mobile Concessions	Fees/Charges
Parks and Recreational Facility Parking Lots	$150 Qtr. $60 Monthly

Service is defined as the ability to access electricity. (Not all facilities have this capability).

Parks and Recreation Advisory Board

April 20, 2023

The Parks and Recreation Advisory Board held a meeting on April 20, 2023, at 6:05 p.m. at City Hall Council Chambers, 700 N. Main, Las Cruces, NM.

Members Present:
- Cassie McClure - District 1
- Kenneth Coppedge – District 2
- Aracely Tellez – District 3
- Stan Engle - District 4
- Laura Haas - District 6
- Fred Raish – At large member

Members Absent:
- Eric Montgomery - District 5

Others Present:
- Robert Nunez, Interim Director, Parks and Recreation
- Phillip Catanach, Recreation Deputy Director, Parks & Recreation
- Hazel Nevarez, Senior Office Manager, Parks & Recreation
- Claudia Chavez, Interim Deputy Director Youth Services, Parks & Recreation
- Franco Granillo, Parks Deputy Director, Parks & Recreation
- Catherine Mathews, Landscape Architect, Parks & Recreation
- Greg Shervanick, Public
- Becky Baum, Recording Secretary, RC Creations, LLC
- Cathy Gonzales, Parks & Recreation Parks & Recreation Staff Member
- Terik Montgomery, Parks & Recreation Staff Member
- Jasmyn Rios, Parks & Recreation Staff Member
- Yvonne Rios, Parks & Recreation Staff Member
- Karla Munoz, Parks & Recreation Staff Member
- Kathy Hollett, Public
- Karina Herrera, Parks & Recreation Staff Member
- Amanda Curry, Public

The Parks and Recreation Advisory Board Meeting of April 20, 2023, at City Hall Council Chambers, 700 N. Main, Las Cruces, NM was brought to order at 6:05 p.m. by Chair McClure and recognized the meeting as having a legal quorum.

1. Introduction:

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Board Members introduced themselves and stated the district they represent. Attending staff introduced themselves.

2. Conflict of Interest:

There was no conflict of interest.

3. Approval of the Agenda:

Board Member Raish moved to approve the Parks and Recreation Advisory Board Meeting Agenda for April 20, 2023, seconded by Vice-Chair Engle. Motion carried unanimously.

4. Approval of Minutes - February 16, 2023:

Board Member Haas moved to approve the Parks and Recreation Advisory Board Meeting Minutes February 16, 2023, seconded by Board Member Tellez. Motion carried unanimously.

5. Approval of Minutes - March 16, 2023:

Vice-Chair Engle moved to approve the Parks and Recreation Advisory Board Meeting Minutes March 16, 2023 as amended by Hazel, where date of approved minutes on page 2, line 12 was changed from Minutes November 17, 2022 to Work Session minutes January 19, 2023, seconded by Board Member Haas. Motion carried unanimously.

6. Public Participation:

There was none.

7. Action Items:

7.1 Parks & Recreation 2023-2024 Fees and Charges/Facility Use Policy - Robert Nunez:

This policy did not go before City Council immediately after being presented to this Board at the end of last year. It has now been updated and will hopefully be on the Council agenda sometime next month. There was no change to the introduction. This is the Board's recommended policy to determine user fees, different types of cost recovery, and various internal policies and City policies regarding scholarships, fee waivers, payment plans, programming, and permitting.

The categories of cost recovery are: Minimum Cost Recovery which is normally 0-20% of direct program cost such as out-of-school programs,

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therapeutic programs, special events, and aquatics; Partial Cost Recovery include youth classes and athletics; Full Cost Recovery include any adult programming. The policy includes definitions of Direct Cost, a list Parks and Rec's facilities, and programming/hours of operation. There are guidelines for sponsorship of groups and Department guidelines for the distribution of City stipends to local recreational youth leagues or organizations/associations. This funding is to help lower the cost of participation for youth members. Currently $10,000 is budgeted for this and only one club has recently applied for aid. The established clubs have become self-sustaining recently, as they have not applied for aid in some time. The policy includes a refund policy, returned check policy, payment plan guidelines, and the youth scholarship program. The scholarship program runs from July 1 through June 30 and uses funds received from unsolicited private donations. A household can receive up to $240; individuals can receive up to $120. Sponsored youth are required to pay 50% of the program fees. Scholarships cannot be used to pay for fitness classes, rentals, equipment fees, special events, pass cards, and daily entry to the pool facility. Families who desire scholarships must fill out an application and provide proof of income and residence. Parks and Rec follows State guidelines for income analysis. The policy includes a transfer policy, age categories, seniors, recreation facility age limits, family definitions, organization aquatic fee, restorative pool, weight room program, free swim dates, school district year-end parties, and facility use rental guidelines for all the recreational centers.

One new item there is "rentals cannot be used to conduct private business for personal gain unless approved by Parks and Recreation Director." There are contracts to conduct City programming, permitting procedures, which includes the new permit rule "to request for the use of water-holding structures like but not limited to Las Cruces Dam and Tee time will need prior approval by the Public Works Department before park facility application can be approved." Those two locations are under the authority of Public Works and the Army Corps of Engineers. Also updates was the request for use of parks: Request for use of the following parks but not limited to Apodaca Park, Desert Trails Park, Johnson Park, Klein Park, Women's Pioneer Park, Veterans Memorial Park, and Young Park will require a deposit/fee of $250. This payment is nonrefundable and will be applied to your overall rental fee." The policy also lays out nondiscrimination compliance, insurance; the City of Las Cruces requires anyone renting the park and using jumping balloons to carry additional liability insurance with the City listed as additional insured. There are guidelines for sports field requests: If you are not established or in good standing, a 50% payment will be due up front once a permit has been approved. This payment is nonrefundable and will be applied to your overall rental. The remaining balance must be paid within one week after the event. All tournaments require a $250 deposit upon approval of permitting. All organizations, leagues, and field users including point-of-contact and league office that do not reside within City limits will have to pay a non-resident fee

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and will require a $250 deposit upon approval of permit. This payment is nonrefundable and will be applied to your overall rental fee. A Post Office box will not be allowed as proof of local residence. All organizations will be responsible for collection of event camping fees at tournaments.

Parks and Recreation Advisory Board authority over leagues and organizations that utilize City fields and/or facilities: The purpose of this is to provide guidance to local recreational youth, adult leagues, or organizations that utilize City fields and/or facilities, to provide an independent, non-biased committee that has the authority to review league/organization procedures, act as an appellant body for players, coaches, parents, spectators, suspensions, review financial records and recommend or require changes to league organizational operations. This is per Resolution 12-072. There have been coaches and parents come in, as all leagues are required to have standard operating procedures regarding behavior and actions of fans, league officers, parents, teams, everyone who is in attendance, and there have been suspensions coming all the way up to the Board. Complaints start at the level of the section that they are under, then the level of the Director, and if it is unable to be resolved it is brought before the Parks and Rec Advisory Board to be heard. Parks and Rec Advisory Board has the final say in these situations. Board Member Coppedge asked about renting soccer fields and that information is further down in the policy.

There are requirements listed for fishing, swimming, carnivals and amusements, roller skating/rollerblading/skateboarding, golfing, mobile concessions/vending, special use permits, inflatable/portable play equipment, vehicles driving in City parks, the wellness program, the community gardening program including that all participants must be registered annually and all current gardeners can register for one plot from January 3rd through January 31st and new gardeners can register for available plots from February 1st through 28th and beginning March 1st registered gardeners can request a second plot if available. There was a high demand for plots last year so Parks and Rec wants to try to provide enough. Parks and Rec has added the Memorial Tree and Bench Program for people to purchase a new tree for $500 each, and a park bench with a plaque for $2,200 up to $2,500 or without a plaque starting at $1,800 dedicated to the person or group of their choice. A Walk of Honor brick paver would be $35. The list includes park hours and rules for park use. Pet owners' responsibilities are listed and the locations of the dog parks. The rules are listed for merchandising, advertising, and signs with exceptions, and City fee policies as established by City Council.

A fitness punch card with 30 visits should be increased to $60, the gymnastics program is being discontinued due to lack of instructors and will hopefully be reinstated later if an instructor can be found, open pickleball sessions is $2 per session, pickleball net rental for on-site use only is $10 per net, the Water Cycle Class is $5 per class, the Water Fitness punch card is increased to $60,

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the Aquatic Weight Room is also increased to $60 for 30 visits. The After School Program fee schedule was $400 per semester; during the pandemic those fees were removed. Now that the pandemic is officially listed as over, the fees will be $100 per semester. Summer Recreation Program fees will be requested to be set at $40 and the Spring Camp and Fall Camp at $20 per session. Pre- and post-program fees will be eliminated, the Life Center Angel Care building has been sold to a private business and so is no longer part of the Therapeutic Recreational Program, for youth sports leagues and cheer with jersey is $50, without jersey is $40, coach rental card is $5 per player, and with the pilot programming process the Department will be able to improve their research and innovation for new programming.

The fees will be set at the time of implementation with City Council's approval. Special events fees remain the same. For the swimming program the fees have been adjusted. First aid will be $55, CPR will be $75, recertification will be $50, lifeguard skills recertification will be $90, home swimming pool/spa water safety will be $30, open water safety will be $30, home swimming water safety/open water will be $50. Daily fees remain the same for the swimming pools. There will no longer be punch cards at Frenger, East Mesa, and Laabs. Rentals have been scratched. Natatorium meet and practice fees for nonprofit, commercial, and non-residential have been thoroughly researched and are: Nonprofit $11, commercial $50 per 25-yard lane for practice, and non-residential is $17. A 50-meter lane is $13 for nonprofit, $50 for commercial, and $26 for non-residential. Swim meets: Nonprofit $175 per hour without scoreboard, $700 for commercial, and $220 for non-residential. Starting system per meet: Nonprofit $25, commercial $100, and non-residential $30. Dolphin timers, each per meet: Nonprofit $15, commercial $60, and non-residential $20. Operation fee for timing system will be $30 per operator across the board. Swim meet spectator fee will be $3 across the board. Touch pads: Nonprofit $15, commercial $60, and $20 for non-residential. Swim meets timing system will be $500 across the board. School swim teams per lane is $11 across the board.

There is also a breakdown of staff fees for required personnel such as lifeguards. Aquatic special events will be $5 per participant. Punch cards and private lessons are not offered. Swim lessons, not including books, for lifeguarding and water safety instructor, minimum age of 16, are $200. The new system will have a debit card for daily use, as the punch cards did not work as well as hoped. The debit cards can be used for everything, where the punch cards were specific to each facility. The City will need to hire more lifeguards to be able to keep the facilities open for the hours desired. Fitness room rent is $20 per hour, party area/party room is $100 per three hours. East Mesa Multipurpose Room team rental is $10 per hour. The gymnastics rental package has been scratched. Meerscheidt Recreation Facility, entire building indoors is $100 per hour. The Frank O'Brien Papen Community Center dining room is $30 per hour and the auditorium is $40 per hour. The Meerscheidt

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Recreation Center team practice rental card allows use of the Multipurpose Room and either gymnasium is six sessions for $50 or eight sessions for $70. Fundraising rentals will need to be coordinated and approved with additional electric panels through the City's Facilities Section and a separate fee will be assessed. Merchandise has been raised to $15, $20, and $25. Pickleballs are $1 each. The Ziggy plush is $10. Park permit fees for organized groups to use facilities: Trails are $2 per participant, parking lot fee is $100 per half lot for four hours or the entire lot for $200, sports leagues per field/court game fees have been adjusted also, and priority and lower rent is given to local leagues.

Pedestrian barricades, temporary fence, or goal transportation for soccer goals are $250 per setup for residents and $500 for non-residents. Practice field hourly fees are being adjusted for residents and non-residents and will be for a maximum of two hours per day and two days per week. Pickleball and handball court fees and tournament fees have been adjusted for residents and non-residents. Facility change fees for setup and tear-down are $1,000 each time if Parks and Rec is requested to take care of that. Sports groups, camping fees, RV trailers, tents have a resident and non-resident fee. BMX fees, horseshoes, and skate part rentals have been adjusted for residents and non-residents. There is an added vendor fee of $60 quarterly and $150 for a concession space and parking spot on the Downtown area. The mobile concession and vending fees are $150 per quarter. These price increases are not based on a percentage but rather staff salaries and research and comparison with other cities' facilities to keep prices competitive and still recover costs.

As a municipality, Las Cruces is required to set some type of fee on most of the programs. Through policy and with the help of City Council, the youth programs are subsidized and supported to keep prices down while the cost recovery is achieved through the adult programming. The process for renting facilities is posted on the Parks and Rec website and can be included in this Policy. Restrooms are open while the parks are open and the Parks and Rec crews keep them up. The Young Park south restroom is kept locked except for huge events because renters who rent the southwest corner of the park complain when people not in their own party use that restroom, so it is easier to just keep that restroom locked. Restrooms are repaired as soon as possible when they break because the port-a-potty vendor is under contract and using that service would go over contract just to replace a broken restroom temporarily. Staff can look into adding restroom use into the Policy. Posted park hours used to be 5:00 a.m. to 11:00 p.m. but there were many issues happening after dark, so park hours were changed to 5:00 a.m. to 9:00 p.m. in the summer and 6:00 a.m. to 7:00 p.m. in the winter. Now, park hours are simply sunrise to sunset and the Department is working on updating the signage and website. This allows Codes and Police to send away people who may be causing problems outside of posted hours.

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Board Member Coppedge moved to table this item until the meeting of May 18, 2023, seconded by Board Member Raish.

This Policy is already in the queue for City Council in May. Staff could easily add the language requested and send out the updated document by e-mail for review so that it can still go to City Council in May. The motion to table died.

Board Member Coppedge moved to approve the Parks & Recreation 2023-2024 Fees And Charges/Facility Use with language added regarding bathroom use and field rental process, seconded by Board Member Haas. Motion carried unanimously by acclamation.

8. Discussion Items:

8.1 Organ Mountains Pickleball Club - Jeff Anderson:

Jeff Anderson is the new President of the Organ Mountains Pickleball Club. The club has been around for about three years and has roughly 250 members and about 500 people on the e-mail list. They use City facilities all the time and are very pleased to work with Parks and Rec. The club is a nonprofit group and offers free youth lessons, broken into age groups of 3rd and 4th grade, 5th and 6th grade, and 7th and 8th grade. They also offer free beginning adult lessons. The club works with the Parkinson's Support Group of Southern New Mexico and the patients get great benefits from the exercise. There was a very successful tournament at Apodaca Park this year. The club raised $3,000 for Soles4Souls to provide shoes for local children and $3,000 for La Casa to help victims of domestic violence. Tournaments at Apodaca Park on Fridays and Saturdays are very well-attended. The club sponsored the Aaron Gifford Annual Pickleball Tournament at Lions Park three weeks ago and it was very successful. Ms. Hunter runs that tournament and she reported that it earned $30,000 for City of Hope to help get veterans off the street and for Mission 22 which is a veterans' mental health organization. There are beautiful new courts being built on the East Mesa and the club is eagerly awaiting their opening. The club has a website and Mr. Anderson invites everyone to visit Organ Mountains Pickleball there.

8.2 Farmers Market Update - Cassie McClure:

Board Member McClure attended the Farmers Market last month to chat with attendees. She was very impressed with the sign for her booth. There were many people asking questions in Spanish and she suggests that the subcommittee should discuss how to market services in Spanish. Board Member Engle also attended and there were many comments to him about trails, wayfinding, and bicycle path infrastructure. Board Member Haas was impressed with the amount of literature that was provided for her to pass out at

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Franco Granillo commented that Robert Nunez and everyone have been very helpful with unrealistic expectations from the public and thanks them for all the daily assistance they provide, and hopes he is as helpful to them as they are to him. Board Member Engle spoke to his Council representative regarding how much maintenance is required to keep up the new equipment being installed. Mr. Granillo concurred and mentioned that replacing a vandalized slide will cost $14,000 which has to be taken from something else to do it.

Robert Nunez mentioned that FY 24 budget is going to a work session next week and Parks and Rec staff will be attending to answer questions regarding the ask for FY 24 and hoping the request is approved. Board Members and Parks and Rec team were thanked for all their hard work. The CAPRA accreditation application has been submitted as of almost two weeks ago. The core team will be available to answer questions. The review team for Las Cruces consists of a person from Washington State, one from Texas, and one from Florida working on Las Cruces' application over the next ten weeks. If all goes well, the review team will be here in mid-June for a site visit. They may also wish to talk to Board Members.

10. Board Member Comments:

Board Member Engle also thanks Parks and Rec staff for their hard work. His son is enjoying the splash pad Downtown occasionally and riding the free RoadRUNNER Transit to parks on the weekends. Board Member Engle's son is signed up for Little Sluggers and staff was able to help him get the applications done on RecTrack. He was very thankful for the help. Board Member Engle also thanks the Board for their hard work.

Board Member Raish thanks staff for all their hard work.

Chair McClure thanks staff for their hard work.

11. Adjournment:

Vice-Chair Engle moved to adjourn, seconded by Board Member Haas.

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Chairperson

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CITY OF LAS CRUCES
PARKS AND RECREATION DEPARTMENT
~~2019-2020~~ FEES & CHARGES/FACILITY USE POLICY

INTRODUCTION

The City of Las Cruces Parks and Recreation Department has the responsibility to establish policy for recovering costs for using the City's parks, recreation facilities and taking part in various recreation programs. This policy is meant to be a guide to Administration, the Parks and Recreation Advisory Board, and the City Council, in developing a fair and consistent fee schedule.

AUTHORITY

The authority to establish appropriate fees and facility use on an annual basis rests with the City Council. The Parks and Recreation Advisory Board shall act in an advisory capacity to the Parks and Recreation Department and to the City Council in the establishment of the policy.

FACILITATION

The Parks and Recreation Section shall develop fees and recommend appropriate uses of parks facilities and participation in recreation programs. The fee will be reviewed annually by staff, the Parks and Recreation Advisory Board, and ultimately approved by the City Council with the adoption of each annual budget.

PURPOSE OF POLICY

The policy is intended to establish a standardized approach to assessing fees for the use of City facilities, parks and participation in recreation programs; for determining which users or groups should pay at what percentage; to keep all fees at a fair market level in order to encourage participation; to strive for a degree of cost recovery; and to lessen the burden on the City and the General Fund.

USER FEES

User fees are established by the City Council. All applicable fees and/or deposits must be paid by cash, credit card, check, or money order, made payable to the order of the City of Las Cruces, a minimum of ten business working days prior to the approved event.

CATEGORIES OF COST RECOVERY

1. MINIMAL COST RECOVERY

Small percentage of direct program costs. Normally 0-20 percent of direct cost:

Program Examples:
- Therapeutic Art
- Special Events
- Aquatics
- Out of School Time Programming (OST)
- ~~Teen Programming~~
- ~~Summer Recreation~~
- Therapeutic Dances
- ~~Safe Haven~~

2. PARTIAL COST RECOVERY *

Recreation programs will strive to recover 85 percent of direct program cost.
Program Examples:
- Youth Classes
- Youth Athletics

3. FULL COST RECOVERY *

Recreation programs will strive to recover 100 percent of direct program costs.
Program Examples:
- Adult Recreation
- Adult Classes
- Adult Athletics

** **NOTE:** Addressed in Resolution No. 93-264*

TARGETED COST RECOVERY

Targeted cost recovery for recreation programs is 85-100 percent of direct costs, 33 percent for Aquatics, 85 percent for Youth (not to go below 75 percent), and 100 percent recovery for adult programs and special recreation programs.

DEFINITIONS DIRECT COST

Costs directly associated with providing activities and/or services required for program functionality. Examples: cost for instructor/leader, supplies, materials, building rental, advertising, etc.

FACILITIES

Existing City Parks and Recreation Facilities including recreation centers, tennis and other playing courts, sports fields, swimming pools, and parks. Examples are, but not limited to, the following:

- Meerscheidt Recreation Center
- East Mesa Recreation Center
- Volleyball Court
- Soccer Complexes
- Maag Complex
- Regional Aquatic Center (RAC)
- Triviz Multi-Purpose Path
- La Llorona Park
- Veterans Memorial Park
- Apodaca Softball/Baseball Fields
- Ron Galla T-Ball Fields
- Frank O'Brien Papen Community Center

- Tennis Courts
- Public Pools/Metro Verde Splash Pad/Interactive Fountain
- Harty Complex
- Paz Complex
- Lions Park
- Young Park
- Four Hills Park
- Pioneer Women's Park
- A. Fielder Memorial Safe Haven
- Plaza de Las Cruces
- Archery Range/Remote Control Airport
- WIA Building
- Butterfield Shooting Range

PROGRAMMING HOURS OF OPERATION

In order to provide the most efficient and effective use of Parks and Recreation staff, facilities, and programs, the City of Las Cruces Parks and Recreation Department reserves the authority to change facility hours of operation in accordance with recreation programming. At designated facilities, City of Las Cruces Parks and Recreation staff will be on site only during scheduled recreation programming hours. Any change in programming hours of operation at a designated facility will be posted in advance. Facility hours may be further adjusted based on staffing levels, budget constraints and/or public demands.

SPONSORSHIP OF GROUPS

Groups that meet all criteria as set forth by the Parks and Recreation Advisory Board may be co-sponsored and/or supplementary funded by the City of Las Cruces: (Group sponsorship subject to change).

PARKS AND RECREATION DEPARTMENT GUIDELINES FOR THE DISTRIBUTION OF CITY STIPENDS

Purpose: To provide guidelines and criteria for the distribution of City funding/stipends to local recreational youth leagues or organizations/associations. The funding is intended to be used to lower the cost of participation for local youth participants. This partial funding is to be used to assist with the operational costs of the program/activity. The youth league or organization/association must provide proof of financial need and community benefit.

Well established, financially sound youth/adult leagues, organizations/associations, tournament/traveling treams, and non-local residents will not qualify.

REFUND POLICY

The Parks and Recreation Department will refund fees for the following only:

1. Department cancellation of activity due to low registration.

2. Department cancellation of activity due to inclement weather.

3. Department cancellation of activity due to mechanical malfunctions.

4. Inability of class or league to proceed with activity.

5. A 25 percent service charge assessed prior to the second game or class with no refund to be granted after the second class or game.

6. In cases of emergency, i.e., death or illness, rental fee paid in advance to secure the rental will be refunded. A 25 percent service charge will be assessed to all cancellations other than emergencies of rentals of facilities and parks.

RETURNED CHECK POLICY

There will be a $30.00 service charge on all returned checks as per the City's Finance Department.

PAYMENT PLAN

The Parks and Recreation Department is offering a payment plan to individuals who are unable to pay the full program amount at time of registration. Each individual will be reviewed on a case-by-case basis and a suitable payment plan must be agreed upon by both the individual and the City of Las Cruces. Scholarships may be available through the generous donations of citizens of Las Cruces in accordance with scholarship policy.

Installment/Payment Plan – The department will offer an installment payment plan in order to help accommodate participants and ~~ie~~nsure that all citizens have access to programs. Installment/Payment Plan must be approved by a Recreation Program Manager. Payment(s) arrangements must be made prior to participation in any program. Plans may include monthly/quarterly payment plans. The department may request proof of inability to pay or financial hardship and may deny installment payment plan requests. If payment is not received, prior to service delivery, then services may be terminated immediately.

Youth Scholarship Program

The City of Las Cruces Parks & Recreation Department will offer program scholarships for qualified children for the fiscal year (July 1 – June 30) or as funds are available. Participation in leisure, recreational, and fitness activities has proven to provide safe, healthy activities, help reduce health risks and issues, and strengthen family and community relations. To instill the value of these benefits, the City of Las Cruces is willing to subsidize program fees for eligible individuals who qualify based on residency, total household income and number of dependents. A strong sense of ownership and pride is developed when the scholarship recipient contributes to the cost of the program.

Applicant(s) may receive a scholarship in the amount $120.00 per fiscal year (July 1 – June 30) per dependent. A maximum of $240.00 per household may be approved per fiscal year. A minimum 50% of program fees must be paid by applicant before scholarship can be utilized. No other discounts may be applied.

Example of approved/exempt programs:

Approved programs: Athletics *(basketball, baseball, football, volleyball, soccer, cheer, etc.)*, After School, Camps, Gymnastics, Swim Lesson, Summer Program

Exempt programs: Fitness Classes, Rentals, Equipment Fees, Special Events, Pass Cards, Daily Pool entry

TRANSFER POLICY

City Parks and Recreation Program transfers are permitted on a space available basis.

AGE CATEGORIES FOR RECREATION PROGRAMS

- Infant 0-2 years of age
- Youth 3-17 years of age
- Adult 18-59 years of age
- Senior 60 and over

SENIORS

The Parks and Recreation Department defines a senior as any individual who is 60 years of age and over. The senior population will be given a 50% discount off of all fees required to participate in our programs with an ID card. Discount does not apply to league participation.

RECREATION FACILITY AGE LIMITS

It is recommended that all children under the age of 18 be under the direct supervision of an adult 18 or older, however the Parks and Recreation Department shall use the information below as a guide for regular open hours at all facilities (pool rules differ):

1. Ages 1-7. Allowed admittance to the facilities (recreation/community) centers under direct supervision of an adult 18 or older, but never allowed in the weight room or group fitness classes. This age group must be accompanied by an adult at all times.

2. Ages 8-11. Must be accompanied by an adult 18 or older in the facilities. This age group is not allowed in the weight room or group fitness classes. Allowed use of the racquetball courts with an adult 18 or older.

3. Ages 12-14. This age group will be allowed access to most areas of the facilities without an adult, except for the weight room (14 and older will be allowed in the weight room with supervision of an adult; some group fitness classes, but not spinning). They will also be allowed use of the racquetball courts without an adult.

4. Ages 15-17. This age group may participate in all group fitness classes. They will be permitted in the weight room (parent/legal guardian must sign a waiver) only under the direct supervision of an adult 18 or older.

5. Ages 18 and over. This age group will be allowed full access to facilities.

6. In swimming pool facilities children ages 8 and under must be accompanied by an adult in the water unless child has passed a designated swim test.

FAMILY DEFINITIONS

Husband, wife and children, including natural, adopted, foster and step-children, living within the same household, also, persons who are not married, including children, who are living in the same household.

ORGANIZATION AQUATIC FEE

1. The Organization or Agency must be non-profit and show financial need:

   a. Verification of non-profit and low-income status (prior year's tax filing)
   b. Letter of Incorporation from State of New Mexico

2. The Organization or Agency must be located within Dona Ana County.

3. Member or clients of the Organization or Agency must reside within the same building.

4. Submit a letter to the Parks and Recreation Director or designee with above documentation requesting discounted punch card or swimming pool pass.

~~5. Approved non-profit agencies will receive a 50 percent discount on the appropriate 30 punch card rate. For Profit agencies will be charged current rates. For Profit/Non-Profit agencies will adhere to the following:~~

~~a. 1-10 clients – at least one supervisor required and actively supervising in water.~~
~~b. 11-20 clients – at least 2 supervisors required with one actively supervising in water.~~
~~c. 21-30 clients – at least 1 supervisor to 10 clients required.~~

RESTORATIVE POOL/WEIGHTROOM PROGRAM

The City of Las Cruces Parks and Recreation Department is offering use of the aquatic features and Warm Water Pool at the Las Cruces Regional Aquatic Center at a reduced fee for qualifying individuals. Individuals with medical conditions that would benefit from water exercise to enhance, restore, and maintain a person's functional abilities may qualify. Conditions can be acute, transient, or chronic. Individuals and their care-provider(s) will be charged an admission fee of $1.00 per person to use the Aquatic Center's amenities for one hour during any ~~open~~ fitness swim session. Individuals participating in this program may be accompanied by their care-provider(s) at an admission fee of $1.00. This ~~program~~ is a non-renewable six- month program and does not apply to fitness classes.

Both the participant and care-provider(s) must pay for each session of use at the facility. A doctor's note validating the need for the use of the facility specifying the need for water, land therapy, must be provided at the time of registration.

FREE SWIM

City staff has the authority to offer free swim session admission on a weekly basis for everyone (not to exceed capacity based on New Mexico Environment Department Public Swimming Pool Regulations).

SCHOOL DISTRICT YEAR-END PARTIES

Schools may schedule ~~Frenger Pool or~~ the Las Cruces Regional Aquatic Facility for end-of-the-year school parties, not to exceed a maximum of 80 students as availability allows (not to exceed capacity based on New Mexico Environment Department Public Swimming Pool Regulations). Adults/Students who plan to swim will pay the daily rate.

FACILITY USE/RENTALS (RECREATION CENTERS)

Facilities refer to East Mesa, Frank O'Brien Papen Center, Meerscheidt Center, A Fielder Memorial Safe Haven, Regional Aquatic Center, WIA building or any other Parks and Recreation facilities. In consideration of the payment of the rental fee and the agreement with the Renter to comply with the Contract, the City of Las Cruces agrees to make space indicated available to the Renter for the dates and times set forth and make available the equipment requested. By signing the Contract, the Renter agrees to the following:

I. Payment

A. Reservations:
- Facility reservations are taken on a first-come, first-served basis. Deadline for arrangements and payment is ten business days prior to the date of usage. Otherwise, the reservation will be terminated.
- Group sports in the gymnasium reservations are taken on a first-come, first-served basis.
- Rentals cannot be used to conduct private business for personal gain unless approved by Parks & Recreation Director.

B. The Renter is responsible for loss or damage to CLC property. If, after inspection, room/facility is not left in a satisfactory condition, clean-up/damage fees will be assessed.

C. Rental Fee: To secure reservation, one hundred percent (100%) of the rental fee is due at the time of the completion of this Contract.

D. Request for Changes: Any requests for changes to this Contract must be agreed upon in writing between the Renter and the City of Las Cruces staff. Requests must be completed no later than two (2) weeks prior to event or by mutual agreement.

E. Cancellation/Refund: If reservation is cancelled by Renter, the City of Las Cruces will retain a 25% cancellation fee. The exceptions to this are injury, illness or in case of emergency or extenuating circumstances.

II. Set-Up, Supervision, Caterers, Decorations, Equipment, Clean-Up and Closing of Facility

A. Set-Up: Access to the facility for setting up, including caterers set-up, will be during the hours on the face of the Contract ONLY.

The City of Las Cruces provides certain items for use to Renter and/or Caterer such as

tables, chairs, and equipment within the facility(s). We do not provide linens, silver, or tableware. The City of Las Cruces staff's sole responsibility is to supervise the facility, the equipment and supply the above listed rental items for space being rented, along with trash cans and liners. The City of Las Cruces will not be responsible for moving, set-up and break-down, including stacking of tables, chairs, and other equipment used during the event.

B. Supervision: Any individual at this event under the age of 18 must be supervised at all times. Any area of the facility that is not under Contract is off limits. Only activities conducive to the facility will be allowed. If required, security services must be present for the duration of the event. Parking is permitted at the facility. Please obey all posted signs.

C. Caterers: Caterers must have proper licenses and liability insurance coverage. The City of Las Cruces requires that a copy of the Caterer's Certificate of Insurance be made available when final payment is received for catered event.

D. Decorations: The renter shall not (a) cause or permit the facility to be injured, marred, or in any manner defaced or changed; (b) place any nails, tacks, screws or other

fasteners into any part of the facility; (c) place or permit to be placed, signs on painted walls in any part of the facility. No decorations such as posters, pictures or banners are to be fastened to walls, woodwork or curtains inside or out.

E. Equipment: All equipment not owned by the City of Las Cruces and being used by Renter/Caterer must be removed at the conclusion of the event. The City of Las Cruces is not responsible for any lost, stolen or damaged property.

F. Clean-Up: At the conclusion of any event the facility must be returned to its pre-event condition. All City of Las Cruces equipment must be returned to the original designated areas. All food, beverages, equipment and rented supplies must be removed from the premises immediately after each use of the facility(s) AND NO LATER THAN THE EXIT TIME STATED ON THE FACE OF THIS CONTRACT. Any catering areas used must be cleaned and left in "as found or better" condition. All trash must be removed from the building and placed in an appropriate dumpster. All floors must be swept and/or vacuumed after use of space. Renter will give floors a light mop where needed. Renter must immediately take care of any major spills. If renter is unable to remove spills, the City of Las Cruces will have area(s) professionally cleaned at the renter's expense.

III. Alcohol, Drugs and Tobacco

A. Alcohol: No alcohol or liquor is allowed on City property without prior City Manager approval.

B. Drugs: No illegal drugs are allowed on City property.

C. Smoking: No smoking or vaping, including e-cigarettes, is permitted inside any facility. Any person smoking must be at least 50 feet away from any facility entrance.

D. ANY VIOLATION OF THESE RULES MAY CAUSE THE EVENT TO BE TERMINATED.

IV. Destruction and Damage

A. Damage: If anyone damages the facility(s) during the rental period, the Renter shall be liable for all necessary repairs.

B. Destruction: If the City of Las Cruces facility(s) are destroyed or damaged by fire or any other cause or unforeseen occurrence that shall make the fulfillment of the Agreement impossible, then the rental contract shall terminate, and payments will be returned and Renter waives all rights to any claims against the City of Las Cruces.

V. Facility Use

A. Compliance: Renter agrees that any use of City of Las Cruces facility(s) must comply with all statutes, ordinances, rules and regulations issued by Federal, State and Municipal governments, including all rules of the Las Cruces Police and Fire Departments. When requested, the Renter shall provide Liability insurance naming the City of Las Cruces, its employees and agents as additionally insured with the limits of $1,000,000. If the City is to be named as additional insured, the insurance company must issue an endorsement stating that the City of Las Cruces is additional insured.

B. License & Payments: Renter agrees to obtain or collect and to pay and deliver to the proper governmental agency or regulating authority, any and all license fees, permits, royalties and taxes required in connection with the use of the facility(s).

C. Hazardous Materials: Renter agrees not to bring on to the premises any material, substance, equipment or object which is likely to endanger the life of, cause bodily injury to any person or property or which is likely to constitute a hazard.

VI. Responsibility and Indemnity

A. Conduct: The conduct of all event participants while on City of Las Cruces property shall be the responsibility of the Renter. The Renter also accepts all responsibility for any injury to person(s) or property, or loss of or damage to property or theft of personal property on City of Las Cruces premises during the rental period or resulting therefrom. Failure by any individual or group to follow all applicable rules and regulations will be cause for eviction. The City of Las Cruces retains the right to evict objectionable persons from the premises. Repeated violations may result in denial of future reservation requests.

B. Indemnity: The Renter shall release, indemnify, keep and save harmless the City of Las Cruces, its agents, officers or employees from any and all responsibility or liability for any and all damages or injury of any kind or nature whatever (including death) to all persons, whether agents or employees of the Renter or persons attending the event for which the premises have been leased, and to all property damage proximately caused by, incident to, resulting from, arising out of, occurring in connection with, the use of the Renter of the premises. The provisions of this section shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses, including reasonable attorney's fees.

VII. Security

A. Building Security: Different uses of the facility(s) may entail different requirements concerning security. The City of Las Cruces is not responsible for any items left in the facility(s). The Renter will take the necessary precautions to protect personal property and to maintain order during event. ONE PROFESSIONAL SECURITY GUARD PER FIFTY (50) PARTICIPANTS MAY BE REQUIRED. Receipted confirmation of professional security services obtained must be presented at time of final payment.

CONTRACTS TO CONDUCT CITY PROGRAMMING

If the City contracts with any organization to conduct a city-sponsored program, it is the City's responsibility to ensure such activities are carried out by the contractor in compliance with the requirements of the Americans with Disability Act. The following language shall be included in all such contracts entered into by the City.

The Contractor 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.

PERMITTING PROCEDURE

1. Requests for exclusive use of a City-owned park/recreation facility or portion thereof by any individual, group or organization must be submitted in writing to the Department a minimum of ten business days in advance of the requested date and shall contain the reason for the request.

   (Note: Requests for park/recreation facility areas with bathroom facilities, bathroom facilities will remain available for general public use, and not specifically for permitter. Bathrooms are regularly maintained and stocked on daily schedule. If restrooms are inoperable, signage will be placed at restroom and permitter will be notified.)

2. Requests for use of City-owned parking lots adjacent to City-owned parks and recreation facilities must be submitted in writing to the Department a minimum of ten business days in advance of the requested date and shall contain the reason for the request.

3. Requests for use of the City-owned parking lots surrounding Main Street Downtown (Main Street from Picacho Street to Lohman Avenue) must be submitted in writing to Parks and Recreation Department ten business days in advance of the requested date. Uses that compete with established businesses or the Farmers and Crafts Market are prohibited. Because of the proximity to businesses on Main Street Downtown, use of these parking areas shall only be permitted from 7:00 p.m. to 10:00 p.m., Monday through Saturday, or from 9:00 a.m. to 10:00 p.m., Sundays. (Permitting is now being done by Parks & Recreation).

4. Requests for the use of water holding structures like, but not limited to: Las Cruces Dam and Tee Time will need the prior approval of the Public Works Department before a Park/Facility application can be approved and permitted.

5. Permits for exclusive use of City-owned parks, recreation facilities or parking areas will be issued for a period not less than four hours for the established fee, with the following considerations:

   a. Permit requests for all parks, pavilions, gazebos and shelters will be rented for an established fee and time period.

   b. The proposed use will not unreasonably interfere with general public enjoyment of a facility.

   c. The proposed activity is not anticipated to incite violence, crime or disorderly conduct.

   d. The proposed activity will not entail unusual expense (overtime scheduling) or risk to the City.

   e. The facility or portion thereof requested has not previously been reserved.

   f. The facility requested is suitable for the activity proposed.

   g. The proposed activity will not interfere with the promotion of public health, welfare and safety of the citizens of Las Cruces.

   h. All appropriate paperwork has been completed in full and accepted by the Departments.

   i. The individual, group or organization ~~i~~ensures the permitted facility will be left in a clean and acceptable condition.

   j. Requests for use of the following parks, but not limited to Apodaca Park, Desert Trails Park, Johnson Park, Klein Park, Women's Pioneer Park, Veterans Memorial Park, and Young Park will require a deposit fee of $250.00. This payment is non-refundable and will be applied to your overall rental fee.

NON-DISCRIMINATION COMPLIANCE

Facility users will not discriminate against any person in access to or participation in any program contemplated by this policy, or in any facility used in connection therewith, on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, age or disability in employment or the provision of services. Facility users will ensure that all programs, services and activities are accessible to an 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, and other impairments, integrated seating and the provision of reasonable modifications and/or accommodations and shall adhere to the City of Las Cruces Communication Policy (if portable toilets are going to be provided, accessible units must also be provided at each bank of

standard units).

INSURANCE

The City requires that users of City-owned facilities for special requests, one-time events, athletic leagues, tournament play, and recreational programs provide proof of liability insurance to cover such use of the facilities, with the City of Las Cruces named as an additional insured on the policy, if staff determines that such insurance is necessary. If the City is to be named as additional insured, then the insurance company must issue an endorsement stating that the City of Las Cruces is additional insured. This proof of insurance will be forwarded to the Parks and Recreation Department upon approval of permit. The amount of this insurance shall coincide with the limitations of the *New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et siq.* If Insurance is not received, event will be cancelled.

SPECIAL EVENTS REQUESTS

Special Event requests must be submitted a minimum of 30 days in advance by filling out a Facility/Park Use Permit Application and turning it into the Department.
The following information /documentation must be submitted along with the Facility/Park Use Permit Application:

1. On annual basis 30 days prior to a special event, submit a detailed financial statement covering funds received and expended for the event's previous year event or program. The City of Las Cruces may also require and audit at the organization's expense in cases where the City of las Cruces provides funding or direct support.

2. ~~30~~ 10 business days prior to a Special Event, submit proof of insurance for the upcoming event for the required amount. If insurance is not submitted, permit will be cancelled.

SPORTS FIELD REQUESTS

Sport field requests for tournament play may be submitted at the November League Meeting, the Wednesday the week before Thanksgiving, for the coming year up to January 15. Sport field requests for league play may be submitted any time after January 15. (If you are a new requestor, sports field requests will be reviewed on a case by case basis depending on field availability.)

1. On annual basis 30 days prior to a Sports Event, submit a detailed financial statement covering funds received and expended for the event or league operations to include local, state, regional or national tournaments for the previous year event. The City of Las Cruces may also require an~~d~~ audit at the organization's expense in cases where the City of Las Cruces provides funding or direct support.

2. Tournaments will not be approved if they are in association with league play. For example, submitting a permit for tournament play in order to complete league

play will not be approved (masking permits as tournaments to finish league play).

3. If you are a new league (not established) or you are an organization not in "good standing", a 50% payment will be due upfront once permit has been approved. This payment is nonrefundable ~~but~~ and will be applied to your overall rental fee. The remaining balance must be paid within one (1) week after the event. All tournaments will require a $250.00 deposit upon approval of permit.

4. 30 days prior to a ~~sports~~ sporting event, submit proof of insurance for the upcoming event for the required amount.

5. All Organizations, Leagues and Field Users (including point of contact and league office) that do not reside within City limits will have to pay a Non-Resident Fee and will require a $250.00 deposit upon approval of permit. This payment is non-refundable and will be applied to your overall rental fee. A post office box will not be allowed as proof of local resident.

6. All organizations will be responsible for collection of event camping fees at tournaments.

Definitions:

a. **Tournaments** - A tournament will be classified as a tournament if it carries a minimum of fifteen (15) teams which includes local and outside area participants or leagues. Tournaments must be sanctioned by the local, state, or national sports sanctioning body.
b. **Established Organizations/Leagues** - An organization/league which has utilized City of Las Cruces facilities as an organization/league for three (3) or more years.
c. **Outside League or Organization** - A team, league, or entity outside the immediate umbrella of an established league or organization which is requesting field use to hold a tournament. For example, this could be a team or organization from another association, city or state.
d. **Good Standing –** An established league or organization that has paid field request fees within the two (2) weeks, after being invoiced after the event. They should have also submitted their insurance requirements thirty (30) days prior to the event and followed permitting guidelines outlined in this policy on a consistent basis. Period of "good standing" = three (3) years or more.

SPORTS FIELD PRACTICE RESERVATIONS

Parks will issue a reservation for a fee to ensure that all City-owned ball fields are made available on an equitable basis to individuals and organizations. This policy applies to all leagues and organizations wanting to use City athletic fields for practice.

Application Process

- Reservations are taken on a first come, first served basis at the Parks and Recreation Administration office located at 1501 East Hadley. Reservations will only be taken during normal business hours: **Monday-Thursday 8 am-5 pm**.

- Reservations will only be taken for the following week only and in person. Teams may not reserve more than two practices per week. One individual may reserve one field for a maximum of two times per week.
- Cancellations for practice times will only be honored due to inclement weather and must be submitted within 24 hours of the cancellation. Practices cancelled by individual will not be refunded.
- Practice fields availability may be limited due to permit reservations, fields blocked for construction and field prep.

Requirements

- All teams will need to be covered by the respective leagues insurance for the amount of one million in liability insurance with the City of Las Cruces attached to the policy with an endorsement. If team is not covered, a waiver will need to be signed by all users.
- All teams are responsible for policing the area for litter and making sure that the area is clean at all times. If it is determined by the City of Las Cruces Parks and Recreation Department that deterioration of the fields or abuse is present, all practice requests will be ceased at that time.
- Teams will be responsible for monitoring and conducting themselves in a safe manner.

PARKS AND RECREATION ADVISORY BOARD AUTHORITY OVER LEAGUES/ORGANIZATIONS THAT UTILIZE CITY FIELDS AND/OR FACILITIES

Purpose: To provide guidance to local recreational youth/adult leagues or organizations that utilize City fields and/or facilities. To provide an independent, non-biased committee that has the authority to review league/organization procedures, act as an appellate body for player/coach/parent/spectator suspensions, review financial records and recommend (or require) changes to league/organization operations.

Resolution No. (12-072)

FISHING

Fishing will be allowed at Young Park Pond in accordance with New Mexico Game and Fish regulations.

SWIMMING

Swimming is allowed at Laabs Pool, East Mesa Bataan Memorial Pool, Regional Aquatic Center and ~~Frenger Pool~~ Las Cruces Natatorium. No swimming is allowed in the Young Park Pond. Splash pads and interactive fountains are not bodies of water in which swimming can be conducted. All posted rules must be followed for safety purposes.

CARNIVALS AND AMUSEMENTS

Requests for conducting Circuses, Carnivals/Amusement Parks and similar businesses must be submitted to the Community Development Department's Permitting Office. If approved, these businesses must then apply for a Park Permit if the activity is conducted at a Parks and Recreation area or facility.

ROLLER SKATING, ROLLERBLADING, SKATEBOARDING, REMOTE CONTROL TRACK, ARCHERY, REMOTE CONTROL AIRPLANES, DRONES

The City of Las Cruces may designate and restrict areas and facilities for these purposes.

GOLFING

No hitting of golf balls allowed on any City park facility as per *LCMC, Section 20-36*, with the exception of City golf programming.

MOBILE CONCESSIONS/VENDING

Any individual, group, business entity or organization engaged in the sale of food, beverage, or any other merchandise at a public park, Plaza de Las Cruces or public space within the City limits must obtain a permit from the Parks and Recreation Department. Applicant is responsible and required to meet all applicable city, state and health department laws and regulations, including acquiring all necessary permits for food and beverage preparation. All such permits must be provided to the City prior for the issuance of a permit from the Parks and Recreation Department.

I. REQUIREMENTS:

The Parks & Recreation Department reserves the right to permit if vendors are able to provide the following:

1. **BUSINESS LICENSE:** Provide a copy of the required Business license and Registration permit from the City of Las Cruces Business Registration Office.

2. **FOOD SERVICE PERMIT:** Provide a copy of the required permit(s) from the State of New Mexico Health Department.

3. **LIABILITY INSURANCE WITH ENDORSMENT:** Applicant is required to provide the City a copy of proof of liability insurance coverage in the minimum amount of one million dollars ($1,000,000) per occurrence, naming the City of Las Cruces as an additional insured with an endorsement page.

4. **FEES:** Vendor agrees to pay the City of Las Cruces $60 monthly fee. Permits will **ONLY** be issued on a quarterly basis or fraction thereof. Payment shall be made to the City of Las Cruces in full in order to receive a permit for each quarter.

5. TAXATION CERTIFICATE MUST BE ON FILE.

All concession/vendors, to include mobile vendors, must be in good standing at all times. Good standing will be defined as no complaints, regular payment of required fees, and all appropriate documentation on file. The Parks and Recreation Department staff has the right to deny concession/vending permits based on non-compliance. The City may develop a request for proposal to operate all City concession stands on park property.

SPECIAL USE PERMITS (TO INCLUDE, BUT NOT LIMITED TO, MODEL AIRPLANES/MODEL ROCKETS/METAL DETECTING), AND REMOTE CONTROL CARS

Model Airplanes/rockets, metal detecting, and remote control cars are recognized as legitimate recreation activities when they are conducted in ways that do not damage the natural and cultural resources of City of Las Cruces park facilities.

A Facility Use Permit is required to use any city park for these activities. Use of metal detectors is limited to park areas only and not in ball field areas. To obtain a Park/Facility use Permit visit the Parks and Recreation Administrative Office at 1501 E. Hadley.

INFLATABLE/PORTABLE PLAY EQUIPMENT

The City of Las Cruces allows inflatable play equipment at designated sites in Young Park, Pioneer Park, Apodaca Park, and Klein Park. Any business that operates/leases party and or event equipment, i.e. jumping balloons, dunk tanks, sporting equipment, etc., in a City park/facility is required to provide proof of general liability insurance in the amount of three million dollars ($3,000,000) per occurrence, with the City of Las Cruces named as an additional insured with an endorsement page.

The amount of the insurance shall coincide with the limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1. This proof of insurance must be forwarded to the Parks and Recreation Department for record keeping. Uninsured businesses may be held personally responsible for injury or damages caused by any uninsured or unauthorized inflatable or portable play equipment.

VEHICLES AND DRIVING IN CITY PARKS

Driving or parking vehicles on the grass or landscaping located in a City park or on City property is prohibited except during events for which a permit has been granted. Driving on park property results in damage to both turf and irrigation sprinkler systems and can result in costly repairs. Items should be hand carried from the street or parking lot to the interior of a park. This is also true for local businesses that offer tents or other large items for party rentals or other activities. In addition, no parking is allowed on the grass surrounding soccer fields and softball/baseball fields. This section does not apply to City vehicles, emergency vehicles or public utility service vehicles.

WELLNESS PROGRAM

The City of Las Cruces has expanded the current workplace Wellness Program by recognizing the value of improving the health and well-being of its employees. The program *is designed to improve employee morale, loyalty, and productivity. Employees have been* provided access to physical fitness classes, the weight room and cardio rooms, nutrition classes, diabetes checks, health fairs, sports, and golf opportunities. Staff will continue to seek ways to increase the benefits for City of Las Cruces employees and their family members.

COMMUNITY GARDENING

The City of Las Cruces offers local citizens use of public property for community gardening activities. Gardeners are encouraged to plant vegetables and other annual plants. All gardening participants must be registered annually. All current gardeners can register for one plot from January 3 until January 31. New gardeners can register for any available plots from February 1 until February 28. Beginning March 1, registered gardeners can request a second plot if available. ~~Applications deadline for gardeners will be accepted beginning February of each year.~~ Registration is accepted at the Parks and Recreation Department, 1501 E. Hadley. Garden plots will be rented on a first-come, first- served basis and for an established fee and time period. Garden sites are:

- Jardin de Esperanza – 341 E. Picacho
- Gomez Community Garden – 2250 S. Espina
- Munson Community Garden – 975 S. Mesquite (program garden)
- Sage Community Garden – 6121 Reynolds Dr.

MEMORIAL TREE AND BENCH PROGRAM

The City of Las Cruces offers a Memorial Tree and Bench Program. The Memorial Tree and Bench Program is a wonderful way for all to celebrate, honor or memorialize a special individual or group. With the purchase of a new tree or park bench, the City of Las Cruces Parks and Recreation Department will work with the donor to assure the planting or installing of a new tree or bench in a park, public space, or along a walking trail. In addition, this unique living memorial will also contribute to the beautification of public spaces for countless generations to enjoy.

WALK OF HONOR BRICK PAVERS

The City of Las Cruces offers the opportunity to purchase personalized quarry tile brick pavers to be used in the construction of a walk of honor for veterans within the City's Veterans Memorial Park on Roadrunner Parkway. Bricks may be purchased at the Parks and Recreation Department for an established fee. Bricks will be ordered quarterly (every three months).

PARK OPENING AND CLOSING HOURS

1. City parks may be open from from sunrise to sunset ~~5 am – 9 pm, March 1 to October 31 (summer hours), and 6 am – 7 pm November 1 to February 28 (winter hours)~~, except for emergencies, permitted special events and in parks where hours are posted differently from those operating under the normal operating time. *Refer to LCMC, ~~Chapter 22, Parks and Recreation, Article I. "In General", Section 22-1~~ Chapter 20, PARKS AND RECREATION ARTICLE II. RULES FOR USE OF PARKS, Section 20-28.*

2. Unidad Park and Butterfield Shooting Range hours of operation are sunrise to sunset. Note: Butterfield Shooting Range will be closed Thursday morning until 3:00 p.m. for maintenance.

3. Splash pad hours will be consistent with similar facilities.

4. Individuals shall not be allowed in any City park during closing times unless authorized by permit.

5. The City Manager has the authority to change opening and closing hours of City parks.

6. Parks and Recreation Department employees or Police employees are not restricted by the opening and closing hours when in performance of their duties.

7. For further information regarding park operations, please *refer to LCMC, ~~Chapter 22, Section 22-1, available in the City Clerk's Office.~~* Chapter 20, Section 20-28, available in the City Clerk's Office.

PET OWNER'S RESPONSIBILITIES

The City of Las Cruces requires by *LCMC*, Chapter 1, Section #7-4.a that all pet owners clean up after their pet while they visit our parks and facilities.

In addition, dog owners must have their dogs under their control and on a lead not longer than twelve (12) feet; off leash recreation is provided at the "Off Leash Dog Parks"~~,~~: ~~directly behind the Meerscheidt Recreation Center, 1600 E. Hadley St.~~

- 1600 E. Hadley (South of Meerscheidt Recreation Center)
- 3551 Bataan Memorial (North of Animal Service Center)
- 855 Amador Ave. (within Burn Lake Park)

Pet owners will be restricted from bringing their pets to athletic complexes, unless designated as a service animal.

MERCHANDISING, ADVERTISING AND SIGNS

1. Individuals, groups or organizations, while utilizing City-owned parks and/or facilities, are prohibited from the following unless authorized by the Departments in writing:

   a. Calling to the public attention an article or service for sale or hire.

   b. Posting or erecting any sign on City-owned property unless authorized by the City Sign Code.

   c. Collection of money by an individual, group, or organization from the public for services and/or merchandise where all or some of such monies will be disbursed to an entity, individual, group or organization, will only be authorized by permit. Applicable park rental fees may apply.

2. The Parks and Recreation Department has created advertising opportunities that will develop partnerships with our local business community to increase the visibility of their respective businesses and to ensure the sustainability of offering quality/affordable programs to the citizens of Las Cruces.

   a. Advertisements will be offered through personalized display opportunities at designated Parks and Recreation facilities.

b. Fees will be established as per City Council Approval.

EXCEPTIONS

There may be requests that are exceptions to this policy. These requests will be reviewed on a case-by-case basis and may require Parks and Recreation Advisory Board, City Manager, or City Council approval.

CITY FEE ~~WAIVER~~ POLICIES (as established by City Council)

1. ~~City Fee Waiver Policy~~.
2. Park Facility Fee Waiver for Military Services at Veterans Memorial Park.
3. Official City Sponsored or co-sponsored events as approved by City Council.

CITY OF LAS CRUCES
PARKS AND RECREATION PROGRAMS AND FACILITIES
~~2019/2020~~ FEES & CHARGES/FACILITY USE SCHEDULE

I. GENERAL RECREATION PROGRAMS

General Instructions:

Program	Session	FY 19/20	Fees/Charges
Fitness/Circuit Training	1 class	$2.00	$2.00
Fitness Punch Card	30 visits	$48.00	$60.00
60+ Fitness Punch Card	30 visits	$30.00	$30.00
MRC Activity Punch Card (not for rentals)	34 visits	$30.00	$30.00
Indoor Cycling	1 class	$2.00	$2.00
~~Gymnastics – Parent/Tot~~	~~8 classes~~	~~$30.00~~	~~$30.00~~
~~Gymnastics – Beginning~~	~~8 classes~~	~~$30.00~~	~~$30.00~~
~~Gymnastics – Intermediate~~	~~8 classes~~	~~$30.00~~	~~$30.00~~
~~Gymnastics – Advanced/Elite~~	~~8 classes~~	~~$45.00~~	~~$45.00~~
~~Gymnastics - Tumble/Cheer~~	~~8 classes~~	~~$45.00~~	~~$45.00~~
Adult Dance	8 classes	$40.00	$40.00
Racquetball Court Rental Pass	6 visits	$20.00	$20.00
Racquetball	1 hour/court	$ 4.00	$ 4.00
Pickleball Court Rental (MPR)	1 hour/court	$10.00	$10.00
Open Pickleball Session	Per Session		$2.00
Pickleball Net Rental (for onsite use only)	Per Net		$10.00
Racquetball Court Rental	1 hour/court	$10.00	$10.00
Racquetball/Pickle ball Racquet Rental	1 racquet	$ 1.00	$ 1.00
Teen Dance	1 admission	$3.00	$3.00
Teen Splash	1 admission	$1.00	$3.00
Water Cycle Class	1 class		$5.00
Water Fitness Class	1 class	$2.00	$2.00
Water Fitness Class Punch Card	30 visits	$48.00	$60.00
Weight Room – Meerscheidt	Daily Fee	$1.00	$1.00
Weight Room – Regional Aquatic Center	Daily Fee	$2.00	$2.00
Weight Room – Regional Aquatic Center	30 visits	$48.00	$60.00
Therapeutic Program Dance	1 admission	$2.00	$2.00
Fitness Classes/Lap Swim	1 hour	$2.00	$2.00

Shower Fee	1 each	$1.00	$1.00
Activity ID Card Reprint Fee	ALL	$5.00	$5.00
Towel Fee	1 each	$1.00	$1.00
Copy Fee	Per copy	$.50	$.50
Open Session Basketball/Volleyball/Skate	Daily Fee	$1.00	1.00
Specialty Camps	Half Day Full Day	$50.00 $100.00	$50.00 $100.00
Locker Rental	Daily	$.50	$.50
Locker Rental	Weekly	$2.50	$2.50
Locker Rental	Monthly	$10.00	$10.00
Locker Rental	Yearly	$120.00	$120.00
After School Program (Registration will be accepted based on availability~~.); a prorated fee may be assessed.)~~	Per Semester (Fall/Spring)	$400.00	$100.00
Summer Recreation Program	Per Session	$200.00	$40.00
Spring/Fall/Winter Camp	Per Session	$100.00	$20.00
Program	**Session**	**FY 19/20**	**Fees/Charges**
Camp Daily Drop-In Fee	Per Day	$20.00	$0.00
~~Pre or Post Program Fee~~	~~Per Session~~	~~$10.00~~	$0.00

~~*Staff will pursue additional program opportunities throughout the year and set fees based on Council's direction concerning rates of recovery.~~

Therapeutic Recreation Programming – Private Entities

A programming fee will be charged for Therapeutic Recreation Program administered activities held at any private entity~~. not including the building previously known as the "Life Center/Angel Care" (outside of a City building).~~ The Therapeutic Recreation programming fee will be a minimum of 25 cents per participant/care provider per activity. This fee may vary based on the activity, allowing for a wide-range of diversity in venues and opportunities for program participants. The Therapeutic Recreation Program will work with care providing agencies, care providers and participant families to set activity programming fees for more costly and expansive activities. This programming fee will provide a minimal cost recovery and help off-set direct expenses incurred for the facilitation and delivery of such activities.

Sports League Program:

Program	Session	FY 19/20	Fees/Charges
Adult Volleyball*	9 games	$250.00	$250.00
Adult Basketball*	9 games	$465.00	$465.00
Camp Daily Drop-in Fee		$ 20.00	$20.00
Racquetball League	12 games	$ 12.00	$12.00
Basketball Coaches Certif.	1 year	$30.00	$30.00
Officiating Clinic	1 year	$30.00	$30.00
Youth Sports Leagues (City) - with Jersey** Youth Sports Leagues (City)- without Jersey**	8 games	$45.00/child $35.00/child	$50.00/child $40.00/child
Sports Tournament – Adult (City)* Sports Tournament – Youth (City)**		$200.00 $150.00	$200.00 $150.00

Non-Traditional Sports Tournaments – Adult* Non-Traditional Sports Tournaments – Youth**		$75-200.00 $50-150.00	$75-$200 $50-150.00
Cheer – with Jersey Cheer – without Jersey	8 classes	New $45.00 Returning $35	~~New~~ $50.00 ~~Returning~~ $40.00
Coach Rental Card			$5.00 per player

* Adult Leagues run at 100 percent recovery of direct cost.
**Youth Leagues run at 85 percent recovery of direct cost.

Pilot Program Process:
The Parks and Recreation Department will have the authority to research and pursue new and innovative ~~revenue sources~~ services by utilizing new and creative programming or single event activities for all ages and abilities. Staff will set fees based on Council's direction concerning rates of recovery.

Special Events:

Program	Session	FY 19/20	Fees/Charges
Youth Running Events/Late Fee	1 race	$15.00/$25.00	$15.00/$25.00
Adult Running Events/Late Fee	1 race	$20.00/$25.00	$20.00/$25.00
Running Event Series	3 5K races	$30.00	$30.00
Duathlon/Duathlon Late Fee	1 race	$30.00/$35.00	$30.00/$35.00

II. **SWIMMING** (In the event of pool closures and capacity, open recreation and swim time will be split into two equal sessions. All swimming pools will have split sessions during summer months (Memorial Weekend thru Labor Day).

Community Education Classes:

Program	Session	FY 19/20	Fees/Charges
First Aid	4 hrs.	$50.00	$55.00
CPR-PR		$70.00	$75.00
Recertification (CPR-PR or First Aid)	One time	$45.00	$50.00
Recertification (Lifeguard Skills)	One time	$85.00	$90.00
Home Swimming Pool/Spa Water Safety	1.5 hours	$25.00	$30.00
Open Water Safety	1.5 hours	$25.00	$30.00
Home Swimming/Water Safety/Open Water	3 hours	$45.00	$50.00

- ***Fees subject to current Red Cross pricing***

Daily Fees (Frenger/East Mesa/Laabs):

	Age Group	FY 19/20	Fees/Charges
Infant	0-2 years	Free	Free
Youth	3-17years	$2.00	$2.00
Adult	18-59 years	$2.00	~~$~~2.00
Senior	60+ years	$1.00	$1.00

Child Watch Fee (Parent/Guardian)	N/A	$1.00	~~$~~1.00

~~30 Punch Admission Card (Frenger/East Mesa/Laabs):~~

	~~Age Group~~	~~FY 19/20~~	Fees/Charges
~~Infant~~	~~0-2 years~~	~~Free~~	~~Free~~
~~Youth~~	~~3-17 years~~	~~$50.00/30 punch~~	~~$50.00/30 punch~~
~~Adult~~	~~18-59 years~~	~~$50.00/30 punch~~	~~$50.00/30 punch~~

~~Rentals: Frenger/Laabs/East Mesa (Swim Meet/4 hours based)~~

~~Amount of Group~~	~~FY 19/20~~	~~Guards on Duty~~
~~Swim Meet (Entire Pool)~~	~~$200 / hr~~	~~4 Guards~~

Las Cruces Natatorium Meet & Practice Fees & Amenities

	Fees/Charges		
Amenity/Fee	**Non-Profit**	**Commercial**	**Non-Residential**
25 yrd/meter lane for practice	**$ 11.00**	**$ 50.00**	**$ 17.00**
50 meter lane for practice	**$ 13.00**	**$50.00**	**$ 26.00**
Swim Meets per hour (scoreboard included)	**$175.00**	**$700.00**	**$220.00**
Starting System per meet	**$ 25.00**	**$100.00**	**$ 30.00**
Dolphin Timers each per meet	**$ 15.00**	**$ 60.00**	**$ 20.00**
Operation Fee for Timing System	**$ 30.00 (per operator)**	**$ 30.00 (per operator)**	**$ 30.00 (per operator)**
Swim Meet Spectator Fee	**$ 3.00**	**$ 3.00**	**$ 3.00**
Touch Pads Each	**$ 15.00**	**$ 60.00**	**$ 20.00**
Swim Meets – Timing System per meet	**$500.00**	**$500.00**	**$500.00**
School Swim Teams per lane	**$ 11.00**	**$ 11.00**	**$ 11.00**
Staff Fee (Salary/Labor)	**$18.00 (2 Lifeguards Reg.) $ 20.00 (1 H. Guard) $ 16.00 Attendee (2)**	**$ 18.00 (2 Lifeguards Reg.) $ 20.00 (1 H. Guard) $16.00 Attendee (2)**	**$ 18.00 (2 Lifeguards Reg.) $20.00 (1 H. Guard) $16.00 Attendee (2)**

Rentals will be based on overall demand (public use) and safety window of opportunity (amount of daylight). *Swim Team Rentals as per agreement.*

Holidays/Maintenance Closures:

Swimming pools may be closed on City observed holidays with the exception of Memorial Day, Fourth of July and Labor Day.

LAS CRUCES REGIONAL AQUATIC CENTER

Special Events:

Program	Session	FY 19/20	Fees/Charges
~~Children's Triathlon and Races~~	~~1 race~~	~~$15.00~~	
Aquatic Special Event	1 event		$5.00 per participant

Daily Fees:

	Age Group	FY 19/20	Fees/Charges
Infant	0-2 years	Free	Free
Youth	3-17 years	$3.00	$3.00
Adult	18-59 years	$4.00	$4.00
Senior	60+ years	$3.00	$3.00
Child Watch Fee (Parent/Guardian 18+)	N/A	$1.00	$1.00

~~30 Punch Admission Card / Open Swim~~

	~~Age Group~~	~~FY 19/20~~
~~Infant~~	~~0-2 years~~	~~Free~~
~~Youth*~~	~~3-17 years~~	~~$80.00/30 punch~~
~~Adult*~~	~~18-59 years~~	~~$110.00/30 punch~~
~~Senior*~~	~~60+ years~~	~~$80.00/30 punch~~

Gift certificates are available for purchase at all swimming pool facilities.

Swimming Lessons:

Program	Levels	FY 19/20	Fees/Charges
~~Private Lessons~~	~~All Ages~~	~~$35.00/hour~~	~~$35.00/hour~~
Infant/Toddler/Preschool/ Level 1 & 2	Beginner	$45.00/8 classes	$45.00/8 classes
	Levels 3 &4 (Intermediate)	$60.00/8 classes	$60.00/8 classes
	Levels 5, 6 & 7(Advanced)	$60.00/8 classes	$60.00/8 classes
Lifeguarding (includes books or pocket mask		$200.00/30 hours	$200.00/30 hours
Lifeguarding Instructor (LGI) Does not include books		$195.00/26 hours	$200.00/26 hours
Water Safety Instructor (WSI) Minimum age 16 years. Does not include books		$190.00/15 hours	$200.00/15 hours
Be A Guard WSIA & Guard Start (Working at Pools) Minimum age 15 years. Must have passed Level 3		$95.00/15 hours	$95.00/15 hours

Lifeguard Training fee is refundable upon successful completion of certification process and

upon hire with the City of Las Cruces (completion of 90 days of service).

Rentals: (Fitness Room) – Week day operations only.

Amount of Group	~~Guards on Duty~~	FY 19/20	Fees/Charges
~~Plus Sound System~~		~~$20.00/hr~~	
Fitness Room			$20.00/hr

Rentals: (Party Area)

Area	FY 19/20	Fees/Charges
Party Room/Wet *	$100.00/3 ½ hours	$100.00/3 hours
Private Use-190 Maximum Capacity, Includes Guards/fees, Friday, Saturday, Sunday only	$400/2 hrs	$400/2 hrs

III. FACILITIES RENTAL

Community Gardens *

	FY 19/20	Fees/Charges
Jardin de Esperanza	$15.00/plot	$15.00/plot
Gomez Community Garden	$15.00/plot	$15.00/plot
Sage Community Garden	$15.00/plot	$15.00/plot

*Munson Garden (program)

Meerscheidt, Frank O'Brien Papen Center, East Mesa, A. Fielder Memorial Safe Haven, and WIA Building (weekend rates only and/or after normal business hours):

Rental Area	FY 19/20	Fees/Charges
WIA Building	$40.00/hr	$40.00/hr
East Mesa Multi-Purpose Room Team Rental		$10.00/hr
Multi-Purpose Room/or Dining Room	$40.00/hr	$40.00/hr
Class Room	$30.00/hr	$30.00/hr
Auditorium (Frank O'Brien Papen Community Center only)	$60.00/hr	$60.00/hr
Gym Rentals (Meerscheidt Rec Center only)	$40.00/hr	$40.00/hr
~~Gymnastic Rental Package (East Mesa) instructor & equipment~~	~~$50.00/hr plus room rental~~	
Sand Volleyball Courts includes use of commercial net system – setup & teardown (Meerscheidt Rec Center Only)	$40.00 per 2hr time period per court	$40.00 per 2hr time period per court
Sand Volleyball Courts (per day) includes non-commercial net only (Meerscheidt Rec Center Only)	$40.00/day per court	$40.00/day per court
Meerscheidt Facility (Entire building-Indoor)		$100.00/hour

Frank O'Brien Papen (weekday operations only):

Rental Area	FY 19/20	Fees/Charges

Class Room	$15.00/hr	$15.00/hr
Dining Room (Kitchen not included)	$25.00hr	$30.00/hr
~~Any additional room associated with Multi-Purpose Rental~~	~~$10.00/hr~~	
Auditorium (Frank O'Brien Papen Community Center only)	$30.00/hr	$40.00/hr
Game Room Rental – includes use of equipment	$40.00/hr	40.00/hr

Meerscheidt Recreation Center (weekday operations only and during normal business hours):

Rental Area	FY 19/20	Fees/Charges
Multi-Purpose Room Team Rental	$10.00/hr	$10.00/hr
~~City League~~ Team Practice/Rental Card	$50.00	$50.00/6 sessions $70.00/8 sessions
Gymnasium – Half Court	$10.00/hr	$10.00/hr
Gymnasium – Full Court	$20.00/hr	$20.00/hr
Sand Volleyball Courts – includes non-commercial net only	$10.00 per court	$10.00 per court

City approved professional security guard services by the renter at a ratio of one guard for every 50 guests (licensed/bonded).

In an effort to reduce staff overtime costs, no rentals will be offered on City Holidays.

The primary focus for Meerscheidt Recreation Center will be sports related activities and programs; and Frank O'Brien Papen Center will be recreational programming, activities and private rentals. East Mesa & A. Fielder Memorial Safe Haven will primarily be for youth programming.

IV. FUNDRAISING RENTALS

a. Nonprofit organizations that are holding an event / tournament that are not Co-Sponsored by the City of Las Cruces will incur fees.
b. Non-profit / for profit fundraising exclusive use events of an entire park may be assessed a flat fee rate of $1,250.
c. Car shows with exclusive use of park lawn areas will be assessed a flat fee rate of $500 in addition to the rental fees assessed.
d. All rentals requesting exclusive use of park areas will be assessed a fee of $50 per four hours per section of the park requested. An additional $50 fee will be assessed for electrical service and water service. Additional electric panels will need to be coordinated and approved through the City's Facility section. A separate fee will be assessed.

V. MERCHANDISE

Merchandise	Amount Requested	FY 19/20	Fees/Charges

Program/Event T-Shirts Short Sleeve Long Sleeve T-Shirts Sweatshirts	 Each Each Each	 $10.00 $15.00 $20.00	 $15.00 $20.00 $25.00
Swim Pant Fee/Youth	Each	$1.00	$1.00
Goggles	Each	$10.00	$10.00
Towels	Each	$10.00	$10.00
Earplugs	Each	$3.00	$3.00
Nose Clips	Each	$3.00	$3.00
Head Phones	Each	$3.00	$3.00
Pickleball Ball	Each		$1.00
Swim Cap (Latex)	Each	$3.00	$3.00
Swim Cap (Silicone)	Each	$5.00	$5.00
Ziggy Plush	Each		$10.00

VI. MEMORIAL TREES, BENCHES, WALK OF HONOR BRICKS

Item	Fees/Charges
Tree	$500.00 per tree
Bench with Plaque	Range of $2,200.00 – $2,500.00
Bench without Plaque	$1,800.00
Walk of Honor Memorial Brick	$ 35.00 per brick

VII. PARK PERMIT FEE

Facility Requests	Number of Hours/Day Fee	FY 19/20	Fees/Charges
Park area/section	4	$50.00	$50.00
Trail area			$2.00 per/participant
Parking Lot Fees – half lot	4		$100.00
Parking Lot Fees – entire lot All parking lot rentals will require a Traffic Control Plan (TCP) for the Event from Public Works	4		$200.00

VIII. SPORTS LEAGUES (PER FIELD/COURT/GAME FEE)

Sport/Age Group	FY 19/20	Fees/Charges	
		Resident	Non-Resident
Recreational Youth Baseball/Softball/Soccer/Football (Local – 17 years and under)	$0	$0	$0
Select Youth Baseball/Softball/Soccer/Football (Non-Local* – 17 years and under)	$10.00	$10.00	$20.00
Adult Baseball/Softball	$25.00	$25.00	$50.00

Adult Football/Soccer	$20.00	$20.00	$40.00
Senior Softball/Baseball (Local)	$12.50	$12.50	$25.00
Adult Tournaments (up to 12 hours)			
4 Field Complex	$600.00	$600.00	$1,200.00
3 Field Complex	$450.00	$450.00	$900.00
Single fields	$150.00	$150.00	$300.00
High Noon #1 – 5~~, #11 - 12~~	$500.00	$500.00	$1,000.00
Burn Lake	$300.00	$300.00	$600.00
Provencio Van Dame	$300.00	$300.00	$600.00
Soldados	$200.00	$200.00	$400.00
Apodaca Baseball	$200.00	$200.00	$400.00
Youth Tournaments (up to 12 hours)			
4 Field Complex	$200.00	$200.00	$400.00
3 Field Complex	$150.00	$150.00	$300.00
Single fields	$50.00	$50.00	$100.00
High Noon #1 - 5~~, #11 - 12~~	$250.00	$250.00	$500.00
Burn Lake	$150.00	$150.00	$300.00
Provencio Van Dame	$150.00	$150.00	$300.00
Soldados	$100.00	$100.00	$200.00
Apodaca Baseball	$100.00	$100.00	$200.00
Field Service Fee Per Game/Per Field (Complete Service)	$ 80.00	$ 80.00	$160.00
Field Service Fee Per Field/Per Game (Touch Up)	$ 24.00	$ 24.00	$48.00
Service Fees for: Pedestrian Barricades, Temporary Fences, or Goal Transportation		$250.00 each per set up	$500.00 each per set up
Practice Field Fees: Practice space can be reserved for the following fields as available: Paz, Maag, Apodaca Baseball, Apodaca Softball, Burn Lake Provencio/Van Dame.	$10.00 per hr (max 2 hrs per day, max 2 days per week	$10.00 per hr (max 2 hrs per day, max 2 days per week	$20.00 per hr (max 2 hrs per day, max 2 days per week
Tennis Camp, Pickleball, Handball Court Fee (Youth)	$1.00 per court/per 4 hrs	$1.00 per court/per 4 hrs	$2.00 per court/per 4 hrs
Tennis Camp, Pickleball, Handball Court Fee (Adult)	$5.00 per court/per 4 hrs	$5.00 per court/per 4 hrs	$10.00 per court/per 4 hrs
Tennis, Pickleball, Handball Tournament Fee (Youth) all courts	$25.00 per 4 hrs	$25.00 per 4 hrs	$50.00 per 4 hrs
Tennis, Pickleball, Handball Tournament Fee (Adult) all courts	$50.00 per 4 hrs	$50.00 per 4 hrs	$100.00 Per 4 hrs

~~*Non-local = Non-City Resident~~

NOTE: Facility Change Fee: Set up $1,000.00, Tear Down $1,000.00

~~Sport/Age Group~~Non-Traditional Sports/Groups	FY 19/20	Fees/Charges	
		Resident	Non-Resident
Camping Fees: RV/Trailer Tents	 $10.00 per night $5.00 per night	 $10.00 per night $5.00 per night	 $20.00 per night $10.00 per night
Yearly Fee for League/Season BMX Horseshoe Courts (Entire) Horseshoe Courts (Single Court) Skate Park	 $1,000.00 $100.00 $5.00/4 hr Max $50.00/4 hr Max	 $1,000.00 $100.00 per 4 hrs $5.00~~/4 hr Max~~ per 4 hrs ~~$50~~100.00~~/4 hr Max~~ per 4 hrs	 $2,000.00 $200.00 per 4 hrs $10.00 per 4 hrs $200.00 per 4 hrs

IX. DOWNTOWN AREA FEES

AREA	Duration	Fee	Duration	Fee
North Section MSD / free general public	4 hours	$ 0	12 hours	$ 0
North Section MSD / rental	4 hours	$50	12 hours	$150
Middle Section MSD / free general public	4 hours	$ 0	12 hours	$ 0
Middle Section MSD / rental	4 hours	$50	12 hours	$150
South Section MSD / free general public	4 hours	$ 0	12 hours	$ 0
South Section MSD / rental	4 hours	$50	12 hours	$150
Parking lot/space Concession/Vendor	Month	$~~50~~60	~~Month~~Quarter	$ ~~50~~150
Parking lot reservation	4 hours	$50	12 hours	$150
La Placita/rental	4 hours	$50	12 hours	$150

X. MOBILE CONCESSION/VENDING FEES

Mobile Concessions			FY 19/20	Fees/Charges
Parks and Recreational Facility Parking Lots			$150. Qtr. $60 Monthly	$150 Qtr. $60 Monthly

Service is defined as the ability to access electricity. (Not all facilities have this capability).

~~(Fees and Charges for FY 18/19 & 19/20)~~

3033; Council Bill 23-027

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	May 1, 2023	**Adopted:**	June 5, 2023
Drafter:	Erika Jaquez	**Department:**	Financial Services
Program:	Treasury	**Line of Business:**	Revenue Management

Title: **AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SUBORDINATE LIEN LOAN AGREEMENT AND NOTE BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO AND THE NEW MEXICO ENVIRONMENT DEPARTMENT IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $16,916,853 PLUS ACCRUED INTEREST, AND LOAN SUBSIDY GRANT FUNDS IN THE AMOUNT OF $227,240, TO EXPAND AND IMPROVE THE WASTEWATER COMPONENT OF THE CITY'S JOINT UTILITY SYSTEM; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES OF THE JOINT UTILITY SYSTEM; AND PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND NOTE AND SECURITY THEREFORE.**

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

PURPOSE(S) OF ACTION:

Authorize issuance of debt.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On November 10, 2022, the LCU Board passed Resolution 22-23-LCU009 authorizing the submission of a completed application for financial assistance to the NMED. Utilities staff recognized the need for funding to address critical wastewater capital improvements. The proposed action will allow the Utilities Department to finance wastewater capital improvements which have been delayed due to insufficient funding.

Approval of this Ordinance authorizes the execution and delivery of a loan agreement between the City and NMED. The City will borrow up to $1,916,853 plus accrued interest and loan subsidy grant funds in the amount of $227,240 to finance wastewater system improvements. The revenue pledged to finance the wastewater system improvements come from a subordinate lien on the net revenues of the Joint Utility System.

Due to timing of the bond approval scheduling with NMED, at the first reading of this proposed Ordinance, only a sample ordinance (preliminary), loan agreement, promissory note and other related documents will be attaches as Attachments as needed. After the first reading, the final ordinance is attached. Clean and redlined copies of the final documents will be provided in the agenda packets for the meeting at which final adoption is scheduled. The final documents and attachments are listed below.

SUPPORT INFORMATION:

Exhibit "A" Loan Agreement CSWRF 128
Exhibit "B" Promissory Note CSWRF 128

Attachment "A" Redlined Promissory Note CSWRF 128
Attachment "B" Redlined Promissory Note CSWRF 128
Attachment "C" Attorney Opinion CSWRF 128
Attachment "D" Federal Requirements CSWRF 128

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 NMED and proceed with wastewater system improvements.
2. Vote "No"; this will not approve the Ordinance and will not allow the City to accept the loan from NMED and use this funding mechanism to finance wastewater system improvements.
3. Vote to "Amend"; this could delay the execution and delivery of the loan from NMED and the wastewater system improvements.
4. Vote to "Table"; this could delay the financing opportunity and increase the projected cost of the wastewater system improvements.

REFERENCE INFORMATION:
Resolution 22-23-LCU009

ORDINANCE 3033; COUNCIL BILL 23-027

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SUBORDINATE LIEN LOAN AGREEMENT AND NOTE BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO AND THE NEW MEXICO ENVIRONMENT DEPARTMENT IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $16,916,853 PLUS ACCRUED INTEREST, AND LOAN SUBSIDY GRANT FUNDS IN THE AMOUNT OF $227,240, TO EXPAND AND IMPROVE THE WASTEWATER COMPONENT OF THE CITY'S JOINT UTILITY SYSTEM; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES OF THE JOINT UTILITY SYSTEM; AND PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND NOTE AND SECURITY THEREFORE.

The City Council is informed that:

WHEREAS, unless otherwise defined in Article I or elsewhere in this supplemental ordinance (the "Ordinance") or unless the context requires otherwise, capitalized terms in the following preambles have the same meanings assigned to such terms in Article I of Ordinance No. 1593, Council Bill 97-035 adopted by the City Council (the "Council") on December 18, 1996, as amended by Ordinance No. 2750, Council Bill No. 15-031 adopted by the Council on April 8, 2015 and Ordinance No. 2837, Council Bill No. 18-013 adopted by the Council on January 16, 2018 (collectively the "Master Ordinance"); and

WHEREAS, the Master Ordinance provides for the adoption of subsequent ordinances to authorize the issuance and sale of one or more series of System Bonds as well as the approval of specific terms and documents relating to the issuance and sale of System Bonds; and

WHEREAS, this Ordinance is adopted pursuant to the Master Ordinance to authorize the issuance of the Bonds in the form of a loan agreement (the "Loan Agreement") and Promissory Note (the "Note") delivered to the New Mexico Environment Department ("NMED") payable from Net Revenues of the System and constituting a lien thereon subordinate to the lien of outstanding Parity Bonds, and on parity with the lien of outstanding Subordinate Bonds, for the purpose of acquiring, extending, enlarging, bettering, repairing or otherwise improving the wastewater component of the System, all to the benefit of the City will provide for the public health, peace and safety of the City and its citizens; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2721, passed and adopted by the Council on July 23, 2014, the City issued its City of Las Cruces, New Mexico Joint Utility Refunding Revenue Bonds, Series 2014A (the "Series 2014A Bonds") in the original aggregate principal amount of $7,125,000 of which $1,480,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2721, passed and adopted by the Council on July 23, 2014, the City issued its City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds, Series 2014B (the "Series 2014B Bonds") in the original aggregate principal amount of $3,425,000 of which $2,160,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2750, passed and adopted by the Council on April 8, 2015, the City issued its City of Las Cruces, New Mexico Joint Utility Refunding and Improvement Revenue Bonds, Series 2015 (the "Series 2015 Bonds") in the original aggregate principal amount of $16,895,000 of which $7,515,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance, Ordinance No. 2766, passed and adopted by the Council on November 2, 2015, and Resolution No. 16-111 adopted on November 19, 2015, the City issued its City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds, Series 2015A (the "Series 2015A Bonds")

in the original aggregate principal amount of $17,065,000 of which $12,250,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2789 adopted on September 15, 2016, the City issued its City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds, Series 2016 (the "Series 2016 Bonds") in the original aggregate principal amount of $16,375,000, of which $12,090,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2825 adopted on October 16, 2017, the City issued its City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds, Series 2017 (the "Series 2017 Bonds") in the original aggregate principal amount of $5,135,000, of which $3,890,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2837 adopted on January 16, 2018, the City issued its City of Las Cruces, New Mexico Subordinate Lien Joint Utility System Improvement Revenue Bonds, Series 2018 (the "Series 2018 Bonds") in the original aggregate principal amount of $22,180,000, of which $19,920,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2909 adopted on February 3, 2020, the City issued its City of Las Cruces, New Mexico Joint Utility System Improvement and Refunding Revenue Bonds, Series 2020 (the "Series 2020 Bonds") in the original aggregate principal amount of $12,825,000, of which $7,640,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2926 adopted on May 18, 2020, the City issued its City of Las Cruces, New Mexico Joint Utility System Improvement Revenue Bonds, Series 2020A (the "Series 2020A Bonds") in the original aggregate principal amount of $11,240,000, of which $10,185,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, pursuant to the Master Ordinance and Ordinance No. 2927 adopted on May 18, 2020, the City issued its City of Las Cruces, New Mexico Subordinate Lien Joint Utility System Improvement Revenue Bonds, Series 2020B (the "Series 2020B Bonds") in the original aggregate principal amount of $7,985,000, of which $7,765,000 will remain Outstanding after payment of principal coming due on June 1, 2023 is made; and

WHEREAS, other than the Series 2014A Bonds, the Series 2014B Bonds, the Series 2015 Bonds, the Series 2015A Bonds, the Series 2016 Bonds, the Series 2017 Bonds, the Series 2018 Bonds, the Series 2020 Bonds, the Series 2020A Bonds, and the Series 2020B Bonds, the Net Revenues of the System are not pledged to the payment of any bonds or other obligations which are presently Outstanding and unpaid; and

WHEREAS, the City Council expects to execute and deliver the Loan Agreement and Note to the NMED, and to authorize to the Mayor, or in the absence of the Mayor, another Authorized Officer to execute and deliver the both initial and final Loan Agreement and Note to the NMED, provided that the final terms set forth in the initial and final Loan Agreement and Note be within the parameters set forth in this Ordinance; and

WHEREAS, if determined to be advisable by City Manager, in consultation with the Municipal Advisor and Bond Counsel to the City, the City may obtain a reserve account insurance policy in connection with the Loan Agreement, the specific terms, conditions and features of which shall be included in a reimbursement agreement and other documents and instruments prescribed by the provider of the reserve account insurance policy; and

WHEREAS, the proposed forms of this Bond Ordinance, the Loan Agreement and Note have been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council has determined and hereby determines that the Project, as described in the NMED-approved Project Description Form on file with NMED and in Section 1 hereof as the "Project", may be completed and financed by execution and delivery of the Loan Agreement and Note, and that it is in the best

interest of the City and its residents that the Loan Agreement and Note be executed and delivered and that the financing of the Project take place thereby; and

WHEREAS, it is in the best interests of the City to authorize, execute and deliver the Loan Agreement and Note within the parameters, terms and conditions as set forth in this Ordinance; and

WHEREAS, all required authorizations, consents and approvals of each governmental body, agency or authority in connection with the authorization, execution and delivery of the Bonds which are to have been obtained prior to the date on which this Ordinance is adopted, or which will be required to be obtained prior to the date of issuance of the Bonds, have or will have been obtained by such dates.

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

ARTICLE I

DEFINITIONS

As used in this Ordinance, the following terms have the meanings specified, unless the context clearly requires otherwise. Other capitalized terms used in this Ordinance, which are not defined in this Article or in this Ordinance, have the same meanings assigned to such terms in Article I of the Master Ordinance, unless the context clearly requires otherwise.

"Act" means the general laws of the State, including the municipal revenue bond statutes, Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, enactments of the governing Body of the City relating to the Note and the Loan Agreement made by resolution or ordinance, including this Ordinance; and the powers of the City as a public body under authority given by the Constitution and Statutes of the State.

"Annual Audit" or "Single Audit" means financial statements of the City as of the end of each Fiscal Year, audited by an Independent Accountant, consistent with the federal Single Audit Act and the State Auditor's rules.

"Authorized Officer" means the Mayor, City Manager, or other officer or employee of the City as designated by the City's Resolution Number 22-23-LCU009 adopted by the Governing Body of the City, as amended.

"Bond Ordinance" means, collectively, the Master Ordinance and this Ordinance.

"Borrower" or "City" means the City of Las Cruces, New Mexico.

"Closing Date" means the date on which the City executes and delivers the Loan Agreement and Note to NMED.

"Costs of Issuance" means all costs relating to the execution and delivery of the Loan Agreement and the Note, without limitation, costs of advertising and publication, costs of preparing the Loan Agreement and Note, legal fees, financial advisor fees, expenses and applicable gross receipts taxes, and other reasonable and necessary fees and costs related to the execution and delivery of the Loan Agreement and Note.

"EPA" means the United States Environmental Protection Agency.

"Fiscal Year" means the twelve-month period commencing on the first day of July of each year and ending on the last day of June of the succeeding year, or any other twelve-month period which the Borrower hereafter may establish as the fiscal year or the System.

"Funds" means the Loan and Loan Subsidy Grant funds.

"Governing Body" means the City Council of the City.

"Gross Revenues" has the meaning assigned to that term in the Master Ordinance, to wit: all income and revenues directly or indirectly derived by the City from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the City, or any municipal corporation or agency succeeding to the rights of the City, from the System and from the sale and use of water, sanitary sewer and natural gas services or facilities, or any other service, commodity or facility or any combination thereof furnished to the inhabitants in the Service Area. Such term also includes:

(a)all income derived from the investment of any money in the Acquisition Fund, Income Fund, Debt Service Fund, Reserve Fund and Rate Stabilization Fund and from surplus Net Revenues;

(b)money released from the Rebate Fund to the City;

(c)money released from the Rate Stabilization Fund to the extent that the amount released is used to pay Operation and Maintenance Expenses or Debt Service Requirements on System Bonds in the year released; provided that withdrawals from the Rate Stabilization Fund shall not be included in Gross Revenues for the purposes of the Rate Covenant in any two consecutive calendar years;

(d)property insurance proceeds which are not necessary to restore or replace the property lost or damaged and the proceeds of the sale or other disposition of any part of the System; and

(e)such other amounts that may be designated as Gross Revenues in a Supplemental Ordinance.

Gross Revenues do not include:

(a)any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefor or other capital contributions from any source which are restricted as to use;

(b)gross receipts taxes, other taxes and/or fees collected by the City and remitted to other governmental agencies; and

(c)condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

"Loan" means the lending of funds by NMED pursuant to the Loan Agreement.

"Loan Agreement" means, together, the initial loan agreement between the Borrower and the NMED, pursuant to which the Funds will be loaned to the Borrower to construct the Project and pay eligible costs relating thereto; and the final loan agreement which shall state the final amount the NMED loaned to the Borrower, which shall be executed upon completion of the Project and dated on the date of execution.

"Loan and Grant Subsidy" means a sub-grant of funds to the Borrower from a one-time federal grant of funds to the NMED by EPA, for the purpose of subsidizing the amount loaned to the Borrower under the Loan Agreement and Note.

"Net Effective Interest Rate" means the interest rate based on the actual price paid to the City for the Bonds, calculated to maturity according to standard tables of bond values, as provided by Section 6-14-2(A) NMSA 1978.

"Net Revenues" or "Net Revenues of the System" has the meaning assigned to that term in the Master Ordinance, to wit: Gross Revenues minus Operation and Maintenance Expenses.

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

"Note" means the interim and final promissory notes executed and delivered by the Borrower to the NMED evidencing the obligation of the Borrower to the NMED incurred pursuant to this Ordinance and Loan Agreement.

"Operation and Maintenance Expenses" shall have the meaning assigned to that term in the Master Ordinance, to wit: all reasonable and necessary current expenses of the System, in any particular Fiscal Year

or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a)legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the System;

(b)insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;

(c)premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay Debt Service Requirements on System Bonds) for Credit Facilities;

(d)expenses other than Expenses paid from the proceeds of System Bonds;

(e)the costs of audits of the books and accounts of the System;

(f)amounts required to be deposited in the Rebate Fund;

(g)salaries, administrative expenses, labor costs, surety bonds and the cost of water, natural gas, materials and supplies used for or in connection with the current operation of the System; and

(h)any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the City's general fund, liabilities incurred by the City as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Ordinance" means this Ordinance as amended or supplemented from time to time.

"Parity Bonds" or "Parity Obligations" means revenue Bonds and other bonds or other obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues on parity with the bonds or obligations as described in this Ordinance.

"Pledged Revenues" means Net Revenues of the System.

"Project" means Wastewater system improvements to including, but not limited to, upgrades to the Jacob Hands Wastewater Treatment Facility and the East Mesa Waste Reclamation along with extending the sewer collection system, as may be modified by the NMED approved Project Description listed on the Project Description Form on file with NMED.

"Project Completion Date" means the date that operations of the completed works are initiated or capable of being initiated, whichever is earlier; which shall also apply to individual phases or segments.

"Related Documents" has the meaning assigned to that term in the Master Ordinance, to wit: the Fiscal Agreements, Credit Facilities, disclosure documents, bond purchase agreements and such other agreements as may be required for one or more series of System Bonds.

"Regulations" means regulations promulgated by the Water Quality Control Commission at 20.7.5 NMAC and New Mexico Environment Department at 20.7.6 – 20.7.7 NMAC.

"Series 2014 Bonds" means, collectively, the City of Las Cruces, New Mexico Joint Utility Refunding Revenue Bonds, Series 2014A and the City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds, Series 2014B authorized pursuant to the Master Ordinance and City Ordinance No. 2721.

"Series 2015 Bonds" means the City of Las Cruces, New Mexico Joint Utility Refunding and Improvement Revenue Bonds, Series 2015 authorized pursuant to the Master Ordinance and City Ordinance No. 2750.

"Series 2015A Bonds" means the City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds, Series 2015A authorized pursuant to the Master Ordinance and City Ordinance No. 2766, as supplemented by Resolution No. 16-111.

"Series 2016 Bonds" means the City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds, Series 2016 authorized pursuant to the Master Ordinance and City Ordinance No. 2789.

"Series 2017 Bonds" means the City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds, Series 2017 authorized pursuant to the Master Ordinance and City Ordinance No. 2825.

"Series 2018 Bonds" means the City of Las Cruces, New Mexico Subordinate Lien Joint Utility System Improvement Revenue Bonds, Series 2018 authorized pursuant to the Master Ordinance and City Ordinance No. 2837.

"Series 2020 Bonds" means the City of Las Cruces, New Mexico Joint Utility System Improvement and Refunding Revenue Bonds, Series 2020 authorized pursuant to the Master Ordinance and City Ordinance No. 2909.

"Series 2020A Bonds" means the City of Las Cruces, New Mexico Joint Utility System Improvement Revenue Bonds, Series 2020A authorized pursuant to the Master Ordinance and this Ordinance No. 2926.

""Series 2020B Bonds" means the City of Las Cruces, New Mexico Subordinate Lien Joint Utility System Improvement Revenue Bonds, Series 2020B authorized pursuant to the Master Ordinance and Ordinance No. 2927.

"Series 2023 CWSRF Acquisition Account" means the Series 2023 Improvement Project acquisition account created and maintained under Section 5.04 herein.

"Series 2023 CWSRF Debt Service Account" means the Debt Service Account for the Loan Agreement and Note created and maintained under Section 5.02 herein.

"Series 2023 CWSRF Paying Agent" means the City Treasurer, or its successor, as Paying Agent with respect to the Loan Agreement and Note.

"Subordinate Bonds" or "Subordinate Obligations" means obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues on parity with the lien of the Loan Agreement and Note as described in this Ordinance.

"System" has the meaning assigned in the Master Ordinance, to wit: the municipally owned public utility designated as the City's joint water, sanitary sewer and natural gas utility system consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the joint utility system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the City designated by the Council as part of the joint utility system, whether situated within or without the limits of the City.

"System Bonds" has the meaning assigned to that term in the Master Ordinance, to wit: Parity Bonds, Subordinate Obligations and other similar obligations payable solely or primarily from Net Revenues which may from time to time be issued pursuant to the Master Ordinance. The Loan Agreement and Note constitute System Bonds.

"Wastewater Facility Construction Loan Act" means the Wastewater Facility Contruction Loan Act, Section 74-6A-1 to 74-6A-15 NMSA 1978, as amended.

ARTICLE II

RATIFICATION

All action heretofore taken, not inconsistent with the provisions of this Ordinance, by the Council and the officers of the City directed toward the execution and delivery of the Loan Agreement and Note for the purpose of financing the Project be, and the same hereby is, ratified, approved and confirmed, including without limiting the generality of the foregoing, the adoption of the Master Ordinance, and the delivery of the Loan Agreement and Note to the NMED.

ARTICLE III

FINDINGS AND DECLARATIONS

The Council declares that it has considered all relevant information and data and makes the following findings and declarations:

A.The execution and delivery of the Loan Agreement and Note pursuant to the home rule powers of the City granted by the City Charter, the Bond Ordinance, the Act, the Wastewater Facility Contruction Loan Act, and Sections 3-31-1 to 3-31-12 NMSA 1978 is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City and will result in savings of finance costs to the City.

B.The money available for the Project from all sources other than the Loan Agreement is not sufficient to pay when due the cost of the Project.

C. The Project is and will be part of the System.

D.The Pledged Revenues may be lawfully pledged to secure the payment of amounts due under the Loan Agreement and Note.

E.The Loan Agreement and Note are hereby authorized by an affirmative vote of three-fourths of all the members of the Council.

F.The Loan Agreement and Note are not general obligations of the City, but are special limited obligations payable only from the Net Revenues provided in the Master Ordinance and this Ordinance with a lien thereon on parity with the lien of the of Outstanding Subordinate Obligations, and subordinate to the lien thereon of Parity Obligations, and the NMED may not look to any other municipal fund for payment of the Loan.

G. The City will finance the costs of the Project, in whole or in part, with the proceeds of the Loan Agreement and Note.

H.The net effective interest rate on the Loan Agreement and Note is less than the statutory maximum of 12% per annum.

I.The forms of the Loan Agreement and Note, as presented to the Council, and the execution and delivery of the Loan Agreement and Note to the NMED with terms that are within the parameters set forth in this Ordinance are hereby approved by the Council.

ARTICLE IV

SUBORDINATE OBLIGATIONS; SPECIAL LIMITED OBLIGATIONS

Section 4.01.Pledge of Net Revenues. In accordance with Article XXII of the Master Ordinance, the City hereby declares that the Loan Agreement and Note shall be Subordinate Obligations and designates and confirms that the Net Revenues are pledged for the payment of the Bonds and such other obligations of the City as may be expressly provided herein and in the Master Ordinance on parity with the lien on the Net Revenues of the "Subordinate Obligations" and subordinate to the pledge of Net Revenues for the payment of Parity Bonds and other obligations of the City related to Parity Bonds.

Section 4.02.Special Limited Obligations. The Loan Agreement and Note and all payments thereon shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues which are irrevocably pledged as set forth in this Ordinance. The NMED may not look to any general or other fund for the payment on the Loan Agreement and Note except the designated special funds pledged therefore. The Loan Agreement and the Note shall not constitute indebtedness or debts within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or be held to be general obligations of the Borrower and shall recite that they are payable and collectible solely from the Pledged Revenues the income from which is so pledged.

ARTICLE V

AUTHORIZATION OF PROJECT, LOAN AGREEMENT AND NOTE

Section 5.01.

A.Authorization of Project. The acquisition and construction of the Project and payment of eligible items as set forth in the Regulations from proceeds of the Loan Agreement and Note is hereby authorized at a cost not to exceed the principal Loan amount of $16,916,853 and the Loan Subsidy Grant amount of $227,240 excluding any cost of the Project to be paid from any source other than the proceeds of the Loan Agreement and Note.

B.Authorization of Loan Agreement and Note.

(1)For the purpose of protecting the public health, conserving the property, and protecting the general welfare of the residents of the City and acquiring the Project, it is hereby declared necessary that the City, pursuant to the Act, the Wastewater Facility Construction Loan Act, and the Regulations, execute and deliver the Loan Agreement and Note, and the City is hereby authorized to execute and deliver the Loan Agreement and the Note, to be payable and collectible solely from the Pledged Revenues. The NMED has agreed to disburse the proceeds according to the terms of the Loan Agreement to the Borrower over the construction period of the Project. The principal Loan amount of the Note shall not exceed $16,916,853 plus accrued interest without further authorization or amendment of this Ordinance by the City Council, and the annual interest rate on that principal amount shall not exceed one hundredth of one percent (0.01%) per annum. Interest shall be computed as a percentage per year on the outstanding principal amount on the Loan on the basis of a 365-day year, actual number of days lapsed. The final maturity date on the Note shall not extend beyond the agreed upon useful life of the project. The Loan shall be repaid in substantially equal annual installments in the amount and on the dates provided in the Loan Agreement with the first annual installment due no later than one year after completion of the project. The City shall maintain a debt service coverage ratio of no less than 1.2. The City shall comply with the requirements for issuing Additional Parity Obligations as provided in the Master Ordinance.

(2)The City is hereby authorized to accept a Loan Subsidy Grant under the terms of the Loan Agreement. By accepting a Loan Subsidy Grant, the Borrower is a sub-recipient of a one-time federal grant of funds to NMED by EPA. As a sub-recipient, the Borrower is responsible for complying with the specific requirements and the conditions of the one-time federal grant. If the City fails to satisfy any federal grant requirements or conditions, the Borrower may be required to refund any federal grant funds disbursed to the Borrower from NMED.

(3)The form of the Loan Agreement and the Note are approved. The Authorized Officer is hereby directed to execute and deliver the Loan Agreement and the Note and any extensions of or amendments to any such document to be executed after completion of the Project, or any substitution

therefore, with such changes therein consistent with the Ordinance and as shall be approved by an Authorized Officer whose execution thereof, or any extension thereof, or substitution therefore, in their final forms shall constitute conclusive evidence of their approval and compliance with this section.

(4)From and after the date of the initial execution and delivery of the Loan Agreement and the Note, Authorized Officers, agents and employees of the City are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Ordinance, the Loan Agreement and the Note.

ARTICLE VI

FUNDS AND ACCOUNTS

Section 6.01.Series 2023 CWSRF Debt Service Account. The Series 2023 CWSRF Debt Service Account is established as a separate and distinct account of the City to be maintained and controlled by the City or its designee within the Debt Service Fund for the payment of the Debt Service Requirements on the Loan Agreement and Note.

Section 6.02. Creation of Accounts; Deposits. On the date of delivery of the Loan Agreement, the net proceeds from the sale of the Loan Agreement shall be deposited or used as follows:

A.Proceeds of the Loan shall be deposited in the Series 2023 CWSRF Acquisition Account of the Acquisition Fund created under the Master Ordinance. Until the completion of the Project, the money in the Series 2023 CWSRF Acquisition Account shall be used and paid out solely for the purpose of the Project, including the Costs of Issuance to be paid by the City, in compliance with applicable law.

B.As soon as practicable after completion of the Project, and in any event not more than 60 days after completion of the Project, any proceeds remaining unspent (other than any amount retained by the City for any Project costs not then due and payable) shall be transferred and deposited in the 2023 CWSRF Debt Service Account and used by the City to pay principal and interest on the Loan Agreement and Note as the same become due.

The City Treasurer shall be, and hereby is, authorized to make any necessary adjustments in the amounts to be deposited in the funds and accounts described in this Section on the Closing Date.

Section 6.03. Administration of Income Fund and Other Funds and Accounts.

A.Use of Gross Revenues. Pursuant to Section 18.01 of the Master Ordinance, as long as any System Bonds are Outstanding, all Gross Revenues shall be deposited in the Income Fund and transferred from that Fund to the following funds and accounts or for payment of the following amounts in the order listed:

(1)Operation and Maintenance Expenses. A sufficient amount of Gross Revenues shall be set aside each month into the Operation and Maintenance Fund to be used to pay the current Operation and Maintenance Expenses as they become due.

(2)Debt Service Accounts for Parity Bonds. Net Revenues shall be transferred to each Debt Service Account established for each series of Outstanding Parity Bonds in approximately equal amounts each month to provide an amount sufficient to pay Debt Service Requirements on each series of Parity Bonds as they become due.

(3)Reserve Account. Net Revenues shall be transferred to each Reserve Account for each series of Parity Bonds with a Reserve Requirement each month to the extent that deposits are required to be made as a result of any draws on a Reserve Account Insurance Policy or deficiency in the Reserve Requirement for a series of Parity Bonds.

(4)Subordinate Obligations. Net Revenues shall be transferred to such funds and accounts as may be established by Supplemental Ordinance with respect to one or more series of Subordinate Obligations and used to pay Debt Service Requirements on Subordinate Obligations and to fund any

Reserve Requirement for Subordinate Obligations. In connection with the Loan Agreement and Note, Net Revenues shall be transferred and deposited as provided in Subsection B of this Section.

(5)Replacement Fund. At the option of the City, Net Revenues may be transferred to the Replacement Fund to be used for the purposes stated in Section 18.06 of the Master Ordinance.

(6)Rate Stabilization Fund. At the option of the City, Net Revenues may be transferred to the Rate Stabilization Fund to be used for the purposes stated in Section 18.07 of the Master Ordinance.

(7)Surplus Net Revenues. Net Revenues shall be retained in the Income Fund or used for any other lawful System purpose including, but not limited to, redeeming or purchasing System Bonds or paying costs and expenses of the City relating to the administration of System Bonds but shall not be transferred to the general fund of the City except for Operation and Maintenance Expenses owed by the System to the City and except for taxes, payments in lieu of taxes, franchise fees, assessments and other municipal or governmental charges of the City lawfully levied or assessed upon the System.

(8)Accumulation of Revenues. Gross Revenues need not be retained for any use or in any fund or account described in this Section in excess of the Gross Revenues required for any current use or deposit. For the purposes of this subparagraph, the term current shall mean the month during which the Net Revenues are being distributed and the immediately following period until the next payment date for Debt Service Requirements on System Bonds.

B.Administration of the Debt Service Fund. Following the deposit of Net Revenues to the Debt Service Accounts and, if applicable, Reserve Accounts for Outstanding Parity Obligations, Net Revenues shall be transferred in approximately equal amounts each month to the 2023 CWSRF Debt Service Account and each other Debt Service Account sufficient to pay when due the Debt Service Requirements on the Loan Agreement and Note, and each other series of Outstanding Subordinate Obligations.

(1)Except as stated in Section 18.04 of the Master Ordinance (Termination on deposits to Maturity) or required by the Supplemental Ordinance relating to a series of Subordinate Obligations, approximately equal monthly deposits of Net Revenues shall be made to each Debt Service Account beginning six months before each Interest Payment Date for the Loan Agreement and Note, and any Outstanding Subordinate Obligations in order to make the next payment of interest on each such System Bond when due. However, if the first Interest Payment Date for a series of System Bonds is less than seven months after the date of the original issuance of that series of System Bonds, equal monthly deposits of Net Revenues before the first Interest Payment Date shall begin in the first full month following the date of issuance of that series of System Bonds.

(2)Except as stated in Section 18.04 of the Master Ordinance (Termination on deposits to Maturity), as supplemented hereby, substantially equal monthly deposits of Net Revenues shall be made to the 2023 CWSRF Debt Service Account and, except as otherwise required by Supplemental Ordinance relating to a series of System Bonds, to each other Debt Service Account for a series of Subordinate Obligations beginning 12 months before each principal or Accreted Value payment date for any Subordinate Obligations in order to make the next scheduled payment of principal or Accreted Value on each such System Bond when due whether at maturity on a mandatory sinking fund redemption date or other Accretion Term Date. However, if the first principal payment date for a series of System Bonds is less than thirteen months after the date of the original issuance of that series of System Bonds, equal monthly deposits of Net Revenues before the first principal payment date shall begin in the first full month following the date of issuance of that series of System Bonds. Principal payments include scheduled payments at maturity, by mandatory sinking fund installment or otherwise scheduled payments of principal. Accreted Value payments include scheduled payments on the Accretion Term Date, if any, and as otherwise stated in the applicable Supplemental Ordinance.

If in the month immediately preceding any payment date for the Loan Agreement and Note and any series of Subordinate Obligations, the City determines that there are not sufficient funds accumulated in a Debt Service Account to pay the amount becoming due on such series of System Bonds on the payment date, the City shall promptly deposit any available Net Revenues in that Debt Service Account in an amount equal to the deficiency. If, prior to any payment date for a series of System Bonds, there has accumulated in the applicable Debt Service Account the entire amount necessary to pay the amount becoming due on those System Bonds on that payment date, no additional Net Revenues need be deposited in that Debt Service Account prior to that payment date. In making the determinations permitted by this paragraph, the City may take into account the amount on deposit in

any other fund or account or escrow relating to the applicable series of System Bonds irrevocably set aside for the next payment of those System Bonds.

Unless otherwise stated in the Supplemental Ordinance relating to any series of Parity Bonds or Subordinate Obligations, amounts deposited in any Debt Service Account shall be applied first to the payment of interest and then to pay or satisfy any sinking fund requirements for the payment of principal.

Except as provided in Section 18.04 of the Master Ordinance (Termination on deposits to Maturity), money in a Debt Service Account shall be used only to pay the Debt Service Requirements on the Loan Agreement and Note, and any series of System Bonds for which the Debt Service Account was created. Transfers of amounts equal to the Debt Service Requirements shall be made by the City on a timely basis to the appropriate Fiscal Agent.

Any amount owed by the City to a Bond Insurer for payment of Debt Service Requirements on Insured Bonds of a series of Parity Bonds or Subordinate Obligations pursuant to a Bond Insurance Policy shall be paid from Net Revenues with the same priority as other payments of Debt Service Requirements on that series of Parity Bonds or Subordinate Obligations.

C.Administration of Reserve Accounts. Unless otherwise required by the Supplemental Ordinance for a series of Parity Bonds or Subordinate Obligations, as applicable, with respect to deposit of a portion of the proceeds of that series of Parity Bonds, Subordinate Obligations, or of Net Revenues into a Reserve Account for such series of Parity Bonds or Subordinate Obligations, as applicable, beginning in the month following the date of the issuance of that series of Parity Bonds or Subordinate Obligations, as applicable, sixty equal monthly deposits of Net Revenues shall be made into that Reserve Account until the Reserve Requirement for that series of Parity Bonds or Subordinate Obligations is reached. Each Reserve Account may be funded with the proceeds of the applicable series of Parity Bonds or Subordinate Obligations, a Reserve Account Insurance Policy, Net Revenues or any combination thereof, A Reserve Account Insurance Policy may be substituted for an equivalent amount of cash in a Reserve Account.

No payments need be made into a Reserve Account as long as the sum of the money in that Reserve Account and the insurance in effect under any Reserve Account Insurance Policy for the applicable series of Parity Bonds or Subordinate Obligations, as applicable, is equal to or greater than the Reserve Requirement for that series of System Bonds and all proceeds of the Reserve Account Insurance Policy used to pay Debt Service Requirement have been repaid. Money in each Reserve Account shall be accumulated and maintained as a continuing reserve to be used, except as provided in Section 18.03 and Section 18.04 of the Master Ordinance, only to prevent deficiencies in the payment of the principal of, Accreted Value or interest on the series of Parity Bonds or Subordinate Obligations for which the Reserve Account was established and to reimburse the Insurer under any applicable Reserve Account Insurance Policy.

If the amount on deposit in the Debt Service Account for a series of Parity Bonds or Subordinate Obligations, as applicable, on a payment date for that series of System Bonds and available Net Revenues are not enough to pay the amount becoming due on that series on that date, an amount equal to the deficiency shall be transferred from the applicable Reserve Account to the Debt Service Account for that series of Parity Bonds or Subordinate Obligations. If the amount of money on deposit in a Reserve Account is not sufficient to make up the deficiency in the Debt Service Account for that series of Parity Bonds or Subordinate Obligation when due, a demand for payment shall be made on any applicable Reserve Account Insurance Policy.

A sum equal to the amount in a Reserve Account and the proceeds of a Reserve Account Insurance Policy used to pay Debt Service Requirements on a series of Parity Bonds or Subordinate Obligations, plus interest, if any, owed on amounts advanced pursuant to a Reserve Account Insurance Policy shall be deposited in that Reserve Account from the first Net Revenues received by the City which are not required by Section 18.01 of the Master Ordinance to be used for another purpose. The amount received shall first be used to reimburse the Reserve Account Insurer for amounts paid under the Reserve Account Insurance Policy used to pay Debt Service Requirements, second to replace amounts of money drawn from the Reserve Account and third to pay interest or fees owed to a Reserve Account Insurer for amounts advanced pursuant to a Reserve Account

Insurance Policy. Any interest or fees due to a Reserve Account Insurer shall be subordinate to any amounts required to be paid for the benefit of the Owners of a series of Parity Bonds, and on parity with amounts required to be paid for the benefit of Owners of Subordinate Obligations. The priority for the use of money deposited in a Reserve Account for a series of System Bonds may be changed by the Supplemental Ordinance for that Series of System Bonds.

If all proceeds drawn on a Reserve Account Insurance Policy and accrued interest thereon for a series of Parity Bonds or Subordinate Obligations, as applicable, have been reimbursed and paid, any amount on deposit in the Reserve Account relating to that series of System Bonds in excess of the Reserve Requirement for that series (taking into consideration the amount of insurance in effect under any applicable Reserve Account Insurance Policy) may be withdrawn at any time from the Reserve Account and deposited in the Replacement Fund. However, any excess which represents original proceeds of a series of Outstanding System Bonds or interest thereon shall first be used to pay Debt Service Requirements on that series of System Bonds or costs of the Project for which that series of System Bonds was issued.

If a Reserve Account Insurance Policy is used to satisfy the Reserve Requirement for a series of Parity Bonds or Subordinate Obligations, as applicable, the City shall give notice thereof to each rating agency providing a rating for that series of System Bonds.

D.Termination Upon Deposits to Maturity. Pursuant to Section 18.04 of the Master Ordinance as supplemented by this Ordinance, no payments need be made into the Debt Service Account or Reserve Account for Loan Agreement and Note or a series of System Bonds if the sum of the amounts in that Debt Service Account and Reserve Account (without regard for the coverage available under any Reserve Account Insurance Policy) is not less than the Debt Service Requirements due and to become due on and before the final maturity date of that series of System Bonds, both accrued and not accrued, and all proceeds paid under any Reserve Account Insurance Policy and Bond Insurance Policy for that series of System Bonds have been reimbursed. Unless otherwise provided in the Supplemental Ordinance applicable to a series of System Bonds, the money retained in those two accounts shall be used only to pay the Debt Service Requirements on that series of System Bonds when due except that any money on deposit in any such Debt Service Account which is not necessary to pay such Debt Service Requirements shall be used as surplus Net Revenues and any money on deposit in any such Reserve Account which is not necessary to pay such Debt Service Requirements (other than proceeds of Outstanding System Bonds) shall be deposited in the Replacement Fund.

E.Replacement Fund. Pursuant to Section 18.06 of the Master Ordinance, in addition to Net Revenues, the City shall deposit in the Replacement Fund, all money released from a Reserve Account for a series of System Bonds in excess of the Reserve Requirement for that series pursuant to Section 18.03, except for any such excess which is designated for another System purpose by resolution or ordinance of the Council or which is proceeds of Outstanding System Bonds, together with such other moneys from other sources as may be designated by the Council.

While any System Bonds are Outstanding, money on deposit in the Replacement Fund shall be used only (i) for replacement costs and capital improvements to the System, (ii) for extraordinary charges relating to the financing or refinancing of the System, and (iii) to purchase or otherwise defease, or provide for the defeasance of, Outstanding System Bonds.

F.Rate Stabilization Fund. Pursuant to Section 18.07 of the Master Ordinance, money on deposit in the Rate Stabilization Fund may be withdrawn at any time and used for any purpose for which Gross Revenues may be used. If deposits to the Rate Stabilization Fund are made by the City from sources of legally available moneys other than Gross Revenues, then such deposits shall be excluded from computations required pursuant to Article XXIV and Section 26.03 of the Master Ordinance.

G.Pro Rata Deposits. Pursuant to Section 18.08 of the Master Ordinance, if the amount of Net Revenues available for deposit in the Debt Service Fund is not sufficient to pay the entire amount required to be deposited in the Debt Service Accounts and/or Reserve Accounts, the Net Revenues available shall

be deposited first in the Debt Service Accounts and then in the Reserve Accounts established in connection with Parity Bonds, and then in the Debt Service Accounts and then in the Reserve Accounts established in connection with Subordinate Obligations, in each case, pro rata based upon the amount required to be deposited in each Account to the total Net Revenues available for deposit.

Reimbursements owed to a Bond Insurer, Reserve Account Insurer or provider of another Credit Facility for amounts used to pay Debt Service Requirements on a series of System Bonds shall be paid on the same pro rata basis and with the same priority as are amounts to be deposited in the Debt Service Account or Reserve Account, as applicable, with respect to the applicable series of Parity Bonds, or comparable accounts with respect to a series of Subordinate Obligations.

ARTICLE VII

EQUALITY OF SYSTEM BONDS

Except as set forth in the Master Ordinance, Supplemental Ordinances, or Related Documents, System Bonds from time to time Outstanding, including the Loan Agreement and Note, shall not be entitled to any priority one over the other in the application of the Net Revenues, regardless of the time or times of their issuance except that the lien on the Net Revenues in favor of the Loan Agreement and Note and any other Subordinate Obligations shall be subordinate to the lien on the Net Revenues in favor of Outstanding Parity Bonds.

ARTICLE VIII

ADDITIONAL BONDS

Section 8.01.Parity Bonds. Pursuant to Section 24.02 of the Master Ordinance as supplemented by this Ordinance, Parity Bonds may be issued for the System purposes including, but not limited to, (i) financing the Costs of a Project; or (ii) providing additional funds for deposit into a Reserve Account or the Replacement Fund and paying the costs incident to the issuance of such Parity Bonds or any combination of the foregoing.

The tests required in this Section shall be performed without adjustment for payments to or withdrawals from the Rate Stabilization Fund or interest accrued (other than amounts representing capitalized interest) in the Acquisition Fund. Except as permitted herein and by Article XXV of the Master Ordinance, prior to the issuance of additional Parity Bonds, the City shall be current in making all deposits required by Article XVIII and the following test shall be satisfied:

A.a certificate prepared by an Authorized Officer of the City showing that the Net Revenues for the Historic Test Period were at least equal to 125% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds after the issuance of the proposed Parity Bonds, or

B.a certificate prepared by a Consulting Engineer showing that:

(i)the Net Revenues for the Historic Test Period were at least equal to 115% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds immediately preceding the issuance of the proposed additional Parity Bonds;

(ii)for each Fiscal Year during the period from the date of delivery of such certificate until the latest estimated Completion Date of the Project being financed, the Consulting Engineer estimates that the City will be in compliance with the Rate Covenant (as defined in the Master Ordinance and as supplemented in Section 9.03(A) of this Ordinance); and

(iii)the estimated Net Revenues for each of the three Fiscal Years immediately following the latest estimated Completion Date for the specified Project to be financed with proceeds of the proposed additional Parity Bonds, as certified to the Consulting Engineer by an Authorized Officer of the City will be at least equal to 125% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds which will be Outstanding immediately after the issuance of the proposed additional Parity Bonds.

For purposes of subsections B.(1) and (ii) above, in estimating Net Revenues, the Consulting Engineer may take into account (1) reasonable Gross Revenues from specified Projects expected to become available, (2) any increase in fees, rates, charges, rentals or other sources of Gross Revenues which have been approved by the City and will be in effect during the period for which the estimates are provided, and (3) any other increases in Gross Revenues for such period which the Consulting Engineer certifies to be reasonable for purposes of such certificate. With respect to Operation and Maintenance Expenses, the Consulting Engineer shall use such assumptions as the Consulting Engineer believes to be reasonable, and taking into account, (i) historical Operation and Maintenance Expenses, (ii) Operation and Maintenance Expenses associated with the specified Projects and (iii) such other factors, including inflation and changing operations or policies of the City, as the Consulting Engineer believes to be appropriate. The Consulting Engineer shall include in the certificate or in a separate accompanying report a description of the assumptions used, and the calculations made in determining the estimated Net Revenues and shall also set forth the calculations of the maximum combined annual Debt Service Requirements, which calculations may be based upon information provided by another Consulting Engineer or Consultant.

For purposes of preparing the certificate or certificates described above, the Consulting Engineer or Consulting Engineers may rely upon financial statements prepared by the City which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized. Officer of the City shall certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

Section 8.02. Certificates. In determining whether additional Parity Bonds may be issued, a written certificate or opinion of a Consulting Engineer shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the additional Parity Bonds.

Section 8.03. Superior Obligations Prohibited. As long as Parity Bonds are Outstanding, the City shall not issue additional System Bonds having a lien on the Net Revenues prior and superior to the lien of Parity Bonds on Net Revenues.

Section 8.04. Subordinate Obligations Permitted. Nothing contained in the Master Ordinance shall be construed to prevent the City from issuing Subordinate Obligations with a lien on the Net Revenues on parity with the lien thereon of the Loan Agreement and Note, pursuant to the provisions set forth herein, or as otherwise provided in a Supplemental Ordinance authorizing the issuance thereof.

Section 8.05. Pursuant to Section 24.05 of the Master Ordinance, as amended, the Loan Agreement and Note, and additional Subordinate Obligations may be issued for System purposes including, but not limited to, (i) financing the Costs of a Project; or (ii) providing additional funds for deposit into a Reserve Account or the Replacement Fund and paying the costs incident to the issuance of such Subordinate Obligations Bonds or any combination of the foregoing.

The tests required in this Section shall be performed without adjustment for payments to or withdrawals from the Rate Stabilization Fund or interest accrued (other than amounts representing capitalized interest) in the Acquisition Fund. Except as permitted herein and by Article XXV [of the Master Ordinance, as amended], prior to the issuance of additional Parity Bonds or Subordinate Obligations, the City shall be current in making all deposits required by Article XVIII and the following test shall be satisfied:

A. A certificate prepared by an Authorized Officer of the City showing that the Net Revenues for the Historic Test Period were at least equal to 115% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Subordinate Obligations after the issuance of the proposed Parity Bonds or Subordinate Obligations, or

B. A certificate prepared by a Consulting Engineer showing that:

(1)The Net Revenues for the Historic Test Period were at least equal to 100% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Subordinate

Obligations immediately preceding the issuance of the proposed additional Parity Bonds or Subordinate Obligations;

(2)For each Fiscal Year during the period from the date of delivery of such certificate until the latest estimated Completion Date of the Project being financed, the Consulting Engineer estimates that the City will be in compliance with the Rate Covenant; and

(3)The estimated Net Revenues for each of the three Fiscal Years immediately following the latest estimated Completion Date for the specified Project to be financed with the proceeds of the proposed additional Parity Bonds or Subordinate Obligations, as certified to the Consulting Engineer by an Authorized Officer of the City will be at least equal to 115% of the maximum combined annual Debt Service Requirements for all Outstanding Parity Bonds and Subordinate Obligations which will be Outstanding immediately after the issuance of the proposed additional Parity Bonds or Subordinate Obligations.

For purposes of subsection B.(1) and (2) above, in estimating Net Revenues, the Consulting Engineer may take into account (1) reasonable Gross Revenues from specified Projects expected to become available, (2) any increase in fees, rates, charges, rentals or other sources of Gross Revenues which have been approved by the City and will be in effect during the period for which the estimates are provided, and (3) any other increases in Gross Revenues for such period which the Consulting Engineer certifies to be reasonable for purposes of such certificate. With respect to Operation and Maintenance Expenses, the Consulting Engineer shall use such assumptions as the Consulting Engineer believes to be reasonable, and taking into account, (i) historical Operation and Maintenance Expenses, (ii) Operation and Maintenance Expenses associated with the specified Projects and (iii) such other factors, including inflation and changing operations or policies of the City, as the Consulting Engineer believes to be appropriate. The Consulting Engineer shall include in the certificate or in a separate accompanying report a description of the assumptions used, and the calculations made in determining the estimated Net Revenues and shall also set forth the calculations of the maximum combined annual Debt Service Requirements, which calculations may be based upon information provided by another Consulting Engineer or Consultant.

For purposes of preparing the certificate or certificates described above, the Consulting Engineer or Consulting Engineers may rely upon financial statements prepared by the City which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Officer of the City shall certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

In determining whether additional Parity Bonds or Subordinate Obligations may be issued pursuant to this Section, a written certificate or opinion of a Consulting Engineer shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the additional Parity Bonds or Subordinate Obligations.

ARTICLE IX

REFUNDING BONDS

Section 9.01The provisions of the Article VIII of this Ordinance [Article XXIV of the Master Ordinance, as amended] are subject to the following exceptions:

A.Privilege of Issuing Refunding Obligations. If at any time while System Bonds remain Outstanding, the City desires to refund any Outstanding System Bonds or other obligations payable from Net Revenues, those System Bonds or other obligations or any part thereof, may be refunded regardless of whether the priority of the lien for the payment of the refunding System Bonds on the Net Revenues is changed (except as provided in Section 8.04 [Section 24.04 of the Master Ordinance, as amended] and in subsections A, B and D of this Article).

B. Limitations Upon Issuance of Refunding Parity Bonds. No refunding bonds or other refunding obligations shall be issued as Parity Bonds unless:

(1)there is delivered a certificate of the Authorized Officer of the City showing that the combined Debt Service Requirements on all Outstanding Parity Bonds for any Fiscal Year after the issuance of refunding Parity Bonds will not exceed the combined Debt Service Requirements for such Fiscal Year on all Outstanding Parity Bonds authorized prior to the issuance of such refunding Parity Bonds by more than ten percent (10%) in any such Fiscal Year, and the City is in current compliance with the Rate Covenant, or

(2)The refunding Parity Bonds are issued in compliance with Sections 8.02 and 8.05 [Sections 24.02 and 24.05 of the Master Ordinance, as amended].

C. Limitations Upon Issuance of Refunding Subordinate Obligations. No refunding bonds or other refunding obligations shall be issued as Subordinate Obligations unless:

(1) there is delivered a certificate of the Authorized Officer of the City showing that the combined Debt Service Requirements on all Outstanding Parity Bonds and Subordinate Obligations for any Fiscal Year after the issuance of refunding Subordinate Obligations will not exceed the combined Debt Service Requirements for such Fiscal Year on all Outstanding Parity Bonds and Subordinate Obligations authorized prior to the issuance of such refunding Subordinate Obligations by more than ten percent (10%) in any such Fiscal Year, and the City is in current compliance with the Rate Covenant, or

(2) The refunding Subordinate Obligations are issued in compliance with Section 8.05 hereof.

D. Limitation Upon Issuance of Any Refunding System Bonds. Any refunding System Bonds shall be issued with such details as the Council may provide by appropriate proceedings but without impairment of any contractual obligation imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of the series of System Bonds or other obligations payable from Net Revenues to which the refunding was applicable.

ARTICLE X

PROTECTIVE COVENANTS

Article XXVI of the Master Ordinance includes the following Protective Covenants, which are hereby incorporated and shall apply to the Loan Agreement and Note.

Section 10.01. Use of System Bond Proceeds.

Pursuant to Master Ordinance Section 26.01, the City covenants and agrees that it will promptly apply the proceeds of each series of System Bonds to the Project for which they were issued or for the refunding of Outstanding System Bonds, as applicable, and for the other purposes permitted by the Master Ordinance or applicable Supplemental Ordinance.

Section 10.02. Payment of System Bonds.

Pursuant to Master Ordinance Section 26.02, the City covenants and agrees that it will promptly pay the Debt Service Requirements on System Bonds at the place, on the dates and in the manner specified in the Master Ordinance and in this Ordinance, Related Documents and the System Bonds, including the Loan Agreement and Note.

Section 10.03. Rate Covenant.

Pursuant to Master Ordinance Section 26.03, as amended:

A. The City covenants that it will at all times fix rates and collect charges for each class of service rendered by the System, and to, from time to time, amend or adjust such rates so that Gross Revenues of

the System shall always be sufficient to provide for the payment of the Debt Service Requirements on all Outstanding System Bonds as and when the same become due and payable, to maintain the funds and accounts established in this Master Ordinance, to provide for the payment of expenses of administration, Operation and Maintenance Expenses of the System which may be necessary to preserve the same in good repair and working order, including the necessary reserves therefor and all other payments necessary to meet ongoing legal obligations to be paid at that time; and

B.The City further covenants that it will at all times, fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year the Net Revenues shall at least equal the greater of (i) 125% of the Debt Service Requirements on any Parity Bonds Outstanding in such Fiscal Year or, (ii) 115% of the Debt Service Requirements on the any Parity Bonds Outstanding and any Subordinate Obligations Outstanding in such Fiscal Year.

C.Failure by the City to comply with the foregoing Rate Covenant in any Fiscal Year will not constitute an event of default under this Master Ordinance so long as the City, within 180 days after the end of any such Fiscal Year, adopts the schedule of rates and charges recommended or approved by a Consulting Engineer which would bring the City into compliance with the Rate Covenant. The City is also required under this Master Ordinance in each Fiscal Year to complete a review of its financial condition for the purpose of estimating whether the Net Revenues for such Fiscal Year and for the next succeeding Fiscal Year will be sufficient to comply with the Rate Covenant set forth above and shall by resolution make a determination with respect thereto. If the City determines that the Net Revenues may not be so sufficient, it shall forthwith cause the Consulting Engineer to make a study for the purpose of recommending a schedule of fees, rates and charges for the System which, in the opinion of the Consulting Engineer, will cause sufficient Gross Revenues to be collected in such Fiscal Year to comply with the Rate Covenant set forth above and will cause additional Gross Revenues to be collected in such Fiscal Year sufficient to eliminate the amount of any deficiency at the earliest practicable time within such Fiscal Year. The City shall as promptly and practicably adopt and place in effect the schedule of fees, rates and charges recommended or approved by the Consulting Engineer pursuant to this Master Ordinance. In the alternative of establishing fees, rates and charges necessary to meet the Rate Covenant set forth above, the City may implement reductions in Operation and Maintenance Expenses for the System in an amount sufficient to meet the Rate Covenant.

Section 10.04. Lien on Lands Serviced by System.

Pursuant to Master Ordinance Section 26.04, State law grants the City a lien upon each lot or parcel of land for the charges imposed for water and sanitary sewer services supplied by the System to the owner of such lot or parcel (except as otherwise provided in Section 3-23-6 NMSA 1978, as amended). The City will cause each lien to be perfected in accordance with the provisions of Sections 3-23-6 and 3-36-1 through 3-36-5 NMSA 1978, as amended. The City will take all necessary steps to enforce the lien against any parcel of property the owner of which is delinquent for more than six months in the payment of charges imposed for the use of the System.

Section 10.05. Levy of Charges.

Pursuant to Master Ordinance Section 26.05, the City will promptly fix, establish and levy the rates and charges which are required by Section 10.03 hereof (Master Ordinance Section 26.03). Unless contrary to any provision of applicable law, any resolution or ordinance adopted by the Council to fix, establish and levy such rates and charges shall be deemed an administrative or executive matter not subject to the referendum provisions of the Charter or State law. No reduction in any initial or existing rate schedule for the System may be made unless:

A.the City has fully complied with the requirements of the Rate Covenant contained in Section 10.03 (Master Ordinance Section 26.03) for any 12 consecutive months out of the 16 calendar months immediately preceding the reduction of the rate schedule, and

B.the audit required by Section 10.09 (Master Ordinance Section 26.09) or a separate certificate by an Independent Accountant for or relating to any 12 consecutive months out of the 16 calendar months immediately preceding any reduction discloses that the estimated Net Revenues resulting from the proposed reduced rate schedule would have been sufficient to meet the Rate Covenant contained in Section 9.03 (Master Ordinance Section 26.03) during the applicable 12-month period.

Section 10.06. Efficient Operation.

Pursuant to Master Ordinance Section 26.06, the City will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and to supply reasonable public and private demands for System services within the Service Area.

Section 10.07. Records.

Pursuant to Master Ordinance Section 26.07, so long as System Bonds remain Outstanding, proper books of record and account will be kept by the City, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. However, pursuant to Section 6-14-10(E) NMSA 1978, as amended, records with regard to the ownership or pledge of System Bonds are not subject to inspection or copying.

Section 10.08. Right to Inspect.

Pursuant to Master Ordinance Section 26.08, Owners, or their duly authorized agents, shall have the right to inspect at all reasonable times all records, accounts and data relating to the System.

Section 10.09. Audits.

Pursuant to Master Ordinance Section 26.09, within 180 days following the close of each Fiscal Year, the City will cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant.

Section 10.10. Billing Procedure.

Pursuant to Master Ordinance Section 26.10, bills for water, sanitary sewer and natural gas utility services or facilities, or any combination, furnished by or through the System shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the City. If permitted by law, if a bill is not paid within the period of time required by such ordinance, water, sanitary sewer and natural gas services shall be discontinued as required by such ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection.

Section 10.11. Charges and Liens Upon System.

Pursuant to Master Ordinance Section 26.11, the City will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the System, The City will not create or permit any lien or charge upon the System or the Gross Revenues except as permitted by the Master Ordinance, or it will make adequate provisions to satisfy and discharge within 60 days after the same accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the System or the Gross Revenues. However, the City shall not be required to pay or cause to be discharged, or make provision for any tax assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings and there is no adverse effect on Owners.

Section 10.12. Insurance.

Pursuant to Master Ordinance Section 26.12, subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, the City will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Council, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by municipalities which operate water, sanitary sewer and natural gas utility systems. "Qualified Self Insurance" means insurance maintained through a program of self-insurance or insurance maintained with a fund, company or association in which the City may have a material interest and of which the City may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the City determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, any remainder may be used to redeem System Bonds or be treated as Gross Revenues and used in the manner provided in Article XVIII.

Section 10.13. Competing System.

Pursuant to Master Ordinance Section 26.13, unless contrary to any provision of, or required by, applicable law, and except for the existing Rio Grande Natural Gas Utility currently operating within the Service Area pursuant to a franchise agreement with the City, as long as System Bonds are Outstanding, the City will not grant any franchise or license to a competing water, sanitary sewer and natural gas utility system, or permit any person, association, firm or corporation to sell water, sanitary sewer and natural gas utility services or facilities to any consumer, public or private, within the Service Area of the System; provided, however, that nothing shall prevent the City from annexing land into its boundaries solely due to the fact that there is a competing utility system or person, association, firm or corporation providing such utility services or facilities within or for the land to be annexed.

Section 10.14. Alienating System.

Pursuant to Master Ordinance Section 26.14, while the System Bonds are Outstanding, the City shall not, except as permitted below, transfer, sell or otherwise dispose of the System. For purposes of this Section, any transfer of an asset over which the City retains or regains substantial control shall not, for so long as the City has such control, be deemed a disposition of the System.

The City may transfer, sell or otherwise dispose of the System only if such transfer, sale or disposition complies with one or more of the following provisions:

A.The property being disposed of is inadequate, obsolete or worn out; or

B.The property proposed to be disposed of and all other property of the System disposed of during the 12-month period ending on the day of such transfer (but excluding property disposed of under (a) above), will not, in the aggregate, constitute a Significant Portion of the System determined as described below and the proceeds are deposited into the Income Fund to be used as described below; or

C.The City receives fair market value for the property, the proceeds are deposited into the Income Fund to be used as described below and, prior to the disposition of such property, there is delivered to the Fiscal Agent a certificate of a Consultant to the effect that notwithstanding such disposition, but taking into account the use of such proceeds in accordance with the expectations of the City as evidenced by a

certificate of an Authorized Officer, the Consultant estimates that the City will be in compliance with the Rate Covenant during each of the five Fiscal Years immediately following such disposition.

For purposes of this Section, the term "Significant Portion" of the System means property of the System which, if such property had been disposed of by the City at the beginning of the Fiscal Year which includes the month of commencement of the 12-month period referred to in (b) above would have resulted in a reduction in Net Revenues for such Fiscal Year of more than 4% when the actual Net Revenues for such Fiscal Year are decreased by the revenues directly attributable to such property of the System and increased by the expenses of the City directly attributable to such property of the System.

Proceeds of the disposition of assets under (b) or (c) above shall be deposited into the Income Fund and used, within a reasonable period of time, not to exceed three years, to (i) provide additional revenue-producing properties to the System, (ii) redeem System Bonds or (iii) create an escrow fund pledged to pay specified System Bonds and thereby cause such System Bonds to be deemed to be paid as provided in Article XXXI of the Master Ordinance.

Properties of the System which were financed with the proceeds of obligations the interest on which is then excluded from gross income for federal income tax purposes shall not be disposed of, except under the terms of provision (a) above, unless the City has first received a written opinion of Bond Counsel to the effect that such disposition will not cause the interest on such obligations to become includable in gross income for federal income tax purposes.

No such disposition shall be permitted which would cause the City to be in default of any other covenant contained in this Master Ordinance.

Section 10.15. Extending Interest Payments.

Pursuant to Master Ordinance Section 26.15, to prevent any accumulation of claims for interest after maturity, except as permitted by the Master Ordinance, Supplemental Ordinance or Related Documents, the City will not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on System Bonds. If the time for payment of interest is extended contrary to the provisions of this Section, the installments of interest extended shall not be entitled, in case of an event of default under the Master Ordinance, Supplemental Ordinance or Related Documents, to the benefit or security of the Master Ordinance, Supplemental Ordinance or Related Documents until the prior payment in full of the principal of, Accreted Value and interest on all other System Bonds then Outstanding.

Section 10.16. Competent Management.

Pursuant to Master Ordinance Section 26.16, the City shall employ experienced and competent personnel to manage the System.

Section 10.17. Performing Duties.

Pursuant to Master Ordinance Section 26.17, the City will faithfully and punctually perform all duties with respect to the System required by State and City laws, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as required by this Section and the proper segregation and application of the Gross Revenues.

Section 10.18. Other Liens.

Pursuant to Master Ordinance Section 26.18, other than as stated in or provided by the Master Ordinance or applicable disclosure document for a series of System Bonds, there are no liens or encumbrances of any nature whatsoever, on or against the System, the Gross Revenues or the Net Revenues.

Section 10.19. City's Existence.

Pursuant to Master Ordinance Section 26.19, the City will maintain its corporate identity and existence as long as System 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. However, the City may annex or de-annex land if the City complies with other applicable covenants contained in the Master Ordinance.

ARTICLE XI

PREPAYMENT OF LOAN AGREEMENT AND NOTE

The principal amount of the Note, or any part thereof, may be prepaid at any time without penalty at the discretion of the Borrower and the prepayments of principal shall be applied as set forth in the Loan Agreement.

ARTICLE XII

PAYING AGENT AND REGISTRAR

The City Treasurer of the City of Las Cruces is appointed as Fiscal Agent for the Note and Loan Agreement in the capacities of Paying Agent and Registrar for the Note and Loan Agreement.

ARTICLE XIII

EVENTS OF DEFAULT; REMEDIES AND DUTIES

Section 13.01. DEFAULT. The following shall constitute an event of default under the Loan Agreement:

A. The failure by the City to pay the annual payment due on the repayment of the Loan set forth in the Loan Agreement and Note when due and payable either at maturity or otherwise; or

B.Default by the Borrower in any of its covenants or conditions set forth under the Loan Agreement (other than a default described in the previous clause of this section) for 60 days after the NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.

Section 13.02.UPON OCCURRENCE OF DEFAULT:

A.The entire unpaid principal amount of the Interim and Final Promissory Note plus accrued interest and any fees thereon may be declared by the NMED to be immediately due and payable and the City shall pay the amounts due under Note from the Pledged Revenues, either immediately or in the manner required by the NMED in its declaration, but only to the extent funds are available for payment of the Note and Outstanding System Bonds. However, if insufficient funds are available for payment of the Note(s) and Outstanding System Bonds, the NMED may require the City to adjust the rates charged by the System to ensure repayment of the Note and Outstanding System Bonds.

B.Default by the City as to covenants or conditions required under the federal grant to NMED from EPA pursuant to which the Loan and Loan Subsidy Grant are made by NMED to the City, the City may be required to refund the amount of the Loan and Loan Subsidy Grant disbursed to the Borrower from NMED.

C. NMED shall have no further obligation to make payments to the Borrower under the Loan Agreement.

Section 13.03. ENFORCEMENT; VENUE. The NMED retains the right to seek enforcement of the terms of the Loan Agreement. If the NMED and the City cannot reach agreement regarding disputes as to the terms and conditions of this Loan Agreement, such disputes are to be resolved promptly and expeditiously in

the district court of Santa Fe County. City agrees that the district court for Santa Fe County shall have exclusive jurisdiction over the Borrower and the subject matter of the Loan Agreement and waives the right to challenge such jurisdiction.

Section 13.04. REMEDIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in the Loan Agreement or this Ordinance, the NMED may proceed against the City to protect and enforce its rights under the 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 in this Ordinance for the enforcement of any proper legal or equitable remedy as the NMED may deem most effective 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 the NMED, or to require the City to act as if it were the trustee of an express trust, or any combination of such remedies. Each right or privilege of the NMED is in addition and cumulative to any other right or privilege under this Ordinance or the Loan Agreement and Note and the exercise of any right or privilege by the NMED shall not be deemed a waiver of any other right or privilege.

Section 13.05. DUTIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in this Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the NMED to protect and preserve the security created for the payment of the Note to ensure the payment on the Note promptly as the same become due. All proceeds derived from the System, so long as the Note is Outstanding, shall be treated as revenues to the extent permitted by the Master Ordinance. If the City fails or refuses to proceed as required by this Section, the NMED, after demand in writing, may proceed to protect and enforce the rights of the NMED as provided in this Ordinance and the Loan Agreement.

ARTICLE XIV

SEVERABILITY

Section 14.01.Severability. If any Article, section, paragraph, clause or provision of this Ordinance shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such Article, section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 14.02.Headings. The headings used in this Ordinance are for convenience only, and shall not be construed as modifying the text.

ARTICLE XV

ORDINANCE IRREPEALABLE

This Ordinance shall be and remain irrepealable until the principal of, premium, if any, and interest on the Loan Agreement and Note are fully paid and the Loan Agreement and Note are canceled or there has been a defeasance of the Loan Agreement and Note as provided in the Master Ordinance.

ARTICLE XVI

REPEALER CLAUSE

All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with the Master Ordinance as supplemented and amended by this Ordinance are repealed to the extent of such inconsistency. This repealer shall not be construed to revive any bylaw, order or resolution, or part thereof, previously repealed.

ARTICLE XVII

EFFECTIVE DATE AND GENERAL SUMMARY FOR PUBLICATION

Upon due adoption of this Ordinance, it shall be recorded and preserved by the City Clerk, authenticated by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the title and a general summary of the subject matter contained in this Ordinance (set out below) shall be published in a newspaper which maintains an office and is of general circulation in the City. This Ordinance shall be in full force and effect thereafter as provided by law.

Pursuant to Section 3-17-5 NMSA 1978, as amended, the title and a general summary of the subject matter contained in this 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 Governing Body of the City of Las Cruces, New Mexico on June 5, 2023 (the "Ordinance"). Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, City of Las Cruces, 700 North Main Street, Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND NOTE BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO AND THE NEW MEXICO ENVIRONMENT DEPARTMENT IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $16,916,853 PLUS ACCRUED INTEREST, AND LOAN SUBSIDY GRANT FUNDS IN THE AMOUNT OF $227,240, TO EXPAND AND IMPROVE THE WASTEWATER COMPONENT OF THE CITY'S JOINT UTILITY SYSTEM; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES OF THE JOINT UTILITY SYSTEM; AND PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND NOTE AND SECURITY THEREFOR.

A general summary of the Ordinance is:

The supplemental ordinance authorizes the execution and delivery of a loan agreement and note to the New Mexico Environment Department for the purpose of (i) acquiring, extending enlarging, bettering, repairing or otherwise improving the wastewater component of the City's joint water, sanitary sewer and natural gas utility system, and (ii) paying all Costs of Issuance and expenses pertaining to the authorization, preparation, execution and delivery of the Loan Agreement and Note; authorizes the Mayor and City Manager to execute and deliver the Loan Agreement and Note within the parameters of this Ordinance; approves the execution of certain documents relating to the Loan Agreement and Note; ratifies certain actions previously taken in connection with the Loan Agreement and Note; repeals all action inconsistent with the Ordinance.

The notice constitutes compliance with § 6-14-6 NMSA 1978.

(End of Form of Summary of Ordinance for Publication)

ARTICLE XVIII

FURTHER AUTHORIZATION; AUTHORITY TO MAKE BUDGET ADJUSTMENTS TO REFLECT PROCEEDS OF THE LOAN AGREEMENT AND NOTE

Authorized Officers of the City are hereby authorized to take all necessary action to effect the execution and delivery of the Loan Agreement and Note to the NMED, including, without limitation, the execution and the delivery of the Related Documents, if any, and the execution and delivery of closing certificates, agreements and instruments necessary or advisable in connection with the execution and delivery of the Loan Agreement and Note. Authorized Officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the proceeds of the Loan Agreement and Note.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"

Modrall Sperling draft 4.24.23

Clean Water State Revolving Loan Fund

Interim Loan Agreement

City of Las Cruces

This Funding Package Consists of:

$16,916,853 Loan
$227,240 Subsidy

Federal Requirements for this Funding Package include:

- **Super Crosscutters**
- **Generally Accepted Governmental Accounting**
- **Single Audit Act Requirements**
- **Prohibition on Certain Telecomm**
- **American Iron and Steel (AIS)**
- **Environmental Review Requirements**
- **Davis-Bacon**
- **Uniform Grant Guidance**
- **BIL Public Awareness (Signage) Requirement**
- **Useful Life Requirement**
- **OIG Hotline Requirement**

INTERIM LOAN AGREEMENT
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
CLEAN WATER STATE REVOLVING LOAN FUND (CWSRF) –also known as-
WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM

Loan Number: CWSRF 128

Name of Borrower: **City of Las Cruces**

Funding Packet: Loan: $16,916,853; Grant: 227,240; Interest Rate: 0.01%

This Interim Loan Agreement (Agreement) between the New Mexico Environment Department (NMED) of the State of New Mexico and the City of Las Cruces (Borrower) becomes effective on the date signed by the NMED. Borrower has enacted Ordinance No._____ approved on _____ (Ordinance) which authorizes execution of this Agreement, authorizes the Borrower to accept loan and grant funds (Funds) from NMED, and irrevocably pledges the Net Revenues of the Borrower's Joint Utility System (Pledged Funds) for the repayment of the loan (such capitalized terms as defined in Section 1 of the Ordinance).

Listed below are agency contacts.

Borrower's Name and Address: City of Las Cruces 700 N Main Las Cruces, NM 88001	**NMED:** New Mexico Environment Department Clean Water State Revolving Fund Program P.O. Box 5469 Santa Fe, NM 87502-5469 NMENV-cpbinfo@state.nm.us
Borrower's Contact Information: Ken Miyagishima, Mayor 575-541-2067 kmiyagishima@las-cruces.org	**NMED Contact Information:** Brandon Kalinowski, Project Engineer (505) 670-3571 brandon.kalinowski@env.nm.gov Andres Delgado, Program Administrator (505) 660-7913 andres.delgado@env.nm.gov Rhonda Holderman, Financial Manager (505) 469-3365 rhonda.holderman@env.nm.gov

Incorporated as part of this Agreement as though fully set forth in this Agreement is the following:

Borrower's Loan Ordinance
Interim Promissory Note
Loan Amortization Schedule
Project Description Form
Federal Requirements

I. Project Description:

a. City of Las Cruces Wastewater Treatment Plant Improvements-construction. The current approved Project Description on file with NMED.

b. The Borrower agrees that it will implement, in all respects, the project outlined in the attached Project Description, and made a part of this Agreement.

c. The Borrower agrees to make no change in the Project Description without first submitting a written request to NMED and obtaining NMED's written approval of the required change, and if necessary, an amended loan agreement.

II. Loan Amount:

a. NMED agrees to loan the Borrower to pay for approved costs to plan, acquire and construct the Project, in an amount not to exceed: **Sixteen Million Nine Hundred Sixteen Thousand Eight Hundred Fifty-Three Dollars ($16,916,853) (Loan Amount)** at the interest rate of **0.01%** annually upon the terms and conditions set forth in this Agreement and the Interim Promissory Note.

b. Provided the Borrower complies with the Conditions and the Loan Subsidy Grant Requirements below, the loan and loan subsidy amount will be available for a period of **two years (2) years** from the date of this Agreement.

III. Loan Subsidy Grant Award Amount:

a. Subject to the terms and conditions set forth in this Agreement, NMED agrees to award the Borrower a grant funded from NMED's federal grant award to pay for approved costs to plan, acquire and construct the Project, in an amountof: **Two Hundred Twenty Seven Thousand Two Hundred Fourty Dollars ($227,240) (Loan Subsidy).**

b. Loan Subsidy will be applied when **35%** of total funding package has been expended. Loan subsidy will be fully expended; remaining disbursement will be paid as loan.

IV. Project Conditions:

A. Subsequent to the date of this Agreement, but prior to NMED's approval of the Contract Documents, for any phase, the Borrower's attorney shall provide an opinion satisfactory to NMED that the Borrower is an incorporated municipality with home-rule powers under the Constitution and statutes of the State.

B. Upon execution of this Agreement, the Borrower shall follow the procedures listed below unless waived in writing by NMED. Disbursement by NMED may be withheld if any of these procedures are not followed by the Borrower.

1. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit documentation regarding the hiring process to be used and the (RFP), to NMED for review and approval prior to selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must comply with the New Mexico Procurement Code. NMSA 1978, Sections 13-1-21 et seq. or the Borrower's procurement policies enacted pursuant to its home-rule powers. Engineering Services must be chosen based on a qualification-based request for proposal process regardless of the anticipated cost. A minimum of three proposers must be interviewed as part of the selection process. The Borrower is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB email ptab@acecnm.org.)

2. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit a draft form of any engineering agreement and/or other professional services contract, or a letter certifying that the Borrower's staff will perform the engineering and/or other professional services, to NMED for review and approval prior to executing the agreement/contract or using Borrower's staff. The preferred engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/.

3. If these Funds are to be used for engineering design or for construction, the Borrower shall submit all plans, specifications, and any addenda for this project to NMED for review and approval before the project is advertised for construction bids. Plans, specifications, and addenda shall be prepared by a registered New Mexico Professional Engineer.

4. Following NMED approval of the proposed award, the Borrower shall submit to NMED for review the notice of the award and the minutes of meeting in which award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed. The selected contractor will be required to post a performance and payment bond in accordance with requirements of NMSA 1978, Section 13-4-18.

5. The selected contractor will be required to submit a construction schedule to the Borrower at the pre-construction conference.

6. The Borrower will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. NMED's written decision approving or disapproving the modification shall be rendered promptly to the Borrower. If immediate action is needed, a verbal notification of NMED's decision will be made, followed by written notification.

7. The Borrower shall provide a full-time construction inspector during construction of the project. The Borrower shall submit the inspector's résumé and inspection reports to NMED for review and approval.

8. NMED shall 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.

9. NMED may require proof of deposit and/or proof of payments to contractors and consultants, including the disbursement of funds other than those provided by the Agreement.

10. The Borrower (or the system owner) shall employ properly certified utility operators and shall comply with all provisions of the New Mexico Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 et seq.

11. With the exception of easements (See Section V.H), when real property is acquired by the Borrower, either through purchase or donation as a part of this project and within the project period, the Borrower 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 who was selected

through applicable procurement procedures. These documents must be reviewed and approved by NMED prior to the acquisition of any real property. After real property acquisition, the Borrower will make available to NMED all documents of title pertaining to the acquired property and all easements or rights-of-way necessary for the completion of work under this agreement.

12. If the Funds are to be used for construction of wastewater collection lines or water distribution lines, the existing population served by the project shall be connected to the collection system or distribution system within a reasonable time after project completion. This will be accomplished by adoption and annual review of an Ordinance/Resolution and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.

13. Notwithstanding the other provisions of this Agreement the Borrower shall comply with the Prompt Payment Act, NMSA 1978, Sections 57-28-1 et seq. 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 Borrower and NMED.

14. If the Funds are to be used for construction, final disbursement 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:

    (a) Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals.

    (b) A final reimbursement request including the final certified construction pay request prepared by the Borrower's project engineer and approved by the Borrower.

    (c) A certificate of substantial completion including punch list items.

    (d) A letter certifying project acceptance by the Borrower and the Borrower’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 Borrower, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Borrower and contractors will be submitted to NMED for final review and approval.

(e) Certification letter by the Borrower that the Labor Standards Contract Provisions have been met.

(f) Record drawings prepared by the Borrower's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings.

(g) Complete and legally effective releases or waivers (satisfactory to the Borrower) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished thereunder. In lieu thereof and as approved by the Borrower, 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 Borrower or its property might in any way be responsible, have been paid or otherwise satisfied.

(h) A written consent of the surety, if any, to final payment; and

(i) Borrower's ledger sheets including all payments made by the Borrower may be requested with the final disbursement request and before the final disbursement request can be processed by NMED.

(j) Verification to NMED of FSP (facilities security plan?) and written certification that a FSP is in place.

15. If these Funds are to be used for the purchase of equipment, final payment will be made after approval by NMED of appraisal reports and equipment title for used equipment.

16. The Borrower must ensure that each procurement contract contain the following term and condition: The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of the contract which may result in the termination of the contract or other legally available remedies.

C. The Borrower shall require the Contractor of the Project to post a performance and payment bond approved by NMED in the amount of the bid.

D. Bid tabulation and supporting documents (Contract Documents) shall be prepared and furnished to NMED within fifteen (15) days of bid opening. The Borrower shall not proceed with construction of the Project until NMED has approved the Contract Documents.

E. Any change order to the Project construction contract which results in a change to the Project's contract amount, scope of work, or schedule must be approved by NMED.

F. Borrower agrees to implement environmental recommendations that will be supplied by NMED prior to final Plan approval.

G. The Borrower must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review prior to advertising for construction. The Borrower must certify in writing that this has been done prior to the award of the construction contract. A site certificate addressing the property upon or through which the facility is being constructed and prepared by the Borrower's attorney is required.

H. The Borrower agrees to obtain a single audit annually from an Independent Professional Auditor.

I. The Borrower shall achieve Project Completion by the end of the loan agreement term. Project Completion means the date the operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments. If the Borrower is unable to complete the project by the loan termination date, the Borrower must notify NMED at least 30 days prior to the loan termination date, otherwise, NMED may terminate this Agreement or may withhold Funds. If NMED terminates this Agreement, the Borrower shall refund any Funds disbursed to the Borrower by NMED within ninety (90) days of termination.

V. General Conditions

A. This Agreement is made pursuant to and in accordance with the provisions of the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, and the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC.

B. Pursuant to the Ordinance/Resolution of the Borrower, the Borrower is authorized to enter into this Agreement and the Final Loan Agreement and to execute and deliver an Interim Promissory Note and Final Promissory Note. The terms of the Ordinance/Resolution and Interim Promissory Note are incorporated as part of this Agreement as though fully set forth in this Agreement.

C. For the purposes of this Agreement, NMED's inspection, review and approval of the Project are only for the purposes of determining compliance with applicable State regulations. NMED approval shall not be interpreted as any warranty or guarantee. Approval of the plans and design of the Project means only that plans are complete. NMED will bring to the Borrower's attention any obvious defects in the Project's design, materials, or workmanship, but all such defects and their correction shall be the responsibility of the Borrower and its contractors. Any questions raised by NMED shall be resolved exclusively by the Borrower and its contractors, who shall remain responsible for the completion and success of the Project.

D. The Borrower warrants, represents and agrees that it, and its contractors, subcontractors, employees, and representatives will comply with all applicable State and Federal laws and regulations, and the requirements set forth in this Agreement or any amendment to the Agreement.

E. If the Borrower seeks additional funding from any other entity for the Project, the Borrower agrees that the Borrower is solely responsible for satisfying any requirements arising as a result of funding from that other entity.

F. The Borrower warrants that the internal financial statements provided to NMED by the Borrower for approval of the loan do not contain false material statements, representations, certifications, or omissions of material fact.

G. The Borrower shall submit all future audited financial reports to the State Auditor as required by the State Auditor's Rules.

H. The proceeds of the loan shall be used for the Project and for no other purpose. Unallowable uses of the proceeds of the loan include but are not limited to paying administrative expenses (including applications for funding), costs of Borrower employees, late fees, interest, or penalties. The Borrower shall pay those costs.

I. The parties agree that allowable costs will be limited to those costs that are necessary, reasonable, and related to the efficient achievement of the objectives of this Agreement. The Borrower must justify all expenditures for which it requests reimbursement, according to accepted NMED criteria and procedures. NMED may withhold reimbursement of any item or expenditure and

may reclaim improperly documented reimbursement until the Borrower provides sufficient justification. NMED may not disburse any loan funds if the Borrower fails to adhere to the schedule described in Section IV. above.

J. For any phase of the Project which requires National Environmental Policy Act (NEPA) review, NMED shall not disburse any funds for that phase until a NEPA review is completed.

K. The Borrower agrees to abide by all required Equal Employment Opportunity laws, both State and Federal.

L. The Borrower agrees that it will take affirmative action to ensure that the Project is constructed in compliance with Federal and State occupational health and safety laws and that inspectors authorized by NMED's Occupational Health and Safety Bureau will be given free access to the Project sites.

M. The Borrower agrees to make all fiscal records related to the Project available to NMED, the United States Environmental Protection Agency, the United States General Accounting Office (GAO), and the State Auditor for inspection and audit.

N. The obligations of the Borrower under the Agreement are the special limited obligations of the Borrower as set forth in the Agreement and the Note. The Agreement and the Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall the Agreement and Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment due on the Agreement or Note.

O. The Borrower agrees to operate and maintain the Project so that the Project will function properly over the structural and material design life of the Project.

P. The loan will not be used by the Borrower on any project constructed in fulfillment, in whole or in part, of requirements made of a subdivider by the provisions of the Land Subdivision Act, NMSA 1978, § 47-5-1 to 47-5-8 NMSA 1978.

Q. The Borrower understands and agrees that the Project is subject to Federal and State regulations and acceptance of any disbursement pursuant to the Agreement constitutes an agreement by the Borrower that the amounts have been properly accounted for and expended in accordance with applicable Federal and State regulations.

R. The Borrower agrees to maintain separate Project accounts in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) including standards relating to the reporting of infrastructure assets. If requested by NMED, the Borrower shall conduct an audit of the financial records pertaining to the Project.

VI. Covenants

A. Disbursements (payment of loan funds) to the Borrower made pursuant to the Agreement will be available on and after the date of the execution of the Agreement and Note if the Borrower is compliant with the Conditions and Covenants of the Agreement. Disbursements will be made only for actual costs incurred by the Borrower to plan, design, construct or acquire the Project, or any phase thereof. The Borrower shall request disbursements on forms acceptable to NMED on at least a quarterly basis and such requests shall be prepared by and certified by the Borrower. All disbursements to the Borrower will be made in accordance with applicable Federal and State regulations. Eligible planning, design and associated pre-building costs that are within the scope of the project and were incurred prior to signing the Agreement are payable under the Agreement and shall be submitted for reimbursement immediately upon execution of the Agreement. Interim disbursements will be made as the work progresses. Interim disbursement requests shall be submitted by the Borrower within ninety (90) days after the liability of the Borrower was incurred as evidenced by the date of the invoice for which disbursement is being requested.

B. The Borrower shall not sell, lease, or transfer any property related to the Project except as permitted by the Ordinance/Resolution, as amended, and supplemented.

C. The Borrower shall not obligate the Pledged Funds for this Agreement except as set forth in the Ordinance/Resolution as adopted at the time of execution of the Agreement.

D. The Borrower hereby irrevocably agrees that the Borrower has fixed and collected, or will fix and collect, adequate rates, fees, and other charges for the use of the System (as defined in the Ordinance/Resolution) which will be sufficient to satisfy the Agreement and the Note.

E. If the pledged funds shall prove insufficient to produce the Repayments set forth herein and in the Interim and Final Promissory Note, the Borrower agrees to adjust and increase such rates, fees, and charges in the manner authorized by law to provide funds sufficient to produce the repayment of the loan set forth herein and in the Interim and Final Promissory Note.

F. The Borrower shall not provide any free services of the Water and Wastewater System. The Borrower shall, to the full extent permitted by law, collect payment for water and wastewater services provided. The Borrower shall notify NMED should delinquent users impact their ability to service this agreement as defined.

G. The Borrower shall maintain property, liability and fidelity insurance coverage on the Project as required by NMED and provide written proof of such insurance coverage to NMED.

H. The following shall constitute an event of default under the Agreement:

1. The failure by the Borrower to pay the annual payment on the repayment of the loan set forth in the Agreement and Interim and Final Promissory Notes when due and payable either at maturity or otherwise; or

2. Default by the Borrower in any of its covenants or conditions set forth under the Agreement (other than a default set forth in the previous clause of this section) for 60 days after NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.

I. Upon occurrence of an event of default:

1. The entire unpaid amount of the Agreement and Interim and Final Promissory Note may be declared by the NMED to be immediately due and payable to the extent of available Pledged Funds, and the Borrower shall pay the amounts due under the Agreement and Interim and Final Promissory Note, but solely from available Pledged Funds, either immediately or in the manner required by NMED in its declaration.

2. If the event of default is under clause one of Subsection H, except to the extent not consistent with the Ordinance, NMED is authorized to set water and wastewater user rates in the area of the Borrower's jurisdiction in order to provide sufficient money for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System. Funds sufficient to provide for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed on a yearly basis if necessary.

3. If default by the Borrower is of covenants or conditions required under the Agreement, the Borrower may be required to refund the amount of the loan disbursed to the Borrower from NMED.

4. NMED shall have no further obligation to make disbursements to the Borrower under the Agreement and may pursue any other appropriate remedies.

J. NMED retains the right to seek enforcement of the terms of the Agreement. If the parties cannot reach agreement regarding disputes as to the terms and conditions of this Agreement, such disputes are to be resolved in the district court of Santa Fe County. The parties agree that the district court for Santa Fe County shall have exclusive jurisdiction over the parties and the subject matter of this Agreement and waive the right to challenge such jurisdiction.

K. This Agreement, the Ordinance/Resolution and the Note incorporate all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement, the Ordinance/Resolution, and the Note. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement, the Ordinance/Resolution, and the Note.

L. This Agreement shall be binding upon and inure to the benefit of the Borrower, NMED and their respective successors. The rights and obligations under the Agreement and Interim and Final Promissory Note may not be assigned by the Borrower.

M. No change shall be made to the Agreement or the Interim and Final Promissory Note except in writing signed by NMED and the Borrower.

The parties have executed this Agreement on the dates set forth by their respective names.

Issued and administered by:

By executing this Agreement, the undersigned represents authorization to act on behalf of the Recipient.

BY:

_____
Signature of duly authorized Recipient Official
City of Las Cruces

_____
Title

_____
Date

New Mexico Environment Department
Wastewater Facility Construction Loan Program
Clean Water State Revolving Loan Fund

BY: _____
Judith L. Kahl, P.E., Chief, Constructions Programs Bureau
Signed pursuant to May 24, 2021, Secretary of Environment Delegation Order

EXHIBIT "B"

Modrall Sperling 4.24.23

INTERIM PROMISSORY NOTE

To the New Mexico Environment Department (NMED)
Clean Water State Revolving Loan Fund (CWSRF)
-also known as-
Wastewater Facility Construction Loan Program

FOR VALUE RECEIVED, the City of Las Cruces (Borrower) promises to pay the NMED at:

New Mexico Environment Department
Construction Programs Bureau
1190 S. St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87505-5469

or by electronic funds transfer (EFT)

or at such other place as NMED may hereafter designate in writing, the principal amount of

Sixteen Million Nine Hundred Sixteen Thousand Eight Hundred Fifty-Three Dollars ($16,916,853)

or so much of that amount as has been paid by NMED to the Borrower pursuant to the terms of the Interim Loan Agreement (Agreement) or any amendment to the Agreement for Loan Number **CWSRF 128** between NMED and the Borrower plus **0.01%** project interest annually from the date of each respective disbursement annually until paid in full. Effective on the execution of the Agreement.

The principal plus interest due, if applicable, and payable on this Note shall be payable as follows: Principal loaned, and the subsequent interest shall be due and paid according to the Final Promissory Note as described.

Repayment Rate and Schedule

Annual principal and interest payments will commence not later than one year after completion of the project and shall be paid in annual installments due on the anniversary of the first annual installment. A Final Promissory Note will be processed and executed, and the Agreement will be amended and executed as a Final Loan Agreement to reflect the final amount loaned by NMED to Borrower. The principal amount of the Final Promissory Note and Agreement, as amended, will be an amount equal to that loaned and paid to Borrower under this Note.

Source of Repayment

The Borrower is giving a security interest by dedicating the Net Revenues of the Borrower's Joint Utility System (Pledged Funds) for the repayment of the loan (such capitalized terms as defined in Section 1 of the Ordinance). The Pledged Funds are defined as:

Joint Net System Utility Revenues (Water, Sanitary Sewer, and Natural Gas)

Except as stated in the Ordinance, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

Assignment

No assignment by NMED of the right to receive payments under this Note shall affect the Borrower's obligations or rights other than to make payments either by EFT or at the address designated by NMED to the Borrower in writing.

Collection and Default

At the option of NMED, any amount paid by NMED to collect amounts due under this Note or to preserve or protect NMED's rights under the Agreement shall become a part of, and bear interest at the interest rate as set forth in the previous REPAYMENT RATE AND SCHEDULE section above and shall become immediately due and payable by the Borrower to NMED upon demand by NMED. Events of default and remedies upon an event of default as described in the Agreement in COVENANTS are incorporated herein by reference.

Prepayment

The Borrower may prepay all or any part of the principal of this Note without penalty. Extra payments, shall, after payment of interest due, be applied to the reduction of principal. After any prepayment of principal, the Borrower shall continue to pay the amounts listed in the Agreement and Final Promissory Note until the entire principal and interest are paid in full.

Authority

This Note is authorized by the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC, and the Borrower's Ordinance No. _____.

This Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall this Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement and the Ordinance, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment of the principal or interest on the Agreement or Note.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and effective as of the date listed below by the Borrower.

_____
Borrower's authorized signature

_____
Borrower's printed name

_____
Title

_____
Date

State of _____

County of _____

Signed or attested before me on _____ by _____,
date Witness

Seal

_____
Signature of notary officer

My commission expires: _____

Clean Water State Revolving Loan Fund

Interim Loan Agreement

City of Las Cruces

This Funding Package Consists of:

$16,916,853 Loan
$227,240 Subsidy

Federal Requirements for this Funding Package include:

- **Super Crosscutters**
- **Generally Accepted Governmental Accounting**
- **Single Audit Act Requirements**
- **Prohibition on Certain Telecomm**
- **American Iron and Steel (AIS)**
- **Environmental Review Requirements**
- **Davis-Bacon**
- **Uniform Grant Guidance**
- **BIL Public Awareness (Signage) Requirement**
- **Useful Life Requirement**
- **OIG Hotline Requirement**

INTERIM LOAN AGREEMENT
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
CLEAN WATER STATE REVOLVING LOAN FUND (CWSRF) –also known as-
WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM

Loan Number: CWSRF 128

Name of Borrower: **City of Las Cruces**

Funding Packet: Loan: $16,916,853; Grant: 227,240; Interest Rate: 0.01%

This Interim Loan Agreement (Agreement) between the New Mexico Environment Department (NMED) of the State of New Mexico and the City of Las Cruces (Borrower) becomes effective on the date signed by the NMED. Borrower has enacted Ordinance No._____ approved on _____ (Ordinance) which authorizes execution of this Agreement, authorizes the Borrower to accept loan and grant funds (Funds) from NMED, and irrevocably pledges the Net Revenues of the Borrower's Joint Utility System ~~Revenues~~ (Pledged Funds) for the repayment of the loan (such capitalized terms as defined in Section 1 of the Ordinance).

Listed below are agency contacts.

Borrower's Name and Address: City of Las Cruces 700 N Main Las Cruces, NM 88001	**NMED:** New Mexico Environment Department Clean Water State Revolving Fund Program P.O. Box 5469 Santa Fe, NM 87502-5469 NMENV-cpbinfo@state.nm.us
Borrower's Contact Information: Ken Miyagishima, Mayor 575-541-2067 kmiyagishima@las-cruces.org	**NMED Contact Information:** Brandon Kalinowski, Project Engineer (505) 670-3571 brandon.kalinowski@env.nm.gov Andres Delgado, Program Administrator (505) 660-7913 andres.delgado@env.nm.gov Rhonda Holderman, Financial Manager (505) 469-3365 rhonda.holderman@env.nm.gov

Incorporated as part of this Agreement as though fully set forth in this Agreement is the following:

Borrower's Loan Ordinance
Interim Promissory Note
Loan Amortization Schedule
Project Description Form
Federal Requirements

I. Project Description:

a. City of Las Cruces Wastewater Treatment Plant Improvements-construction. The current approved Project Description on file with NMED.

b. The Borrower agrees that it will implement, in all respects, the project outlined in the attached Project Description, and made a part of this Agreement.

c. The Borrower agrees to make no change in the Project Description without first submitting a written request to NMED and obtaining NMED's written approval of the required change, and if necessary, an amended loan agreement.

II. Loan Amount:

a. NMED agrees to loan the Borrower to pay for approved costs to plan, acquire and construct the Project, in an amount not to exceed: **Sixteen Million Nine Hundred Sixteen Thousand Eight Hundred Fifty-Three Dollars ($16,916,853) (Loan Amount)** at the interest rate of **0.01%** annually upon the terms and conditions set forth in this Agreement and the Interim Promissory Note.

b. Provided the Borrower complies with the Conditions and the Loan Subsidy Grant Requirements below, the loan and loan subsidy amount will be available for a period of **two years (2) years** from the date of this Agreement.

III. Loan Subsidy Grant Award Amount:

a. Subject to the terms and conditions set forth in this Agreement, NMED agrees to award the Borrower a grant funded from NMED's federal grant award to pay for approved costs to plan, acquire and construct the Project, in an amountof: **Two Hundred Twenty Seven Thousand Two Hundred Fourty Dollars ($227,240) (Loan Subsidy).**

b. Loan Subsidy will be applied when **35%** of total funding package has been expended. Loan subsidy will be fully expended; remaining disbursement will be paid as loan.

IV. Project Conditions:

A. Subsequent to the date of this Agreement, but prior to NMED's approval of the Contract Documents, for any phase, the Borrower's attorney shall provide an opinion satisfactory to NMED that the Borrower is an incorporated municipality with home-rule powers under the Constitution and statutes of the State.~~entity.~~

B. Upon execution of this Agreement, the Borrower shall follow the procedures listed below unless waived in writing by NMED. Disbursement by NMED may be withheld if any of these procedures are not followed by the Borrower.

1. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit documentation regarding the hiring process to be used and the (RFP), to NMED for review and approval prior to selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must comply with the New Mexico Procurement Code. NMSA 1978, Sections 13-1-21 et seq. or the Borrower's procurement policies enacted pursuant to its home-rule powers. Engineering Services must be chosen based on a qualification-based request for proposal process regardless of the anticipated cost. A minimum of three proposers must be interviewed as part of the selection process. The Borrower is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB email ptab@acecnm.org.)

2. If these Funds are to be used for engineering and/or other professional services, the Borrower shall submit a draft form of any engineering agreement and/or other professional services contract, or a letter certifying that the Borrower's staff will perform the engineering and/or other professional services, to NMED for review and approval prior to executing the agreement/contract or using Borrower's staff. The preferred engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/.

3. If these Funds are to be used for engineering design or for construction, the Borrower shall submit all plans, specifications, and any addenda for this project to NMED for review and approval before the project is advertised for construction bids. Plans, specifications, and addenda shall be prepared by a registered New Mexico Professional Engineer.

4. Following NMED approval of the proposed award, the Borrower shall submit to NMED for review the notice of the award and the minutes of meeting in which award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed. The selected contractor will be required to post a performance and payment bond in accordance with requirements of NMSA 1978, Section 13-4-18.

5. The selected contractor will be required to submit a construction schedule to the Borrower at the pre-construction conference.

6. The Borrower will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. NMED's written decision approving or disapproving the modification shall be rendered promptly to the Borrower. If immediate action is needed, a verbal notification of NMED's decision will be made, followed by written notification.

7. The Borrower shall provide a full-time construction inspector during construction of the project. The Borrower shall submit the inspector's résumé and inspection reports to NMED for review and approval.

8. NMED shall 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.

9. NMED may require proof of deposit and/or proof of payments to contractors and consultants, including the disbursement of funds other than those provided by the Agreement.

10. The Borrower (or the system owner) shall employ properly certified utility operators and shall comply with all provisions of the New Mexico Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 et seq.

11. With the exception of easements (See Section V.H), when real property is acquired by the Borrower, either through purchase or donation as a part of this project and within the project period, the Borrower 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 who was selected

through applicable procurement procedures. These documents must be reviewed and approved by NMED prior to the acquisition of any real property. After real property acquisition, the Borrower will make available to NMED all documents of title pertaining to the acquired property and all easements or rights-of-way necessary for the completion of work under this agreement.

12. If the Funds are to be used for construction of wastewater collection lines or water distribution lines, the existing population served by the project shall be connected to the collection system or distribution system within a reasonable time after project completion. This will be accomplished by adoption and annual review of an Ordinance/Resolution and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.

13. Notwithstanding the other provisions of this Agreement the Borrower shall comply with the Prompt Payment Act, NMSA 1978, Sections 57-28-1 et seq. 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 Borrower and NMED.

14. If the Funds are to be used for construction, final disbursement 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:

    (a) Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals.

    (b) A final reimbursement request including the final certified construction pay request prepared by the Borrower's project engineer and approved by the Borrower.

    (c) A certificate of substantial completion including punch list items.

    (d) A letter certifying project acceptance by the Borrower and the Borrower’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 Borrower, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Borrower and contractors will be submitted to NMED for final review and approval.

(e) Certification letter by the Borrower that the Labor Standards Contract Provisions have been met.

(f) Record drawings prepared by the Borrower's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings.

(g) Complete and legally effective releases or waivers (satisfactory to the Borrower) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished thereunder. In lieu thereof and as approved by the Borrower, 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 Borrower or its property might in any way be responsible, have been paid or otherwise satisfied.

(h) A written consent of the surety, if any, to final payment; and

(i) Borrower's ledger sheets including all payments made by the Borrower may be requested with the final disbursement request and before the final disbursement request can be processed by NMED.

(j) Verification to NMED of FSP (facilities security plan?) and written certification that a FSP is in place.

15. If these Funds are to be used for the purchase of equipment, final payment will be made after approval by NMED of appraisal reports and equipment title for used equipment.

16. The Borrower must ensure that each procurement contract contain the following term and condition: The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of the contract which may result in the termination of the contract or other legally available remedies.

C. The Borrower shall require the Contractor of the Project to post a performance and payment bond approved by NMED in the amount of the bid.

D. Bid tabulation and supporting documents (Contract Documents) shall be prepared and furnished to NMED within fifteen (15) days of bid opening. The Borrower shall not proceed with construction of the Project until NMED has approved the Contract Documents.

E. Any change order to the Project construction contract which results in a change to the Project's contract amount, scope of work, or schedule must be approved by NMED.

F. Borrower agrees to implement environmental recommendations that will be supplied by NMED prior to final Plan approval.

G. The Borrower must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review prior to advertising for construction. The Borrower must certify in writing that this has been done prior to the award of the construction contract. A site certificate addressing the property upon or through which the facility is being constructed and prepared by the Borrower's attorney is required.

H. The Borrower agrees to obtain a single audit annually from an Independent Professional Auditor.

I. The Borrower shall achieve Project Completion by the end of the loan agreement term. Project Completion means the date the operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments. If the Borrower is unable to complete the project by the loan termination date, the Borrower must notify NMED at least 30 days prior to the loan termination date, otherwise, NMED may terminate this Agreement or may withhold Funds. If NMED terminates this Agreement, the Borrower shall refund any Funds disbursed to the Borrower by NMED within ninety (90) days of termination.

V. General Conditions

A. This Agreement is made pursuant to and in accordance with the provisions of the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, and the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC.

B. Pursuant to the Ordinance/Resolution of the Borrower, the Borrower is authorized to enter into this Agreement and the Final Loan Agreement and to execute and deliver an Interim Promissory Note and Final Promissory Note. The terms of the Ordinance/Resolution and Interim Promissory Note are incorporated as part of this Agreement as though fully set forth in this Agreement.

C. For the purposes of this Agreement, NMED's inspection, review and approval of the Project are only for the purposes of determining compliance with applicable State regulations. NMED approval shall not be interpreted as any warranty or guarantee. Approval of the plans and design of the Project means only that plans are complete. NMED will bring to the Borrower's attention any obvious defects in the Project's design, materials, or workmanship, but all such defects and their correction shall be the responsibility of the Borrower and its contractors. Any questions raised by NMED shall be resolved exclusively by the Borrower and its contractors, who shall remain responsible for the completion and success of the Project.

D. The Borrower warrants, represents and agrees that it, and its contractors, subcontractors, employees, and representatives will comply with all applicable State and Federal laws and regulations, and the requirements set forth in this Agreement or any amendment to the Agreement.

E. If the Borrower seeks additional funding from any other entity for the Project, the Borrower agrees that the Borrower is solely responsible for satisfying any requirements arising as a result of funding from that other entity.

F. The Borrower warrants that the internal financial statements provided to NMED by the Borrower for approval of the loan do not contain false material statements, representations, certifications, or omissions of material fact.

G. The Borrower shall submit all future audited financial reports to the State Auditor as required by the State Auditor's Rules.

H. The proceeds of the loan shall be used for the Project and for no other purpose. Unallowable uses of the proceeds of the loan include but are not limited to paying administrative expenses (including applications for funding), costs of Borrower employees, late fees, interest, or penalties. The Borrower shall pay those costs.

I. The parties agree that allowable costs will be limited to those costs that are necessary, reasonable, and related to the efficient achievement of the objectives of this Agreement. The Borrower must justify all expenditures for which it requests reimbursement, according to accepted NMED criteria and procedures. NMED may withhold reimbursement of any item or expenditure and

may reclaim improperly documented reimbursement until the Borrower provides sufficient justification. NMED may not disburse any loan funds if the Borrower fails to adhere to the schedule described in Section IV. above.

J. For any phase of the Project which requires National Environmental Policy Act (NEPA) review, NMED shall not disburse any funds for that phase until a NEPA review is completed.

K. The Borrower agrees to abide by all required Equal Employment Opportunity laws, both State and Federal.

L. The Borrower agrees that it will take affirmative action to ensure that the Project is constructed in compliance with Federal and State occupational health and safety laws and that inspectors authorized by NMED's Occupational Health and Safety Bureau will be given free access to the Project sites.

M. The Borrower agrees to make all fiscal records related to the Project available to NMED, the United States Environmental Protection Agency, the United States General Accounting Office (GAO), and the State Auditor for inspection and audit.

N. The obligations of the Borrower under the Agreement are the special limited obligations of the Borrower as set forth in the Agreement and the Note. The Agreement and the Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall the Agreement and Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment due on the Agreement or Note.

O. The Borrower agrees to operate and maintain the Project so that the Project will function properly over the structural and material design life of the Project.

P. The loan will not be used by the Borrower on any project constructed in fulfillment, in whole or in part, of requirements made of a subdivider by the provisions of the Land Subdivision Act, NMSA 1978, § 47-5-1 to 47-5-8 NMSA 1978.

Q. The Borrower understands and agrees that the Project is subject to Federal and State regulations and acceptance of any disbursement pursuant to the Agreement constitutes an agreement by the Borrower that the amounts have been properly accounted for and expended in accordance with applicable Federal and State regulations.

R. The Borrower agrees to maintain separate Project accounts in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) including standards relating to the reporting of infrastructure assets. If requested by NMED, the Borrower shall conduct an audit of the financial records pertaining to the Project.

VI. Covenants

A. Disbursements (payment of loan funds) to the Borrower made pursuant to the Agreement will be available on and after the date of the execution of the Agreement and Note if the Borrower is compliant with the Conditions and Covenants of the Agreement. Disbursements will be made only for actual costs incurred by the Borrower to plan, design, construct or acquire the Project, or any phase thereof. The Borrower shall request disbursements on forms acceptable to NMED on at least a quarterly basis and such requests shall be prepared by and certified by the Borrower. All disbursements to the Borrower will be made in accordance with applicable Federal and State regulations. Eligible planning, design and associated pre-building costs that are within the scope of the project and were incurred prior to signing the Agreement are payable under the Agreement and shall be submitted for reimbursement immediately upon execution of the Agreement. Interim disbursements will be made as the work progresses. Interim disbursement requests shall be submitted by the Borrower within ninety (90) days after the liability of the Borrower was incurred as evidenced by the date of the invoice for which disbursement is being requested.

B. The Borrower shall not sell, lease, or transfer any property related to the Project except as permitted by the Ordinance/Resolution, as amended, and supplemented.

C. The Borrower shall not obligate the Pledged Funds for this Agreement except as set forth in the Ordinance/Resolution as adopted at the time of execution of the Agreement.

D. The Borrower hereby irrevocably agrees that the Borrower has fixed and collected, or will fix and collect, adequate rates, fees, and other charges for the use of the System (as defined in the Ordinance/Resolution) which will be sufficient to satisfy the Agreement and the Note.

E. If the pledged funds shall prove insufficient to produce the Repayments set forth herein and in the Interim and Final Promissory Note, the Borrower agrees to adjust and increase such rates, fees, and charges in the manner authorized by law to provide funds sufficient to produce the repayment of the loan set forth herein and in the Interim and Final Promissory Note.

F. The Borrower shall not provide any free services of the Water and Wastewater System. The Borrower shall, to the full extent permitted by law, collect payment for water and wastewater services provided. The Borrower shall notify NMED should delinquent users impact their ability to service this agreement as defined.

G. The Borrower shall maintain property, liability and fidelity insurance coverage on the Project as required by NMED and provide written proof of such insurance coverage to NMED.

H. The following shall constitute an event of default under the Agreement:

1. The failure by the Borrower to pay the annual payment on the repayment of the loan set forth in the Agreement and Interim and Final Promissory Notes when due and payable either at maturity or otherwise; or

2. Default by the Borrower in any of its covenants or conditions set forth under the Agreement (other than a default set forth in the previous clause of this section) for 60 days after NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.

I. Upon occurrence of an event of default:

1. The entire unpaid amount of the Agreement and Interim and Final Promissory Note may be declared by the NMED to be immediately due and payable to the extent of available Pledged Funds, and the Borrower shall pay the amounts due under the Agreement and Interim and Final Promissory Note, but solely ~~–~~from available ~~the –~~Pledged Funds, either immediately or in the manner required by NMED in its declaration.

2. If the event of default is under clause one of Subsection H, except to the extent not consistent with the Ordinance, NMED is authorized to set water and wastewater user rates in the area of the Borrower's jurisdiction in order to provide sufficient money for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System. Funds sufficient to provide for repayment, on scheduled due dates of the loan and proper operation and maintenance of the System shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed on a yearly basis if necessary.

3. If default by the Borrower is of covenants or conditions required under the Agreement, the Borrower may be required to refund the amount of the loan disbursed to the Borrower from NMED.

4. NMED shall have no further obligation to make disbursements to the Borrower under the Agreement and may pursue any other appropriate remedies.

J. NMED retains the right to seek enforcement of the terms of the Agreement. If the parties cannot reach agreement regarding disputes as to the terms and conditions of this Agreement, such disputes are to be resolved in the district court of Santa Fe County. The parties agree that the district court for Santa Fe County shall have exclusive jurisdiction over the parties and the subject matter of this Agreement and waive the right to challenge such jurisdiction.

K. This Agreement, the Ordinance/Resolution and the Note incorporate all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement, the Ordinance/Resolution, and the Note. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement, the Ordinance/Resolution, and the Note.

L. This Agreement shall be binding upon and inure to the benefit of the Borrower, NMED and their respective successors. The rights and obligations under the Agreement and Interim and Final Promissory Note may not be assigned by the Borrower.

M. No change shall be made to the Agreement or the Interim and Final Promissory Note except in writing signed by NMED and the Borrower.

The parties have executed this Agreement on the dates set forth by their respective names.

Issued and administered by:

By executing this Agreement, the undersigned represents authorization to act on behalf of the Recipient.

BY:

_____

Signature of duly authorized Recipient Official
City of Las Cruces

_____

Title

_____

Date

New Mexico Environment Department
Wastewater Facility Construction Loan Program
Clean Water State Revolving Loan Fund

BY: _____

Judith L. Kahl, P.E., Chief, Constructions Programs Bureau
Signed pursuant to May 24, 2021, Secretary of Environment Delegation Order

ATTACHMENT "B"

Modrall Sperling 4.24.23

INTERIM PROMISSORY NOTE

To the New Mexico Environment Department (NMED)
Clean Water State Revolving Loan Fund (CWSRF)
-also known as-
Wastewater Facility Construction Loan Program

FOR VALUE RECEIVED, the City of Las Cruces (Borrower) promises to pay the NMED at:

New Mexico Environment Department
Construction Programs Bureau
1190 S. St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87505-5469

or by electronic funds transfer (EFT)

or at such other place as NMED may hereafter designate in writing, the principal amount of

Sixteen Million Nine Hundred Sixteen Thousand Eight Hundred Fifty-Three Dollars ($16,916,853)

or so much of that amount as has been paid by NMED to the Borrower pursuant to the terms of the Interim Loan Agreement (Agreement) or any amendment to the Agreement for Loan Number **CWSRF 128** between NMED and the Borrower plus **0.01%** project interest annually from the date of each respective disbursement annually until paid in full. Effective on the execution of the Agreement.

The principal plus interest due, if applicable, and payable on this Note shall be payable as follows: Principal loaned, and the subsequent interest shall be due and paid according to the Final Promissory Note as described.

Repayment Rate and Schedule

Annual principal and interest payments will commence not later than one year after completion of the project and shall be paid in annual installments due on the anniversary of the first annual installment. A Final Promissory Note will be processed and executed, and the Agreement will be amended and executed as a Final Loan Agreement to reflect the final amount loaned by NMED to Borrower. The principal amount of the Final Promissory Note and Agreement, as amended, will be an amount equal to that loaned and paid to Borrower under this Note.

Source of Repayment

The Borrower is giving a security interest by dedicating the Net Revenues of the Borrower's Joint Utility System (Pledged Funds) for the repayment of the loan (such capitalized terms as defined in Section 1 of the Ordinance). ~~Pledged Funds.~~ The Pledged Funds are defined as:

Joint Net System Utility Revenues (Water, Sanitary Sewer, and Natural Gas)

Except as stated in the Ordinance, the Pledged Funds have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Pledged Funds on the date of the Ordinance. The loan will be payable and collectible solely from the Pledged Funds.

Assignment

No assignment by NMED of the right to receive payments under this Note shall affect the Borrower's obligations or rights other than to make payments either by EFT or at the address designated by NMED to the Borrower in writing.

Collection and Default

At the option of NMED, any amount paid by NMED to collect amounts due under this Note or to preserve or protect NMED's rights under the Agreement shall become a part of, and bear interest at the interest rate as set forth in the previous REPAYMENT RATE AND SCHEDULE section above and shall become immediately due and payable by the Borrower to NMED upon demand by NMED. Events of default and remedies upon an event of default as described in the Agreement in COVENANTS are incorporated herein by reference.

Prepayment

The Borrower may prepay all or any part of the principal of this Note without penalty. Extra payments, shall, after payment of interest due, be applied to the reduction of principal. After any prepayment of principal, the Borrower shall continue to pay the amounts listed in the Agreement and Final Promissory Note until the entire principal and interest are paid in full.

Authority

This Note is authorized by the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC, and the Borrower's Ordinance No. _____.

This Note shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall this Note be considered or held to be a general obligation of the Borrower. The obligations of the Borrower under the Agreement and Note are payable and collectible solely out of the Pledged Funds as defined in the Agreement and the Ordinance, and NMED or any other holders of the Agreement or Note may not look to any general or municipal fund for the payment of the principal or interest on the Agreement or Note.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and effective as of the date listed below by the Borrower.

_____
Borrower's authorized signature

_____
Borrower's printed name

_____
Title

_____
Date

State of _____

County of _____

Signed or attested before me on _____ by _____,
date Witness

Seal

_____
Signature of notary officer

My commission expires: _____

ATTACHMENT "C"

SAMPLE

City of Las Cruces Attorney Opinion

Date _____

New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502

This letter is being delivered relating to Loan Number CWSRF 128 between the City of Las Cruces (the City) and the New Mexico Environment Department (NMED) and the related promissory note, executed and delivered by the City Council pursuant to Ordinance, Enactment No. _____ (the "Ordinance"). Capitalized terms used in this letter, which are not otherwise defined in this letter, have the same meaning as in the Loan Agreement.

It is the opinion of the undersigned that, as of the date hereof:

1. The City is a duly organized and validly existing political subdivision of the State under the Constitution and laws of the State with the power and authority to execute and deliver the Loan Agreement and the Note.

2. The Ordinance was duly adopted by the City Council in accordance with all applicable laws and has not been repealed or rescinded.

3. The City has the power and authority to enter into, execute, and deliver the Loan Agreement and to execute and deliver the Note.

4. The Loan Agreement and Note will be duly authorized, executed, and delivered by the City.

5. To the knowledge of the undersigned, the adoption by the City Council of the Ordinance and compliance with the provisions thereof, the Loan Agreement and the Note will not violate any provision of the Constitutional laws of the State and will not conflict with or cause any default under any provision of the City Charter, City resolution or ordinance or other agreement to which the City is a party.

6. To the knowledge of the undersigned, there is no litigation or proceeding pending or, after due inquiry, threatened, in any way affecting the Project, the existence of the City, or seeking to restrain or to enjoin the execution and delivery of the Loan Agreement or the Note, or the right of the City to collect Net Revenues or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Loan Agreement, Note or the Ordinance.

7. Other than the Loan Agreement and Note, there are on the date of this certificate no liens or encumbrances of any kind or description against the Net Revenues with a lien on the Net Revenues superior to the lien thereon of the Loan Agreement and Note except for liens and encumbrances designated in Ordinance No. _____.

SAMPLE

8. The City has full legal right, power, and authority to construct the Project and all necessary governmental or other approvals for construction of the Project either have been obtained or, in due course, are anticipated to be obtained, and all necessary filings have been or will be made.

9. No referendum petition has been filed with respect to the Ordinance and the time for the filing of such petition has expired.

10. To the knowledge of the undersigned, neither the Mayor, any member of the City Council, nor any other officer, employee or any other agent of the City is interested (except in the performance of his official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed an appertaining to the execution and delivery of the Loan Agreement and Note or affecting any improvements to be acquired with the proceeds of the Loan Agreement and Note.

11. The Loan Agreement and Note will be duly authorized, and executed by the Issuer and the Ordinance has been duly adopted in accordance with all applicable laws.

Respectfully submitted,

Office of the City Attorney,
City of Las Cruces

By:_____
City of Las Cruces Attorney

New Mexico CWSRF Contract Provision #R1: Anti-Discrimination Laws (Super Cross-Cutters)

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Civil Rights Laws (i.e., Super Crosscutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102

These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability, or age, in programs or activities receiving federal financial assistance. All recipients of CWSRF financial assistance must agree, and required their contractors and subcontractors to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age.

New Mexico CWSRF Contract Provision #R2: Generally Accepted Governmental Accounting

All recipients of CWSRF financial assistance (Assistance Recipients) are required to comply with the following provisions:

Section 602(b)(9) of the Federal Water Pollution Control Act (FWPCA) states:

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets;

The most recent applicable standard is GASB Statement No. 34 (GASB 34), issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. Further details on the requirements, as well as the full text of GASB 34, can be obtained through the GASB. CWSRF assistance recipients that follow GAAP standards other than GASB 34 are still required to maintain project accounts according to GAAP and apply GAAP standards for reporting on infrastructure assets.

Pursuant to Section 602(b)(9) of the FWPCA, all CWSRF Assistance Recipients must agree to maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), using standards relating to the reporting of infrastructure assets.

SINGLE AUDIT REPORTING

Applies to both CWSRF and DWSRF
Sponsors of equivalency projects are required to comply with the requirements of the Single Audit Act ("SAA") (31 USC 7501 et seq.), 2 CFR Part 200, subpart F.

Each SRF equivalency assistance recipient who expends $750,000 or more of any type or combination of Federal financial assistance within their fiscal year is required to complete and file a Single Audit or a project specific audit within 9 months of the end of the fiscal year the Federal funds were expended. SRF financings for equivalency projects are considered to be Federal financial assistance under the SAA.

The following summarizes some of the key responsibilities for SRF assistance recipients with regard to NMED:

1. Maintain an accounting system that is capable of identifying all expenditures of Federal financial assistance, not just from the SRF programs;

2. Determine annually whether expenditures of Federal funds exceeded $750,000 within the fiscal year of the project sponsor. If Federal expenditures exceeded $750,000, then a Single Audit or program-specific audit should be prepared within 9 months of the end of the fiscal year. The Single Audit or the program-specific audit should address the CWSRF or DWSRF, as appropriate. The CFDA number for the CWSRF is 66.458. The CFDA number for the DWSRF is 66.468. Federal guidance on 2 CFR Part 200, Subpart F3 can be found on the following link: https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf

3. Submit a copy of the Single Audit or program-specific audit to the Federal Audit Clearinghouse when finalized; and

4. Initiate corrective actions for Single Audits or program-specific audits with findings and recommendations that impact the SRF financial assistance. NMED should be informed of such corrective actions, findings and recommendations related to the SRF contained in any Single Audits.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Recipients of SRF financial assistance in an amount equal to the capitalization grant ("equivalency projects") must be in compliance with 2 CFR 200.216, which prohibits the use of loan or grant funds to procure or use certain telecommunication and video surveillance services or equipment either:

1. Produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hilkvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of such entities; or
2. Provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by the government of a covered foreign county.

Entities on the excluded parties list can be found in the System for Award Management (www.sam.gov). This prohibition cannot be waived. See Public Law 115-232, section 889 for additional information.

AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

The Federal Water Pollution Control Act (P.L. 92-500) Section 608 requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The Act states:

SEC. 608. REQUIREMENTS.

(a) IN GENERAL.—Funds made available from a State water pollution control revolving fund established under this title may not be used for a project for the construction, alteration, maintenance, or repair of treatment works unless all of the iron and steel products used in the project are produced in the United States.

(b) DEFINITION OF IRON AND STEEL PRODUCTS.—In this section, the term `iron and steel products' means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.

(c) APPLICATION.—Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(d) WAIVER.—If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet site of the Environmental Protection Agency.

(e) INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.

(f) MANAGEMENT AND OVERSIGHT.—The Administrator may retain up to 0.25 percent of the funds appropriated for this title for management and oversight of the requirements of this section.

(g) EFFECTIVE DATE.—This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of enactment of the Water Resources Reform and Development Act of 2014.

AMERICAN IRON AND STEEL (AIS) GUIDANCE

The following guidance excerpt has been provided from EPA:
(Complete guidance may be downloaded from: https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais- requirement)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:
Lined or unlined pipes or fittings;
Manhole Covers;
Municipal Castings (defined in more detail below);
Hydrants;
Tanks;
Flanges;
Pipe clamps and restraints; Valves;
Structural steel (defined in more detail below); Reinforced precast concrete; and
Construction materials (defined in more detail below).

12) What does the term 'primarily iron or steel' mean?

'Primarily iron or steel' places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stemcoupling, valve, seals, etc.). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and

silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does 'produced in the United States' mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non- US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of 'municipal castings?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

Access Hatches;
Ballast Screen;
Benches (Iron or Steel);
Bollards;
Cast Bases;
Cast Iron Hinged Hatches, Square and Rectangular;
Cast Iron Riser Rings;
Catch Basin Inlet;
Cleanout/Monument Boxes;
Construction Covers and Frames;
Curb and Corner Guards;
Curb Openings;
Detectable Warning Plates;
Downspout Shoes (Boot, Inlet);
Drainage Grates, Frames and Curb Inlets;
Inlets;
Junction Boxes;
Lampposts;
Manhole Covers, Rings and Frames, Risers;
Meter Boxes;
Service Boxes;
Steel Hinged Hatches, Square and Rectangular;
Steel Riser Rings;
Trash receptacles;
Tree Grates;
Tree Guards;
Trench Grates; and
Valve Boxes, Covers and Risers.

20) What is 'structural steel'?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a 'construction material' for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners

(i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a 'construction material' for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

<u>Certification and Compliance</u>

NMED Form #C4 "American Iron and Steel (AIS) Certification" must be executed and included in the bid package. Failure to complete the certification will result the bid being returned. The contractor will supply to the loan recipient manufacturers' certifications for each iron and steel item documenting/asserting that all manufacturing processes occurred in the United States. Such certifications will be submitted with shop drawings.

New Mexico CWSRF Contract Provision #R9: Environmental Review Requirements

The Federal Water Pollution Control Act section 511(c)(1) applies the National Environmental Policy Act (NEPA) to assistance for the construction of treatment works. All CWSRF-funded projects involving the construction of treatment works, regardless of the source of the funding , must undergo an environmental review following the procedures in NMED's State Environmental Review Process.

This document supplements the State Environmental Review Process ("SERP") guidance available on the NMED website at https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/

The guidance references the specific steps indicated on the checklist below. The checklist and supporting documentation must be submitted to the NMED Engineer assigned to the project.

<table>
<tr><td colspan="2">Assistance Recipient:</td><td>SRF Project Number:</td></tr>
<tr><td></td><td></td><td>Project Name:</td></tr>
<tr><td>Yes
No</td><td colspan="2">Does this project meet the definition of a Categorical Exclusion below (as defined by 40 CFR Part 6.204)?

Actions relating to existing infrastructure systems (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve:
• Minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and stormwater systems, including combined sewer overflow systems) or
• Construction of new minor ancillary facilities adjacent to or on the same property as existing facilities.

A Categorical Exclusion may not be granted for actions that: involve new or relocated discharges to surface or ground water; will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water; will provide capacity to serve a population 30% greater than the existing population; are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.</td></tr>
<tr><td>If YES:</td><td colspan="2">DO NOT COMPLETE THE REMAINDER OF THIS FORM</td></tr>
<tr><td>If NO:</td><td colspan="2">Complete the remainder of this form after preparing a Preliminary Engineering Report (PER) and Environmental Information Document (EID) following the guidelines in NMED's SERP Process</td></tr>
</table>

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework is described in the guidance document found at: https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-waiver-process

Approved and denied waivers may be reviewed at: https://www.epa.gov/cwsrf/american-iron- and-steel-requirement-approved-project-waivers and https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-withdrawn-or-denied-waivers

De Minimis Materials Waiver

The EPA has granted a nationwide waiver of the AIS requirements of the Consolidated Appropriations Act under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible infrastructure projects. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the total materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the total materials used in and incorporated into a project. Contractors who wish to use this waiver should determine the costs of all items installed or supplied for the project. The contractor must retain relevant documentation (i.e., invoices) for each of these items in their project files, and must summarize the items in monthly draw requests to the owner: the total cost of all materials, the total cost of "incidental" materials, and the calculations by which they determined the percentage of incidental products installed or supplied for the project. None of the products specifically listed as "Covered Iron and Steel Products" are incidental, nor are the products identified in detail in the technical specifications.

New Mexico CWSRF Contract Provision #R10: Davis-Bacon

Assistance recipients ("sub-recipients") for CWSRF-funded treatment works projects are required to comply with Section 513 of the Federal Water Pollution Control Act (P.L. 92-500, as amended by the Water Resources Reform and Development Act of 2014) requiring all laborers and mechanics employed by contractors working on treatment works to be paid prevailing wages as determined by the Secretary of Labor. It is considered a Davis-Bacon related Act.

DAVIS-BACON REQUIREMENT (GOVERNMENTAL ENTITIES)

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA), DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/ weekly to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(c) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2014 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number

for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the

classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing hat the records to be maintained under this paragraph shall be made

available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub-recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub-recipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

DAVIS-BACON REQUIREMENT (NON-GOVERNMENTAL ENTITIES)

Under these terms and conditions, the sub-recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2014 Water Resource Reform and Development Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with NMED before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub-recipients must obtain proposed wage determinations for specific localities at https://beta.sam.gov/. After the Sub-recipient obtains its proposed wage determination, it must submit the wage determination to the **New Mexico Environment Department Construction Programs Bureau** ((505)-469-3459) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub-recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub-recipient shall monitor https://beta.sam.gov/. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub-recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub-recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub-recipient.

(ii) If the sub-recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub-recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub-recipient shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub-recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a

solicitation, the sub-recipient shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(d) Sub-recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub-recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub-recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub-recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub-recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub-recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2014

(b) Water Resource Reform and Development Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the

time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub-recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub-recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub-recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub-recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub-recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics

includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub-recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub-recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub-recipient shall provide written confirmation

in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub-recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub-recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to

make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the

Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub-recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub-recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub-recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub-recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years

from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub-recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub-recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub-recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub-recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub-recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub-recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub-recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub-recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub-recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub-recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub-recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub-recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub-recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

New Mexico CWSRF Contract Provision #R11: Uniform Grant Guidance (2 CFR 200)

Assistance recipients for CWSRF projects receiving additional subsidy (grant) funds must comply with the Uniform Grant Guidance requirements established by 2 CFR 200.

UNIFORM GRANT GUIDANCE REQUIREMENTS PER 2 CFR 200

The following requirements apply to recipients of CWSRF grants (referred to below as "CWSRF grant recipient").

- Subaward procurement requirements in 2 CFR 200.317 through 2 CFR 200.327, and the

Subaward Procurement Requirements

Attachment A lists the provisions of 2 CFR 200.317 through 2 CFR 200.327. In summary, these provisions require sub-awardees and state programs to have, among other requirements:

- Transparent and fair competition on the use of these funds,
- Oversight of subawards and contractors to ensure terms are met,
- Records for third party verification of compliance, and
- Solicited proposals from minority and women owned businesses.

Subaward Monitoring Requirements

Attachment B lists the provisions of 2 CFR 200.331 through 2 CFR 200.333. In summary, these provisions require sub-awardees and state programs to have, among other requirements:

- Their risk assessed in receiving federal funds and proper steps taken to protect those funds, including subaward monitoring, subaward training, and special conditions as needed to ensure funds are used appropriately, and
- State documentation of their subaward assessment process and oversight efforts.

Attachment A: Procurement Requirements for CWSRF Grant Recipients

All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

2 CFR § 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non- Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost- effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.

Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and

claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

2 CFR § 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding;
(3) Noncompetitive pricing practices between firms or between affiliated companies;
(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient

requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

2 CFR § 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) ***Informal procurement methods.*** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT),* as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) ***Micro-purchases*** -

(i) ***Distribution.*** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) ***Micro-purchase awards.*** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) ***Micro-purchase thresholds.*** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) ***Non-Federal entity increase to the micro-purchase threshold up to $50,000.*** Non- Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) ***Non-Federal entity increase to the micro-purchase threshold over $50,000.*** Micro- purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) ***Small purchases*** -

(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) ***Formal procurement methods.*** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids.*** A procurement method in which bids are publicly solicited and a firm fixed- price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present: (A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) ***Proposals.*** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications- based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in

procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) ***Noncompetitive procurement.*** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

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(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

2 CFR § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

2 CFR § 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

2 CFR § 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2 CFR § 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

2 CFR § 200.325 Federal awarding agency or pass-through entity review. 12

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self- certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

2 CFR § 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2 CFR § 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

New Mexico CWSRF Contract Provision #R12: BIL Public Awareness (Signage) Requirement

Assistance recipients for the follow types of CWSRF projects must display project signs in accordance with the U.S. Chief Financial Officers Council Controller Alert titled "*Enhancing Transparency Through the Use of the Building a Better America Emblem on Construction Signs*":

- Construction projects identified as "equivalency projects" for BIL general supplemental capitalization grants;
- Construction projects that receive additional subsidization (grants or forgivable loans) made available by BIL general supplemental capitalization grants;
- All construction projects funded with BIL emerging contaminants capitalization grants;
- All construction projects funded with BIL lead service line replacement capitalization grants.

Summary: The BIL signage term and condition requires a physical sign displaying the official *Building a Better America* emblem and EPA logo be placed at construction sites for BIL-funded projects. In cases where the construction site covers a large area (e.g., lead service line replacement or septic tank repair/replacement projects), a sign should be placed in an easily visible location near where the work is being performed (e.g., entrance to the neighborhood, along a main road through town, etc.). Signage costs are considered an allowable SRF expense, provided the costs associated with the signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, assistance recipients are encouraged to translate the language on signs (excluding the official Building a Better America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable SRF expenses, provided the costs are reasonable.

1. Signage Requirements

a. Building A Better America Emblem: The recipient will ensure that a sign is placed at construction sites supported under this award displaying the official Building A Better America emblem and must identify the project as a "project funded by President Biden's Bipartisan Infrastructure Law." Construction is defined at 40 CFR 33.103 as "erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply." The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

   The recipient will ensure compliance with the guidelines and design specifications for using the official Building A Better America emblem and corresponding logomark available at: https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf

b. EPA Logo: The recipient will ensure that signage displays the EPA logo along with the official BuildingA Better America emblem. The EPA logo must not be displayed in a manner that implies that

EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project.
The recipient will ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA is available on the Using the EPA Seal and Logo page.

c. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language onsigns (excluding the official Building A Better America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

New Mexico CWSRF Contract Provision #R13: Useful Life Requirement

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Section 603(d)(1)(A) of the Clean Water Act (as amended) restricts the terms of CWSRF loans to the lesser of 30 years or the useful life of the project. All applicants for CWSRF financial assistance agree to provide an engineer's estimate of the useful life of project components to be funded by the CWSRF.

New Mexico CWSRF Contract provision #R14: Office of Inspector General Posting

The US Environmental Protection Agency requires that contracts exceeding $1,000,0000 prominently display the Office of the Inspector General Hotline poster within contractor work areas and facilities where work is performed.

Posters may be obtained at:

https://www.epa.gov/office-inspector-general/poster-report-fraud-waste-and-abuse-epa-oig-hotline

OFFICE OF INSPECTOR GENERAL
U.S ENVIRONMENTAL PROTECTION AGENCY



Visit epa.gov/oig for anonymity guidelines and whistleblower information.

3034; Council Bill 23-028

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	May 1, 2023	**Adopted:**	June 5, 2023
Drafter:	Erika Jaquez	**Department:**	Financial Services
Program:	Treasury	**Line of Business:**	Revenue Management

Title:	**AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $3,100,000 LOAN AGREEMENT FOR FLOOD CONTROL INFRASTRUCTURE IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.**

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. As part of the program, City Council is required to authorize the submission of the application. The proposed action will allow the City to finance the acquisition, construction, maintenance and completion of various flood control infrastructure projects.

A proposed resolution approved at the May 1, 2023 City Council meeting authorizes City staff to submit an application for financial assistance from NMFA for the acquisition, construction, maintenance and completion of various flood control infrastructure projects.

Approval of the Ordinance authorizes the execution and delivery of a loan agreement between the City and NMFA. The City would borrow up to $3,100,000 to finance the acquisition, construction, maintenance and completion of various flood control infrastructure projects and pay the related debt issuance costs and professional fees. The revenue pledged to finance the projects would come from a lien on the City's fifth quarter percent increment of municipal gross receipts tax and the hold harmless distribution associated with the fifth quarter percent increment of municipal gross receipts tax.

Due to timing of the loan approval scheduling by NMFA, at the first reading of this proposed Ordinance, only a sample ordinance (preliminary), loan agreement and intercept agreement will be attached as Attachments as needed. After the first reading, the final ordinance is attached. After 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.

SUPPORT INFORMATION:

EXHIBIT "A" NMFA Loan Agreement MGRT Flood Control 2023
EXHIBIT "B" NMFA Intercept Agreement MGRT Flood Control 2023
ATTACHMENT "A" Redlined Loan Ordinance MGRT Flood Control 2023
ATTACHMENT "B" Redlined NMFA Loan Agreement MGRT Flood Control 2023
ATTACHMENT "C" Redlined NMFA Intercept Agreement MGRT Flood Control 2023

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance authorizing the City to accept the loan from NMFA and proceed with the flood control projects.
2. Vote "No"; this will not approve the Ordinance and will not authorize the City to accept the loan from NMFA and use this funding mechanism to finance the flood control projects.
3. Vote to "Amend"; this could delay the execution and delivery of the loan from NMFA and the delay the funding of the flood control projects.
4. Vote to "Table"; this could delay the financing opportunity and increase the projected cost of the flood control projects.

ORDINANCE 3034; COUNCIL BILL 23-028

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $3,100,000 LOAN AGREEMENT FOR FLOOD CONTROL INFRASTRUCTURE IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

The City Council is informed that:

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

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered within the parameters set forth herein and upon the final terms set forth in the Pricing Certificate and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement and Intercept Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement and Intercept Agreement; and

WHEREAS, other than as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a “private activity bond” as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

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

(I)

Section 1.Definitions. As used in the 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 through 3-31-12 and 6-14-1 through 6-14-12, NMSA 1978, as amended, the charter of the Governmental Unit, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

"Authorized Officers" means the Mayor, Mayor Pro-Tem, City Manager, Director of Financial Services, Treasurer and City Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Completion Date" means the date of final payment of the cost of the Project.

"Delegate" means the City Manager, City Director of Financial Services, or other Authorized Officer of the City delegated the authority to approve the final terms of the Loan Agreement and Intercept Agreement.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Expenses" means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

"Finance Authority Reserve Account" means the account in the name of the Governmental Unit established in the Loan Agreement, held by the Finance Authority, and funded upon the conditions and administered as provided in the Loan Agreement.

"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 Governmental Unit as its fiscal year.

"Governing Body" means the City Council of the Governmental Unit, or any future successor governing body of the Governmental Unit.

"Governmental Unit" means the City of Las Cruces, New Mexico.

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

"Hold Harmless Flood Control MGRT Distribution" means the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 1135, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year until the distribution is eliminated after July 1, 2029.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as such terms are defined in the Indenture).

"Intercept Agreement" means the Intercept Agreement, if any, dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment, if required, by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority, and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

"Loan Agreement Principal Amount" means an amount not to exceed $3,100,000, the original principal amount of the loan as shown on the Term Sheet and as set forth in the Pricing Certificate.

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

"Ordinance" means this Ordinance No. 3034 as adopted by the Governing Body on June 5, 2023, approving the Loan Agreement and Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

"Parity Obligations" mean the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Loan Agreement, including any such obligations shown in Exhibit "A" to the Loan Agreement.

"Pledged Revenues" means the revenues derived from (i) the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 1135, adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by City Ordinance No. 1760, adopted on July 27, 1999, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the City for the month in which the tax is distributed to the City and (ii) the associated Hold Harmless Flood Control MGRT Distribution; provided that the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance (the City is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the City).

"Pricing Certificate" means one or more certificates executed by the Delegate dated on or before the date of execution and delivery of the Loan Agreement, setting forth the following final terms of the Loan

Agreement and Intercept Agreement: (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 provisions; (vii) the creation of any capitalized interest fund, if any, including the size and funding of such fund(s); and (viii) the final terms of agreements, if any, with the Finance Authority or service providers required for the execution and delivery of the Loan Agreement and Intercept Agreement, all subject to the parameters and conditions contained in this Ordinance.

"Program Account" means the account in the name of the Governmental Unit established under the Indenture and held by the Trustee for deposit of the net proceeds of the Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project described in Exhibit "A" to the Loan Agreement.

"State" means the State of New Mexico.

"Subordinate Obligations" means the obligations now outstanding (as listed on Exhibit "A" to the Loan Agreement) or hereafter issued with a lien on the Pledged Revenues subordinate to the lien thereon of the Loan Agreement and the Parity Obligations.

"Term Sheet" means Exhibit "A" to the Loan Agreement.

"Trustee" means the BOKF, NA, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2.Ratification. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3.Authorization of the Project, the Loan Agreement and Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4.Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A.The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B.Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of acquiring the Project.

C.The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D.It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E.The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F.The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G.Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H.The net effective interest rate on the Loan to be established in the Pricing Certificate does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5.Loan Agreement and Intercept Agreement - Authorization and Detail.

A.Authorization. This Ordinance has been adopted by the affirmative vote of three-fourths of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay the Loan Agreement Principal Amount not to exceed $3,100,000.00 plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to finance the acquisition of the Project and to pay the costs of issuance of the Loan Agreement. The Project will be owned by the Governmental Unit.

B.Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted with the approval of the final terms of the Loan Agreement and Intercept Agreement to be accepted by the Delegate in the Pricing Certificate within the parameters set forth in this Ordinance as permitted by Section 6-14-10.2 NMSA 1978. The Loan shall be in an aggregate principal amount not to exceed $3,100,000.00 as set forth in the Pricing Certificate, shall be payable in installments of principal due on June 1 of the years designated in the Pricing Certificate and Exhibit “B” to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on the date and at the rates designated in the Pricing Certificate and in Exhibit “B” to the Loan Agreement.

Section 6.Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement with such changes, insertions and omissions that are consistent with this Ordinance as may be approved by such the Delegate in the Pricing Certificate, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7.Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan

Agreement, in its sole and absolute discretion, including funds on deposit in the Governmental Unit's fund designated as the Flood Control Improvement Project Acquisition Fund.

Section 8.Disposition of Proceeds: Completion of Acquisition of the Project.

A.Program Account, Finance Authority Debt Service Account and Finance Authority Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account and Finance Authority Reserve Account to be held and maintained by the Finance Authority and to the Program Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Finance Authority Debt Service Account and the Program Account all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B.Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that acquisition of and payment for the Project has been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C.Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9.Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A.Deposit of Pledged Revenues. The Governmental Unit shall pay Pledged Revenues to the Finance Authority, or pursuant to the Intercept Agreement, the Pledged Revenues shall be redirected to the Finance Authority, for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay the Loan Agreement Payments.

B.Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amount in the Finance Authority Debt Service Account and the Finance Authority Reserve Account totals a sum at least equal to the entire aggregate amount to become due as to principal and interest, on, and any other amounts due under, the Loan Agreement in which case moneys in such account 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 such accounts shall be transferred to the Governmental Unit and used as provided below.

C.Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10.Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11.Delegation of Authority to Approve the Final Terms of the Loan Agreement and Intercept Agreement Within the Parameters Set Forth Herein; Authorization of Authorized Officers; Delegated Authority to Make Budget Adjustments. The private placement of the Loan Agreement and Intercept Agreement with the Finance Authority within the parameters set forth below and as described in the Pricing Certificate is hereby approved. After the Loan Agreement and Intercept Agreement have been duly executed and upon receipt of the purchase price therefor, the Loan Agreement and Intercept Agreement shall be delivered to the Finance Authority by an Authorized Officer in accordance with the Pricing Certificate and this Ordinance. The final terms of the Loan Agreement and Intercept Agreement shall be within the parameters set forth below:

(a) The proceeds of the Loan Agreement shall be used for the Project.

(b)The maximum par amount of the Loan Agreement shall not be more than $3,100,000.

(c)The final maturity of the Loan Agreement shall be no later than June 1, 2036.

(d)The maximum interest rate on the Loan Agreement shall be no greater than 12% per annum.

(e)The Loan Agreement shall be secured by a first lien, but not an exclusive first lien, on and shall be payable solely from the Pledged Revenues.

(f)The Loan Agreement and Intercept Agreement shall be entered into pursuant to a private placement with the Finance Authority.

(g)The Finance Authority's Processing Fee, if any, shall not exceed 1% of the aggregate principal amount of the Loan Agreement.

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

(i)The Loan Agreement and Intercept Agreement shall be in substantially the forms submitted to the Governing Body with the adoption of this Ordinance.

The Delegate is hereby authorized pursuant to this Ordinance to determine the final terms of the Loan Agreement and Intercept Agreement as permitted by Section 6-14-10.2 NMSA 1978 and to execute a Pricing Certificate in conformance with these parameters.

Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary). The Authorized Officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Loan Agreement proceeds.

Section 12.Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13.Ordinance Irrepealable. After the Loan Agreement and the Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14.Severability Clause. If any section, paragraph, clause or provision of this 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 Ordinance.

Section 15.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 16.Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17.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 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 Ordinance No. 3034, duly adopted and approved by the Governing Body of the City of Las Cruces, New Mexico (the “City”), on June 5, 2023. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 700 North Main Street, Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $3,100,000 LOAN AGREEMENT FOR FLOOD CONTROL INFRASTRUCTURE IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

A general summary of the subject matter of the Ordinance is:

The Ordinance authorizes execution and delivery of a Loan Agreement and Intercept Agreement between the City and the New Mexico Finance Authority. The loan will be in the amount not to exceed $3,100,000.00 with the final terms of the Loan Agreement and Intercept Agreement to be approved by the Delegate pursuant to the Supplemental Public Securities Act. The proceeds of the loan will be used for flood control infrastructure improvement projects. The loan will be secured by the revenues derived from the fifth quarter percent increment of municipal gross receipts tax imposed pursuant to Ordinance No. 1135. The forms of the Loan Agreement and Intercept Agreement are approved along with the details of the loan to be determined by the Delegate within the parameters set forth in this Ordinance. Prior actions of City officials relating to the loan are ratified and further actions are authorized.

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

$3,070,000

LOAN AGREEMENT

dated

July __, 2023

by and between the

NEW MEXICO FINANCE AUTHORITY

and

CITY OF LAS CRUCES, NEW MEXICO

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to BOKF, NA, as trustee under an Indenture, as defined in Article I of this Loan Agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT dated July __ 2023 is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and the CITY OF LAS CRUCES, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

W I T N E S S E T H:

WHEREAS, the Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the "Finance Authority Act"); and

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of flood control improvements as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, the Governmental Unit is authorized by the Act to impose by ordinance a Municipal Local Option Gross Receipts Tax pursuant to Section 7-19D-9, NMSA 1978; as amended; and

WHEREAS, pursuant to the Act, the Governmental Unit has by the Tax Ordinance imposed the municipal gross receipts tax on the gross receipts of all persons engaging in business within the Governmental Unit which provides for the Pledged Revenues; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the Governmental Unit is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(a) of the Finance Authority's Amended Rules and Regulations Governing the Public Project Revolving Fund Program; and

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the Finance Authority and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the Finance Authority, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Ordinance; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I
DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement including the foregoing recitals, unless the context clearly requires otherwise.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12 NMSA 1978, as amended and Section 7-19D-9, NMSA 1978, as amended, Sections 6-14-1 through 6-14-12, NMSA 1978, as amended, the Governmental Unit's Charter and home rule powers of the Governmental Unit under Article X, Section 6 of the State Constitution and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Ordinance.

"Additional Payment Obligations" mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required to replenish the Loan Agreement Reserve Account and payments required pursuant to the provisions of Article IX and Article X hereof.

"Aggregate Annual Debt Service Requirement" means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

"Authorized Officers" means, in the case of the Governmental Unit, Mayor, Mayor Pro-Tem, City Manager, Director of Financial Services, Treasurer and City Clerk, and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

"Blended Interest Rate" means the rate of interest on this Loan Agreement as shown on the Term Sheet.

"Bond Counsel" means nationally recognized bond counsel experienced in matters of municipal law, satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semiannually by The Bond Buyer's Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse this Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Event of Default" means one or more events of default as defined in Section 10.1 of this Loan Agreement.

"Expenses" means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

"Finance Authority Debt Service Account" means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

"Fiscal Year" means the period beginning 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 Governmental Unit as its fiscal year.

"Governing Body" means the duly organized City Council of the Governmental Unit, and any successor governing body of the Governmental Unit.

"Hold Harmless Flood Control MGRT Distribution" means the distribution to the Governmental Unit made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Ordinance 1135, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978, each year beginning July 1, 2015 until the distribution is eliminated after July 1, 2029.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

"Intercept Agreement" means the Intercept Agreement dated July __, 2023, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

"Interest Component" means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan" means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement.

"Loan Agreement" means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

"Loan Agreement Balance" means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Payment Date" means each date a payment is due on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Principal Amount" means the original principal amount of this Loan Agreement as shown on the Term Sheet.

"Loan Agreement Reserve Account" means the loan agreement reserve account established in the name of the Governmental Unit under the Indenture, funded by the Governmental Unit pursuant to the terms of this Loan Agreement, and administered by the Trustee pursuant to the Indenture. The Loan Agreement Reserve Account is to be funded only upon the circumstances provided in Section 5.2(c) of this Loan Agreement.

"Loan Agreement Reserve Requirement" means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) on hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement. The Loan Agreement Reserve Requirement, if any, shall be recalculated every year on or about June 1.

"Loan Agreement Term" means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

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

"Ordinance" means the Governmental Unit Ordinance No. 3034 adopted by the Governing Body on June 5, 2023 as supplemented by the Pricing Certificate executed on June ___, 2023, approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

"Parity Obligations" means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

"Permitted Investments" means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of

the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or S&P Global Ratings; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, as amended, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means the revenues derived from (i) the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by the Tax Ordinance, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Flood MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the Governmental Unit is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the Governmental Unit), pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit "B" hereto.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project(s) described on the Term Sheet.

"Tax Ordinance" means Ordinance No. 1135 adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by City Ordinance No. 1760, adopted on July 27, 1999, which imposes for a municipality a Municipal Local Option Gross Receipts Tax known as one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business within the Governmental Unit, subject to the exemptions specified in Section 7-19D-9 NMSA 1978.

"Term Sheet" means Exhibit "A" attached hereto.

"Trustee" means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

"Unassigned Rights" means the rights of the Finance Authority to receive payment of the administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit. The Governmental Unit represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized by the Act to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement to the acquisition of the Project.

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement,

however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of acquiring and completing flood control infrastructure improvements as set forth on the Term Sheet. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with Section 7-19D-9 NMSA 1978, as amended.

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement, and this Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of _____ years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is at least ____years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve Requirement; and (iii) an amount necessary to pay the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court

or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Ordinance**,** shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement or the Intercept Agreement.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the

Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) Pledged Revenues Covenants. The Governing Body has duly adopted the Tax Ordinance imposing the fifth one quarter of one percent (1/4%) Municipal Gross Receipts Tax, which constitutes the Pledged Revenues. The Tax Ordinance has not been repealed or superseded and is in full force and effect.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement and Intercept Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws

of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement based upon the Finance Authority's findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is $_____ which is less than one hundred percent (100%) of the State median household income of $_____.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the residents of the Governmental Unit.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property, and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreement, or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

(g) Compliance with Securities Laws. The Finance Authority acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The Finance Authority is a sophisticated accredited investor regularly making loans and purchasing securities similar to this Loan Agreement and has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit. Other than the pledge to the Trustee described above, the Finance Authority will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of this Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding this Loan Agreement and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable state securities laws and regulations.

(h) Finance Authority Compliance with Policies. As related to this Loan Agreement, the Finance Authority has complied with all policies and procedures as adopted and approved by the Finance Authority Board of Directors, or such policies have been waived by the Finance Authority Board of Directors.

ARTICLE III
LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

ARTICLE IV
LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

(b) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof.

No deposit of proceeds of the Loan or other Governmental Unit moneys into the Loan Agreement Reserve Account shall be required on the Closing Date or at any time thereafter, except in the circumstances and on the conditions described in subsection (c) of Section 5.2 hereof.

ARTICLE V
LOAN TO THE GOVERNMENTAL UNIT;
PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account, such account being held by the Trustee, (iv) the Loan Agreement Reserve Account, should such account be created and funded, pursuant to the terms of Section 5.2(c) and (d) of this Loan Agreement; and (v) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues either pursuant to the Intercept Agreement or directly from the Governmental Unit as provided by this Loan Agreement and the Intercept Agreement**,** the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amounts provided in subsection (d) of this Section 5.2 for deposit into the Loan Agreement Reserve Account, if necessary. The

Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee, each on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and the Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following from the Pledged Revenues received either directly or pursuant to the Intercept Agreement, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date, in an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is December 1, 2023), and (B) on the first day of each month thereafter, one-sixth of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. (A) Monthly, beginning on the first day of the month following the Closing Date in an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is June 1, 2024) and (B) on the first day of each month thereafter, one-twelfth of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections (i) and (ii) of this Section 5.2(a), and the Finance Authority shall not intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreement unless the Governmental Unit fails to timely transfer each such amount, in which event the Finance Authority shall intercept such amounts from Pledged Revenues pursuant to the Intercept Agreement. Such amounts shall be intercepted in approximately equal monthly payments when distributions are made by the Distributing State Agency in accordance with a schedule prepared by the Finance Authority at the commencement of interception of payments. The monthly intercepted installments will be amounts sufficient, when combined, to meet the payments described in subparagraphs (a)(i) and (ii) above, on a parity with the payment of the Governmental Unit's outstanding Parity Obligations.

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) The Treasurer (or successor) of the Governmental Unit, on or before the 150th day after the close of each Fiscal Year, shall deliver a certificate stating the ratio of coverage of Pledged Revenues to the Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the outstanding Loan Agreement and other Parity Obligations, if any (the "Debt Service Coverage Ratio"). No deposit shall be required in the Loan Agreement Reserve Account so long as the Pledged Revenues in each Fiscal Year equal or exceed two hundred percent (200%) of the maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on all outstanding Parity Obligations, if any. If the Debt Service Coverage Ratio in any Fiscal Year is insufficient to meet the test set forth in the preceding sentence, the Governmental Unit shall begin making substantially equal monthly deposits into the Loan Agreement Reserve Account from the first legally available Pledged Revenues so that after twenty-four (24) months an amount equal to the Loan Agreement Reserve Requirement will be held in the Loan Agreement Reserve Account. After funding the Loan Agreement Reserve Fund in an amount equal to the Loan Agreement Reserve Requirement, no additional payments need be made into the Loan Agreement Reserve Account so long as the moneys therein shall equal not less than the Loan Agreement Reserve Requirement. Such accumulations shall be made from Pledged Revenues, second and subordinate to the payments referred to in Section 5.2(a) of this Loan Agreement.

After the funding of the Loan Agreement Reserve Account as aforesaid, if each certificate from the Treasurer of the Governmental Unit required under this Section 5.2(c) for two (2) consecutive Fiscal Years indicate that the Debt Service Coverage Ratio is at least two hundred percent (200%) of the maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the outstanding Loan Agreement and other Parity Obligations, if any, any money or securities in the Loan Agreement Reserve Account may be transferred to other Governmental Unit funds or accounts, and the procedure provided in the first paragraph of this subparagraph (c) shall be reinstated. The moneys (if any) in the Loan Agreement Reserve Account shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in subparagraphs (d) and (e) of this Section 5.2, only to prevent deficiencies in the payment of the principal of and interest on the Loan Agreement resulting from failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay the principal and interest as the same become due.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account.

(d) If, on any Loan Agreement Payment Date, the Governmental Unit shall, for any reason, fail to pay into the Finance Authority Debt Service Account the full amount above stipulated from the Pledged Revenues, then an amount shall be paid into the Finance Authority Debt Service Account on such date from the Loan Agreement Reserve Account (if moneys are then on deposit in the Loan Agreement Reserve Account) equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. If the moneys paid into the Finance Authority Debt Service Account from the Loan Agreement Reserve Account are not equal to the amount required to be paid into the Finance Authority Debt Service Account for such date, then in the following month, an amount equal to the difference between the amount paid and the amount required shall be deposited into the Finance Authority Debt Service Account, in addition to the normal payment required to be paid in such month, from the

first Pledged Revenues thereafter received and not required to be otherwise applied. The money deposited in the Finance Authority Debt Service Account from the Loan Agreement Reserve Account, if any, shall be replaced in the Loan Agreement Reserve Account from the first Pledged Revenues thereafter received not required to be otherwise applied such that the amount on deposit in the Loan Agreement Reserve Account equal the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided that no additional Pledged Revenues shall be deposited or intercepted to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Components. The moneys in the Loan Agreement Reserve Account 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 Loan Agreement; provided, however, that any moneys at any time in excess of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the Loan Agreement Reserve Account shall not be invested in a manner which could cause the Loan Agreement to become arbitrage bonds within the meaning of the Code. Any investments held in the Loan Agreement Reserve Account shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the Loan Agreement Reserve Account exceeds the Loan Agreement Reserve Requirement, all amounts in excess of the Loan Agreement Reserve Requirement shall be transferred to the credit of the Governmental Unit to the Finance Authority Debt Service Account and used to pay principal of and interest on the Loan Agreement.

(e) No payment shall be made into the Finance Authority Debt Service Account or the Loan Agreement Reserve Account if the amounts in such accounts total a sum at least equal to the entire aggregate amount due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such accounts 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 such accounts shall be transferred to the Governmental Unit and used as provided below.

(f) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the

Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Finance Authority Debt Service Account and the Loan Agreement Reserve Account (if the Loan Agreement Reserve Account is then required to be funded) as provided in Section 5.2 hereof.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinance or this Loan Agreement.

(c) The Pledged Revenues (not including the Hold Harmless Flood MGRT Distribution) received by or credited to the Governmental Unit for the Fiscal Year immediately preceding the date of the issuance of such proposed additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) For purposes of the test set forth in clause (b) above, if on the date of issuance of the additional Parity Obligations, (a) any amount of the reserve fund requirement for the additional Parity Obligations is immediately deposited in or credited to the reserve fund for the additional Parity Obligations or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Obligations is then on deposit in or credited to the reserve fund for any issue of outstanding Parity 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 Obligations or any issue of outstanding Parity Obligations for which such reserve fund was created.

(e) A written certification or opinion by the Governmental Unit's Treasurer or Financial Director or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(f) The Governmental Unit shall notify the Finance Authority of the approval by the Governmental Unit of the issuance of any Parity Obligations or subordinate Obligations upon the Governmental Unit's approval of the issuance of such Parity or subordinate Obligations.

(g) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

(h) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (d) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or 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 such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority for the Governmental Unit may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and the Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

ARTICLE VI
THE PROJECT

Section 6.1 Agreement to Acquire the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to acquire the Project. The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance

with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of the Project. Upon completion of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

ARTICLE VII
COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and 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 the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII
PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after ten (10) years following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the Finance Authority and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay

this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, 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.

ARTICLE IX
INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph

(b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on

the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, 700 North Main Street, Las Cruces, New Mexico 88001, Attention: City Director of Financial Services; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on May 25, 2023, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By_____
Marquita D. Russel, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS
OF THE NEW MEXICO FINANCE AUTHORITY:
Sutin, Thayer & Browne A Professional Corporation
As Loan Counsel

By_____
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF
THE NEW MEXICO FINANCE AUTHORITY:

By_____
Daniel C. Opperman, Chief Legal Officer

CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

By:_____
Ken Miyagishima, Mayor

ATTEST:

By:_____
Christine Rivera, City Clerk

EXHIBIT "A"

TERM SHEET
New Mexico Finance Authority Loan PPRF-____

Governmental Unit:	City of Las Cruces**,** New Mexico
Project Description:	The acquisition, construction, maintenance and completion of various flood control infrastructure projects, including the payment of Costs of Issuance and related professional fees
Loan Agreement Principal Amount:	$3,070,000
Disadvantaged Funding Amount:	$0
Pledged Revenues:	Revenues derived from (i) the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 1135, adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by City Ordinance No. 1760, adopted on July 27, 1999, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Flood MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the Governmental Unit is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the Governmental Unit).
Coverage Ratio:	125%
Distributing State Agency:	State of New Mexico Taxation and Revenue Department

Currently Outstanding Parity Obligations:	Series 2014B Municipal Gross Receipts Tax Improvement Revenue Bonds in the original aggregate principal amount of $1,500,000, of which $120,000 remains outstanding, and with a final maturity date of June 1, 2024; Series 2016 Municipal Gross Receipts Tax Improvement Revenue Bonds in the original aggregate principal amount of $5,000,000, of which $1,410,000 remains outstanding with a final maturity of June 1, 2028; 2020 Loan Agreement dated June 5, 2020 with NMFA in the original aggregate principal amount of $3,580,000, of which $1,495,000 remains outstanding with a final maturity date of June 1, 2032
Additional Parity Bonds Test:	200% with notice to Finance Authority after issuance of Parity or subordinate Obligations)
Authorizing Legislation:	Ordinance No. 3034 adopted on June 5, 2023 as supplemented by the Pricing Certificate executed on June __, 2023
Closing Date:	July __, 2023
Blended Interest Rate:	____%
Program Account Deposit:	$3,070,000 (including $_____ for Costs of Issuance)
Loan Agreement Reserve Account Deposit:	$0.00 (Loan Agreement Reserve Requirement is the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement), if required to be funded pursuant to Section 5.2(c) hereof.
Finance Authority Debt Service Account Deposit:	$0.00
First Interest Payment Date:	December 1, 2023
First Principal Payment Date:	June 1, 2024
Final Payment Date:	June 1, ____

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

EXHIBIT "B"

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: $3,070,000 Loan Agreement by and between the City of Las Cruces, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
PPRF@nmfa.net

You are hereby authorized to disburse from the Program Account – City of Las Cruces, New Mexico (2023 Flood Control Improvements Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: PPRF-6169 CLOSING DATE: _____ 2023

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: $_____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Las Cruces, New Mexico (2023 Flood Improvements Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Las Cruces, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Las Cruces**,** New Mexico**,** shall, and understands its obligation to, complete the acquisition of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By: _____
Authorized Officer of Borrower
Title: _____
Print Name and Title

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: $3,070,000 Loan Agreement by and between the City of Las Cruces, New Mexico and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority
PPRF@nmfa.net

Susen Ellis
Assistant Vice President, Corporate Trust
BOKF, NA
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-6169 CLOSING DATE: July __, 2023

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By:_____
Authorized Officer of Governmental Unit

Title: _____
Print Name and Title

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into July ___, 2023, by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "State") under the laws of the State and the CITY OF LAS CRUCES, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the "Governmental Unit").

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the acquisition of acquisition of flood control improvements for use by the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, (collectively, the "Act") the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the "Loan Agreement"); and

WHEREAS, the Governmental Unit desires to acquire the Project and such acquisition is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow $3,100,000 from the Program for the purpose of financing the acquisition of the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 7-1-6.15, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of revenues from (i) the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 1135, adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by Governmental Unit Ordinance No. 1760, adopted on July 27, 1999, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit

and (ii) the associated Hold Harmless Flood Control MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the "Pledged Revenues"), from the State Taxation and Revenue Department (the "Distributing State Agency"), be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of $3,100,000 to finance the acquisition of the Project. Pursuant to Section 5.2(a) of the Loan Agreement and this Intercept Agreement, the Governmental Unit shall directly make timely payment of all Loan Agreement Payments to the Finance Authority. In the event that the Governmental Unit fails to make timely payment of Loan Agreement Payments to the Finance Authority, the Governmental Unit agrees that all payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from monthly distributions of the Pledged Revenues pursuant to Section 7-1-6.4 NMSA 1978, as amended, to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made

pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization**.** The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Ordinance No. 3034, passed and adopted on June 5, 2023, by the Governing Body of the Governmental Unit, as supplemented by the Pricing Certificate executed on June ___, 2023, which Ordinance is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts**.** This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. The distribution of the Pledged Revenues to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit as indicated on the Intercept Schedule.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By:_____
Marquita D. Russel, Chief Executive Officer

CITY OF LAS CRUCES, NEW MEXICO

By:_____
Ken Miyagishima, Mayor

(SEAL)

Attest:

By:_____
Christine Rivera, City Clerk

Acknowledged:

By:_____
Taxation and Revenue Department
Date:_____

EXHIBIT "A"

INTERCEPT SCHEDULE
CITY OF LAS CRUCES, NEW MEXICO

Month	Pledged Revenues	Amount
Monthly beginning _____, 2023 through _____, 203__	The distribution of that portion of the revenues derived from the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 1135, adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by Governmental Unit Ordinance No. 1760, adopted on July 27, 1999, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Flood Control MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance, which distributions are made monthly by the State Taxation and Revenue Department	$0*

*Except in the event that the Governmental Unit fails to make timely payments of Loan Agreement Payments, as provided in Section 5.2(a) of the Loan Agreement at which time a monthly collection schedule will be prepared by the Finance Authority and given to the Governmental Unit and the State Taxation and Revenue Department. The State Taxation and Revenue Department shall thereafter distribute Pledged Revenues set forth in the collection schedule to be applied to payment of the Loan as provided in the Loan Agreement and this Intercept Agreement.

ORDINANCE NO. 3034~~-~~; COUNCIL BILL NO. 23-028

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $3,100,000 LOAN AGREEMENT FOR FLOOD CONTROL INFRASTRUCTURE IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

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

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered within the parameters set forth herein and upon the final terms set forth in the Pricing Certificate and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement and Intercept Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement and Intercept Agreement; and

WHEREAS, other than as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a

general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces that:

(I)

Section 1. Definitions. As used in the 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 through 3-31-12 and 6-14-1 through 6-14-12, NMSA 1978, as amended, the charter of the Governmental Unit, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

"Authorized Officers" means the Mayor, Mayor Pro-Tem, City Manager, Director of Financial Services, Treasurer and City Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Completion Date" means the date of final payment of the cost of the Project.

"Delegate" means the City Manager, City Director of Financial Services, or other Authorized Officer of the City delegated the authority to approve the final terms of the Loan Agreement and Intercept Agreement.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Expenses" means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

"Finance Authority Reserve Account" means the account in the name of the Governmental Unit established in the Loan Agreement, held by the Finance Authority, and funded upon the conditions and administered as provided in the Loan Agreement.

"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 Governmental Unit as its fiscal year.

"Governing Body" means the City Council of the Governmental Unit, or any future successor governing body of the Governmental Unit.

"Governmental Unit" means the City of Las Cruces, New Mexico.

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

"Hold Harmless Flood Control MGRT Distribution" means the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed

on all persons engaging in business in the City by City Ordinance No. 1135, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year until the distribution is eliminated after July 1, 2029.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as such terms are defined in the Indenture).

"Intercept Agreement" means the Intercept Agreement, if any, dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment, if required, by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance

Authority, and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

"Loan Agreement Principal Amount" means an amount not to exceed $3,100,000, the original principal amount of the loan as shown on the Term Sheet and as set forth in the Pricing Certificate.

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

"Ordinance" means this Ordinance No. ~~____~~3034 as adopted by the Governing Body on June 5, 2023, approving the Loan Agreement and Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

"Parity Obligations" mean the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Loan Agreement, including any such obligations shown in Exhibit "A" to the Loan Agreement.

"Pledged Revenues" means the revenues derived from (i) the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 1135, adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by City Ordinance No. 1760, adopted on July 27, 1999, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the City for the month in which the tax is distributed to the City and (ii) the associated Hold Harmless Flood Control MGRT Distribution; provided that the

City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance (the City is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the City).

"Pricing Certificate" means one or more certificates executed by the Delegate dated on or before the date of execution and delivery of the Loan Agreement, setting forth the following final terms of the Loan Agreement and Intercept Agreement: (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 provisions; (vii) the creation of any capitalized interest fund, if any, including the size and funding of such fund(s); and (viii) the final terms of agreements, if any, with the Finance Authority or service providers required for the execution and delivery of the Loan Agreement and Intercept Agreement, all subject to the parameters and conditions contained in this Ordinance.

"Program Account" means the account in the name of the Governmental Unit established under the Indenture and held by the Trustee for deposit of the net proceeds of the Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project described in Exhibit "A" to the Loan Agreement.

"State" means the State of New Mexico.

"Subordinate Obligations" means the obligations now outstanding (as listed on Exhibit "A" to the Loan Agreement) or hereafter issued with a lien on the Pledged

Revenues subordinate to the lien thereon of the Loan Agreement and the Parity Obligations.

"Term Sheet" means Exhibit "A" to the Loan Agreement.

"Trustee" means the BOKF, NA, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement and Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of acquiring the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan to be established in the Pricing Certificate does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of three-fourths of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver

the Loan Agreement and Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay the Loan Agreement Principal Amount not to exceed $3,100,000.00 plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to finance the acquisition of the Project and to pay the costs of issuance of the Loan Agreement. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted with the approval of the final terms of the Loan Agreement and Intercept Agreement to be accepted by the Delegate in the Pricing Certificate within the parameters set forth in this Ordinance as permitted by Section 6-14-10.2 NMSA 1978. The Loan shall be in an aggregate principal amount not to exceed $3,100,000.00 as set forth in the Pricing Certificate, shall be payable in installments of principal due on June 1 of the years designated in the Pricing Certificate and Exhibit "B" to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on the date and at the rates designated in the Pricing Certificate and in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement with such changes, insertions and omissions

that are consistent with this Ordinance as may be approved by such the Delegate in the Pricing Certificate, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or

taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion, including funds on deposit in the Governmental Unit's fund designated as the Flood Control Improvement Project Acquisition Fund.

Section 8. Disposition of Proceeds: Completion of Acquisition of the Project.

A. Program Account, Finance Authority Debt Service Account and Finance Authority Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account and Finance Authority Reserve Account to be held and maintained by the Finance Authority and to the Program Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Finance Authority Debt Service Account and the Program Account all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B. Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that acquisition of and payment for the Project has been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. The Governmental Unit shall pay Pledged Revenues to the Finance Authority, or pursuant to the Intercept Agreement, the Pledged Revenues shall be redirected to the Finance Authority, for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay the Loan Agreement Payments.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amount in the Finance Authority Debt Service Account and the Finance Authority Reserve Account totals a sum at least equal to the entire aggregate amount to become due as to principal and interest, on, and any other amounts due under, the Loan Agreement in which case moneys in such account 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 such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Delegation of Authority to Approve the Final Terms of the Loan Agreement and Intercept Agreement Within the Parameters Set Forth Herein; Authorization of Authorized Officers; Delegated Authority to Make Budget Adjustments.

The private placement of the Loan Agreement and Intercept Agreement with the Finance Authority within the parameters set forth below and as described in the Pricing Certificate is hereby approved. After the Loan Agreement and Intercept Agreement have been duly executed and upon receipt of the purchase price therefor, the Loan Agreement and Intercept Agreement shall be delivered to the Finance Authority by an Authorized Officer in accordance with the Pricing Certificate and this Ordinance. The final terms of the Loan Agreement and Intercept Agreement shall be within the parameters set forth below:

(a) The proceeds of the Loan Agreement shall be used for the Project.

(b) The maximum par amount of the Loan Agreement shall not be more than $3,100,000.

(c) The final maturity of the Loan Agreement shall be no later than June 1, 2036.

(d) The maximum interest rate on the Loan Agreement shall be no greater than 12% per annum.

(e) The Loan Agreement shall be secured by a first lien, but not an exclusive first lien, on and shall be payable solely from the Pledged Revenues.

(f) The Loan Agreement and Intercept Agreement shall be entered into pursuant to a private placement with the Finance Authority.

(g) The Finance Authority's Processing Fee, if any, shall not exceed 1% of the aggregate principal amount of the Loan Agreement.

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

(i) The Loan Agreement and Intercept Agreement shall be in substantially the forms submitted to the Governing Body with the adoption of this Ordinance.

The Delegate is hereby authorized pursuant to this Ordinance to determine the final terms of the Loan Agreement and Intercept Agreement as permitted by Section 6-14-10.2 NMSA 1978 and to execute a Pricing Certificate in conformance with these parameters.

Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary). The Authorized Officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Loan Agreement proceeds.

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to Finance Authority, the provisions of this Ordinance may be

supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan Agreement and the Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this 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 Ordinance.

Section 15. 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 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation

in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. 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 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 Ordinance No. ~~____,~~3034, duly adopted and approved by the Governing Body of the City of Las Cruces, New Mexico (the "City"), on June 5, 2023. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 700 North Main Street, Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $3,100,000 LOAN AGREEMENT FOR FLOOD CONTROL INFRASTRUCTURE IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIFTH QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

A general summary of the subject matter of the Ordinance is:

The Ordinance authorizes execution and delivery of a Loan Agreement and Intercept Agreement between the City and the New Mexico Finance Authority. The loan will be in the amount not to exceed $3,100,000.00 with the final terms of the Loan Agreement and Intercept Agreement to be approved by the Delegate pursuant to the

Supplemental Public Securities Act. The proceeds of the loan will be used for flood control infrastructure improvement projects. The loan will be secured by the revenues derived from the fifth quarter percent increment of municipal gross receipts tax imposed pursuant to Ordinance No. 1135. The forms of the Loan Agreement and Intercept Agreement are approved along with the details of the loan to be determined by the Delegate within the parameters set forth in this Ordinance. Prior actions of City officials relating to the loan are ratified and further actions are authorized.

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this 5th day of June, 2023.

APPROVED:

_____
Ken Miyagishima, Mayor

ATTEST:

_____
Christine Rivera, City Clerk

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima: _____
Councilor Gandara: _____
Councilor Abeyta: _____
Councilor Graham: _____
Councilor Bencomo: _____
Councilor Corran: _____
Councilor Flores: _____

APPROVED AS TO FORM

_____
Jocelyn Garrison, Acting City Attorney

EXHIBIT "A"

Meeting Agenda
June 5, 2023
City Council Meeting

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss.
CITY OF LAS CRUCES)

I, Christine Rivera, the duly acting and qualified City Clerk of the City of Las Cruces, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on June 5, 2023, at the hour of 1:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

3. Notice of such meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the City's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of June, 2023.

CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

_____
Christine Rivera, City Clerk

$3,~~100~~070,000

LOAN AGREEMENT

dated

July __, 2023

by and between the

NEW MEXICO FINANCE AUTHORITY

and

CITY OF LAS CRUCES, NEW MEXICO

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to BOKF, NA, as trustee under an Indenture, as defined in Article I of this Loan Agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT dated July __ 2023 is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and the CITY OF LAS CRUCES, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

W I T N E S S E T H:

WHEREAS, the Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the "Finance Authority Act"); and

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of flood control improvements as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, the Governmental Unit is authorized by the Act to impose by ordinance a Municipal Local Option Gross Receipts Tax pursuant to Section 7-19D-9, NMSA 1978; as amended; and

WHEREAS, pursuant to the Act, the Governmental Unit has by the Tax Ordinance imposed the municipal gross receipts tax on the gross receipts of all persons engaging in business within the Governmental Unit which provides for the Pledged Revenues; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the Governmental Unit is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(a) of the Finance Authority's Amended Rules and Regulations Governing the Public Project Revolving Fund Program; and

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the Finance Authority and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the Finance Authority, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Ordinance; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I
DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement including the foregoing recitals, unless the context clearly requires otherwise.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12 NMSA 1978, as amended and Section 7-19D-9, NMSA 1978, as amended, Sections 6-14-1 through 6-14-12, NMSA 1978, as amended, the Governmental Unit's Charter and home rule powers of the Governmental Unit under Article X, Section 6 of the State Constitution and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Ordinance.

"Additional Payment Obligations" mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required to replenish the Loan Agreement Reserve Account and payments required pursuant to the provisions of Article IX and Article X hereof.

"Aggregate Annual Debt Service Requirement" means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

"Authorized Officers" means, in the case of the Governmental Unit, Mayor, Mayor Pro-Tem, City Manager, Director of Financial Services, Treasurer and City Clerk, and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

"Blended Interest Rate" means the rate of interest on this Loan Agreement as shown on the Term Sheet.

"Bond Counsel" means nationally recognized bond counsel experienced in matters of municipal law, satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semiannually by The Bond Buyer's Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse this Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Event of Default" means one or more events of default as defined in Section 10.1 of this Loan Agreement.

"Expenses" means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

"Finance Authority Debt Service Account" means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

"Fiscal Year" means the period beginning 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 Governmental Unit as its fiscal year.

"Governing Body" means the duly organized City Council of the Governmental Unit, and any successor governing body of the Governmental Unit.

"Hold Harmless Flood Control MGRT Distribution" means the distribution to the Governmental Unit made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Ordinance 1135, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978, each year beginning July 1, 2015 until the distribution is eliminated after July 1, 2029.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

"Intercept Agreement" means the Intercept Agreement dated July __, 2023, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

"Interest Component" means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan" means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement.

"Loan Agreement" means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

"Loan Agreement Balance" means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Payment Date" means each date a payment is due on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Principal Amount" means the original principal amount of this Loan Agreement as shown on the Term Sheet.

"Loan Agreement Reserve Account" means the loan agreement reserve account established in the name of the Governmental Unit under the Indenture, funded by the Governmental Unit pursuant to the terms of this Loan Agreement, and administered by the Trustee pursuant to the Indenture. The Loan Agreement Reserve Account is to be funded only upon the circumstances provided in Section 5.2(c) of this Loan Agreement.

"Loan Agreement Reserve Requirement" means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) on hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement. The Loan Agreement Reserve Requirement, if any, shall be recalculated every year on or about June 1.

"Loan Agreement Term" means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

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

"Ordinance" means the Governmental Unit Ordinance No. ~~____~~3034 adopted by the Governing Body on ~~July ___~~,June 5, 2023 as supplemented by the Pricing Certificate executed on June ___, 2023, approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

"Parity Obligations" means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

"Permitted Investments" means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of

the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or S&P Global Ratings; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, as amended, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means the revenues derived from (i) the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by the Tax Ordinance, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Flood MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the Governmental Unit is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the Governmental Unit), pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit "B" hereto.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project(s) described on the Term Sheet.

"Tax Ordinance" means Ordinance No. 1135 adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by City Ordinance No. 1760, adopted on July 27, 1999, which imposes for a municipality a Municipal Local Option Gross Receipts Tax known as one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business within the Governmental Unit, subject to the exemptions specified in Section 7-19D-9 NMSA 1978.

"Term Sheet" means Exhibit "A" attached hereto.

"Trustee" means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

"Unassigned Rights" means the rights of the Finance Authority to receive payment of the administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit. The Governmental Unit represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized by the Act to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement to the acquisition of the Project.

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement,

however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of acquiring and completing flood control infrastructure improvements as set forth on the Term Sheet. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with Section 7-19D-9 NMSA 1978, as amended.

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement, and this Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of _____ years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is at least ____years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve Requirement; and (iii) an amount necessary to pay the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court

or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Ordinance**,** shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement or the Intercept Agreement.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the

Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) Pledged Revenues Covenants. The Governing Body has duly adopted the Tax Ordinance imposing the fifth one quarter of one percent (1/4%) Municipal Gross Receipts Tax, which constitutes the Pledged Revenues. The Tax Ordinance has not been repealed or superseded and is in full force and effect.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement and Intercept Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws

of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement based upon the Finance Authority's findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is $_____ which is less than one hundred percent (100%) of the State median household income of $_____.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the residents of the Governmental Unit.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property, and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreement, or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

(g) Compliance with Securities Laws. The Finance Authority acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The Finance Authority is a sophisticated accredited investor regularly making loans and purchasing securities similar to this Loan Agreement and has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit. Other than the pledge to the Trustee described above, the Finance Authority will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of this Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding this Loan Agreement and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable state securities laws and regulations.

(h) Finance Authority Compliance with Policies. As related to this Loan Agreement, the Finance Authority has complied with all policies and procedures as adopted and approved by the Finance Authority Board of Directors, or such policies have been waived by the Finance Authority Board of Directors.

ARTICLE III
LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

ARTICLE IV
LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

(b) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof.

No deposit of proceeds of the Loan or other Governmental Unit moneys into the Loan Agreement Reserve Account shall be required on the Closing Date or at any time thereafter, except in the circumstances and on the conditions described in subsection (c) of Section 5.2 hereof.

ARTICLE V
LOAN TO THE GOVERNMENTAL UNIT;
PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account, such account being held by the Trustee, (iv) the Loan Agreement Reserve Account, should such account be created and funded, pursuant to the terms of Section 5.2(c) and (d) of this Loan Agreement; and (v) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues either pursuant to the Intercept Agreement or directly from the Governmental Unit as provided by this Loan Agreement and the Intercept Agreement**,** the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amounts provided in subsection (d) of this Section 5.2 for deposit into the Loan Agreement Reserve Account, if necessary. The

Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee, each on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and the Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following from the Pledged Revenues received either directly or pursuant to the Intercept Agreement, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date, in an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is December 1, 2023), and (B) on the first day of each month thereafter, one-sixth of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. (A) Monthly, beginning on the first day of the month following the Closing Date in an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is June 1, 2024) and (B) on the first day of each month thereafter, one-twelfth of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections (i) and (ii) of this Section 5.2(a), and the Finance Authority shall not intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreement unless the Governmental Unit fails to timely transfer each such amount, in which event the Finance Authority shall intercept such amounts from Pledged Revenues pursuant to the Intercept Agreement. Such amounts shall be intercepted in approximately equal monthly payments when distributions are made by the Distributing State Agency in accordance with a schedule prepared by the Finance Authority at the commencement of interception of payments. The monthly intercepted installments will be amounts sufficient, when combined, to meet the payments described in subparagraphs (a)(i) and (ii) above, on a parity with the payment of the Governmental Unit's outstanding Parity Obligations.

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) The Treasurer (or successor) of the Governmental Unit, on or before the 150th day after the close of each Fiscal Year, shall deliver a certificate stating the ratio of coverage of Pledged Revenues to the Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the outstanding Loan Agreement and other Parity Obligations, if any (the "Debt Service Coverage Ratio"). No deposit shall be required in the Loan Agreement Reserve Account so long as the Pledged Revenues in each Fiscal Year equal or exceed two hundred percent (200%) of the maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on all outstanding Parity Obligations, if any. If the Debt Service Coverage Ratio in any Fiscal Year is insufficient to meet the test set forth in the preceding sentence, the Governmental Unit shall begin making substantially equal monthly deposits into the Loan Agreement Reserve Account from the first legally available Pledged Revenues so that after twenty-four (24) months an amount equal to the Loan Agreement Reserve Requirement will be held in the Loan Agreement Reserve Account. After funding the Loan Agreement Reserve Fund in an amount equal to the Loan Agreement Reserve Requirement, no additional payments need be made into the Loan Agreement Reserve Account so long as the moneys therein shall equal not less than the Loan Agreement Reserve Requirement. Such accumulations shall be made from Pledged Revenues, second and subordinate to the payments referred to in Section 5.2(a) of this Loan Agreement.

After the funding of the Loan Agreement Reserve Account as aforesaid, if each certificate from the Treasurer of the Governmental Unit required under this Section 5.2(c) for two (2) consecutive Fiscal Years indicate that the Debt Service Coverage Ratio is at least two hundred percent (200%) of the maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the outstanding Loan Agreement and other Parity Obligations, if any, any money or securities in the Loan Agreement Reserve Account may be transferred to other Governmental Unit funds or accounts, and the procedure provided in the first paragraph of this subparagraph (c) shall be reinstated. The moneys (if any) in the Loan Agreement Reserve Account shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in subparagraphs (d) and (e) of this Section 5.2, only to prevent deficiencies in the payment of the principal of and interest on the Loan Agreement resulting from failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay the principal and interest as the same become due.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account.

(d) If, on any Loan Agreement Payment Date, the Governmental Unit shall, for any reason, fail to pay into the Finance Authority Debt Service Account the full amount above stipulated from the Pledged Revenues, then an amount shall be paid into the Finance Authority Debt Service Account on such date from the Loan Agreement Reserve Account (if moneys are then on deposit in the Loan Agreement Reserve Account) equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. If the moneys paid into the Finance Authority Debt Service Account from the Loan Agreement Reserve Account are not equal to the amount required to be paid into the Finance Authority Debt Service Account for such date, then in the following month, an amount equal to the difference between the amount paid and the amount required shall be deposited into the Finance Authority Debt Service Account, in addition to the normal payment required to be paid in such month, from the

first Pledged Revenues thereafter received and not required to be otherwise applied. The money deposited in the Finance Authority Debt Service Account from the Loan Agreement Reserve Account, if any, shall be replaced in the Loan Agreement Reserve Account from the first Pledged Revenues thereafter received not required to be otherwise applied~~. If, in any month,~~ such that the ~~Governmental Unit shall, for any reason, fail to pay into~~ amount on deposit in the Loan Agreement Reserve Account equal the ~~full amount required, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first~~Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided that no additional Pledged Revenues ~~thereafter received and not required~~shall be deposited or intercepted to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to ~~be otherwise applied.~~the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Components. The moneys in the Loan Agreement Reserve Account 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 Loan Agreement; provided, however, that any moneys at any time in excess of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the Loan Agreement Reserve Account shall not be invested in a manner which could cause the Loan Agreement to become arbitrage bonds within the meaning of the Code. Any investments held in the Loan Agreement Reserve Account shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the Loan Agreement Reserve Account exceeds the Loan Agreement Reserve Requirement, all amounts in excess of the Loan Agreement Reserve Requirement shall be transferred to the credit of the Governmental Unit to the Finance Authority Debt Service Account and used to pay principal of and interest on the Loan Agreement.

(e) No payment shall be made into the Finance Authority Debt Service Account or the Loan Agreement Reserve Account if the amounts in such accounts total a sum at least equal to the entire aggregate amount due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such accounts 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 such accounts shall be transferred to the Governmental Unit and used as provided below.

(f) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance

Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Finance Authority Debt Service Account and the Loan Agreement Reserve Account (if the Loan Agreement Reserve Account is then required to be funded) as provided in Section 5.2 hereof.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinance or this Loan Agreement.

(c) The Pledged Revenues (not including the Hold Harmless Flood MGRT Distribution) received by or credited to the Governmental Unit for the Fiscal Year immediately preceding the date of the issuance of such proposed additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) For purposes of the test set forth in clause (b) above, if on the date of issuance of the additional Parity Obligations, (a) any amount of the reserve fund requirement for the additional Parity Obligations is immediately deposited in or credited to the reserve fund for the additional Parity Obligations or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Obligations is then on deposit in or credited to the reserve fund for any issue of outstanding Parity 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 Obligations or any issue of outstanding Parity Obligations for which such reserve fund was created.

(e) A written certification or opinion by the Governmental Unit's Treasurer or Financial Director or by an Independent Accountant that the Pledged Revenues for the Historic

Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(f) The Governmental Unit shall notify the Finance Authority of the approval by the Governmental Unit of the issuance of any Parity Obligations or subordinate Obligations upon the Governmental Unit's approval of the issuance of such Parity or subordinate Obligations.

~~(f)~~(g) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

~~(g)~~(h) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (d) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or 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 such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other

obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority for the Governmental Unit may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and the Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

ARTICLE VI
THE PROJECT

Section 6.1 Agreement to Acquire the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to acquire the Project. The Governmental

Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of the Project. Upon completion of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

ARTICLE VII
COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is

required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and 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 the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII
PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after ten (10) years following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the Finance Authority and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or

(ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, 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.

ARTICLE IX
INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the

Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, 700 North Main Street, Las Cruces, New Mexico 88001, Attention: City Director of Financial Services; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on May 25, 2023, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By_____
Marquita D. Russel, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS
OF THE NEW MEXICO FINANCE AUTHORITY:
Sutin, Thayer & Browne A Professional Corporation
As Loan Counsel

By_____
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF
THE NEW MEXICO FINANCE AUTHORITY:

By_____
Daniel C. Opperman, Chief Legal Officer

CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

By:_____
Ken Miyagishima, Mayor

ATTEST:

By:_____
Christine Rivera, City Clerk

EXHIBIT "A"

TERM SHEET
New Mexico Finance Authority Loan PPRF-____

Governmental Unit:	City of Las Cruces**,** New Mexico
Project Description:	The acquisition, construction, maintenance and completion of various flood control infrastructure projects, including the payment of Costs of Issuance and related professional fees
Loan Agreement Principal Amount:	$3,~~100~~070,000
Disadvantaged Funding Amount:	$0
Pledged Revenues:	Revenues derived from (i) the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 1135, adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by City Ordinance No. 1760, adopted on July 27, 1999, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Flood MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the Governmental Unit is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the Governmental Unit).
Coverage Ratio:	125%
Distributing State Agency:	State of New Mexico Taxation and Revenue Department

Currently Outstanding Parity Obligations:	Series 2014B Municipal Gross Receipts Tax Improvement Revenue Bonds in the original aggregate principal amount of $1,500,000, of which $120,000 remains outstanding, and with a final maturity date of June 1, 2024; Series 2016 Municipal Gross Receipts Tax Improvement Revenue Bonds in the original aggregate principal amount of $5,000,000, of which $1,410,000 remains outstanding with a final maturity of June 1, 2028; 2020 Loan Agreement dated June 5, 2020 with NMFA in the original aggregate principal amount of $3,580,000, of which $1,495,000 remains outstanding with a final maturity date of June 1, 2032
Additional Parity Bonds Test:	200% with notice to Finance Authority after issuance of Parity or subordinate Obligations)
Authorizing Legislation:	Ordinance No. ~~——~~3034 adopted on June 5, 2023 as supplemented by the Pricing Certificate executed on June __, 2023
Closing Date:	July __, 2023
Blended Interest Rate:	____%
Program Account Deposit:	$3,~~100~~070,000 (including $_____ for Costs of Issuance)
Loan Agreement Reserve Account Deposit:	$0.00 (Loan Agreement Reserve Requirement is the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement), if required to be funded pursuant to Section 5.2(c) hereof.
Finance Authority Debt Service Account Deposit:	$0.00
First Interest Payment Date:	December 1, 2023
First Principal Payment Date:	June 1, 2024
Final Payment Date:	June 1, ____

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

EXHIBIT "B"

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: $3,~~100~~070,000 Loan Agreement by and between the City of Las Cruces, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
PPRF@nmfa.net

You are hereby authorized to disburse from the Program Account – City of Las Cruces, New Mexico (2023 Flood Control Improvements Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: PPRF-~~____~~-6169 CLOSING DATE: _____
2023

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: $_____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Las Cruces, New Mexico (2023 Flood Improvements Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Las Cruces, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Las Cruces**,** New Mexico**,** shall, and understands its obligation to, complete the acquisition of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By: _____
Authorized Officer of Borrower
Title: _____
Print Name and Title

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: $3,~~100~~070,000 Loan Agreement by and between the City of Las Cruces, New Mexico and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority
PPRF@nmfa.net

Susen Ellis
Assistant Vice President, Corporate Trust
BOKF, NA
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-6169~~___~~ CLOSING DATE: July __, 2023

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By:_____
Authorized Officer of Governmental Unit

Title: _____
Print Name and Title

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into July ___, 2023, by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "State") under the laws of the State and the CITY OF LAS CRUCES, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the "Governmental Unit").

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the acquisition of acquisition of flood control improvements for use by the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, (collectively, the "Act") the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the "Loan Agreement"); and

WHEREAS, the Governmental Unit desires to acquire the Project and such acquisition is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow $3,100,000 from the Program for the purpose of financing the acquisition of the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 7-1-6.15, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of revenues from (i) the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 1135, adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by Governmental Unit Ordinance No. 1760, adopted on July 27, 1999, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit

and (ii) the associated Hold Harmless Flood Control MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the "Pledged Revenues"), from the ~~Revenue Division of the~~State Taxation and Revenue Department ~~of the State of New Mexico~~ (the "Distributing State Agency"), be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of $3,100,000 to finance the acquisition of the Project. Pursuant to Section 5.2(a) of the Loan Agreement and this Intercept Agreement, the Governmental Unit shall directly make timely payment of all Loan Agreement Payments to the Finance Authority. In the event that the Governmental Unit fails to make timely payment of Loan Agreement Payments to the Finance Authority, the Governmental Unit agrees that all payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from monthly distributions of the Pledged Revenues pursuant to Section 7-1-6.4 NMSA 1978, as amended, to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization**.** The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Ordinance No. ~~——~~3034, passed and adopted on June 5, 2023, by the Governing Body of the Governmental Unit, as supplemented by the Pricing Certificate executed on ~~——~~June ___, 2023, which Ordinance is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts**.** This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. The distribution of the Pledged Revenues to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit as indicated on the Intercept Schedule.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By:_____
Marquita D. Russel, Chief Executive Officer

CITY OF LAS CRUCES, NEW MEXICO

By:_____
Ken Miyagishima, Mayor

(SEAL)

Attest:

By:_____
Christine Rivera, City Clerk

Acknowledged:

By:_____
Taxation and Revenue Department
Date:_____

EXHIBIT "A"

INTERCEPT SCHEDULE
CITY OF LAS CRUCES, NEW MEXICO

Month	Pledged Revenues	Amount
Monthly beginning _____, 2023 through _____, 203__	The distribution of that portion of the revenues derived from the fifth one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 1135, adopted on March 26, 1990, with an effective date of July 1, 1990, as amended by Governmental Unit Ordinance No. 1760, adopted on July 27, 1999, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Flood Control MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance, which distributions are made monthly by the State Taxation and Revenue Department	$0*

*Except in the event that the Governmental Unit fails to make timely payments of Loan Agreement Payments, as provided in Section 5.2(a) of the Loan Agreement at which time a monthly collection schedule will be prepared by the Finance Authority and given to the Governmental Unit and the State Taxation and Revenue Department. The State Taxation and Revenue Department shall thereafter distribute Pledged Revenues set forth in the collection schedule to be applied to payment of the Loan as provided in the Loan Agreement and this Intercept Agreement.

3035; Council Bill 23-029

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	May 1, 2023	**Adopted:**	June 5, 2023
Drafter:	Erika Jaquez	**Department:**	Financial Services
Program:	Treasury	**Line of Business:**	Revenue Management

Title: **AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $5,100,000 LOAN AGREEMENT FOR STREET IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.**

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. As part of the program, City Council is required to authorize the submission of the application. The proposed action will allow the City to finance street improvements, repairs, resurfacing, reconstruction and major maintenance of city streets including related repairs to integral curbs, sidewalks, drainage and utility systems necessitated by the street modifications.

A proposed resolution approved at the May 1, 2023 City Council meeting authorizes City staff to submit an application for financial assistance from NMFA for street improvements, repairs, resurfacing, reconstruction and major maintenance of city streets including related repairs to integral curbs, sidewalks, drainage and utility systems necessitated by the street modifications.

Approval of the Ordinance authorizes the execution and delivery of a loan agreement between the City and NMFA. The City would borrow up to $5,100,000 to finance street improvements, repairs, resurfacing, reconstruction and major maintenance of city streets including related repairs to integral curbs, sidewalks, drainage and utility systems necessitated by the street modifications and pay the related debt issuance costs and professional fees. The revenue pledged to finance the projects would come from a lien on the City's first quarter percent increment of municipal gross receipts tax and the hold harmless distribution associated with the first quarter percent increment of municipal gross receipts tax.

Due to timing of the loan approval scheduling by NMFA, at the first reading of this proposed Ordinance, only a sample ordinance (preliminary), loan agreement and intercept agreement will be attached as Attachments as needed. After the first reading, the final ordinance is attached. After 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.

SUPPORT INFORMATION:

EXHIBIT "A" NMFA Loan Agreement MGRT Streets 2023
EXHIBIT "B" NMFA Intercept Agreement MGRT Streets 2023
ATTACHMENT "A" Redlined Loan Ordinance MGRT Streets 2023
ATTACHMENT "B" Redlined NMFA Loan Agreement MGRT Streets 2023
ATTACHMENT "C" Redlined NMFA Intercept Agreement MGRT Streets 2023

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance authorizing the City to accept the loan from NMFA and proceed with the street projects.
2. Vote "No"; this will not approve the Ordinance and will not authorize the City to accept the loan from NMFA and use this funding mechanism to finance the street projects.
3. Vote to "Amend"; this could delay the execution and delivery of the loan from NMFA and the delay the funding of the street projects.
4. Vote to "Table"; this could delay the financing opportunity and increase the projected cost of the street projects.

ORDINANCE 3035; COUNCIL BILL 23-029

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $5,100,000 LOAN AGREEMENT FOR STREET IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

The City Council is informed that:

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

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered within the parameters set forth herein and upon the final terms set forth in the Pricing Certificate and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement and Intercept Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement and Intercept Agreement; and

WHEREAS, other than as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a “private activity bond” as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

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

(I)

Section 1.Definitions. As used in the 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 through 3-31-12 and 6-14-1 through 6-14-12, NMSA 1978, as amended, the charter of the Governmental Unit, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

"Authorized Officers" means the Mayor, Mayor Pro-Tem, City Manager, Director of Financial Services, Treasurer and City Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Completion Date" means the date of final payment of the cost of the Project.

"Delegate" means the City Manager, City Director of Financial Services, or other Authorized Officer of the City delegated the authority to approve the final terms of the Loan Agreement and Intercept Agreement.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Expenses" means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

"Finance Authority Reserve Account" means the account in the name of the Governmental Unit established in the Loan Agreement, held by the Finance Authority, and funded upon the conditions and administered as provided in the Loan Agreement.

"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 Governmental Unit as its fiscal year.

"Governing Body" means the City Council of the Governmental Unit, or any future successor governing body of the Governmental Unit.

"Governmental Unit" means the City of Las Cruces, New Mexico.

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

"Hold Harmless Street MGRT Distribution" means the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 187, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year until the distribution is eliminated after July 1, 2029.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as such terms are defined in the Indenture).

"Intercept Agreement" means the Intercept Agreement, if any, dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment, if required, by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority, and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

"Loan Agreement Principal Amount" means an amount not to exceed $5,100,000, the original principal amount of the loan as shown on the Term Sheet and as set forth in the Pricing Certificate.

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

"Ordinance" means this Ordinance No. 3035 as adopted by the Governing Body on June 5, 2023, approving the Loan Agreement and Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

"Parity Obligations" mean the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Loan Agreement, including any such obligations shown in Exhibit "A" to the Loan Agreement.

"Pledged Revenues" means the revenues derived from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 187, adopted on October 16, 1978, with an effective date of July 1, 1979, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the City for the month in which the tax is distributed to the City and (ii) the associated Hold Harmless Street MGRT Distribution; provided that the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance (the City is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the City).

"Pricing Certificate" means one or more certificates executed by the Delegate dated on or before the date of execution and delivery of the Loan Agreement, setting forth the following final terms of the Loan Agreement and Intercept Agreement: (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 provisions; (vii) the creation of any capitalized interest fund, if any, including the size and funding of such fund(s); and (viii) the final terms of agreements, if any, with the Finance Authority or service providers required for the execution and delivery of the Loan Agreement and Intercept Agreement, all subject to the parameters and conditions contained in this Ordinance.

"Program Account" means the account in the name of the Governmental Unit established under the Indenture and held by the Trustee for deposit of the net proceeds of the Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project described in Exhibit "A" to the Loan Agreement.

"State" means the State of New Mexico.

"Subordinate Obligations" means the obligations now outstanding (as listed on Exhibit "A" to the Loan Agreement) or hereafter issued with a lien on the Pledged Revenues subordinate to the lien thereon of the Loan Agreement and the Parity Obligations.

"Term Sheet" means Exhibit "A" to the Loan Agreement.

"Trustee" means the BOKF, NA, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2.Ratification. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3.Authorization of the Project, the Loan Agreement and Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4.Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A.The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B.Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of acquiring the Project.

C.The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D.It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E.The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F.The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G.Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H.The net effective interest rate on the Loan to be established in the Pricing Certificate does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5.Loan Agreement and Intercept Agreement - Authorization and Detail.

A.Authorization. This Ordinance has been adopted by the affirmative vote of three-fourths of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay the Loan Agreement Principal Amount not to exceed $5,100,000.00 plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to finance the acquisition of the Project and to pay the costs of issuance of the Loan Agreement. The Project will be owned by the Governmental Unit.

B.Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted with the approval of the final terms of the Loan Agreement and Intercept Agreement to be accepted by the Delegate in the Pricing Certificate within the parameters set forth in this Ordinance as permitted by Section 6-14-10.2 NMSA 1978. The Loan shall be in an aggregate principal amount not to exceed $5,100,000.00 as set forth in the Pricing Certificate, shall be payable in installments of principal due on June 1 of the years designated in the Pricing Certificate and Exhibit “B” to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on the date and at the rates designated in the Pricing Certificate and in Exhibit “B” to the Loan Agreement.

Section 6.Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement with such changes, insertions and omissions that are consistent with this Ordinance as may be approved by such the Delegate in the Pricing Certificate, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7.Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan

Agreement, in its sole and absolute discretion, including funds on deposit in the Governmental Unit's fund designated as the Street Improvement Project Acquisition Fund.

Section 8.Disposition of Proceeds: Completion of Acquisition of the Project.

A.Program Account, Finance Authority Debt Service Account and Finance Authority Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account and Finance Authority Reserve Account to be held and maintained by the Finance Authority and to the Program Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Finance Authority Debt Service Account and the Program Account all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B.Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that acquisition of and payment for the Project has been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C.Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9.Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A.Deposit of Pledged Revenues. The Governmental Unit shall pay Pledged Revenues to the Finance Authority, or pursuant to the Intercept Agreement, the Pledged Revenues shall be redirected to the Finance Authority, for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay the Loan Agreement Payments.

B.Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amount in the Finance Authority Debt Service Account and the Finance Authority Reserve Account totals a sum at least equal to the entire aggregate amount to become due as to principal and interest, on, and any other amounts due under, the Loan Agreement in which case moneys in such account 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 such accounts shall be transferred to the Governmental Unit and used as provided below.

C.Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10.Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11.Delegation of Authority to Approve the Final Terms of the Loan Agreement and Intercept Agreement Within the Parameters Set Forth Herein; Authorization of Authorized Officers; Delegated Authority to Make Budget Adjustments. The private placement of the Loan Agreement and Intercept Agreement with the Finance Authority within the parameters set forth below and as described in the Pricing Certificate is hereby approved. After the Loan Agreement and Intercept Agreement have been duly executed and upon receipt of the purchase price therefor, the Loan Agreement and Intercept Agreement shall be delivered to the Finance Authority by an Authorized Officer in accordance with the Pricing Certificate and this Ordinance. The final terms of the Loan Agreement and Intercept Agreement shall be within the parameters set forth below:

(a) The proceeds of the Loan Agreement shall be used for the Project.

(b)The maximum par amount of the Loan Agreement shall not be more than $5,100,000.

(c)The final maturity of the Loan Agreement shall be no later than June 1, 2037.

(d)The maximum interest rate on the Loan Agreement shall be no greater than 12% per annum.

(e)The Loan Agreement shall be secured by a first lien, but not an exclusive first lien, on and shall be payable solely from the Pledged Revenues.

(f)The Loan Agreement and Intercept Agreement shall be entered into pursuant to a private placement with the Finance Authority.

(g)The Finance Authority's Processing Fee, if any, shall not exceed 1% of the aggregate principal amount of the Loan Agreement.

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

(i)The Loan Agreement and Intercept Agreement shall be in substantially the forms submitted to the Governing Body with the adoption of this Ordinance.

The Delegate is hereby authorized pursuant to this Ordinance to determine the final terms of the Loan Agreement and Intercept Agreement as permitted by Section 6-14-10.2 NMSA 1978 and to execute a Pricing Certificate in conformance with these parameters.

Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary). The Authorized Officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Loan Agreement proceeds.

Section 12.Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13.Ordinance Irrepealable. After the Loan Agreement and the Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14.Severability Clause. If any section, paragraph, clause or provision of this 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 Ordinance.

Section 15.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 16.Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17.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 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 Ordinance No. 3035, duly adopted and approved by the Governing Body of the City of Las Cruces, New Mexico (the "City"), on June 5, 2023. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 700 North Main Street, Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $5,100,000 LOAN AGREEMENT FOR STREET IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

A general summary of the subject matter of the Ordinance is:

The Ordinance authorizes execution and delivery of a Loan Agreement and Intercept Agreement between the City and the New Mexico Finance Authority. The loan will be in the amount not to exceed $5,100,000.00 with the final terms of the Loan Agreement and Intercept Agreement to be approved by the Delegate pursuant to the Supplemental Public Securities Act. The proceeds of the loan will be used for street improvement projects. The loan will be secured by the revenues derived from the first quarter percent increment of municipal gross receipts tax imposed pursuant to Ordinance No. 187. The forms of the Loan Agreement and Intercept Agreement are approved along with the details of the loan to be determined by the Delegate within the parameters set forth in this Ordinance. Prior actions of City officials relating to the loan are ratified and further actions are authorized.

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

$5,080,000

LOAN AGREEMENT

dated

July __, 2023

by and between the

NEW MEXICO FINANCE AUTHORITY

and

CITY OF LAS CRUCES, NEW MEXICO

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to BOKF, NA, as trustee under an Indenture, as defined in Article I of this Loan Agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT dated July __, 2023 is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and the CITY OF LAS CRUCES, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

W I T N E S S E T H:

WHEREAS, the Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the "Finance Authority Act"); and

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of street improvements as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, the Governmental Unit is authorized by the Act to impose by ordinance a Municipal Local Option Gross Receipts Tax pursuant to Section 7-19D-9, NMSA 1978; as amended; and

WHEREAS, pursuant to the Act, the Governmental Unit has by the Tax Ordinance imposed the municipal gross receipts tax on the gross receipts of all persons engaging in business within the Governmental Unit which provides for the Pledged Revenues; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the Governmental Unit is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(a) of the Finance Authority's Amended Rules and Regulations Governing the Public Project Revolving Fund Program; and

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the Finance Authority and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the Finance Authority, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Ordinance; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I
DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement including the foregoing recitals, unless the context clearly requires otherwise.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, Sections 6-14-1 through 6-14-12, and Section 7-19D-9, NMSA 1978, as amended, the Governmental Unit's Charter and home rule powers of the Governmental Unit under Article X, Section 6 of the State Constitution and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Ordinance.

"Additional Payment Obligations" mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required to replenish the Loan Agreement Reserve Account and payments required pursuant to the provisions of Article IX and Article X hereof.

"Aggregate Annual Debt Service Requirement" means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

"Authorized Officers" means, in the case of the Governmental Unit, Mayor, Mayor Pro-Tem, City Manager, Director of Financial Services, Treasurer and City Clerk, and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

"Blended Interest Rate" means the rate of interest on this Loan Agreement as shown on the Term Sheet.

"Bond Counsel" means nationally recognized bond counsel experienced in matters of municipal law, satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semiannually by The Bond Buyer's Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse this Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Event of Default" means one or more events of default as defined in Section 10.1 of this Loan Agreement.

"Expenses" means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

"Finance Authority Debt Service Account" means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

"Fiscal Year" means the period beginning 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 Governmental Unit as its fiscal year.

"Governing Body" means the duly organized City Council of the Governmental Unit, and any successor governing body of the Governmental Unit.

"Hold Harmless Street MGRT Distribution" means the distribution to the Governmental Unit made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Ordinance 187, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978, each year beginning July 1, 2015 until the distribution is eliminated after July 1, 2029.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

"Intercept Agreement" means the Intercept Agreement dated July ___, 2023, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

"Interest Component" means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan" means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement.

"Loan Agreement" means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

"Loan Agreement Balance" means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Payment Date" means each date a payment is due on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Principal Amount" means the original principal amount of this Loan Agreement as shown on the Term Sheet.

"Loan Agreement Reserve Account" means the loan agreement reserve account established in the name of the Governmental Unit under the Indenture, funded by the Governmental Unit pursuant to the terms of this Loan Agreement, and administered by the Trustee pursuant to the Indenture. The Loan Agreement Reserve Account is to be funded only upon the circumstances provided in Section 5.2(c) of this Loan Agreement.

"Loan Agreement Reserve Requirement" means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) on hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement. The Loan Agreement Reserve Requirement, if any, shall be recalculated every year on or about June 1.

"Loan Agreement Term" means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

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

"Ordinance" means the Governmental Unit Ordinance No. 3035 adopted by the Governing Body on June 5, 2023 as supplemented by the Pricing Certificate executed on June __, 2023, approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

"Parity Obligations" means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

"Permitted Investments" means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or S&P Global Ratings; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, as amended, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means the revenues derived from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by the Tax Ordinance, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Street MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the Governmental Unit is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the Governmental Unit), pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit "B" hereto.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project(s) described on the Term Sheet.

"Tax Ordinance" means Ordinance No. 187 passed and approved by the Governmental Unit pursuant to the Act on October 16, 1978, with an effective date of July 1, 1979, which imposes for a municipality a Municipal Local Option Gross Receipts Tax known as one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business within the Governmental Unit, subject to the exemptions specified in Section 7-19D-9 NMSA 1978.

"Term Sheet" means Exhibit "A" attached hereto.

"Trustee" means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

"Unassigned Rights" means the rights of the Finance Authority to receive payment of the administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit. The Governmental Unit represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent

authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized by the Act to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement to the acquisition of the Project.

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of acquiring and completing street improvements as set forth on the Term Sheet. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with Section 7-19D-9 NMSA 1978, as amended.

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement, and this Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of _____ years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is at least __ years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve Requirement; and (iii) an amount necessary to pay the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Ordinance**,** shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the

Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement or the Intercept Agreement.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be

necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) Pledged Revenues Covenants. The Governing Body has duly adopted the Tax Ordinance imposing the first one quarter of one percent (1/4%) Municipal Gross Receipts Tax, which constitutes the Pledged Revenues. The Tax Ordinance has not been repealed or superseded and is in full force and effect.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement and Intercept Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement based upon the Finance Authority's findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is $_____ which is less than one hundred percent (100%) of the State median household income of $_____.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the residents of the Governmental Unit.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property, and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreement, or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

(g) Compliance with Securities Laws. The Finance Authority acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The Finance Authority is a sophisticated accredited investor regularly making loans and purchasing securities similar to this Loan Agreement and has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit. Other than the pledge to the Trustee described above, the Finance Authority will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of this Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding this Loan Agreement and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable state securities laws and regulations.

(h) Finance Authority Compliance with Policies. As related to this Loan Agreement, the Finance Authority has complied with all policies and procedures as adopted and approved by the Finance Authority Board of Directors, or such policies have been waived by the Finance Authority Board of Directors.

ARTICLE III
LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

ARTICLE IV
LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

(b) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof.

No deposit of proceeds of the Loan or other Governmental Unit moneys into the Loan Agreement Reserve Account shall be required on the Closing Date or at any time thereafter, except in the circumstances and on the conditions described in subsection (c) of Section 5.2 hereof.

ARTICLE V
LOAN TO THE GOVERNMENTAL UNIT;
PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the

Finance Authority; (iii) the Program Account, such account being held by the Trustee, (iv) the Loan Agreement Reserve Account, should such account be created and funded, pursuant to the terms of Section 5.2(c) and (d) of this Loan Agreement; and (v) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues either pursuant to the Intercept Agreement or directly from the Governmental Unit as provided by this Loan Agreement and the Intercept Agreement**,** the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amounts provided in subsection (d) of this Section 5.2 for deposit into the Loan Agreement Reserve Account, if necessary. The Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee, each on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and the Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following

from the Pledged Revenues received either directly or pursuant to the Intercept Agreement, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date in an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is December 1, 2023), and (B) on the first day of each month thereafter, one-sixth of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. (A) Monthly beginning on the first day of the month following the Closing Date in an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is June 1, 2024) and (B) on the first day of each month thereafter, one-twelfth of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections (i) and (ii) of this Section 5.2(a), and the Finance Authority shall not intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreement unless the Governmental Unit fails to timely transfer each such amount, in which event the Finance Authority shall intercept such amounts from Pledged Revenues pursuant to the Intercept Agreement. Such amounts shall be intercepted in approximately equal monthly payments when distributions are made by the Distributing State Agency in accordance with a schedule prepared by the Finance Authority at the commencement of interception of payments. The monthly intercepted installments will be amounts sufficient, when combined, to meet the payments described in subparagraphs (a)(i) and (ii) above, on a parity with the payment of the Governmental Unit's outstanding Parity Obligations.

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) The Treasurer (or successor) of the Governmental Unit, on or before the 150th day after the close of each Fiscal Year, shall deliver a certificate stating the ratio of coverage of Pledged Revenues to the Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the outstanding Loan Agreement and other Parity Obligations, if any (the "Debt Service Coverage Ratio"). No deposit shall be required in the Loan Agreement Reserve Account so long as the Pledged Revenues in each Fiscal Year equal or exceed two hundred percent (200%) of the maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on all outstanding Parity Obligations, if any. If the Debt Service Coverage Ratio in any Fiscal Year is insufficient to meet the test set forth in the preceding sentence, the Governmental Unit shall begin making substantially equal monthly deposits into the Loan Agreement Reserve Account from the first legally available Pledged Revenues so that after twenty-four (24) months an amount equal to the Loan Agreement Reserve Requirement will be held in the Loan Agreement Reserve Account. After funding the Loan Agreement Reserve Fund in an amount equal to the Loan Agreement Reserve Requirement, no additional payments need be made into the Loan Agreement Reserve Account so long as the moneys therein shall equal not less than the Loan

Agreement Reserve Requirement. Such accumulations shall be made from Pledged Revenues, second and subordinate to the payments referred to in Section 5.2(a) of this Loan Agreement.

After the funding of the Loan Agreement Reserve Account as aforesaid, if each certificate from the Treasurer of the Governmental Unit required under this Section 5.2(c) for two (2) consecutive Fiscal Years indicate that the Debt Service Coverage Ratio is at least two hundred percent (200%) of the maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the outstanding Loan Agreement and other Parity Obligations, if any, any money or securities in the Loan Agreement Reserve Account may be transferred to other Governmental Unit funds or accounts, and the procedure provided in the first paragraph of this subparagraph (c) shall be reinstated. The moneys (if any) in the Loan Agreement Reserve Account shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in subparagraphs (d) and (e) of this Section 5.2, only to prevent deficiencies in the payment of the principal of and interest on the Loan Agreement resulting from failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay the principal and interest as the same become due.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account.

(d) If, on any Loan Agreement Payment Date, the Governmental Unit shall, for any reason, fail to pay into the Finance Authority Debt Service Account the full amount above stipulated from the Pledged Revenues, then an amount shall be paid into the Finance Authority Debt Service Account on such date from the Loan Agreement Reserve Account (if moneys are then on deposit in the Loan Agreement Reserve Account) equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. If the moneys paid into the Finance Authority Debt Service Account from the Loan Agreement Reserve Account are not equal to the amount required to be paid into the Finance Authority Debt Service Account for such date, then in the following month, an amount equal to the difference between the amount paid and the amount required shall be deposited into the Finance Authority Debt Service Account, in addition to the normal payment required to be paid in such month, from the first Pledged Revenues thereafter received and not required to be otherwise applied. The money deposited in the Finance Authority Debt Service Account from the Loan Agreement Reserve Account, if any, shall be replaced in the Loan Agreement Reserve Account from the first Pledged Revenues thereafter received not required to be otherwise applied such that the amount on deposit in the Loan Agreement Reserve Account equal the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided that no additional Pledged Revenues shall be deposited or intercepted to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Components. The moneys in the Loan Agreement Reserve Account 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 Loan Agreement; provided, however, that any moneys at any time in excess of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the Loan Agreement Reserve Account shall not be invested in a manner which could cause the Loan Agreement to become arbitrage bonds within the meaning of the Code. Any investments held in the Loan Agreement Reserve Account shall be valued

annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the Loan Agreement Reserve Account exceeds the Loan Agreement Reserve Requirement, all amounts in excess of the Loan Agreement Reserve Requirement shall be transferred to the credit of the Governmental Unit to the Finance Authority Debt Service Account and used to pay principal of and interest on the Loan Agreement.

(e) No payment shall be made into the Finance Authority Debt Service Account or the Loan Agreement Reserve Account if the amounts in such accounts total a sum at least equal to the entire aggregate amount due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such accounts 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 such accounts shall be transferred to the Governmental Unit and used as provided below.

(f) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Finance Authority Debt Service Account and the Loan Agreement Reserve Account (if the Loan Agreement Reserve Account is then required to be funded) as provided in Section 5.2 hereof.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinance or this Loan Agreement.

(c) The Pledged Revenues (not including the Hold Harmless Street MGRT Distribution) received by or credited to the Governmental Unit for the Fiscal Year immediately preceding the date of the issuance of such proposed additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) For purposes of the test set forth in clause (b) above, if on the date of issuance of the additional Parity Obligations, (a) any amount of the reserve fund requirement for the additional Parity Obligations is immediately deposited in or credited to the reserve fund for the additional Parity Obligations or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Obligations is then on deposit in or credited to the reserve fund for any issue of outstanding Parity 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 Obligations or any issue of outstanding Parity Obligations for which such reserve fund was created.

(e) A written certification or opinion by the Governmental Unit's Treasurer or Financial Director or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(f) The Governmental Unit shall notify the Finance Authority of the approval by the Governmental Unit of the issuance of any Parity Obligations or subordinate Obligations upon the Governmental Unit's approval of the issuance of such Parity or subordinate Obligations.

(g) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

(h) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (d) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or 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 such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority for the Governmental Unit may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and the Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

ARTICLE VI
THE PROJECT

Section 6.1 Agreement to Acquire the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to acquire the Project. The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of the Project. Upon completion of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

ARTICLE VII
COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and 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 the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII
PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after ten (10) years following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the Finance Authority and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, 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.

ARTICLE IX
INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent

of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or

becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, 700 North Main Street, Las Cruces, New Mexico 88001, Attention: City Director of Financial Services; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on May 25, 2023, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By_____
Marquita D. Russel, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS
OF THE NEW MEXICO FINANCE AUTHORITY:
Sutin, Thayer & Browne A Professional Corporation
As Loan Counsel

By_____
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF
THE NEW MEXICO FINANCE AUTHORITY:

By_____
Daniel C. Opperman, Chief Legal Officer

CITY OF LAS CRUCES, NEW MEXICO

[SEAL] By:_____
Ken Miyagishima, Mayor

ATTEST:

By:_____
Christine Rivera, City Clerk

EXHIBIT "A"

TERM SHEET
New Mexico Finance Authority Loan PPRF-6168

Governmental Unit:	City of Las Cruces**,** New Mexico
Project Description:	Street improvements, repairing, resurfacing, reconstructing and major maintenance of city streets including related repairs to integral curbs, sidewalks, drainage and utility systems necessitated by the street modifications and to pay Cost of Issuance and related professional fees
Loan Agreement Principal Amount:	$5,080,000
Disadvantaged Funding Amount:	$_____
Pledged Revenues:	Revenues derived from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 187, adopted on October 16, 1978, with an effective date of July 1, 1979, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Street MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the Governmental Unit is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the Governmental Unit).
Coverage Ratio:	125%
Distributing State Agency:	State of New Mexico Taxation and Revenue Department
Currently Outstanding Parity Obligations:	Series 2014A Municipal Gross Receipts Tax Improvement Revenue Bonds issued in the original aggregate principal

	amount of $8,000,000, of which $2,355,000 remains outstanding with a final maturity date of June 1, 2028; New Mexico Finance Authority Loan dated June 9, 2017 in the original aggregate principal amount of $5,115,000 of which $1,840,000 remains outstanding with a final maturity date of June 1, 2030 New Mexico Finance Authority Loan dated June 5, 2020 in the original aggregate principal amount of $5,080,000 of which $2,175,000 remains outstanding with a final maturity date of June 1, 2033
Additional Parity Bonds Test:	200%, withnotice to Finance Authority of additional Parity or subordinate Obligations
Authorizing Legislation:	Ordinance No. 3035 adopted on June 5, 2023 as supplemented by the Pricing Certificate executed on June __, 2023
Closing Date:	July __, 2023
Blended Interest Rate:	%
Program Account Deposit:	$5,080,000 (including $_____ for Costs of Issuance)
Loan Agreement Reserve Account Deposit:	$0.00 (Loan Agreement Reserve Requirement is the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement), if required to be funded pursuant to Section 5.2(c) hereof.
Finance Authority Debt Service Account Deposit:	$0.00
First Interest Payment Date:	December 1, 2023
First Principal Payment Date:	June 1, 2024
Final Payment Date:	June 1, 20__

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

EXHIBIT "B"

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: $5,080,000 Loan Agreement by and between the City of Las Cruces, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
PPRF@nmfa.net

You are hereby authorized to disburse from the Program Account – City of Las Cruces, New Mexico (2023 Street Improvements Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: PPRF-6168 CLOSING DATE: July __, 2023

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: $_____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Las Cruces, New Mexico (2023 Street Improvements Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Las Cruces, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Las Cruces**,** New Mexico**,** shall, and understands its obligation to, complete the acquisition of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By: _____
Authorized Officer of Borrower
Title: _____
Print Name and Title

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: $5,100,000 Loan Agreement by and between the City of Las Cruces, New Mexico and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority
PPRF@nmfa.net

Susen Ellis
Assistant Vice President, Corporate Trust
BOKF, NA
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-6168 CLOSING DATE: _____, 2023

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By:_____
Authorized Officer of Governmental Unit

Title: _____
Print Name and Title

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into July __, 2023, by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "State") under the laws of the State and the CITY OF LAS CRUCES, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the "Governmental Unit").

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the acquisition of acquisition of street improvements for use by the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, (collectively, the "Act") the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the "Loan Agreement"); and

WHEREAS, the Governmental Unit desires to acquire the Project and such acquisition is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow $5,100,000 from the Program for the purpose of financing the acquisition of the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 7-1-6.15, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of revenues from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 187, adopted on October 16, 1978, with an effective date of July 1, 1979, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Street MGRT Distribution;

provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the "Pledged Revenues"), from the State Taxation and Revenue Department (the "Distributing State Agency"), be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of $5,100,000 to finance the acquisition of the Project. Pursuant to Section 5.2(a) of the Loan Agreement and this Intercept Agreement, the Governmental Unit shall directly make timely payment of all Loan Agreement Payments to the Finance Authority. In the event that the Governmental Unit fails to make timely payment of Loan Agreement Payments to the Finance Authority, the Governmental Unit agrees that all payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from monthly distributions of the Pledged Revenues pursuant to Section 7-1-6.4 NMSA 1978, as amended, to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made

pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization**.** The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Ordinance No. 3035, passed and adopted on June 5, 2023, by the Governing Body of the Governmental Unit, as supplemented by the Pricing Certificate executed on June __, 2023, which Ordinance is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts**.** This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. The distribution of the Pledged Revenues to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit as indicated on the Intercept Schedule.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By:_____
Marquita D. Russel, Chief Executive Officer

CITY OF LAS CRUCES, NEW MEXICO

By:_____
Ken Miyagishima, Mayor

(SEAL)

Attest:

By:_____
Christine Rivera, City Clerk

Acknowledged:

By:_____
Taxation and Revenue Department
Date:_____

EXHIBIT "A"

INTERCEPT SCHEDULE
CITY OF LAS CRUCES, NEW MEXICO

Month	Pledged Revenues	Amount
Monthly beginning _____, 2023 through _____, 20__	The distribution of that portion of the revenues derived from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 187, adopted on October 16, 1978, with an effective date of July 1, 1979, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Street MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance, which distributions are made monthly by the State Taxation and Revenue Department	$0*

*Except in the event that the Governmental Unit fails to make timely payments of Loan Agreement Payments, as provided in Section 5.2(a) of the Loan Agreement at which time a monthly collection schedule will be prepared by the Finance Authority and given to the Governmental Unit and the State Taxation and Revenue Department. The State Taxation and Revenue Department shall thereafter distribute Pledged Revenues set forth in the collection schedule to be applied to payment of the Loan as provided in the Loan Agreement and this Intercept Agreement.

~~DRAFT 3/29/2023~~
FINAL
STREET PROJECTS

ORDINANCE NO. 3035; COUNCIL BILL NO. 23-029
~~**ORDINANCE NO. ____**~~

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $5,100,000 LOAN AGREEMENT FOR STREET IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

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

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered within the parameters set forth herein and upon the final terms set forth in the Pricing Certificate and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement and Intercept Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement and Intercept Agreement; and

WHEREAS, other than as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a

general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces that:

(I)

Section 1. Definitions. As used in the 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 through 3-31-12 and 6-14-1 through 6-14-12, NMSA 1978, as amended, the charter of the Governmental Unit, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

"Authorized Officers" means the Mayor, Mayor Pro-Tem, City Manager, Director of Financial Services, Treasurer and City Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Completion Date" means the date of final payment of the cost of the Project.

"Delegate" means the City Manager, City Director of Financial Services, or other Authorized Officer of the City delegated the authority to approve the final terms of the Loan Agreement and Intercept Agreement.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Expenses" means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

"Finance Authority Reserve Account" means the account in the name of the Governmental Unit established in the Loan Agreement, held by the Finance Authority, and funded upon the conditions and administered as provided in the Loan Agreement.

"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 Governmental Unit as its fiscal year.

"Governing Body" means the City Council of the Governmental Unit, or any future successor governing body of the Governmental Unit.

"Governmental Unit" means the City of Las Cruces, New Mexico.

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

"Hold Harmless Street MGRT Distribution" means the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all

persons engaging in business in the City by City Ordinance No. 187, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year until the distribution is eliminated after July 1, 2029.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as such terms are defined in the Indenture).

"Intercept Agreement" means the Intercept Agreement, if any, dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment, if required, by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance

Authority, and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

"Loan Agreement Principal Amount" means an amount not to exceed $5,100,000, the original principal amount of the loan as shown on the Term Sheet and as set forth in the Pricing Certificate.

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

"Ordinance" means this Ordinance No. ~~___~~3035 as adopted by the Governing Body on June 5, 2023, approving the Loan Agreement and Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

"Parity Obligations" mean the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Loan Agreement, including any such obligations shown in Exhibit "A" to the Loan Agreement.

"Pledged Revenues" means the revenues derived from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 187, adopted on October 16, 1978, with an effective date of July 1, 1979, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the City for the month in which the tax is distributed to the City and (ii) the associated Hold Harmless Street MGRT Distribution; provided that the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the

amount of revenues pledged pursuant to the Bond Ordinance (the City is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the City).

"Pricing Certificate" means one or more certificates executed by the Delegate dated on or before the date of execution and delivery of the Loan Agreement, setting forth the following final terms of the Loan Agreement and Intercept Agreement: (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 provisions; (vii) the creation of any capitalized interest fund, if any, including the size and funding of such fund(s); and (viii) the final terms of agreements, if any, with the Finance Authority or service providers required for the execution and delivery of the Loan Agreement and Intercept Agreement, all subject to the parameters and conditions contained in this Ordinance.

"Program Account" means the account in the name of the Governmental Unit established under the Indenture and held by the Trustee for deposit of the net proceeds of the Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project described in Exhibit "A" to the Loan Agreement.

"State" means the State of New Mexico.

"Subordinate Obligations" means the obligations now outstanding (as listed on Exhibit "A" to the Loan Agreement) or hereafter issued with a lien on the Pledged Revenues subordinate to the lien thereon of the Loan Agreement and the Parity Obligations.

"Term Sheet" means Exhibit "A" to the Loan Agreement.

"Trustee" means the BOKF, NA, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement and Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of acquiring the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan to be established in the Pricing Certificate does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of three-fourths of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay the Loan Agreement Principal Amount not to exceed

$5,100,000.00 plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to finance the acquisition of the Project and to pay the costs of issuance of the Loan Agreement. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted with the approval of the final terms of the Loan Agreement and Intercept Agreement to be accepted by the Delegate in the Pricing Certificate within the parameters set forth in this Ordinance as permitted by Section 6-14-10.2 NMSA 1978. The Loan shall be in an aggregate principal amount not to exceed $5,100,000.00 as set forth in the Pricing Certificate, shall be payable in installments of principal due on June 1 of the years designated in the Pricing Certificate and Exhibit "B" to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on the date and at the rates designated in the Pricing Certificate and in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement with such changes, insertions and omissions that are consistent with this Ordinance as may be approved by such the Delegate in the Pricing Certificate, and the City Clerk is hereby authorized to affix the seal of the

Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the

Loan Agreement, in its sole and absolute discretion, including funds on deposit in the Governmental Unit's fund designated as the Street Improvement Project Acquisition Fund.

Section 8. Disposition of Proceeds: Completion of Acquisition of the Project.

A. Program Account, Finance Authority Debt Service Account and Finance Authority Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account and Finance Authority Reserve Account to be held and maintained by the Finance Authority and to the Program Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Finance Authority Debt Service Account and the Program Account all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B. Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that acquisition of and payment for the Project has been completed. As soon as

practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. The Governmental Unit shall pay Pledged Revenues to the Finance Authority, or pursuant to the Intercept Agreement, the Pledged Revenues shall be redirected to the Finance Authority, for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay the Loan Agreement Payments.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amount in the Finance Authority Debt Service Account and the Finance Authority Reserve Account totals a sum at least equal to the entire aggregate amount to become due as to principal and interest, on, and any other amounts due under, the Loan Agreement in which case moneys in such account 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 such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Delegation of Authority to Approve the Final Terms of the Loan Agreement and Intercept Agreement Within the Parameters Set Forth Herein; Authorization of Authorized Officers; Delegated Authority to Make Budget Adjustments. The private placement of the Loan Agreement and Intercept Agreement with the Finance Authority within the parameters set forth below and as described in the Pricing Certificate is hereby approved. After the Loan Agreement and Intercept Agreement have been duly

executed and upon receipt of the purchase price therefor, the Loan Agreement and Intercept Agreement shall be delivered to the Finance Authority by an Authorized Officer in accordance with the Pricing Certificate and this Ordinance. The final terms of the Loan Agreement and Intercept Agreement shall be within the parameters set forth below:

(a) The proceeds of the Loan Agreement shall be used for the Project.

(b) The maximum par amount of the Loan Agreement shall not be more than $5,100,000.

(c) The final maturity of the Loan Agreement shall be no later than June 1, 2037.

(d) The maximum interest rate on the Loan Agreement shall be no greater than 12% per annum.

(e) The Loan Agreement shall be secured by a first lien, but not an exclusive first lien, on and shall be payable solely from the Pledged Revenues.

(f) The Loan Agreement and Intercept Agreement shall be entered into pursuant to a private placement with the Finance Authority.

(g) The Finance Authority's Processing Fee, if any, shall not exceed 1% of the aggregate principal amount of the Loan Agreement.

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

(i) The Loan Agreement and Intercept Agreement shall be in substantially the forms submitted to the Governing Body with the adoption of this Ordinance.

The Delegate is hereby authorized pursuant to this Ordinance to determine the final terms of the Loan Agreement and Intercept Agreement as permitted by Section 6-

14-10.2 NMSA 1978 and to execute a Pricing Certificate in conformance with these parameters.

Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary). The Authorized Officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Loan Agreement proceeds.

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Governmental Unit

of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan Agreement and the Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this 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 Ordinance.

Section 15. 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 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. 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 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 Ordinance No. ~~_____~~,3035, duly adopted and approved by the Governing Body of the City of Las Cruces, New Mexico (the "City"), on June 5, 2023. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 700 North Main Street, Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A $5,100,000 LOAN AGREEMENT FOR STREET IMPROVEMENT PROJECTS AND PAYING THE COSTS OF EXECUTION OF THE LOAN AGREEMENT WITH SUCH LOAN AGREEMENT TO BE SECURED BY A LIEN ON THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX AND THE HOLD HARMLESS DISTRIBUTIONS ASSOCIATED WITH THE FIRST QUARTER PERCENT INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX.

A general summary of the subject matter of the Ordinance is:

The Ordinance authorizes execution and delivery of a Loan Agreement and Intercept Agreement between the City and the New Mexico Finance Authority. The loan will be in the amount not to exceed $5,100,000.00 with the final terms of the Loan Agreement and Intercept Agreement to be approved by the Delegate pursuant to the Supplemental Public Securities Act. The proceeds of the loan will be used for street improvement projects. The loan will be secured by the revenues derived from the first

quarter percent increment of municipal gross receipts tax imposed pursuant to Ordinance No. 187. The forms of the Loan Agreement and Intercept Agreement are approved along with the details of the loan to be determined by the Delegate within the parameters set forth in this Ordinance. Prior actions of City officials relating to the loan are ratified and further actions are authorized.

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this 5th day of June, 2023.

APPROVED:

_____
Ken Miyagishima, Mayor

ATTEST:

_____
Christine Rivera, City Clerk

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima: _____
Councilor Gandara: _____
Councilor Abeyta: _____
Councilor Graham: _____
Councilor Bencomo: _____
Councilor Corran: _____
Councilor Flores: _____

APPROVED AS TO FORM

_____
Jocelyn Garrison, Acting City Attorney

EXHIBIT "A"

Meeting Agenda
June 5, 2023
City Council Meeting

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss.
CITY OF LAS CRUCES)

I, Christine Rivera, the duly acting and qualified City Clerk of the City of Las Cruces, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on June 5, 2023, at the hour of 1:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

3. Notice of such meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the City's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of June, 2023.

CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

_____
Christine Rivera, City Clerk

$5,~~100~~080,000

LOAN AGREEMENT

dated

July __, 2023

by and between the

NEW MEXICO FINANCE AUTHORITY

and

CITY OF LAS CRUCES, NEW MEXICO

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to BOKF, NA, as trustee under an Indenture, as defined in Article I of this Loan Agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT dated July __, 2023 is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and the CITY OF LAS CRUCES, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

W I T N E S S E T H:

WHEREAS, the Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the "Finance Authority Act"); and

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of street improvements as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, the Governmental Unit is authorized by the Act to impose by ordinance a Municipal Local Option Gross Receipts Tax pursuant to Section 7-19D-9, NMSA 1978; as amended; and

WHEREAS, pursuant to the Act, the Governmental Unit has by the Tax Ordinance imposed the municipal gross receipts tax on the gross receipts of all persons engaging in business within the Governmental Unit which provides for the Pledged Revenues; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the Governmental Unit is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(a) of the Finance Authority's Amended Rules and Regulations Governing the Public Project Revolving Fund Program; and

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the Finance Authority and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the Finance Authority, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Ordinance; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I
DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement including the foregoing recitals, unless the context clearly requires otherwise.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, Sections 6-14-1 through 6-14-12, and Section 7-19D-9, NMSA 1978, as amended, the Governmental Unit's Charter and home rule powers of the Governmental Unit under Article X, Section 6 of the State Constitution and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Ordinance.

"Additional Payment Obligations" mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required to replenish the Loan Agreement Reserve Account and payments required pursuant to the provisions of Article IX and Article X hereof.

"Aggregate Annual Debt Service Requirement" means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

"Authorized Officers" means, in the case of the Governmental Unit, Mayor, Mayor Pro-Tem, City Manager, Director of Financial Services, Treasurer and City Clerk, and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

"Blended Interest Rate" means the rate of interest on this Loan Agreement as shown on the Term Sheet.

"Bond Counsel" means nationally recognized bond counsel experienced in matters of municipal law, satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semiannually by The Bond Buyer's Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse this Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Event of Default" means one or more events of default as defined in Section 10.1 of this Loan Agreement.

"Expenses" means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

"Finance Authority Debt Service Account" means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

"Fiscal Year" means the period beginning 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 Governmental Unit as its fiscal year.

"Governing Body" means the duly organized City Council of the Governmental Unit, and any successor governing body of the Governmental Unit.

"Hold Harmless Street MGRT Distribution" means the distribution to the Governmental Unit made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Ordinance 187, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978, each year beginning July 1, 2015 until the distribution is eliminated after July 1, 2029.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

"Intercept Agreement" means the Intercept Agreement dated July ___, 2023, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

"Interest Component" means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan" means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement.

"Loan Agreement" means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

"Loan Agreement Balance" means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Payment Date" means each date a payment is due on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Principal Amount" means the original principal amount of this Loan Agreement as shown on the Term Sheet.

"Loan Agreement Reserve Account" means the loan agreement reserve account established in the name of the Governmental Unit under the Indenture, funded by the Governmental Unit pursuant to the terms of this Loan Agreement, and administered by the Trustee pursuant to the Indenture. The Loan Agreement Reserve Account is to be funded only upon the circumstances provided in Section 5.2(c) of this Loan Agreement.

"Loan Agreement Reserve Requirement" means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) on hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement. The Loan Agreement Reserve Requirement, if any, shall be recalculated every year on or about June 1.

"Loan Agreement Term" means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

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

"Ordinance" means the Governmental Unit Ordinance No. ~~____~~3035 adopted by the Governing Body on June 5, 2023 as supplemented by the Pricing Certificate executed on June __, 2023, approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

"Parity Obligations" means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

"Permitted Investments" means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or S&P Global Ratings; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, as amended, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means the revenues derived from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by the Tax Ordinance, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Street MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the Governmental Unit is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the Governmental Unit), pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit "B" hereto.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project(s) described on the Term Sheet.

"Tax Ordinance" means Ordinance No. 187 passed and approved by the Governmental Unit pursuant to the Act on October 16, 1978, with an effective date of July 1, 1979, which imposes for a municipality a Municipal Local Option Gross Receipts Tax known as one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business within the Governmental Unit, subject to the exemptions specified in Section 7-19D-9 NMSA 1978.

"Term Sheet" means Exhibit "A" attached hereto.

"Trustee" means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

"Unassigned Rights" means the rights of the Finance Authority to receive payment of the administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit. The Governmental Unit represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent

authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized by the Act to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement to the acquisition of the Project.

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of acquiring and completing street improvements as set forth on the Term Sheet. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with Section 7-19D-9 NMSA 1978, as amended.

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement, and this Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of _____ years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is at least __ years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve Requirement; and (iii) an amount necessary to pay the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Ordinance**,** shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the

Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement or the Intercept Agreement.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be

necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) Pledged Revenues Covenants. The Governing Body has duly adopted the Tax Ordinance imposing the first one quarter of one percent (1/4%) Municipal Gross Receipts Tax, which constitutes the Pledged Revenues. The Tax Ordinance has not been repealed or superseded and is in full force and effect.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement and Intercept Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement based upon the Finance Authority's findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is $_____ which is less than one hundred percent (100%) of the State median household income of $_____.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the residents of the Governmental Unit.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property, and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreement, or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

(g) Compliance with Securities Laws. The Finance Authority acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The Finance Authority is a sophisticated accredited investor regularly making loans and purchasing securities similar to this Loan Agreement and has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit. Other than the pledge to the Trustee described above, the Finance Authority will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of this Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding this Loan Agreement and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable state securities laws and regulations.

(h) Finance Authority Compliance with Policies. As related to this Loan Agreement, the Finance Authority has complied with all policies and procedures as adopted and approved by the Finance Authority Board of Directors, or such policies have been waived by the Finance Authority Board of Directors.

ARTICLE III
LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

ARTICLE IV
LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

(b) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof.

No deposit of proceeds of the Loan or other Governmental Unit moneys into the Loan Agreement Reserve Account shall be required on the Closing Date or at any time thereafter, except in the circumstances and on the conditions described in subsection (c) of Section 5.2 hereof.

ARTICLE V
LOAN TO THE GOVERNMENTAL UNIT;
PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the

Finance Authority; (iii) the Program Account, such account being held by the Trustee, (iv) the Loan Agreement Reserve Account, should such account be created and funded, pursuant to the terms of Section 5.2(c) and (d) of this Loan Agreement; and (v) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues either pursuant to the Intercept Agreement or directly from the Governmental Unit as provided by this Loan Agreement and the Intercept Agreement**,** the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amounts provided in subsection (d) of this Section 5.2 for deposit into the Loan Agreement Reserve Account, if necessary. The Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee, each on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and the Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following

from the Pledged Revenues received either directly or pursuant to the Intercept Agreement, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date in an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is December 1, 2023), and (B) on the first day of each month thereafter, one-sixth of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. (A) Monthly beginning on the first day of the month following the Closing Date in an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is June 1, 2024) and (B) on the first day of each month thereafter, one-twelfth of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections (i) and (ii) of this Section 5.2(a), and the Finance Authority shall not intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreement unless the Governmental Unit fails to timely transfer each such amount, in which event the Finance Authority shall intercept such amounts from Pledged Revenues pursuant to the Intercept Agreement. Such amounts shall be intercepted in approximately equal monthly payments when distributions are made by the Distributing State Agency in accordance with a schedule prepared by the Finance Authority at the commencement of interception of payments. The monthly intercepted installments will be amounts sufficient, when combined, to meet the payments described in subparagraphs (a)(i) and (ii) above, on a parity with the payment of the Governmental Unit's outstanding Parity Obligations.

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) The Treasurer (or successor) of the Governmental Unit, on or before the 150th day after the close of each Fiscal Year, shall deliver a certificate stating the ratio of coverage of Pledged Revenues to the Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the outstanding Loan Agreement and other Parity Obligations, if any (the "Debt Service Coverage Ratio"). No deposit shall be required in the Loan Agreement Reserve Account so long as the Pledged Revenues in each Fiscal Year equal or exceed two hundred percent (200%) of the maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on all outstanding Parity Obligations, if any. If the Debt Service Coverage Ratio in any Fiscal Year is insufficient to meet the test set forth in the preceding sentence, the Governmental Unit shall begin making substantially equal monthly deposits into the Loan Agreement Reserve Account from the first legally available Pledged Revenues so that after twenty-four (24) months an amount equal to the Loan Agreement Reserve Requirement will be held in the Loan Agreement Reserve Account. After funding the Loan Agreement Reserve Fund in an amount equal to the Loan Agreement Reserve Requirement, no additional payments need be made into the Loan Agreement Reserve Account so long as the moneys therein shall equal not less than the Loan

Agreement Reserve Requirement. Such accumulations shall be made from Pledged Revenues, second and subordinate to the payments referred to in Section 5.2(a) of this Loan Agreement.

After the funding of the Loan Agreement Reserve Account as aforesaid, if each certificate from the Treasurer of the Governmental Unit required under this Section 5.2(c) for two (2) consecutive Fiscal Years indicate that the Debt Service Coverage Ratio is at least two hundred percent (200%) of the maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the outstanding Loan Agreement and other Parity Obligations, if any, any money or securities in the Loan Agreement Reserve Account may be transferred to other Governmental Unit funds or accounts, and the procedure provided in the first paragraph of this subparagraph (c) shall be reinstated. The moneys (if any) in the Loan Agreement Reserve Account shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in subparagraphs (d) and (e) of this Section 5.2, only to prevent deficiencies in the payment of the principal of and interest on the Loan Agreement resulting from failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay the principal and interest as the same become due.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account.

(d) If, on any Loan Agreement Payment Date, the Governmental Unit shall, for any reason, fail to pay into the Finance Authority Debt Service Account the full amount above stipulated from the Pledged Revenues, then an amount shall be paid into the Finance Authority Debt Service Account on such date from the Loan Agreement Reserve Account (if moneys are then on deposit in the Loan Agreement Reserve Account) equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. If the moneys paid into the Finance Authority Debt Service Account from the Loan Agreement Reserve Account are not equal to the amount required to be paid into the Finance Authority Debt Service Account for such date, then in the following month, an amount equal to the difference between the amount paid and the amount required shall be deposited into the Finance Authority Debt Service Account, in addition to the normal payment required to be paid in such month, from the first Pledged Revenues thereafter received and not required to be otherwise applied. The money deposited in the Finance Authority Debt Service Account from the Loan Agreement Reserve Account, if any, shall be replaced in the Loan Agreement Reserve Account from the first Pledged Revenues thereafter received not required to be otherwise applied~~. If, in any month,~~ such that the ~~Governmental Unit shall, for any reason, fail to pay into~~ amount on deposit in the Loan Agreement Reserve Account equal the ~~full amount required, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first~~Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided that no additional Pledged Revenues ~~thereafter received and not required~~shall be deposited or intercepted to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to ~~be otherwise applied~~the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Components. The moneys in the Loan Agreement Reserve Account 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 Loan Agreement; provided, however, that any moneys at any time in excess of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated

in the Loan Agreement Reserve Account shall not be invested in a manner which could cause the Loan Agreement to become arbitrage bonds within the meaning of the Code. Any investments held in the Loan Agreement Reserve Account shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the Loan Agreement Reserve Account exceeds the Loan Agreement Reserve Requirement, all amounts in excess of the Loan Agreement Reserve Requirement shall be transferred to the credit of the Governmental Unit to the Finance Authority Debt Service Account and used to pay principal of and interest on the Loan Agreement.

(e) No payment shall be made into the Finance Authority Debt Service Account or the Loan Agreement Reserve Account if the amounts in such accounts total a sum at least equal to the entire aggregate amount due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such accounts 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 such accounts shall be transferred to the Governmental Unit and used as provided below.

(f) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations

which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Finance Authority Debt Service Account and the Loan Agreement Reserve Account (if the Loan Agreement Reserve Account is then required to be funded) as provided in Section 5.2 hereof.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinance or this Loan Agreement.

(c) The Pledged Revenues (not including the Hold Harmless Street MGRT Distribution) received by or credited to the Governmental Unit for the Fiscal Year immediately preceding the date of the issuance of such proposed additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) For purposes of the test set forth in clause (b) above, if on the date of issuance of the additional Parity Obligations, (a) any amount of the reserve fund requirement for the additional Parity Obligations is immediately deposited in or credited to the reserve fund for the additional Parity Obligations or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Obligations is then on deposit in or credited to the reserve fund for any issue of outstanding Parity 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 Obligations or any issue of outstanding Parity Obligations for which such reserve fund was created.

(e) A written certification or opinion by the Governmental Unit's Treasurer or Financial Director or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(f) The Governmental Unit shall notify the Finance Authority of the approval by the Governmental Unit of the issuance of any Parity Obligations or subordinate Obligations upon the Governmental Unit's approval of the issuance of such Parity or subordinate Obligations.

~~(f)~~(g) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

~~(g)~~(h) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (d) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or 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 such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon

the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority for the Governmental Unit may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and the Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

ARTICLE VI
THE PROJECT

Section 6.1 Agreement to Acquire the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to acquire the Project. The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of the Project. Upon completion of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or

her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

ARTICLE VII
COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and 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 the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII
PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after ten (10) years following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the Finance Authority and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, 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.

ARTICLE IX
INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit

or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement,

insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed

to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, 700 North Main Street, Las Cruces, New Mexico 88001, Attention: City Director of Financial Services; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder,

designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on May 25, 2023, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By_____
Marquita D. Russel, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS
OF THE NEW MEXICO FINANCE AUTHORITY:
Sutin, Thayer & Browne A Professional Corporation
As Loan Counsel

By_____
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF
THE NEW MEXICO FINANCE AUTHORITY:

By_____
Daniel C. Opperman, Chief Legal Officer

CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

By:_____
Ken Miyagishima, Mayor

ATTEST:

By:_____
Christine Rivera, City Clerk

EXHIBIT "A"

TERM SHEET
New Mexico Finance Authority Loan PPRF-~~_____~~-6168

Governmental Unit:	City of Las Cruces**,** New Mexico
Project Description:	Street improvements, repairing, resurfacing, reconstructing and major maintenance of city streets including related repairs to integral curbs, sidewalks, drainage and utility systems necessitated by the street modifications and to pay Cost of Issuance and related professional fees
Loan Agreement Principal Amount:	$5,~~100~~080,000
Disadvantaged Funding Amount:	$_____
Pledged Revenues:	Revenues derived from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 187, adopted on October 16, 1978, with an effective date of July 1, 1979, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Street MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the Governmental Unit is not pledging and the term "Pledged Revenues" does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the Governmental Unit).
Coverage Ratio:	125%
Distributing State Agency:	State of New Mexico Taxation and Revenue Department
Currently Outstanding Parity Obligations:	Series 2014A Municipal Gross Receipts Tax Improvement Revenue Bonds issued in the original aggregate principal

	amount of $8,000,000, of which $2,355,000 remains outstanding with a final maturity date of June 1, 2028; New Mexico Finance Authority Loan dated June 9, 2017 in the original aggregate principal amount of $5,115,000 of which $1,840,000 remains outstanding with a final maturity date of June 1, 2030 New Mexico Finance Authority Loan dated June 5, 2020 in the original aggregate principal amount of $5,080,000 of which $2,175,000 remains outstanding with a final maturity date of June 1, 2033
Additional Parity Bonds Test:	200~~%~~%, withnotice to Finance Authority of additional Parity or subordinate Obligations
Authorizing Legislation:	Ordinance No. ~~____~~3035 adopted on June 5, 2023 as supplemented by the Pricing Certificate executed on June __, 2023
Closing Date:	July __, 2023
Blended Interest Rate:	%
Program Account Deposit:	$5,~~100~~080,000 (including $_____ for Costs of Issuance)
Loan Agreement Reserve Account Deposit:	$0.00 (Loan Agreement Reserve Requirement is the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement), if required to be funded pursuant to Section 5.2(c) hereof.
Finance Authority Debt Service Account Deposit:	$0.00
First Interest Payment Date:	December 1, 2023
First Principal Payment Date:	June 1, 2024
Final Payment Date:	June 1, 20__

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

EXHIBIT "B"

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: $5,~~100~~080,000 Loan Agreement by and between the City of Las Cruces, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
PPRF@nmfa.net

You are hereby authorized to disburse from the Program Account – City of Las Cruces, New Mexico (2023 Street Improvements Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: PPRF-~~____~~-6168 CLOSING DATE: July __, 2023

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: $_____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Las Cruces, New Mexico (2023 Street Improvements Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Las Cruces, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Las Cruces**,** New Mexico**,** shall, and understands its obligation to, complete the acquisition of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By: _____
Authorized Officer of Borrower
Title: _____
Print Name and Title

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: $5,100,000 Loan Agreement by and between the City of Las Cruces, New Mexico and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority
PPRF@nmfa.net

Susen Ellis
Assistant Vice President, Corporate Trust
BOKF, NA
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-____-6168 CLOSING DATE: _____, 2023

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By:_____
Authorized Officer of Governmental Unit

Title: _____
Print Name and Title

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into July __, 2023, by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "State") under the laws of the State and the CITY OF LAS CRUCES, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the "Governmental Unit").

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the acquisition of acquisition of street improvements for use by the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, (collectively, the "Act") the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the "Loan Agreement"); and

WHEREAS, the Governmental Unit desires to acquire the Project and such acquisition is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow $5,100,000 from the Program for the purpose of financing the acquisition of the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 7-1-6.15, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of revenues from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 187, adopted on October 16, 1978, with an effective date of July 1, 1979, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Street MGRT Distribution;

provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance (the "Pledged Revenues"), from the ~~Revenue Division of the~~State Taxation and Revenue Department ~~of the State of New Mexico~~ (the "Distributing State Agency"), be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of $5,100,000 to finance the acquisition of the Project. Pursuant to Section 5.2(a) of the Loan Agreement and this Intercept Agreement, the Governmental Unit shall directly make timely payment of all Loan Agreement Payments to the Finance Authority. In the event that the Governmental Unit fails to make timely payment of Loan Agreement Payments to the Finance Authority, the Governmental Unit agrees that all payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from monthly distributions of the Pledged Revenues pursuant to Section 7-1-6.4 NMSA 1978, as amended, to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made

pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization**.** The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Ordinance No. ~~____~~3035, passed and adopted on June 5, 2023, by the Governing Body of the Governmental Unit, as supplemented by the Pricing Certificate executed on June __, 2023, which Ordinance is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts**.** This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. The distribution of the Pledged Revenues to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit as indicated on the Intercept Schedule.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By:_____
Marquita D. Russel, Chief Executive Officer

CITY OF LAS CRUCES, NEW MEXICO

By:_____
Ken Miyagishima, Mayor

(SEAL)

Attest:

By:_____
Christine Rivera, City Clerk

Acknowledged:

By:_____
Taxation and Revenue Department
Date:_____

EXHIBIT "A"

INTERCEPT SCHEDULE
CITY OF LAS CRUCES, NEW MEXICO

Month	Pledged Revenues	Amount
Monthly beginning _____, 2023 through _____, 20__	The distribution of that portion of the revenues derived from (i) the first one quarter of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Governmental Unit Ordinance No. 187, adopted on October 16, 1978, with an effective date of July 1, 1979, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit and (ii) the associated Hold Harmless Street MGRT Distribution; provided that the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance, which distributions are made monthly by the State Taxation and Revenue Department	$0*

*Except in the event that the Governmental Unit fails to make timely payments of Loan Agreement Payments, as provided in Section 5.2(a) of the Loan Agreement at which time a monthly collection schedule will be prepared by the Finance Authority and given to the Governmental Unit and the State Taxation and Revenue Department. The State Taxation and Revenue Department shall thereafter distribute Pledged Revenues set forth in the collection schedule to be applied to payment of the Loan as provided in the Loan Agreement and this Intercept Agreement.

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3037; Council Bill 23-031

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ **1** ☐ **2** ☐ **3** ☐ **4** ☐ **5** ☐ **6** ☒ **N/A**		
1st Reading:	May 15, 2023	**Adopted:**	June 5, 2023
Drafter:	David Weir	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **AN ORDINANCE AMENDING SECTION 38-53. CONDITIONAL USES AND SECTION 38-54. SPECIAL USE PERMITS OF THE LAS CRUCES MUNICIPAL CODE (LCMC) FOR THE PURPOSE OF ELIMINATING THE 300-FOOT BUFFER BETWEEN CANNABIS RETAILERS/ MICROBUSINESSES AND OTHER CANNABIS RETAILERS/MICROBUSINESSES AND ELIMINATING THE 300-FOOT BUFFER BETWEEN CANNABIS RETAILERS/ MICROBUSINESSES AND SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS. SUBMITTED BY THE CITY OF LAS CRUCES.**

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

PURPOSE(S) OF ACTION:

Code Amendment.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The state of New Mexico legalized cannabis for adult recreational use with the passage of House Bill 2, which includes the Cannabis Regulation Act (CRA), in April of 2021. The City then adopted modifications to Chapter 38, Zoning, of the Las Cruces Municipal Code (LCMC) on September 7, 2021, via Ordinance 2986, to incorporate regulations related to cannabis-related uses.

The Ordinance included several new definitions including *Cannabis Industry, Cannabis Research Laboratory, Cannabis Retailer, Community Garden, Horticulture,* and *Cannabis Microbusiness. Cannabis Retailer* and C*annabis Microbusiness* were added to commercial zones (C-1, C-2, C-3) with conditions, *Cannabis Industry* (production and manufacturing uses) was added to industrial zones (M-1/M-2, M-3) with conditions, *Cannabis Research Laboratory* was added to industrial zones with conditions (MT, M-1/M22, M-3), and residential *Cannabis Microbusiness* was added as allowed with a Special Use Permit (SUP) in the single-family agricultural zones (EE, REM), similar to existing allowances for small breweries and wineries.

The conditions or special provisions associated with those uses listed above include:

- all uses must be 300 feet from a school or daycare, the greatest allowance permitted by the state (commercial trade schools and schools serving adult populations are exempt);
- retail uses and commercial microbusinesses must be 300 feet from single-family zones and no closer than 300 feet from one another unless a special use permit is obtained;
- no on-site consumption can occur in the C-1 district; and
- in addition to a special use permit for the residential cannabis microbusiness in the EE and REM zones, the business must be ancillary to a single-family residence, must be fully enclosed in an accessory

structure, must be 100 feet away from adjacent residences, and must only sell products produced on site.

Over the course of the past year, several cannabis-related businesses have established themselves within the City. For a detailed list of permitted businesses and those that have applied, see Attachment "A". Staff from Economic Development, Community Development, and the Fire Department have worked closely with this emerging industry by providing guidance for permitting, licensing, building code, fire code, zoning code, and other small business assistance. One of the most frequent complaints from prospective businesses is that it is challenging to find a suitable location based on the established distancing requirements, especially the 300-foot distance from a single-family residential zoning district. Many of the available commercial zones are directly adjacent to single-family residential zoning districts.

A Special Use is a use that is not permitted by right in a zoning district. A Special Use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. If the impacts are deemed de minimis or conditions can be applied to reduce said impacts, a SUP can be approved. Fifteen (15) SUPs to operate businesses within these buffers have been submitted to the City. All SUPs heard before the Planning and Zoning Commission were approved based on lack of increased impacts. Two of these were appealed to City Council: one of which was upheld, and the other remains in process. There are several more under review and forthcoming to the P&Z.

The recurring requests for SUPs within the 300-foot buffer indicate that the single-family distancing provision may be overly burdensome. Staff analyzed the number of commercial properties that fall within the 300-foot single-family zoning buffer and determined that 1,081 commercially zoned parcels are potentially burdened by this requirement. There is little evidence that these restrictions are necessarily based on the impacts from these businesses, no other like uses such as pharmacies, bars /taverns, or specialty retail have similar restrictions, nor has Code Enforcement received complaints specific to undue impacts created by these businesses These uses appear to be no more intense than that of any other retail establishment within the City.

While fewer concerns related to the 300-foot buffer between businesses have been expressed, this regulation is also unique to cannabis compared to like uses as mentioned above. The City does not restrict other commercial uses based upon distance from one another. Staff has not observed a concentration of cannabis businesses in one area of town and is confident that the market will dictate the carrying capacity of said businesses within the community.

The proposed amendments can be found in Exhibit "A" and include:

- Sec. 38-53 Conditional Uses; and
- Sec. 38-54 Special Use Permits.

On April 25, 2023, the P&Z, per Section 38-10 B.2.b. of the 2001 Zoning Code, as amended, recommended approval of the proposed code amendment request by a vote of 5-0-2 based upon the following findings:

- The State of New Mexico Cannabis Regulation Act legalizes recreational cannabis, timelines for the production, manufacturing, sale, and use of cannabis, and permits local jurisdictions to regulate the time, use and manner of cannabis uses.
- Based upon staff's analysis of the proposed zoning code amendments, the amendments meet the intent of Elevate Las Cruces Comprehensive Plan; are akin to existing uses and anticipated impacts currently in the zoning code; meets the purpose and intent outlined in Section 38-2 of the 2001 Zoning Code, as amended; and meets the purpose of the Las Cruces Municipal Code Section 2-382.
- The land use impacts of cannabis retail businesses as compared to other types of retail businesses are de minimis.
- Several commercial corridors within the City abut single-family residential zones, unduly restricting the location of cannabis retailers.

The case was publicly noticed in accordance with the City's notification provisions and 1 members of the public spoke in opposition of the amendments during the P&Z hearing. Please refer to Attachment "B" for a copy of the P&Z staff report and Attachment "C" for detailed minutes of the discussion.

Upon recommendation by the P&Z, the City Council is required to review and take final action on Zoning Code Amendments per Section 38-10 B.2. b. and 38-13 A. of the LCMC. The City Council will consider the recommendation of the P&Z and will decide whether the requested zoning code amendments are appropriate. If deemed suitable based upon the evidence presented, the City Council will make a final determination on the request. The City Council may modify the recommendation or reject the recommendation. Any modifications to the ordinance as written must be specifically articulated during the motion.

SUPPORT INFORMATION:

Exhibit "A", LCMC Amendments
Attachment "A", Cannabis Business Registrations dated 3-27-2023
Attachment "B", P&Z Staff Report
Attachment "C", P&Z Draft Minutes

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☐ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation to amend sections 38-53 and 38-54 of the LCMC. The LCMC will be modified to reflect these changes.
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by the P&Z. The current LCMC will remain unchanged.
3. Vote to "Amend"; this allows the City Council to modify the Ordinance as deemed appropriate.
4. Vote to "Table"; this allows the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3037; COUNCIL BILL 23-031

AN ORDINANCE AMENDING SECTION 38-53. CONDITIONAL USES AND SECTION 38-54. SPECIAL USE PERMITS OF THE LAS CRUCES MUNICIPAL CODE (LCMC) FOR THE PURPOSE OF ELIMINATING THE 300-FOOT BUFFER BETWEEN CANNABIS RETAILERS/ MICROBUSINESSES AND OTHER CANNABIS RETAILERS/MICROBUSINESSES AND ELIMINATING THE 300-FOOT BUFFER BETWEEN CANNABIS RETAILERS/ MICROBUSINESSES AND SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS. SUBMITTED BY THE CITY OF LAS CRUCES.

The City Council is informed that:

WHEREAS, the New Mexico Legislature adopted House Bill 2 which legalized recreational cannabis for adult use and created the Cannabis Regulation Act (CRA); and

WHEREAS, Section 12 of the CRA provides local jurisdictions the ability to "adopt time, place, and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses"; and

WHEREAS, the City of Las Cruces adopted zoning regulations related to cannabis uses on September 7, 2021 via Ordinance 2986; and

WHEREAS, *Cannabis Retail* and *Cannabis Microbusiness* uses are similar in land use impact to other retail uses; and

WHEREAS, similar uses do not share the same conditions requiring buffers between other retailers or from single-family residential zoning districts; and

WHEREAS, a large portion of the City of Las Cruces' commercially zoned properties cannot meet the 300-foot buffer from single-family residential zoning districts; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on April 25, 2023, recommended approval of the proposed code amendment by a vote of 5-0-2 based on the following findings:

- The State of New Mexico Cannabis Regulation Act legalizes recreational cannabis, timelines for the production, manufacturing, sale, and use of cannabis, and permits local jurisdictions to regulate the time, use and manner of cannabis uses.
- Based upon staff’s analysis of the proposed zoning code amendments, the amendments meet the intent of Elevate Las Cruces Comprehensive Plan; are akin to existing uses and anticipated impacts currently in the zoning code; meets the purpose and intent outlined in Section 38-2 of the 2001 Zoning Code, as amended; and meets the purpose of the Las Cruces Municipal Code Section 2-382.
- The land use impacts of cannabis retail businesses as compared to other types of retail businesses are de minimis.
- Several commercial corridors within the City abut single family residential zones, unduly restricting the location of cannabis retailers.

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

(I)

THAT Chapter 38, Sections 38-53 and 38-54 of the Las Cruces Municipal Code be repealed and replaced based on the findings listed above and as reflected in Exhibit “A”, attached hereto and made part of this Ordinance.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Sec. 38-53. Conditional Uses

The following land uses are permitted in the zoning districts listed by complying with the specific conditions described. Other conditions and requirements, e.g., parking, walls and fences, that apply to all land uses are found in other sections of this Code. There also may be requirements in the Municipal Code with which specific land uses must comply.

Sec. 38-33H Above Ground Storage Tanks for Flammable and Combustible Liquids and Liquid Petroleum (LP) Gas (All zoning districts). Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the City of Las Cruces, when receiving approval from the Las Cruces Fire Department, or when receiving approval from the State of New Mexico LP Gas Bureau. This provision also applies to Contractor's Yard installations.

Sec. 38-33A Accessory Dwelling Unit (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, and R-1bM). (See Guest Dwelling in this section.) This use is intended to allow flexibility in existing and proposed housing designs in order to better accommodate family living arrangements which often result due to growing economic and social demands and/or impacts. Accessory dwelling unit means a self- contained living quarter containing independent kitchen (cooking/culinary) facilities attached to and under the same roof as the main dwelling, created by:

1. The conversion of an existing single-family dwelling, or
2. The addition to an existing single-family dwelling, or
3. The incorporation of applicable areas into a new single-family dwelling design which is subsequently constructed.

This use shall be permitted provided:

a) Owner of record shall reside in either the main or accessory dwelling unit for a minimum of six (6) months of each calendar year. Instances where non-residency occurs in excess of six months due to a legitimate illness or accident requiring hospitalization or special care shall be exempt from this provision; and

b) No more than one accessory dwelling unit shall exist per single-family dwelling/lot; and

c) Accessory dwelling units shall be created solely to accommodate those related to the family. Actual occupancy is subject to Item a) above; and

d) A maximum permitted increase to the size of an existing dwelling for purposes of an accessory unit shall be 30% of the heated/cooled floor area. No more than 30% of the heated/cooled floor area for new construction may be allocated for the accessory dwelling unit; and

e) Exclusive of the applicant's proposal, no more than 10% of single-family dwellings, in zoning districts that permit single-family dwellings, within a 500 foot radius of the applicant's property (measurement shall be from property line to property line exclusive of rights-of-way) shall have accessory dwelling units. If there are no appropriately zoned properties within the radius measured, the proposal shall be considered as meeting the 10% requirement; and

f) The lot/parcel proposed for such use shall meet the minimum area requirements of the zoning district; and

g) Every effort shall be made to avoid additional entrances or other visible changes on the facade of the house facing the street. Modifications or initial designs shall to the extent possible, conform to the overall design of the house. Exterior materials used for the accessory unit shall, to the extent possible, be of a compatible color, texture, and type; and

h) Accessory dwelling units shall retain direct internal access to the main dwelling in a manner that will allow easy reconversion back as part of the single-family unit (single kitchen). Accessory dwelling units created through an addition or designated as such in new construction, shall be connected to the main dwelling by a common wall(s). A minimum of four (4) feet, including a doorway at least three (3) feet wide, of the accessory unit’s common wall(s) length shall be used in the connection. Direct internal access to the accessory living areas shall exist through functional/integral living areas such as a living room, family room, main hallway, etc. Ancillary hallways, garages, laundry rooms, or similar areas shall not serve as the sole connecting facility; and

i) Landscaping shall be used, to the extent possible, to minimize the impact to adjacent properties; and

j) Accessory dwelling unit shall conform to Section 38-53, Off-Street Parking requirements; and

k) The accessory dwelling unit use shall be discontinued on the grounds of non-compliance with any applicable conditions, codes, or ordinances and thereby, require reconversion back as a single-family dwelling. A change in ownership of property where an accessory dwelling unit exists for a person(s) who is/are no longer a family member of the accessory dwelling unit occupant or a change in the intended accessory dwelling unit occupancy status shall cause said use to immediately become void. In such instances, it shall be the responsibility of the new/present owner to either apply for continued accessory unit use or reconvert the structure back to a single-family unit as required pursuant to all applicable regulations.

Sec. 38-33A Apartment (R-4). The residential uses identified may be used; however, in their use the minimum density threshold shall be met.

Sec. 38-33F Bank, Bonding & Financial Institution/Facility (Drive Thru including ATM & other electronic banking drive thru) (O-2, C-2, and C-3). Stacking lanes shall be provided and designed to insure that no bank or ATM traffic backs into the street giving access to the bank. Banks or ATMs shall have access to a major local or higher designated roadway. For stacking lane requirements, see Section 38-58.

Sec. 38-33A Bed and Breakfast (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, O-1, O-2, C-1 and C-2). This land use shall have direct access to at least a major local-designated roadway. In the EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, O-1 and C-1 zoning districts, the number of rooms is limited to eight (8). In the R-4, O-2 and C-2 zoning districts, the number of rooms is limited to fifteen (15). In application of Matrix 1, overall design of buildings and/or site design shall be consistent with the residential neighborhood, architecturally compatible with existing buildings or be architecturally compatible with building types normally found in the zoning district in which it is located. All parking shall be screened from view along any street.

Sec. 38-33G Cannabis Retailer (C-1, C-2, C-3). Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements. Cannabis retailers shall be located 300 feet from a school or daycare, excepting commercial schools and schools of higher learning serving those 18 years and older. ~~Further, no cannabis retailer in C-1, C-2 or C-3 zoning districts shall be located closer than 300 feet to a single-family residential zone and shall not be closer than 300 feet to another cannabis retailer unless a special use permit is obtained per Sec. 33-54.~~ On-site consumption of cannabis is limited to indoors and is entirely prohibited in the C-1 zoning district.

Sec. 38-33G Cannabis Retailer (M-1/M-2). Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements. A cannabis retailer in the M-1/M-2 zoning district is only permissible as accessory to a cannabis industry and is limited to 5,000 square feet of retail sales space or retail sales space limited to 49% of the total building square footage, whichever is less. On-site consumption of cannabis is limited to indoors.

Sec. 38-33D Cemetery/Columbarium (R-2, R-3, R-4). Any cemetery site shall contain at least five (5) acres and shall be located on a major local or higher designated roadway. A Columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Sec. 38-33D Child Care or Preschool (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, MT, M1/M2 and M-3). Child Care Center, Group Child Care Home, Family Child Care Home, preschool, nursery school, day nursery, kindergarten and similar uses shall be in accord with State licensing requirements. Care of thirteen (13) or more children at one time is prohibited in the residential zoning districts listed. When provided in industrial zoning districts, Child Care Center shall be accessory to industrial uses and shall be within buildings of one of the industrial uses served. See Section 38-52, Home Occupation Business Registration, for babysitting

service/child care when twelve (12) or fewer children are cared for.

Sec. 38-33D Community Buildings - Uses: Public or Private (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, and OS-R). These uses shall be located on a collector or higher designated roadway. Structures or parking located within twenty-five (25) feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within twenty-five (25) feet of property used for residential purposes.

Sec. 38-33I Construction Yard or Building(s) (Temporary) (All zoning districts). Such yard or building(s), including a mobile home or recreational vehicle for a temporary residence or construction office, or any other facilities or arrangement approved by the Community Development Director or designee shall be removed upon completion of construction and in compliance with the Chapter 30 of the Municipal Code. Construction yards and buildings or any other facilities shall be maintained in a neat and orderly fashion. Open yards shall be enclosed by a fence at least five (5) feet in height.

Sec. 38-33A Guest Dwelling (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, and R-1bM). (See Accessory Dwelling Unit in this section.) No more than one guest dwelling shall be permitted per lot with a single-family dwelling. A guest dwelling may be attached to or detached from a single-family unit. The guest dwelling shall be no more than fifty percent (50%) of the main dwelling's heated/cooled square footage and shall not contain a kitchen. A guest dwelling that is not part of the main dwelling is considered an accessory building and shall meet the requirements for accessory buildings, including setback and size restrictions. A guest dwelling is to be used for temporary occupancy only and is not to be rented or leased. Properties using a septic tank may not have a separate septic tank for a guest dwelling.

Sec. 38-33H Parking Facilities, Commercial (Garages & Parking Lots) (R-4). Parking lots must be within five hundred (500) feet of any office, commercial, or industrial use or zoning district. The parking area shall be suitably landscaped, paved and drained, lighted, and maintained free of debris. (See Section 38-58)

Sec. 38-33E Park, Public and Private (All zoning districts).

- Neighborhood Parks: Generally, these parks will be up to ten (10) acres in size. Commercial amusements, circuses, carnivals, craft fairs, etc., shall be prohibited. Only recreational activities and neighborhood affairs, such as, concerts, may be permitted.

- Community Parks: Generally, these parks will be up to 100 acres, but not less than 10 acres in size, and should be located on a minor arterial or higher designated roadway. Recreational activities, concerts, craft fairs may be permitted.

- Regional Parks: Generally, these parks will be more than 100 acres in size and should be located on a major arterial. All types of recreational activities and high intensity uses (carnivals and circuses) amusements, concerts, and craft fairs may be permitted.

All uses proposed to be located in City parks shall comply with Chapter 20 of the Municipal Code.

Sec. 38-33G Private Club or Lodge (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, and OS-R). A private club or lodge shall be located on a major local or higher designated street. Structures or parking located within twenty-five (25) feet of a residential zoning district shall provide an opaque buffer consisting of landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within twenty-five (25) feet of property used for residential purposes.

Sec. 38-33J Public/Private Utility Installations, e.g., substations, waterwells, transformers, regulators, lift stations, telecommunication site (All zoning districts). The site shall be developed and maintained in conformance with the general character and appearance of the district, and such development shall include landscaping and suitable opaque screening in the form of a solid wall, fence or compact shrubbery around the entire perimeter of the lot or tract, or around the installation itself in cases such as transformers. A wall or fence may be up to ten (10) feet high.

Sec. 38-33D Religious Institutions (Over Ten (10) Persons)/Columbarium (All zoning districts except Industrial). Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within twenty-five (25) feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within twenty-five (25) feet of property used for residential purposes.

Sec. 38-33D Schools (K-12) Public, Private, Parochial/College or University/ Commercial, Trade or Technical (For zoning districts, see page Section 38-33D). Elementary, Middle or High Schools shall be located on a collector or higher designated roadway. Commercial, Trade or Technical Schools, College or University shall be located on a minor arterial or higher designated roadway. All sites shall have a minimum of one (1) acre. Structures or parking located within twenty-five (25) feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within twenty-five (25) feet of property used for residential purposes.

Sec. 38-33E Swimming Pool, Commercial or Public (All zoning districts except O-1, C-1 and M-3). A protective fence or wall no less than six (6) feet in height, measured from the highest abutting property, shall be provided which completely encloses the pool area, and the pool shall be no closer than twenty-five (25) feet from any property line. Approval from the electric utility is required to ensure safety. (See Section 38-60)

Sec. 38-54. Special Use Permits

A GENERAL PROVISIONS AND PROCEDURES. A Special Use is a use that is not permitted by right in a zoning district. A Special Use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. The procedures for such approval are as follows:

1. PRE-APPLICATION PROCEDURES. Any proposed Special Use Permit shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Section 38-10 C. This meeting does not require a written application or fee. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.

2. APPLICATION PROCEDURES. An official application, including the Development Statement, for a Special Use Permit shall be obtained from the Community Development Department. Application requirements shall include, but not be limited to:

   a. A letter of intent stating the following:

      1) A statement of the purpose and use of the property,
      2) All property improvements to be made, and
      3) A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

   b. An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable. If only part of the property is to be used for the Special Use, the limits or boundary of the Special Use shall be described in addition to the entire property.

   c. Site Plans. The site plans shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

      1) Title of site plan.
      2) Total acreage of site.
      3) Date of preparation, north arrow, written and graphic scale.
      4) Identification of site by lot, block, subdivision, if applicable.
      5) A statement of ownership, signed by the property owner, that

complies with Section 38-10.C.8).

6) Name and address of property owner.
7) Name and address of applicant, if applicable.
8) Name and address of consulting firm or representative, if applicable.
9) Location and type of all land uses.
10) All site improvements with all setbacks indicated.
11) Dimensions of all buildings.
12) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
13) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.
14) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.
15) Where applicable, location and arrangement of all open space, common recreational space, and private open space.

d. Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

1) All new development illustrating all exterior building materials and colors.
2) All new development illustrating relationships to neighboring uses, including site lighting.
3) Sign location, materials, color, size, shape, and lighting.

A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director or designee, or the Planning and Zoning Commission.

Application materials which are illegible and/or otherwise of a low quality will not be accepted.

A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director or designee may waive any submittal requirement. The Planning and Zoning Commission may require additional items and resulting information in addition to the submittal requirements as per this section. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing. The City Council may require additional information before acting on an appeal.

Special Use Permit applications processed via the IDP for residential uses may exclude the landscaping plan and schedule as part of the submittal. All landscaping

requirements of the City Design Standards shall be complied with at time of construction.

e. Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to Section 38-10 C. 1. (d) (v).

3. PUBLIC HEARING AND NOTICE PROCEDURE. A public hearing shall be held by the Planning and Zoning Commission for all Special Use Permits in accordance with the provisions of Section 38-10 of this Code.

4. REVIEW AND APPROVAL PROCEDURES. The Planning and Zoning Commission may deny a Special Use Permit request or may grant final approval including the minimum conditions listed in Paragraph 38-54B. Also, approval may be granted with additional conditions imposed which are deemed necessary to implement the Comprehensive Plan and Plan elements and to insure that the purpose and intent of this Code are met to protect and provide safeguards for persons and property in the vicinity. Appeal of a Planning and Zoning Commission decision may be made to the City Council in accord with the provision of Section 38-13.

5. TIME LIMITATIONS, REVOCATIONS, AND DEVELOPMENT STANDARDS. In addition to the imposition of conditions, the Planning and Zoning Commission may impose a time limitation on the Special Use Permit. If a Special Use is discontinued for a period of one (1) year, said permit shall automatically be revoked. If a certificate of occupancy and/or a business registration is not issued for the property with the Special Use Permit within two years from the date of Planning and Zoning Commission approval, or if appealed, City Council approval, the Special Use Permit shall be revoked automatically. All improvements shall be in accord with the development standards within the district, except as otherwise authorized by the Special Use Permit. There shall be no major revisions in the approved Special Use site plan, except as approved by the Planning and Zoning Commission, or if appealed, approved by City Council.

Any major revision proposed to the Special Use Permit and site plan shall require resubmittal of the Special Use Permit and site plan in their entirety. Minor revisions are those changes that are not major and may be approved by the Community Development Director or designee. Major revisions to the Special Use Permit and site plan shall include, but are not limited to:

a. Any change in land use,
b. Fifteen (15) percent cumulative increase in land use or building square footage,
c. Fifteen (15) percent cumulative increase in vehicular traffic on any roadway segment or intersection,
d. Any increase or decrease in size of the Special Use area,
e. Any reduction in screening, bufferyards and setbacks at the Special Use boundary line,

f. Fifteen (15) percent cumulative increase in the buildable area for structures including signs, and
g. Reduction or elimination of time limitations.
h. Renewal of the Special Use Permit.

6. RECORDING OF THE SPECIAL USE PERMIT. After approval, the Special Use Permit shall be issued by the Community Development Director or designee and shall include all information, conditions, reference to site plans, and other provisions of the Special Use. The Special Use Permit shall be filed in the Dona Ana County property records. The Special Use Permit shall not become effective until adequate evidence of filing in County records has been provided to the Community Development Director or designee. Approval of a Special Use Permit is not a zoning district change.

B. SPECIAL USES ENUMERATED. The following are special uses that may be approved by the Planning and Zoning Commission in accord with the provisions and conditions of this Section. The Planning and Zoning Commission may, at its discretion, impose additional conditions when deemed necessary. Such uses may be approved only within the districts stipulated.

Sec. 38-33G Adult Bookstore/Video Store or Adult Amusement Establishment (M1/M2, and M-3). These uses shall be permitted provided:

1. Such uses are located at a minimum of 1,000 feet from a property line of a:
   a. school;
   b. church;
   c. nursery/day care;
   d. public park or recreational facility; and
   e. residential zoning district;

2. These uses shall be permitted provided such uses are located at a minimum of 500 feet from the property line of a liquor establishment. The distance shall be measured from the Adult Bookstore/Video Store or the Adult Amusement Establishment to the property line of the liquor establishment; and

3. The operator of an Adult Bookstore/Video Store or Adult Amusement Establishment shall affix a sign to the exterior wall nearest the primary entrance to the structure in which such enterprise is located. Such signs shall be 36" x 18", shall have red lettering (letters shall be 2" in width and 3" in height) on a white background and it shall state as follows:

WARNING:

ADULT BOOKSTORE/VIDEO STORE.
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.

or

WARNING:

ADULT AMUSEMENT ESTABLISHMENT.
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.

4. Distance measurements shall include streets, alleys, channels, canals, other public rights-of-way and railroad right-of-way.

Sec. 38-33H Airport, Privately and Publicly Owned (C-2, C-3, M1/M2 and M-3). The Las Cruces International Airport (LCIA) property is zoned M-3(Conditional). The condition is that land uses will be in accordance with current City-Federal (Federal Aviation Administration) agreements and the adopted LCIA Master Plan. Parking, drainage, landscaping and other development standards are determined by the City Council through Chapter 7.5 of the Municipal Code, as amended, and Resolution 98-371, as amended. The LCIA Master Plan substitutes for a Special Use Permit. No special use permit is required.

Properties within 20,000 feet of an active runway at any airport will not be allowed to conduct land uses that would violate Federal Airspace Protection Regulations, including 14 CFR (Code of Federal Regulations), Part 77.

All other airports shall comply with 14 CFR, Part 77. Development standards, e.g., parking requirements, required runway paving standards, land uses will be determined as part of the Special Use Permit (SUP) review process. A Noise Exposure Study shall be submitted with the SUP application.

Sec. 38-33J Antennas, Towers, Communication Structures and Other Vertical Structures (All zoning districts). See Section 38-59.

Sec. 38-33E Amusement Park (Permanent)(EE, RE, REM, C-3, MT, M1/M2 and M-3). See Section 38-33E.

Sec. 38-33E Archery and Firing Range, Outdoor (OS-R, C-3, M1/M2, and M-3). See Section 38-33E.

Sec. 38-33G Auto/Truck Full or Self-Service/Automated Wash/Wax/Detailing (CBD). See Section 38-43.

Sec. 38-33G Auto/Truck Repair & Service (CBD). See Section 38-43.

Sec. 38-33A Boarding House (CBD). See Section 38-43.

Sec. 38-33C Brewery and Winery(EE and REM).

Sec. 38-43 Building Height over 50 feet (CBD).

Sec. 38-33A Campground (C-3, and M1/M2). See Section 38-57.

Sec. 38-33C Cannabis Microbusiness (EE and REM). Such uses shall be accessory to a primary residence and shall be located in a fully enclosed accessory structure located no less than 100 feet from adjacent residences excluding any residence on the same property on which the cannabis microbusiness is proposed. Cannabis products for retail sale shall be derived from those cultivated on-site. Parking minimums shall be based on the specific use(s) as outlined in Sec. 38-33.

~~Sec 38-33G Cannabis Retailer (C-1, C-2 and C-3). Allows decreased minimum distance requirement from a residential zone and/or from another cannabis retailer.~~

Sec. 38-33D Cemetery/Columbarium (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM and R-1bM). Any cemetery site shall contain at least five (5) acres and shall be located on a major local or higher designated roadway. A Columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Sec. 38-33D Group Child Care Home (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM and R-2).

Sec. 38-33E Country Club, Golf Course and/or Driving Range (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, and OS-R). There shall be screening and buffering on property lines abutting residential areas and no structures shall be within fifty (50) feet of a residential property line. The parking areas for these uses shall have access to a collector or higher designated roadway. Country clubs within the OS-R zone shall be designed in concert with a golf course or similar large open area.

Sec. 38-33I Extraction of Raw Materials (Not to include Manufacture, Processing or Treatment) (EE, RE, and REM). Such uses shall be a minimum of four hundred (400) feet from a residential district boundary or from an existing residential property. Uses shall not create a significance nuisance due to noise, odor, pollution, traffic or other similar problems. See Section 38-33I.

Sec. 38-33G Gas Station (CBD). See Section 38-43.

Sec. 38-33A Halfway House (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3 and R-4).

Sec. 38-33H Heliport/Helistop (EE, REM, R-4, O-2, C-2, C-3, M1/M2 and M-3). Use shall be in accordance with federal Airspace Protection Regulations, including 14 CFR, Part 77.

Sec. 38-33C Racetrack, Animal/Rodeo Arena (EE, RE-Mobile, C-3, M1/M2 and M-3)

Sec. 38-33E Racetrack, Auto/Truck (M-3).

Sec. 38-32D Single Business/Use (Non-Center) - Increased Square Footage Above Maximum (C-1 and C-2). Additional square footage not to exceed 2,000 may be granted in the C-1 district. Additional square footage not to exceed 6,000 may be granted in the C-2 district.

Sec. 38-33E Sports Complex/Stadium: Baseball, Football, Soccer, Softball, Track, etc. (EE, REM, C-3, M1/M2, and M-3). Parking and structures shall be located a minimum of three hundred (300) feet from any residential zoning district boundary.

Sec. 38-33J Waste Transfer Stations/Sewage Treatment Plants (M1/M2 and M-3). Use shall be located at least 300 feet from any residential zoning district boundary.

Sec. 38-55. RESERVED

Cannabis Business Registrations

COMMUNITY DEVELOPMENT DEPARTMENT

Attachment "A"

Total New

Submit Date	Business License	Issue Year	Issue Month	Record Status	DBA Business Name	Contact Name	Business Type	Location Address
12/14/2022	25401-22-APP	2023	3	Issued	SOL CANNABIS LLC	KWAME PONSCHOCK	RETAIL	900 S TELSHOR BLVD STE A
01/05/2023	25452-23-APP	2023	3	Issued	CLOUD HOUSE, LLC	DAMEON NANOCCHIO	AGRICULTURE	1730 W HADLEY AVE
01/19/2023	25487-23-APP	2023	3	Issued	TRUE ESSENTIA LLC	CHRISTIAN ONTIVEROS	RETAIL	530 N TELSHOR BLVD
01/23/2023	25494-23-APP	2023	3	Issued	DOUGHDY LLC	JUSTIN BRENDAN KARRENBERG	WHOLESALE	2201 N MESQUITE ST STE E
02/16/2023	25587-23-APP	2023	3	Issued	MESILLA VALLEY CANNABIS	DERRICK PACHECO	RETAIL	401 N MESILLA ST
02/27/2023	25609-23-APP	2023	3	Issued	CRUCES CRAFT CANNABIS	FERAS AL-HANFOOSH	OTHER	2001 S VALLEY DR STE 3
04/04/2022	24694-22-APP	2023	2	Issued	BLUNTLEY LLC	GONZALO CHAVEZ	RETAIL	3161 N MAIN ST
09/19/2022	25167-22-APP	2023	2	Issued	SASSY GRASS DISPENSARY	RICHARD AZIZ	RETAIL	3100 W PICACHO AVE STE 2
11/30/2022	25371-22-APP	2023	2	Issued	HASHEESH RECREATIONAL CANNABIS	ALEX CARRILLO	RETAIL	1021 E AMADOR AVE STE A
03/03/2022	24607-22-APP	2023	1	Issued	CANNAVERSE LLC	RICHARD SMITH	LIVE PLANTS	1754 BUILDTEK CT STE A
12/06/2022	25383-22-APP	2023	1	Issued	BOTANIX	AMANDA VARELA	MANUFACTURING	750 WEST PALMS
01/01/2022	24385-22-APP	2022	12	Issued	FOURTWENTY COLLECTIONS	MARVINA THOMAS	RETAIL	2215 S MAIN ST STE A
01/14/2022	24499-22-APP	2022	12	Issued	UNITY RD	JOE HERNANDEZ	RETAIL	250 W AMADOR AVE
02/28/2022	24594-22-APP	2022	12	Issued	HAPPY PANDA CANNABIS COMPANY	KEIFER PAYNE	RETAIL	2505 MISSOURI AVE
07/29/2022	25037-22-APP	2022	12	Issued	NORTHSTAR LEAF	SALIM PREMJI	RETAIL	3330 RINCONADA BLVD STE 1
11/23/2022	25355-22-APP	2022	12	Issued	HEAD SPACE DISTRIBUTION LLC	ROBERT DURAN	MANUFACTURING	390 N SEVENTEENTH ST
05/19/2022	24833-22-APP	2022	11	Issued	SOUTHWEST DISPENSARY	ELISEO GARDEA	OTHER	421 AVENIDA DE MESILLA STE C
07/18/2022	24995-22-APP	2022	11	Issued	FCI OF NEW MEXICO	CODY FISHER	RETAIL	140 W PICACHO AVE
10/15/2021	24173-21-APP	2022	10	Issued	TOP CROP	NICK SPOOR	RETAIL	2240 E LOHMAN AVE
06/02/2022	24863-22-APP	2022	10	Issued	THE KITCHEN	LEIGH IDIDY	FOOD SERVICE	300 N MAIN ST
11/18/2021	24287-21-APP	2022	9	Issued	GROBROS	JOEL GREEN	AGRICULTURE	2201 N MESQUITE ST STE A
01/25/2022	24476-22-APP	2022	9	Issued	BUDZ CANNABIS	RICARDO WILSON	RETAIL	1886 W PICACHO AVE BLDG 1
02/09/2022	24588-22-APP	2022	9	Issued	CANNAFUL CREATIONS, LLC	CORINA CUELLAR	MANUFACTURING	525 E MADRID AVE STE 3B
05/12/2022	24810-22-APP	2022	9	Issued	HIGH HORSE	RUBEN AGUILAR	RETAIL	580 S VALLEY DR STE 300
07/25/2022	25020-22-APP	2022	9	Issued	ALTER EGO CULTIVATION	JASON ESCOBAR	AGRICULTURE	1720 W HADLEY AVE UNIT E
03/15/2022	24643-22-APP	2022	8	Issued	EMPIRE CANNABIS	GABRIEL SILVA	RETAIL	590 S SOLANO DR STE C
03/23/2022	24654-22-APP	2022	8	Issued	FRATELLI INVESTMENT GROUP LLC	CARLOS CASILLAS	RETAIL	908 S SOLANO DR
04/25/2022	24752-22-APP	2022	8	Issued	MONSTER HOUSE	MAGGIE MARBLE	RETAIL	301 N SOLANO DR STE 8
06/21/2022	24921-22-APP	2022	7	Issued	MASBUDS LLC	RONALD BENDER	RETAIL	142 WYATT DR
10/06/2021	24141-21-APP	2022	6	Issued	EVEREST APOTHECARY INC.	TRISHELLE KIRK	RETAIL	1240 S VALLEY DR STE D
09/22/2021	24150-21-APP	2022	5	Issued	VIDA VERDE VENTURES, LLC	NICOLE FUCHS	AGRICULTURE	9035 ADVANCEMENT AVE BLDG E
10/14/2021	24170-21-APP	2022	5	Issued	DO WAT I WANT INDUSTRIES	JONATHAN MIRABAL	RETAIL	1770 S TELSHOR BLVD STE C
01/18/2022	24456-22-APP	2022	5	Issued	CANNAVERSE LLC	RICHARD SMITH	RETAIL	2305 NEVADA AVE
02/17/2022	24574-22-APP	2022	5	Issued	ULTRA HEALTH	LEIGH JENKE	RETAIL	1965 BATAAN MEMORIAL WEST STE 1
02/25/2022	24590-22-APP	2022	4	Issued	SOL CANNABIS LLC	BRETT BURKE	RETAIL	523 IDAHO AVE
03/23/2022	24650-22-APP	2022	4	Issued	HASHTAG CANNABIS LLC	ERIC MADRID	RETAIL	2460 MISSOURI AVE
08/25/2021	24022-21-APP	2022	3	Issued	GREENGO NM LLC	NORA LANCASTER	OTHER	2000 E LOHMAN AVE STE E
12/11/2021	24342-21-APP	2022	3	Issued	MICAH BAILEY	MICAH BAILEY	TRANSPORTATION	2049 S TRIVIZ DR APT E17
01/10/2022	24441-22-APP	2022	3	Issued	V&S ENTERPRISES LLC	VERONICA SAENZ	AGRICULTURE	9035 ADVANCEMENT AVE A
02/10/2022	24528-22-APP	2022	3	Issued	ORGAN MOUNTAIN ORGANIX LLC	HAILY VAUGHAN	RETAIL	1300 EL PASEO RD STE 280
02/18/2022	24546-22-APP	2022	3	Issued	BEST BUDZ	JOSE ZAVALA	RETAIL	505 N VALLEY DR
03/16/2022	24627-22-APP	2022	3	Issued	ORYX KING, LLC	NICOLE FUCHS	AGRICULTURE	9035 ADVANCEMENT AVE BLDG B
03/16/2022	24628-22-APP	2022	3	Issued	AKESO BOTANICALS, LLC	NICOLE FUCHS	AGRICULTURE	9035 ADVANCEMENT AVE BLDG D
02/01/2021	23450-21-APP	2021	8	Issued	PHARMTRUE LLC	JOAQUIN ACOSTA	RETAIL	227 S MAIN ST
05/17/2021	23732-21-APP	2021	6	Issued	AKESO BOTANICALS LLC	HAL COFFMAN	MANUFACTURING	200 CONWAY AVE STE B
10/21/2020	23144-20-APP	2021	5	Issued	ZIA COLLECTIVE DISPENSARY	CRISANTA L CALDERON	RETAIL	951 N SOLANO DR STE B
04/21/2021	23697-21-APP	2021	5	Issued	ROUNDHOUSE RESERVE	JORDAN BARBER	RETAIL	200 S SOLANO DR STE 3
02/04/2021	23468-21-APP	2021	2	Issued	RED BARN GROWERS	ELIZABETH BESANCON	OTHER	1405 S VALLEY DR STE 800
06/05/2020	22621-20-APP	2020	7	Issued	R. GREENLEAF ORGANICS INC	AUSTIN OVERPECK	RETAIL	2750 MALL DR STE 260
07/23/2022	25015-22-APP			Denied	CLOUD 9	ERICA ROMERO	RETAIL	1602 E LOHMAN AVE
05/15/2021	23737-21-APP			Incomplete	GROTH INDUSTRIES LLC	MATT GROTH	OTHER	2000 W HADLEY AVE
09/16/2021	24084-21-APP			Incomplete	GROBROS	JOEL GREEN	AGRICULTURE	2201 N MESQUITE ST STE B
11/08/2021	24261-21-APP			Incomplete	DOUGHDY LLC	JUSTIN KARRENBERG	OTHER	2201 N MESQUITE ST, BLDG , LAS CRUCES, NM 88001
12/28/2021	24380-21-APP			Incomplete	RMC NM INC	NATALIE RICKS	RETAIL	304 WYATT DR, SUITE 1, LAS CRUCES, NM 88001
02/05/2022	24533-22-APP			Incomplete	LOS PRIMOS NURSERY LLC	LUIS SENA	LIVE PLANTS	110 N SOLANO DR, BLDG 1/2, LAS CRUCES , NM 88001
03/23/2022	24655-22-APP			Incomplete	THE HOT BOX	CARLOS CASILLAS	RETAIL	887 N MAIN ST
02/16/2022	24775-22-APP			Incomplete	PURLIFE	JON WOOD	RETAIL	2451 N MAIN ST
05/16/2022	24823-22-APP			Incomplete	EVERGREEN PRODUCTS LLC	NICOLE FUCHS	AGRICULTURE	9035 ADVANCEMENT AVE, STE F, LAS CRUCES , NM 88007
06/15/2022	24901-22-APP			Incomplete	QUEEN BEES COLLECTIVE	VERONICA GARCIA	RETAIL	600 S SOLANO DR, STE B, LAS CRUCES , NM 88001
07/26/2022	25027-22-APP			Incomplete	SANDIA BOTANICALS	MICHEAL HAWK	OTHER	2517 N MAIN ST STE A
09/12/2022	25148-22-APP			Incomplete	BOTANICAL INFUSIONS LLC	RAY VIGIL	RETAIL	390 N 17TH ST, LAS CRUCES, NM 88005
10/05/2022	25212-22-APP			Incomplete	BLUE WHALE ENTERPRISES, LLC	BYRON BUTCHER	RETAIL	504 E AMADOR AVE
11/02/2022	25302-22-APP			Incomplete	BLACK BLOOM LLC.	CHARLES CHAVEZ	WHOLESALE	2521 N MAIN ST
12/12/2022	25393-22-APP			Incomplete	LEO AVILES	LEO AVILES	RETAIL	3500 NORTHRISE DR
12/27/2022	25428-22-APP			Incomplete	REVERIE	ERIC MADRID	RETAIL	1025 EL PASEO RD
02/16/2023	25590-23-APP			Incomplete	NRG LYFT LLC	TARVIYA ROYAL	RETAIL	1790 W HADLEY AVE
06/17/2022	24912-22-APP			Inspection Phase	MYCBDPLUS LLC	SAM UKPEDINJAGBA	RETAIL	1030 EL PASEO RD
07/14/2022	24982-22-APP			Inspection Phase	R. GREENLEAF ORGANICS, INC.	RYAN ORDORICA	RETAIL	775 S TELSHOR BLVD
07/22/2022	25012-22-APP			Inspection Phase	CANNA*CO*LC	CORRINA STRAUSS	RETAIL	606 N MESQUITE ST
08/09/2022	25054-22-APP			Inspection Phase	CLOUD 9	ERICA ROMERO	RETAIL	3280 RINCONADA BLVD
08/24/2022	25100-22-APP			Inspection Phase	RMC NM INC	JOANNA BARYZA	RETAIL	3495 BATAAN MEMORIAL WEST

09/14/2022	25161-22-APP	Inspection Phase	SCORE 420	MATT KOPELMAN	RETAIL	2821 N TELSHOR BLVD STE 1
10/17/2022	25251-22-APP	Inspection Phase	Z-CANNA HEALTH EDUCATION AND WELLNESS	ZAHN	OTHER	1045 N MAIN ST
01/12/2023	25468-23-APP	Inspection Phase	YUCCA POINT DISPENSARIES	ERICKA LEON	RETAIL	1000 N MAIN ST STE A
01/27/2023	25506-23-APP	Inspection Phase	GANJA GARDENS LLC	CHRISTOPHER MENDOZA	OTHER	301 N SEVENTEENTH ST BLDG A
02/02/2023	25533-23-APP	Inspection Phase	BIG GREEN GROWERS LLC	KENT DAVIES	AGRICULTURE	250 S CRAWFORD BLVD
02/02/2023	25542-23-APP	Inspection Phase	NUBES	BRANDI GUTIERREZ	RETAIL	420 N CAMPO ST
02/03/2023	25549-23-APP	Inspection Phase	BRIGHT BLOOM	MERCEDES RUIZ	RETAIL	1625 S MAIN ST
02/06/2023	25557-23-APP	Inspection Phase	RARE ENTERPRISES LLC	COLE PILLEY	RETAIL	1455 HICKORY DR STE 3
02/15/2023	25584-23-APP	Inspection Phase	DESERT LOTUS ORGANICS, LLC	JESUS PALMA	RETAIL	2119 N MAIN ST
03/06/2023	25628-23-APP	Inspection Phase	OUTSIDE SMOKE, LLC	MADELEINE CLARKE	AGRICULTURE	1716 W HADLEY AVE UNIT D
03/14/2023	25657-23-APP	Inspection Phase	CEIBA FARMS LLC	JOSE ZAVALA	AGRICULTURE	505 N VALLEY DR
03/14/2023	25658-23-APP	Inspection Phase	HIGH ON LIFE LLC	HEROLD SHUMATE	HEALTH	555 N VALLEY DR
03/16/2023	25669-23-APP	Inspection Phase	HIGHER CULTURES LLC	PEYTON JOHNSON	MANUFACTURING	3497 BATAAN MEMORIAL WEST STE C
03/20/2023	25678-23-APP	Inspection Phase	THE KUSH HOUSE	RAY VIGIL	RETAIL	1960 N SOLANO DR
08/30/2021	24043-21-APP	Pending	HIGH DESERT GROWERS	RYAN MAJOR	AGRICULTURE	7330 SHANNON RD
09/15/2021	24080-21-APP	Pending	LA YERBA BUENA NM<	JOHN SERRANO	AGRICULTURE	401 N SEVENTEENTH ST STE 7
07/06/2022	24965-22-APP	Pending	URBAN WELLNESS	JORDAN REED	RETAIL	3830 E LOHMAN AVE BLDG 2
09/08/2021	24066-21-APP	Revisions Required	ORGAN MOUNTAIN WELLNESS LLC	SOMMER MARTIN	AGRICULTURE	205 W BOUTZ RD, BLDG 1, LAS CRUCES, NM 88005
09/13/2021	24103-21-APP	Revisions Required	DRAGOONS LAIR LLC	ELI SALCIDO	AGRICULTURE	3495 BATAAN MEMORIAL WEST STE D
10/07/2021	24174-21-APP	Revisions Required	ORGAN MOUNTAIN GROWERS, INC.	STEVEN BURLBAW	AGRICULTURE	430 N COMPRESS RD
10/10/2021	24177-21-APP	Revisions Required	ORIGIN GREENLIGHTS	REYES ESPINOZA	WHOLESALE	2001 COPPER LOOP STE 4
10/07/2021	24205-21-APP	Revisions Required	ELEVATED SOCIETY LLC	SERGIO FLORES	PRODUCE	375 N COMPRESS RD
11/24/2021	24304-21-APP	Revisions Required	IRON LUNG NM, LLC	MATT CHADWICK	AGRICULTURE	1655 W AMADOR AVE
12/04/2021	24326-21-APP	Revisions Required	TWISTED ROOTS FARMS	GREGORY SANDERS	AGRICULTURE	1790 W HADLEY AVE STE E
03/21/2022	24641-22-APP	Revisions Required	THE HOT BOX	CARLOS CASILLAS	RETAIL	1007 EL PASEO RD
03/30/2022	24678-22-APP	Revisions Required	THIS CANNABIS	ANTHONY LIRA	PRODUCE	1803 N VALLEY DR
04/13/2022	24723-22-APP	Revisions Required	ABOVE THE CLOUDS	VERONICA GARCIA	RETAIL	600 S SOLANO RD, SPC B, LAS CRUCES, NM 88001
04/26/2022	24759-22-APP	Revisions Required	SMOKEY ROAD FARMS	RYAN STRAND	RETAIL	500 W BOUTZ RD STE A
04/25/2022	24767-22-APP	Revisions Required	LOS PRIMOS FARMS	LUIS SENA	AGRICULTURE	110 N SOLANO DR, #1/2, LAS CRUCES, NM
05/02/2022	24774-22-APP	Revisions Required	HIGH HORSE	RUBEN AGUILAR	RETAIL	2000 E LOHMAN AVE STE B
05/12/2022	24811-22-APP	Revisions Required	HIGH HORSE	RUBEN AGUILAR	AGRICULTURE	1510 W AMADOR AVE STE A
05/11/2022	24831-22-APP	Revisions Required	THE BLOOM MANAGEMENT GROUP LLC	TRAVAUGHN COLWELL	RETAIL	615 E LOHMAN AVE STE A
05/23/2022	24841-22-APP	Revisions Required	OTC NM LLC	NORMAN YOUSIF	RETAIL	750 S MAIN ST
05/26/2022	24852-22-APP	Revisions Required	EVEREST APOTHECARY, INC	JAMES DARBY	RETAIL	1240 S VALLEY DR STE D
04/21/2022	24887-22-APP	Revisions Required	CINDER CANNABIS	JUSTIN PETERSON	RETAIL	4420 N SONOMA RANCH BLVD STE C
03/24/2023	25698-23-APP	Submitted	PREMIER HIGH LIFE	LEON HARRIS	RETAIL	1655 S MAIN ST
10/15/2021	24175-21-APP	Withdrawn	ORGAN MOUNTAIN WELLNESS LLC	SOMMER MARTIN	AGRICULTURE	205 W BOUTZ RD, BLDG 2, LAS CRUCES
03/04/2022	24603-22-APP	Withdrawn	JACKPOT DISPENSARY	JACQURIES WILLIAMS	RETAIL	1275 W PICACHO AVE
05/02/2022	24772-22-APP	Withdrawn	HIGH HORSE	RUBEN AGUILAR	MANUFACTURING	390 N SEVENTEENTH ST
05/02/2022	24773-22-APP	Withdrawn	HIGH HORSE	RUBEN AGUILAR	RETAIL	700 S TELSHOR BLVD STE 1502
05/02/2022	24776-22-APP	Withdrawn	HIGH HORSE	RUBEN AGUILAR	RETAIL	1128 S SOLANO DR
07/20/2022	25004-22-APP	Withdrawn	LOUD LEAFS LLC	ERIC MADRID	AGRICULTURE	2460 MISSOURI AVE
07/26/2022	25026-22-APP	Withdrawn	JACKPOT DISPENSARY	JACQURIES WILLIAMS	RETAIL	1275 W PICACHO AVE
09/28/2022	25195-22-APP	Withdrawn	THE KITCHEN	LEIGH ANN IVY	FOOD SERVICE	300 N MAIN ST, BLDG 4, LAS CRUCES, NM 88011
12/28/2022	25429-22-APP	Withdrawn	MESSILLA VALLEY BUDZ	DARNELL WINN	RETAIL	8493 S MAIN STREET ST, STE 1, MESSILLA PARK, NM 88047

Attachment B

CODE AMENDMENT

City of Las Cruces
MOUNTAINS OF OPPORTUNITY

Planning & Zoning Commission 4/25/2023

Cannabis Zoning Amendments

STAFF CONTACT:	Katherine Harrison-Rogers, (575) 528-3049, krogers@las-cruces.org
DISTRICT:	Citywide
REQUEST:	Code Amendments to modify cannabis regulations for the purpose of eliminating the 300-foot buffer between retailers and also from retailers to single-family residential zones.
RECOMMENDATION:	Approval

SUMMARY OF REQUEST: The City is proposing amendments to the zoning code to modify the cannabis regulations for the purpose of eliminating the 300-foot buffer requirement between individual cannabis retailers/microbusinesses and eliminating the 300-foot buffer between cannabis retailers/microbusinesses and single-family zoning districts. The following sections are subject to amendments:

- Sec. 38-53 Conditional Uses; and
- Sec. 38-54 Special Use Permits.

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

- The State of New Mexico Cannabis Regulation Act legalizes recreational cannabis, timelines for the production, manufacturing, sale, and use of cannabis, and permits local jurisdictions to regulate the time, use and manner of cannabis uses.
- Based upon staff's analysis of the proposed zoning code amendments, the amendments meet the intent of Elevate Las Cruces Comprehensive Plan; are akin to existing uses and anticipated impacts currently in the zoning code; meets the purpose and intent outlined in Section 38-2 of the 2001 Zoning Code, as amended; and meets the purpose of the Las Cruces Municipal Code Section 2-382.
- The land use impacts of cannabis retail businesses as compared to other types of retail businesses is de minimis.
- Several commercial corridors within the City abut single family residential zones, unduly restricting the location of cannabis retailers.
- Cannabis distancing is being applied differently to single-family zones as compared to multi-family zones, multi-family uses, and mixed uses.

PROPOSAL

CANNABIS ZONING RECOMMENDATIONS:

The Cannabis Regulation Act (New Mexico House Bill 2) was approved by the State in the Spring of 2021. The act legalized the recreational use of cannabis and grants the local jurisdictions the authority to regulate the time, place, and manner (including density) of commercial cannabis facilities. Local jurisdictions cannot prevent these types of uses which include the cultivation, manufacturing, packaging, research, testing, sale, and transport of cannabis. According to the New Mexico Regulation and Licensing Department, jurisdictions are required to treat these businesses as they would any other business, including signage. The State is responsible for the licensing and enforcement related to state regulations, including security plans, background checks, water usage and rights, waste disposal, pesticide and chemical use and management, and annual reporting, among others.

In the Fall of 2021, the City of Las Cruces established zoning regulations for cannabis uses which also comply with the State's regulations. The amendments included several definitions including *Cannabis Industry, Cannabis Research Laboratory, Cannabis Retailer, Community Garden, Horticulture,* and *Cannabis Microbusiness.* Retail uses (cannabis retailer) and cannabis microbusinesses were added to commercial zones (C-1, C-2, C-3) with conditions, production and manufacturing uses (cannabis industry) was added to industrial zones (M-1/M22, M-3) with conditions, cannabis research laboratories was added to industrial zones with conditions (MT, M-1/M22, M-3), and small cannabis integrated businesses (cannabis microbusiness) was added as allowed with a special use permit in the single-family agricultural zones (EE, REM), similar to existing allowances for small breweries and wineries.

The conditions or special provisions associated with those uses listed above include:

- all uses must be 300 feet from a school or daycare, the greatest allowance permitted by the state (commercial trade schools and schools serving adult populations are exempt);
- retail uses and microbusinesses must be 300 feet from single-family zones and no closer than 300 feet from one another, unless a special use permit is obtained;
- no on-site consumption can occur in the C-1 district; and
- in addition to a special use permit for the cannabis microbusiness in the EE and REM zones, the business must be ancillary to a single-family residence, must be fully enclosed in an accessory structure, must be 100 feet away from adjacent residences, and must only sell products produced on site.

Over the course of the past year and a half, several cannabis related businesses have established themselves within the City, some of which were allowed by right and others required a Special Use Permit (SUP). For a detailed list of these businesses as of March 27, 2023, see Attachment 1. Staff worked closely with this emerging industry to assist in both building code and zoning code matters. One of the most frequent complaints from prospective businesses was that it is challenging to find a suitable location based on the established distancing requirements, especially from a single-family residential zoning district. Many of the available commercial zones are directly adjacent to single family residential zoning districts.

A Special Use is a use that is not permitted by right in a zoning district. A Special Use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. If the impacts are deemed de minimis or conditions can be applied to reduce said impacts, a SUP can be approved. Fifteen (15) SUPs to operate businesses within these buffers have been submitted to the City. All SUPs heard before the Planning and Zoning Commission were approved based on lack of increased impacts. Two of these were appealed to City Council: one of which was upheld, and the other remains in process. There are several more under review and forthcoming to the P&Z.

Staff is recommending that the buffer distances between retailers and the buffer distances between cannabis businesses and single-family zoning districts be eliminated. The distancing restrictions from single-family zones was originally intended to buffer more intense uses from less intense, lower density uses. However, there is little evidence that these restrictions are necessary based on the impacts from these businesses. These uses appear to be no more intense than that of any other retail establishment within the City. These distancing restrictions may also inadvertently create inequitable treatment between single-family and multi-family uses. The amendments can be found in Attachment 2 and include:

- Sec. 38-53 Conditional Uses; and
- Sec. 38-54 Special Use Permits.

Please note that these amendments were heard and recommended for approval by P&Z in August of 2022, however, City Council rejected the amendments. Since then, City Council has requested these amendments be reconsidered.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Character and Compatibility	Yes
Elevate Las Cruces Comprehensive Plan	Yes
Criteria for Decisions: Article 2, Section 38-10 (K) of the 2001 Zoning Code	Yes

CHARACTER AND COMPATIBILITY:
Staff reviewed use categories currently outlined in the zoning code to determine the uses most akin to cannabis uses. For cannabis retail sales with no consumption, similar uses would be a pharmacy, package liquor, or specialty retail. For those cannabis retail sales with on-site consumption, the most similar use would be a bar/tavern or brewery/winery. None of these existing use categories have distancing requirements in the zoning code and there is no evidence that cannabis retail establishments or microbusinesses create greater impact than their comparable uses.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:
Elevate Las Cruces has policy and actions related to improving the permitting and registration process for businesses as well as establishing regulations to support their potential for economic prosperity. These include:

- Goal CP-2 Economic Equity: Generate employment opportunities that create economic security for all residents.
- CP-3 Entrepreneurship: Create a nurturing regulatory environment that generates entrepreneurship and small business investment.
    - Cp-3.2: streamline the process to register and open a business in las cruces.
        - CP-3.2.1: Make information regarding city business registration, state and federal licensing and operating requirements, and other business assistance resources readily available.

- CP-3.2.2:Continue to evaluate and improve total review times for processing commercial building permits and business registrations.
- CP-3.2.3:Provide step-by-step guidelines for negotiating the permitting process.
- CP-3.2.4:Use the city as a hub for new businesses to be connected to resources within the community for business technical assistance, financing opportunities, permitting, etc. When starting a new business.

While these goals, policies, and actions support continued evaluation and modifications to the City's processes, the elimination of buffers related to cannabis uses in existing zoning categories in the zoning code neither conflicts with nor is specifically supported by Elevate Las Cruces. The place types shown in the Future Development Map do provide guidance on the types of zones and broad uses should be allowed. The cannabis uses are akin to uses found throughout the existing zoning districts, consistent with Elevate' s place type zoning district recommendations.

CRITERIA FOR DECISIONS:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth;
- Impairment of the public health, safety or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, design standards and other companion codes.

City Staff did not identify any issues associated with the proposed amendments as the uses and their anticipated impacts are akin to those already listed throughout the zoning code.

ATTACHMENTS:

1. Cannabis Business Registrations, dated March 27, 2023
2. Las Cruces Municipal Code Chapter 38-53 & 38-54 Redlines

Cannabis Business Registrations

Total New

Submit Date	Business License	Issue Year	Issue Month	Record Status	DBA Business Name	Contact Name	Business Type	Location Address
12/14/2022	25401-22-APP	2023	3	Issued	SOL CANNABIS LLC	KWAME PONSCHOCK	RETAIL	900 S TELSHOR BLVD STE A
01/05/2023	25452-23-APP	2023	3	Issued	CLOUD HOUSE, LLC	DAMEON NANOCCHIO	AGRICULTURE	1730 W HADLEY AVE
01/19/2023	25487-23-APP	2023	3	Issued	TRUE ESSENTIA LLC	CHRISTIAN ONTIVEROS	RETAIL	530 N TELSHOR BLVD
01/23/2023	25494-23-APP	2023	3	Issued	DOUGHDY LLC	JUSTIN BRENDAN KARRENBERG	WHOLESALE	2201 N MESQUITE ST STE E
02/16/2023	25587-23-APP	2023	3	Issued	MESILLA VALLEY CANNABIS	DERRICK PACHECO	RETAIL	401 N MESILLA ST
02/27/2023	25609-23-APP	2023	3	Issued	CRUCES CRAFT CANNABIS	FERAS AL-HANFOOSH	OTHER	2001 S VALLEY DR STE 3
04/04/2022	24694-22-APP	2023	2	Issued	BLUNTLEY LLC	GONZALO CHAVEZ	RETAIL	3161 N MAIN ST
09/19/2022	25167-22-APP	2023	2	Issued	SASSY GRASS DISPENSARY	RICHARD AZIZ	RETAIL	3100 W PICACHO AVE STE 2
11/30/2022	25371-22-APP	2023	2	Issued	HASHEESH RECREATIONAL CANNABIS	ALEX CARRILLO	RETAIL	1021 E AMADOR AVE STE A
03/03/2022	24607-22-APP	2023	1	Issued	CANNAVERSE LLC	RICHARD SMITH	LIVE PLANTS	1754 BUILDTEK CT STE A
12/06/2022	25383-22-APP	2023	1	Issued	BOTANIX	AMANDA VARELA	MANUFACTURING	750 WEST PALMS
01/01/2022	24385-22-APP	2022	12	Issued	FOURTWENTY COLLECTIONS	MARVINA THOMAS	RETAIL	2215 S MAIN ST STE A
01/14/2022	24499-22-APP	2022	12	Issued	UNITY RD	JOE HERNANDEZ	RETAIL	250 W AMADOR AVE
02/28/2022	24594-22-APP	2022	12	Issued	HAPPY PANDA CANNABIS COMPANY	KEIFER PAYNE	RETAIL	2505 MISSOURI AVE
07/29/2022	25037-22-APP	2022	12	Issued	NORTHSTAR LEAF	SALIM PREMJI	RETAIL	3330 RINCONADA BLVD STE 1
11/23/2022	25355-22-APP	2022	12	Issued	HEAD SPACE DISTRIBUTION LLC	ROBERT DURAN	MANUFACTURING	390 N SEVENTEENTH ST
05/19/2022	24833-22-APP	2022	11	Issued	SOUTHWEST DISPENSARY	ELISEO GARDEA	OTHER	421 AVENIDA DE MESILLA STE C
07/18/2022	24995-22-APP	2022	11	Issued	FCI OF NEW MEXICO	CODY FISHER	RETAIL	140 W PICACHO AVE
10/15/2021	24173-21-APP	2022	10	Issued	TOP CROP	NICK SPOOR	RETAIL	2240 E LOHMAN AVE
06/02/2022	24863-22-APP	2022	10	Issued	THE KITCHEN	LEIGH IDIDY	FOOD SERVICE	300 N MAIN ST
11/18/2021	24287-21-APP	2022	9	Issued	GROBROS	JOEL GREEN	AGRICULTURE	2201 N MESQUITE ST STE A
01/25/2022	24476-22-APP	2022	9	Issued	BUDZ CANNABIS	RICARDO WILSON	RETAIL	1886 W PICACHO AVE BLDG 1
02/09/2022	24588-22-APP	2022	9	Issued	CANNAFUL CREATIONS, LLC	CORINA CUELLAR	MANUFACTURING	525 E MADRID AVE STE 3B
05/12/2022	24810-22-APP	2022	9	Issued	HIGH HORSE	RUBEN AGUILAR	RETAIL	580 S VALLEY DR STE 300
07/25/2022	25020-22-APP	2022	9	Issued	ALTER EGO CULTIVATION	JASON ESCOBAR	AGRICULTURE	1720 W HADLEY AVE UNIT E
03/15/2022	24643-22-APP	2022	8	Issued	EMPIRE CANNABIS	GABRIEL SILVA	RETAIL	590 S SOLANO DR STE C
03/23/2022	24654-22-APP	2022	8	Issued	FRATELLI INVESTMENT GROUP LLC	CARLOS CASILLAS	RETAIL	908 S SOLANO DR
04/25/2022	24752-22-APP	2022	8	Issued	MONSTER HOUSE	MAGGIE MARBLE	RETAIL	301 N SOLANO DR STE 8
06/21/2022	24921-22-APP	2022	7	Issued	MASBUDS LLC	RONALD BENDER	RETAIL	142 WYATT DR
10/06/2021	24141-21-APP	2022	6	Issued	EVEREST APOTHECARY INC.	TRISHELLE KIRK	RETAIL	1240 S VALLEY DR STE D
09/22/2021	24150-21-APP	2022	5	Issued	VIDA VERDE VENTURES, LLC	NICOLE FUCHS	AGRICULTURE	9035 ADVANCEMENT AVE BLDG E
10/14/2021	24170-21-APP	2022	5	Issued	DO WAT I WANT INDUSTRIES	JONATHAN MIRABAL	RETAIL	1770 S TELSHOR BLVD STE C
01/18/2022	24456-22-APP	2022	5	Issued	CANNAVERSE LLC	RICHARD SMITH	RETAIL	2305 NEVADA AVE
02/17/2022	24574-22-APP	2022	5	Issued	ULTRA HEALTH	LEIGH JENKE	RETAIL	1965 BATAAN MEMORIAL WEST STE 1
02/25/2022	24590-22-APP	2022	4	Issued	SOL CANNABIS LLC	BRETT BURKE	RETAIL	523 IDAHO AVE
03/23/2022	24650-22-APP	2022	4	Issued	HASHTAG CANNABIS LLC	ERIC MADRID	RETAIL	2460 MISSOURI AVE
08/25/2021	24022-21-APP	2022	3	Issued	GREENGO NM LLC	NORA LANCASTER	OTHER	2000 E LOHMAN AVE STE E
12/11/2021	24342-21-APP	2022	3	Issued	MICAH BAILEY	MICAH BAILEY	TRANSPORTATION	2049 S TRIVIZ DR APT E17
01/10/2022	24441-22-APP	2022	3	Issued	V&S ENTERPRISES LLC	VERONICA SAENZ	AGRICULTURE	9035 ADVANCEMENT AVE A
02/10/2022	24528-22-APP	2022	3	Issued	ORGAN MOUNTAIN ORGANIX LLC	HAILY VAUGHAN	RETAIL	1300 EL PASEO RD STE 280
02/18/2022	24546-22-APP	2022	3	Issued	BEST BUDZ	JOSE ZAVALA	RETAIL	505 N VALLEY DR
03/16/2022	24627-22-APP	2022	3	Issued	ORYX KING, LLC	NICOLE FUCHS	AGRICULTURE	9035 ADVANCEMENT AVE BLDG B
03/16/2022	24628-22-APP	2022	3	Issued	AKESO BOTANICALS, LLC	NICOLE FUCHS	AGRICULTURE	9035 ADVANCEMENT AVE BLDG D
02/01/2021	23450-21-APP	2021	8	Issued	PHARMTRUE LLC	JOAQUIN ACOSTA	RETAIL	227 S MAIN ST
05/17/2021	23732-21-APP	2021	6	Issued	AKESO BOTANICALS LLC	HAL COFFMAN	MANUFACTURING	200 CONWAY AVE STE B
10/21/2020	23144-20-APP	2021	5	Issued	ZIA COLLECTIVE DISPENSARY	CRISANTA L CALDERON	RETAIL	951 N SOLANO DR STE B
04/21/2021	23697-21-APP	2021	5	Issued	ROUNDHOUSE RESERVE	JORDAN BARBER	RETAIL	200 S SOLANO DR STE 3
02/04/2021	23468-21-APP	2021	2	Issued	RED BARN GROWERS	ELIZABETH BESANCON	OTHER	1405 S VALLEY DR STE 800
06/05/2020	22621-20-APP	2020	7	Issued	R. GREENLEAF ORGANICS INC	AUSTIN OVERPECK	RETAIL	2750 MALL DR STE 260
07/23/2022	25015-22-APP			Denied	CLOUD 9	ERICA ROMERO	RETAIL	1602 E LOHMAN AVE
05/15/2021	23737-21-APP			Incomplete	GROTH INDUSTRIES LLC	MATT GROTH	OTHER	2000 W HADLEY AVE
09/16/2021	24084-21-APP			Incomplete	GROBROS	JOEL GREEN	AGRICULTURE	2201 N MESQUITE ST STE B
11/08/2021	24261-21-APP			Incomplete	DOUGHDY LLC	JUSTIN KARRENBERG	OTHER	2201 N MESQUITE ST, BLDG , LAS CRUCES, NM 88001
12/28/2021	24380-21-APP			Incomplete	RMC NM INC	NATALIE RICKS	RETAIL	304 WYATT DR, SUITE 1, LAS CRUCES, NM 88001
02/05/2022	24533-22-APP			Incomplete	LOS PRIMOS NURSERY LLC	LUIS SENA	LIVE PLANTS	110 N SOLANO DR, BLDG 1/2, LAS CRUCES , NM 88001
03/23/2022	24655-22-APP			Incomplete	THE HOT BOX	CARLOS CASILLAS	RETAIL	887 N MAIN ST
02/16/2022	24775-22-APP			Incomplete	PURLIFE	JON WOOD	RETAIL	2451 N MAIN ST
05/16/2022	24823-22-APP			Incomplete	EVERGREEN PRODUCTS LLC	NICOLE FUCHS	AGRICULTURE	9035 ADVANCEMENT AVE, STE F, LAS CRUCES , NM 88007
06/15/2022	24901-22-APP			Incomplete	QUEEN BEES COLLECTIVE	VERONICA GARCIA	RETAIL	600 S SOLANO DR, STE B, LAS CRUCES , NM 88001
07/26/2022	25027-22-APP			Incomplete	SANDIA BOTANICALS	MICHEAL HAWK	OTHER	2517 N MAIN ST STE A
09/12/2022	25148-22-APP			Incomplete	BOTANICAL INFUSIONS LLC	RAY VIGIL	RETAIL	390 N 17TH ST, LAS CRUCES, NM 88005
10/05/2022	25212-22-APP			Incomplete	BLUE WHALE ENTERPRISES, LLC	BYRON BUTCHER	RETAIL	504 E AMADOR AVE
11/02/2022	25302-22-APP			Incomplete	BLACK BLOOM LLC.	CHARLES CHAVEZ	WHOLESALE	2521 N MAIN ST
12/12/2022	25393-22-APP			Incomplete	LEO AVILES	LEO AVILES	RETAIL	3500 NORTHRISE DR
12/27/2022	25428-22-APP			Incomplete	REVERIE	ERIC MADRID	RETAIL	1025 EL PASEO RD
02/16/2023	25590-23-APP			Incomplete	NRG LYFT LLC	TARVIYA ROYAL	RETAIL	1790 W HADLEY AVE
06/17/2022	24912-22-APP			Inspection Phase	MYCBDPLUS LLC	SAM UKPEDINJAGBA	RETAIL	1030 EL PASEO RD
07/14/2022	24982-22-APP			Inspection Phase	R. GREENLEAF ORGANICS, INC.	RYAN ORDORICA	RETAIL	775 S TELSHOR BLVD
07/22/2022	25012-22-APP			Inspection Phase	CANNA*CO*LC	CORRINA STRAUSS	RETAIL	606 N MESQUITE ST
08/09/2022	25054-22-APP			Inspection Phase	CLOUD 9	ERICA ROMERO	RETAIL	3280 RINCONADA BLVD
08/24/2022	25100-22-APP			Inspection Phase	RMC NM INC	JOANNA BARYZA	RETAIL	3495 BATAAN MEMORIAL WEST

09/14/2022	25161-22-APP	Inspection Phase	SCORE 420	MATT KOPELMAN	RETAIL	2821 N TELSHOR BLVD STE 1
10/17/2022	25251-22-APP	Inspection Phase	Z-CANNA HEALTH EDUCATION AND WELLNESS	ZAHN	OTHER	1045 N MAIN ST
01/12/2023	25468-23-APP	Inspection Phase	YUCCA POINT DISPENSARIES	ERICKA LEON	RETAIL	1000 N MAIN ST STE A
01/27/2023	25506-23-APP	Inspection Phase	GANJA GARDENS LLC	CHRISTOPHER MENDOZA	OTHER	301 N SEVENTEENTH ST BLDG A
02/02/2023	25533-23-APP	Inspection Phase	BIG GREEN GROWERS LLC	KENT DAVIES	AGRICULTURE	250 S CRAWFORD BLVD
02/02/2023	25542-23-APP	Inspection Phase	NUBES	BRANDI GUTIERREZ	RETAIL	420 N CAMPO ST
02/03/2023	25549-23-APP	Inspection Phase	BRIGHT BLOOM	MERCEDES RUIZ	RETAIL	1625 S MAIN ST
02/06/2023	25557-23-APP	Inspection Phase	RARE ENTERPRISES LLC	COLE PILLEY	RETAIL	1455 HICKORY DR STE 3
02/15/2023	25584-23-APP	Inspection Phase	DESERT LOTUS ORGANICS, LLC	JESUS PALMA	RETAIL	2119 N MAIN ST
03/06/2023	25628-23-APP	Inspection Phase	OUTSIDE SMOKE, LLC	MADELEINE CLARKE	AGRICULTURE	1716 W HADLEY AVE UNIT D
03/14/2023	25657-23-APP	Inspection Phase	CEIBA FARMS LLC	JOSE ZAVALA	AGRICULTURE	505 N VALLEY DR
03/14/2023	25658-23-APP	Inspection Phase	HIGH ON LIFE LLC	HEROLD SHUMATE	HEALTH	555 N VALLEY DR
03/16/2023	25669-23-APP	Inspection Phase	HIGHER CULTURES LLC	PEYTON JOHNSON	MANUFACTURING	3497 BATAAN MEMORIAL WEST STE C
03/20/2023	25678-23-APP	Inspection Phase	THE KUSH HOUSE	RAY VIGIL	RETAIL	1960 N SOLANO DR
08/30/2021	24043-21-APP	Pending	HIGH DESERT GROWERS	RYAN MAJOR	AGRICULTURE	7330 SHANNON RD
09/15/2021	24080-21-APP	Pending	LA YERBA BUENA NM<	JOHN SERRANO	AGRICULTURE	401 N SEVENTEENTH ST STE 7
07/06/2022	24965-22-APP	Pending	URBAN WELLNESS	JORDAN REED	RETAIL	3830 E LOHMAN AVE BLDG 2
09/08/2021	24066-21-APP	Revisions Required	ORGAN MOUNTAIN WELLNESS LLC	SOMMER MARTIN	AGRICULTURE	205 W BOUTZ RD, BLDG 1, LAS CRUCES, NM 88005
09/13/2021	24103-21-APP	Revisions Required	DRAGOONS LAIR LLC	ELI SALCIDO	AGRICULTURE	3495 BATAAN MEMORIAL WEST STE D
10/07/2021	24174-21-APP	Revisions Required	ORGAN MOUNTAIN GROWERS, INC.	STEVEN BURLBAW	AGRICULTURE	430 N COMPRESS RD
10/10/2021	24177-21-APP	Revisions Required	ORIGIN GREENLIGHTS	REYES ESPINOZA	WHOLESALE	2001 COPPER LOOP STE 4
10/07/2021	24205-21-APP	Revisions Required	ELEVATED SOCIETY LLC	SERGIO FLORES	PRODUCE	375 N COMPRESS RD
11/24/2021	24304-21-APP	Revisions Required	IRON LUNG NM, LLC	MATT CHADWICK	AGRICULTURE	1655 W AMADOR AVE
12/04/2021	24326-21-APP	Revisions Required	TWISTED ROOTS FARMS	GREGORY SANDERS	AGRICULTURE	1790 W HADLEY AVE STE E
03/21/2022	24641-22-APP	Revisions Required	THE HOT BOX	CARLOS CASILLAS	RETAIL	1007 EL PASEO RD
03/30/2022	24678-22-APP	Revisions Required	THIS CANNABIS	ANTHONY LIRA	PRODUCE	1803 N VALLEY DR
04/13/2022	24723-22-APP	Revisions Required	ABOVE THE CLOUDS	VERONICA GARCIA	RETAIL	600 S SOLANO RD, SPC B, LAS CRUCES, NM 88001
04/26/2022	24759-22-APP	Revisions Required	SMOKEY ROAD FARMS	RYAN STRAND	RETAIL	500 W BOUTZ RD STE A
04/25/2022	24767-22-APP	Revisions Required	LOS PRIMOS FARMS	LUIS SENA	AGRICULTURE	110 N SOLANO DR, #1/2, LAS CRUCES, NM
05/02/2022	24774-22-APP	Revisions Required	HIGH HORSE	RUBEN AGUILAR	RETAIL	2000 E LOHMAN AVE STE B
05/12/2022	24811-22-APP	Revisions Required	HIGH HORSE	RUBEN AGUILAR	AGRICULTURE	1510 W AMADOR AVE STE A
05/11/2022	24831-22-APP	Revisions Required	THE BLOOM MANAGEMENT GROUP LLC	TRAVAUGHN COLWELL	RETAIL	615 E LOHMAN AVE STE A
05/23/2022	24841-22-APP	Revisions Required	OTC NM LLC	NORMAN YOUSIF	RETAIL	750 S MAIN ST
05/26/2022	24852-22-APP	Revisions Required	EVEREST APOTHECARY, INC	JAMES DARBY	RETAIL	1240 S VALLEY DR STE D
04/21/2022	24887-22-APP	Revisions Required	CINDER CANNABIS	JUSTIN PETERSON	RETAIL	4420 N SONOMA RANCH BLVD STE C
03/24/2023	25698-23-APP	Submitted	PREMIER HIGH LIFE	LEON HARRIS	RETAIL	1655 S MAIN ST
10/15/2021	24175-21-APP	Withdrawn	ORGAN MOUNTAIN WELLNESS LLC	SOMMER MARTIN	AGRICULTURE	205 W BOUTZ RD, BLDG 2, LAS CRUCES
03/04/2022	24603-22-APP	Withdrawn	JACKPOT DISPENSARY	JACQURIES WILLIAMS	RETAIL	1275 W PICACHO AVE
05/02/2022	24772-22-APP	Withdrawn	HIGH HORSE	RUBEN AGUILAR	MANUFACTURING	390 N SEVENTEENTH ST
05/02/2022	24773-22-APP	Withdrawn	HIGH HORSE	RUBEN AGUILAR	RETAIL	700 S TELSHOR BLVD STE 1502
05/02/2022	24776-22-APP	Withdrawn	HIGH HORSE	RUBEN AGUILAR	RETAIL	1128 S SOLANO DR
07/20/2022	25004-22-APP	Withdrawn	LOUD LEAFS LLC	ERIC MADRID	AGRICULTURE	2460 MISSOURI AVE
07/26/2022	25026-22-APP	Withdrawn	JACKPOT DISPENSARY	JACQURIES WILLIAMS	RETAIL	1275 W PICACHO AVE
09/28/2022	25195-22-APP	Withdrawn	THE KITCHEN	LEIGH ANN IVY	FOOD SERVICE	300 N MAIN ST, BLDG 4, LAS CRUCES, NM 88011
12/28/2022	25429-22-APP	Withdrawn	MESSILLA VALLEY BUDZ	DARNELL WINN	RETAIL	8493 S MAIN STREET ST, STE 1, MESSILLA PARK, NM 88047

Sec. 38-53. Conditional Uses

The following land uses are permitted in the zoning districts listed by complying with the specific conditions described. Other conditions and requirements, e.g., parking, walls and fences, that apply to all land uses are found in other sections of this Code. There also may be requirements in the Municipal Code with which specific land uses must comply.

Sec. 38-33H Above Ground Storage Tanks for Flammable and Combustible Liquids and Liquid Petroleum (LP) Gas (All zoning districts). Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the City of Las Cruces, when receiving approval from the Las Cruces Fire Department, or when receiving approval from the State of New Mexico LP Gas Bureau. This provision also applies to Contractor's Yard installations.

Sec. 38-33A Accessory Dwelling Unit (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, and R-1bM). (See Guest Dwelling in this section.) This use is intended to allow flexibility in existing and proposed housing designs in order to better accommodate family living arrangements which often result due to growing economic and social demands and/or impacts. Accessory dwelling unit means a self- contained living quarter containing independent kitchen (cooking/culinary) facilities attached to and under the same roof as the main dwelling, created by:

1. The conversion of an existing single-family dwelling, or
2. The addition to an existing single-family dwelling, or
3. The incorporation of applicable areas into a new single-family dwelling design which is subsequently constructed.

This use shall be permitted provided:

a) Owner of record shall reside in either the main or accessory dwelling unit for a minimum of six (6) months of each calendar year. Instances where non-residency occurs in excess of six months due to a legitimate illness or accident requiring hospitalization or special care shall be exempt from this provision; and

b) No more than one accessory dwelling unit shall exist per single-family dwelling/lot; and

c) Accessory dwelling units shall be created solely to accommodate those related to the family. Actual occupancy is subject to Item a) above; and

d) A maximum permitted increase to the size of an existing dwelling for purposes of an accessory unit shall be 30% of the heated/cooled floor area. No more than 30% of the heated/cooled floor area for new construction may be allocated for the accessory dwelling unit; and

e) Exclusive of the applicant's proposal, no more than 10% of single-family dwellings, in zoning districts that permit single-family dwellings, within a 500 foot radius of the applicant's property (measurement shall be from property line to property line exclusive of rights-of-way) shall have accessory dwelling units. If there are no appropriately zoned properties within the radius measured, the proposal shall be considered as meeting the 10% requirement; and

f) The lot/parcel proposed for such use shall meet the minimum area requirements of the zoning district; and

g) Every effort shall be made to avoid additional entrances or other visible changes on the facade of the house facing the street. Modifications or initial designs shall to the extent possible, conform to the overall design of the house. Exterior materials used for the accessory unit shall, to the extent possible, be of a compatible color, texture, and type; and

h) Accessory dwelling units shall retain direct internal access to the main dwelling in a manner that will allow easy reconversion back as part of the single-family unit (single kitchen). Accessory dwelling units created through an addition or designated as such in new construction, shall be connected to the main dwelling by a common wall(s). A minimum of four (4) feet, including a doorway at least three (3) feet wide, of the accessory unit’s common wall(s) length shall be used in the connection. Direct internal access to the accessory living areas shall exist through functional/integral living areas such as a living room, family room, main hallway, etc. Ancillary hallways, garages, laundry rooms, or similar areas shall not serve as the sole connecting facility; and

i) Landscaping shall be used, to the extent possible, to minimize the impact to adjacent properties; and

j) Accessory dwelling unit shall conform to Section 38-53, Off-Street Parking requirements; and

k) The accessory dwelling unit use shall be discontinued on the grounds of non-compliance with any applicable conditions, codes, or ordinances and thereby, require reconversion back as a single-family dwelling. A change in ownership of property where an accessory dwelling unit exists for a person(s) who is/are no longer a family member of the accessory dwelling unit occupant or a change in the intended accessory dwelling unit occupancy status shall cause said use to immediately become void. In such instances, it shall be the responsibility of the new/present owner to either apply for continued accessory unit use or reconvert the structure back to a single-family unit as required pursuant to all applicable regulations.

Sec. 38-33A Apartment (R-4). The residential uses identified may be used; however, in their use the minimum density threshold shall be met.

Sec. 38-33F Bank, Bonding & Financial Institution/Facility (Drive Thru including ATM & other electronic banking drive thru) (O-2, C-2, and C-3). Stacking lanes shall be provided and designed to insure that no bank or ATM traffic backs into the street giving access to the bank. Banks or ATMs shall have access to a major local or higher designated roadway. For stacking lane requirements, see Section 38-58.

Sec. 38-33A Bed and Breakfast (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, O-1, O-2, C-1 and C-2). This land use shall have direct access to at least a major local-designated roadway. In the EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, O-1 and C-1 zoning districts, the number of rooms is limited to eight (8). In the R-4, O-2 and C-2 zoning districts, the number of rooms is limited to fifteen (15). In application of Matrix 1, overall design of buildings and/or site design shall be consistent with the residential neighborhood, architecturally compatible with existing buildings or be architecturally compatible with building types normally found in the zoning district in which it is located. All parking shall be screened from view along any street.

Sec. 38-33G Cannabis Retailer (C-1, C-2, C-3). Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements. Cannabis retailers shall be located 300 feet from a school or daycare, excepting commercial schools and schools of higher learning serving those 18 years and older. ~~Further, no cannabis retailer in C-1, C-2 or C-3 zoning districts shall be located closer than 300 feet to a single-family residential zone and shall not be closer than 300 feet to another cannabis retailer unless a special use permit is obtained per Sec. 33-54.~~ On-site consumption of cannabis is limited to indoors and is entirely prohibited in the C-1 zoning district.

Sec. 38-33G Cannabis Retailer (M-1/M-2). Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements. A cannabis retailer in the M-1/M-2 zoning district is only permissible as accessory to a cannabis industry and is limited to 5,000 square feet of retail sales space or retail sales space limited to 49% of the total building square footage, whichever is less. On-site consumption of cannabis is limited to indoors.

Sec. 38-33D Cemetery/Columbarium (R-2, R-3, R-4). Any cemetery site shall contain at least five (5) acres and shall be located on a major local or higher designated roadway. A Columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Sec. 38-33D Child Care or Preschool (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, MT, M1/M2 and M-3). Child Care Center, Group Child Care Home, Family Child Care Home, preschool, nursery school, day nursery, kindergarten and similar uses shall be in accord with State licensing requirements. Care of thirteen (13) or more children at one time is prohibited in the residential zoning districts listed. When provided in industrial zoning districts, Child Care Center shall be accessory to industrial uses and shall be within buildings of one of the industrial uses served. See Section 38-52, Home Occupation Business Registration, for babysitting

service/child care when twelve (12) or fewer children are cared for.

Sec. 38-33D Community Buildings - Uses: Public or Private (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, and OS-R). These uses shall be located on a collector or higher designated roadway. Structures or parking located within twenty-five (25) feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within twenty-five (25) feet of property used for residential purposes.

Sec. 38-33I Construction Yard or Building(s) (Temporary) (All zoning districts). Such yard or building(s), including a mobile home or recreational vehicle for a temporary residence or construction office, or any other facilities or arrangement approved by the Community Development Director or designee shall be removed upon completion of construction and in compliance with the Chapter 30 of the Municipal Code. Construction yards and buildings or any other facilities shall be maintained in a neat and orderly fashion. Open yards shall be enclosed by a fence at least five (5) feet in height.

Sec. 38-33A Guest Dwelling (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, and R-1bM). (See Accessory Dwelling Unit in this section.) No more than one guest dwelling shall be permitted per lot with a single-family dwelling. A guest dwelling may be attached to or detached from a single-family unit. The guest dwelling shall be no more than fifty percent (50%) of the main dwelling's heated/cooled square footage and shall not contain a kitchen. A guest dwelling that is not part of the main dwelling is considered an accessory building and shall meet the requirements for accessory buildings, including setback and size restrictions. A guest dwelling is to be used for temporary occupancy only and is not to be rented or leased. Properties using a septic tank may not have a separate septic tank for a guest dwelling.

Sec. 38-33H Parking Facilities, Commercial (Garages & Parking Lots) (R-4). Parking lots must be within five hundred (500) feet of any office, commercial, or industrial use or zoning district. The parking area shall be suitably landscaped, paved and drained, lighted, and maintained free of debris. (See Section 38-58)

Sec. 38-33E Park, Public and Private (All zoning districts).

- Neighborhood Parks: Generally, these parks will be up to ten (10) acres in size. Commercial amusements, circuses, carnivals, craft fairs, etc., shall be prohibited. Only recreational activities and neighborhood affairs, such as, concerts, may be permitted.

- Community Parks: Generally, these parks will be up to 100 acres, but not less than 10 acres in size, and should be located on a minor arterial or higher designated roadway. Recreational activities, concerts, craft fairs may be permitted.

- Regional Parks: Generally, these parks will be more than 100 acres in size and should be located on a major arterial. All types of recreational activities and high intensity uses (carnivals and circuses) amusements, concerts, and craft fairs may be permitted.

All uses proposed to be located in City parks shall comply with Chapter 20 of the Municipal Code.

Sec. 38-33G Private Club or Lodge (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, and OS-R). A private club or lodge shall be located on a major local or higher designated street. Structures or parking located within twenty-five (25) feet of a residential zoning district shall provide an opaque buffer consisting of landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within twenty-five (25) feet of property used for residential purposes.

Sec. 38-33J Public/Private Utility Installations, e.g., substations, waterwells, transformers, regulators, lift stations, telecommunication site (All zoning districts). The site shall be developed and maintained in conformance with the general character and appearance of the district, and such development shall include landscaping and suitable opaque screening in the form of a solid wall, fence or compact shrubbery around the entire perimeter of the lot or tract, or around the installation itself in cases such as transformers. A wall or fence may be up to ten (10) feet high.

Sec. 38-33D Religious Institutions (Over Ten (10) Persons)/Columbarium (All zoning districts except Industrial). Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within twenty-five (25) feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within twenty-five (25) feet of property used for residential purposes.

Sec. 38-33D Schools (K-12) Public, Private, Parochial/College or University/ Commercial, Trade or Technical (For zoning districts, see page Section 38-33D). Elementary, Middle or High Schools shall be located on a collector or higher designated roadway. Commercial, Trade or Technical Schools, College or University shall be located on a minor arterial or higher designated roadway. All sites shall have a minimum of one (1) acre. Structures or parking located within twenty-five (25) feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within twenty-five (25) feet of property used for residential purposes.

Sec. 38-33E Swimming Pool, Commercial or Public (All zoning districts except O-1, C-1 and M-3). A protective fence or wall no less than six (6) feet in height, measured from the highest abutting property, shall be provided which completely encloses the pool area, and the pool shall be no closer than twenty-five (25) feet from any property line. Approval from the electric utility is required to ensure safety. (See Section 38-60)

Sec. 38-54. Special Use Permits

A GENERAL PROVISIONS AND PROCEDURES. A Special Use is a use that is not permitted by right in a zoning district. A Special Use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. The procedures for such approval are as follows:

1. PRE-APPLICATION PROCEDURES. Any proposed Special Use Permit shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Section 38-10 C. This meeting does not require a written application or fee. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.

2. APPLICATION PROCEDURES. An official application, including the Development Statement, for a Special Use Permit shall be obtained from the Community Development Department. Application requirements shall include, but not be limited to:

   a. A letter of intent stating the following:

      1) A statement of the purpose and use of the property,
      2) All property improvements to be made, and
      3) A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

   b. An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable. If only part of the property is to be used for the Special Use, the limits or boundary of the Special Use shall be described in addition to the entire property.

   c. Site Plans. The site plans shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

      1) Title of site plan.
      2) Total acreage of site.
      3) Date of preparation, north arrow, written and graphic scale.
      4) Identification of site by lot, block, subdivision, if applicable.
      5) A statement of ownership, signed by the property owner, that

complies with Section 38-10.C.8).

6) Name and address of property owner.
7) Name and address of applicant, if applicable.
8) Name and address of consulting firm or representative, if applicable.
9) Location and type of all land uses.
10) All site improvements with all setbacks indicated.
11) Dimensions of all buildings.
12) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
13) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.
14) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.
15) Where applicable, location and arrangement of all open space, common recreational space, and private open space.

d. Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

1) All new development illustrating all exterior building materials and colors.
2) All new development illustrating relationships to neighboring uses, including site lighting.
3) Sign location, materials, color, size, shape, and lighting.

A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director or designee, or the Planning and Zoning Commission.

Application materials which are illegible and/or otherwise of a low quality will not be accepted.

A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director or designee may waive any submittal requirement. The Planning and Zoning Commission may require additional items and resulting information in addition to the submittal requirements as per this section. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing. The City Council may require additional information before acting on an appeal.

Special Use Permit applications processed via the IDP for residential uses may exclude the landscaping plan and schedule as part of the submittal. All landscaping

requirements of the City Design Standards shall be complied with at time of construction.

e. Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to Section 38-10 C. 1. (d) (v).

3. PUBLIC HEARING AND NOTICE PROCEDURE. A public hearing shall be held by the Planning and Zoning Commission for all Special Use Permits in accordance with the provisions of Section 38-10 of this Code.

4. REVIEW AND APPROVAL PROCEDURES. The Planning and Zoning Commission may deny a Special Use Permit request or may grant final approval including the minimum conditions listed in Paragraph 38-54B. Also, approval may be granted with additional conditions imposed which are deemed necessary to implement the Comprehensive Plan and Plan elements and to insure that the purpose and intent of this Code are met to protect and provide safeguards for persons and property in the vicinity. Appeal of a Planning and Zoning Commission decision may be made to the City Council in accord with the provision of Section 38-13.

5. TIME LIMITATIONS, REVOCATIONS, AND DEVELOPMENT STANDARDS. In addition to the imposition of conditions, the Planning and Zoning Commission may impose a time limitation on the Special Use Permit. If a Special Use is discontinued for a period of one (1) year, said permit shall automatically be revoked. If a certificate of occupancy and/or a business registration is not issued for the property with the Special Use Permit within two years from the date of Planning and Zoning Commission approval, or if appealed, City Council approval, the Special Use Permit shall be revoked automatically. All improvements shall be in accord with the development standards within the district, except as otherwise authorized by the Special Use Permit. There shall be no major revisions in the approved Special Use site plan, except as approved by the Planning and Zoning Commission, or if appealed, approved by City Council.

Any major revision proposed to the Special Use Permit and site plan shall require resubmittal of the Special Use Permit and site plan in their entirety. Minor revisions are those changes that are not major and may be approved by the Community Development Director or designee. Major revisions to the Special Use Permit and site plan shall include, but are not limited to:

a. Any change in land use,
b. Fifteen (15) percent cumulative increase in land use or building square footage,
c. Fifteen (15) percent cumulative increase in vehicular traffic on any roadway segment or intersection,
d. Any increase or decrease in size of the Special Use area,
e. Any reduction in screening, bufferyards and setbacks at the Special Use boundary line,

f. Fifteen (15) percent cumulative increase in the buildable area for structures including signs, and
g. Reduction or elimination of time limitations.
h. Renewal of the Special Use Permit.

6. RECORDING OF THE SPECIAL USE PERMIT. After approval, the Special Use Permit shall be issued by the Community Development Director or designee and shall include all information, conditions, reference to site plans, and other provisions of the Special Use. The Special Use Permit shall be filed in the Dona Ana County property records. The Special Use Permit shall not become effective until adequate evidence of filing in County records has been provided to the Community Development Director or designee. Approval of a Special Use Permit is not a zoning district change.

B. SPECIAL USES ENUMERATED. The following are special uses that may be approved by the Planning and Zoning Commission in accord with the provisions and conditions of this Section. The Planning and Zoning Commission may, at its discretion, impose additional conditions when deemed necessary. Such uses may be approved only within the districts stipulated.

Sec. 38-33G Adult Bookstore/Video Store or Adult Amusement Establishment (M1/M2, and M-3). These uses shall be permitted provided:

1. Such uses are located at a minimum of 1,000 feet from a property line of a:
   a. school;
   b. church;
   c. nursery/day care;
   d. public park or recreational facility; and
   e. residential zoning district;

2. These uses shall be permitted provided such uses are located at a minimum of 500 feet from the property line of a liquor establishment. The distance shall be measured from the Adult Bookstore/Video Store or the Adult Amusement Establishment to the property line of the liquor establishment; and

3. The operator of an Adult Bookstore/Video Store or Adult Amusement Establishment shall affix a sign to the exterior wall nearest the primary entrance to the structure in which such enterprise is located. Such signs shall be 36" x 18", shall have red lettering (letters shall be 2" in width and 3" in height) on a white background and it shall state as follows:

WARNING:

ADULT BOOKSTORE/VIDEO STORE.
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.

or

WARNING:

ADULT AMUSEMENT ESTABLISHMENT.
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.

4. Distance measurements shall include streets, alleys, channels, canals, other public rights-of-way and railroad right-of-way.

Sec. 38-33H Airport, Privately and Publicly Owned (C-2, C-3, M1/M2 and M-3). The Las Cruces International Airport (LCIA) property is zoned M-3(Conditional). The condition is that land uses will be in accordance with current City-Federal (Federal Aviation Administration) agreements and the adopted LCIA Master Plan. Parking, drainage, landscaping and other development standards are determined by the City Council through Chapter 7.5 of the Municipal Code, as amended, and Resolution 98-371, as amended. The LCIA Master Plan substitutes for a Special Use Permit. No special use permit is required.

Properties within 20,000 feet of an active runway at any airport will not be allowed to conduct land uses that would violate Federal Airspace Protection Regulations, including 14 CFR (Code of Federal Regulations), Part 77.

All other airports shall comply with 14 CFR, Part 77. Development standards, e.g., parking requirements, required runway paving standards, land uses will be determined as part of the Special Use Permit (SUP) review process. A Noise Exposure Study shall be submitted with the SUP application.

Sec. 38-33J Antennas, Towers, Communication Structures and Other Vertical Structures (All zoning districts). See Section 38-59.

Sec. 38-33E Amusement Park (Permanent)(EE, RE, REM, C-3, MT, M1/M2 and M-3). See Section 38-33E.

Sec. 38-33E Archery and Firing Range, Outdoor (OS-R, C-3, M1/M2, and M-3). See Section 38-33E.

Sec. 38-33G Auto/Truck Full or Self-Service/Automated Wash/Wax/Detailing (CBD). See Section 38-43.

Sec. 38-33G Auto/Truck Repair & Service (CBD). See Section 38-43.

Sec. 38-33A Boarding House (CBD). See Section 38-43.

Sec. 38-33C Brewery and Winery(EE and REM).

Sec. 38-43 Building Height over 50 feet (CBD).

Sec. 38-33A Campground (C-3, and M1/M2). See Section 38-57.

Sec. 38-33C Cannabis Microbusiness (EE and REM). Such uses shall be accessory to a primary residence and shall be located in a fully enclosed accessory structure located no less than 100 feet from adjacent residences excluding any residence on the same property on which the cannabis microbusiness is proposed. Cannabis products for retail sale shall be derived from those cultivated on-site. Parking minimums shall be based on the specific use(s) as outlined in Sec. 38-33.

~~Sec 38-33G Cannabis Retailer (C-1, C-2 and C-3). Allows decreased minimum distance requirement from a residential zone and/or from another cannabis retailer.~~

Sec. 38-33D Cemetery/Columbarium (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM and R-1bM). Any cemetery site shall contain at least five (5) acres and shall be located on a major local or higher designated roadway. A Columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Sec. 38-33D Group Child Care Home (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM and R-2).

Sec. 38-33E Country Club, Golf Course and/or Driving Range (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, and OS-R). There shall be screening and buffering on property lines abutting residential areas and no structures shall be within fifty (50) feet of a residential property line. The parking areas for these uses shall have access to a collector or higher designated roadway. Country clubs within the OS-R zone shall be designed in concert with a golf course or similar large open area.

Sec. 38-33I Extraction of Raw Materials (Not to include Manufacture, Processing or Treatment) (EE, RE, and REM). Such uses shall be a minimum of four hundred (400) feet from a residential district boundary or from an existing residential property. Uses shall not create a significance nuisance due to noise, odor, pollution, traffic or other similar problems. See Section 38-33I.

Sec. 38-33G Gas Station (CBD). See Section 38-43.

Sec. 38-33A Halfway House (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3 and R-4).

Sec. 38-33H Heliport/Helistop (EE, REM, R-4, O-2, C-2, C-3, M1/M2 and M-3). Use shall be in accordance with federal Airspace Protection Regulations, including 14 CFR, Part 77.

Sec. 38-33C Racetrack, Animal/Rodeo Arena (EE, RE-Mobile, C-3, M1/M2 and M-3)

Sec. 38-33E Racetrack, Auto/Truck (M-3).

Sec. 38-32D Single Business/Use (Non-Center) - Increased Square Footage Above Maximum (C-1 and C-2). Additional square footage not to exceed 2,000 may be granted in the C-1 district. Additional square footage not to exceed 6,000 may be granted in the C-2 district.

Sec. 38-33E Sports Complex/Stadium: Baseball, Football, Soccer, Softball, Track, etc. (EE, REM, C-3, M1/M2, and M-3). Parking and structures shall be located a minimum of three hundred (300) feet from any residential zoning district boundary.

Sec. 38-33J Waste Transfer Stations/Sewage Treatment Plants (M1/M2 and M-3). Use shall be located at least 300 feet from any residential zoning district boundary.

Sec. 38-55. RESERVED

10.1 Code Amendment: Amendment of the Las Cruces Municipal Code Sections 38-53 Conditional Uses and 38-54 Special Use Permits for the purpose of eliminating the 300-foot buffer requirement between individual cannabis retailers/microbusinesses and eliminating the 300-foot buffer between cannabis retailers/microbusinesses and single-family zoning districts.

Kaiser: So we'll jump on into new business. And item 10.1, which is an amendment to the Municipal Code related to the 300 foot buffer requirement between cannabis retailers and single-family zoning districts.

Weir: Mr Chair and Commissioners. This case relates to amending the cannabis requirements that were adopted initially. And so what I'll do is give you a little bit of a background of how we got here today. If you recall, in April of 2021, the State of New Mexico adopted their cannabis regulations to allow the sale of recreational marijuana or cannabis. In September of that year, the City of Las Cruces adopted their Zoning Code requirements to regulate that. And in April of 2022, the actual sale of cannabis began. The State statute basically it gave local municipalities the ability to regulate time, manner, and place, and the density of recreational sales in the community. But what the state statute also did is did not allow any restrictions on the transportation, the prohibition of the operations, prohibiting the signage for those businesses, requiring relocation of existing uses, or prohibiting personal use or prohibition. So those are kind of the guidelines that we developed our ordinances in.

As far as where those uses are allowed within the City, the cannabis retail and some of the micro business uses as defined by the ordinances are in our commercial districts, C-1, C-2, and C-3. More of the manufacturing and industrial type of uses were allowed in our

manufacturing, specifically the M-1/M-2, and M-3. And then research related to the cannabis industry was in our MT, which is our manufacturing technology district. And again, the M-1, M-2. There was also the micro businesses allowed in the rural areas. So the E is our equestrian estates, and the REM is our rural estates mobile zoning districts. And so those are allowed with a Special Use Permit. Basically, the use is proposed, the Planning and Zoning Commission determines if there's any conditions that need to be placed on those to operate.

The other conditions that were put in the City's ordinances were that all cannabis uses had to be 300 feet from a school or a daycare. And then they also put in provisions in our commercial districts that they needed to be 300 feet from any residential zone, and also 300 feet from other cannabis retailers. There was a provision that if they were wanting to locate closer, they could go through the Special Use Permit, and the Planning and Zoning Commission could approve those uses at a reduced buffer. There's also provision that in our C-1 which is our smallest or neighborhood commercial zone, that there would be no onsite consumption. Again, some of the provisions that we had in here, that they could be accessory to a retail sale and the provisions that were provided. And then also, as I already mentioned the Special Use Permit provisions for the rural areas.

One of the reasons that we're coming forward with this amendment tonight is that we have had some issues related to the buffers. There are uses that you could say that are similar to cannabis that do not have any buffers so that you're treating similar activities in a different fashion. To date we've had numerous of these businesses open, and we had no complaints in regards to it. There has been issues that providing locations for people to begin their business. So there has been some issues

related to that. There was also brought up that residential is allowed in your commercial districts. So you're treating residential uses differently. If you live in a commercial zone, you can have this use close to you, if you're in a single-family zone, there's a 300 foot buffer. So there's that disparity that was taking place. Also, just to note, there have been at least 15 Special Use Permits, I believe you have one on your agenda this evening. And all of those have been approved by the Planning and Zoning Commission. And like I said there are several more of those that are on the docket that if the amendment is not approved, you will see.

This is just kind of showing you the areas that are zoned commercial, where the buffers are and so how much of the City is buffered from those uses. And they are filling up fast, I guess would be the observation. So what staff has done and we were directed by the City Council to propose an amendment to this. We're proposing that we eliminate the 300 foot buffer from business to business, and also from the single-family zones. We also are recommending to eliminate the Special Use Requirement when those buffers cannot be met. So I guess in general it's keeping the 300 foot buffer from daycares and schools but it's eliminated it from all other uses. And so we're basically treating cannabis as a retail use within the City.

Just the findings that you can use if you support this amendment. Basically, Las Cruces has the ability to regulate the time, place, and manner of cannabis uses. The amendments are in alignment with Elevate Las Cruces. To date with the uses that have opened in the City, we have not seen any impacts. And if they are, they're ones that are associated with other retail uses. And again, back to several of the commercial areas are back to single-family residential zones and so you kind of have that disparate treatment

between residential areas and commercial corridors and the other residential areas. For all of those reasons, staff is supporting the amendment and recommends that the Planning and Zoning Commission make that recommendation to City Council to amend the Zoning Code. And you have your standard options here. And then I'll be welcome to stand and answer any questions you may have.

Kaiser: Great. Thank you. It's only been 15, I feel like it's been 100. Any comments from Commission or questions?

Acosta: I would just like to add that, yes, I'm on top of the 15 there, and the more common that I think just generally going and you know driving even around town and everything. As you see the cannabis businesses, I think I do see the streets honestly just improving around them. And I'm seeing the businesses give back and be a part of the community in all the regards. I haven't seen anything but true healing so far from probably just you know the first year, year and a half. And that's kind of my support on top of that. Keep the positive going.

Kaiser: Commissioner Smith.

Smith: I just want to add you know it's been a year since cannabis sales have been approved for sale in the City. And as Commissioner Acosta said, you know we have seen very limited negative impact on communities and other retailers. You know I knew we'd get to this point at some time. You know it's been a year and I've always looked at it as you know having one bar next to another bar or one restaurant next to another bar. And you know the competitive nature of any type of retail business was going to bring us to this point. So you know I knew it would get here at some point. And here we are.

Kaiser: Thank you. And before we open it up to public comment, I just want to kind of clarify a key

point here, because I think it kind of gets lost in the code jargon. But what we're talking about tonight is there's already, the buffer exists, but there's an option to get approval within the buffer. And those 15 applications that were referenced by staff, those were all applicants that came forward requesting to establish their business within the 300 foot buffer. And this Commission, except I think, with the exception of one or two cases have unanimously approved that. So even if we were to not approve this code amendment tonight, I don't think that changes what's happening or has been happening over the last year. So I just want to clarify that point that this is actually going to make it easier for staff, it's going to lower the burden, it's going to lower the administrative burden for applicants. And so I just wanted to clarify that and looks like, do you have comments?

Nichols: Yes. Thank you, Chairman. Larry Nichols for the record, Community Development Department. One might ask themselves, why would an amendment like this come about? What we discovered as the cannabis industry began to develop, we are now at about I think roughly 130 applications and they are on various stages of review. About 50 have been approved. We have others that are pending, waiting additional information. There have been a few that have withdrawn of that total figure. But what we discovered was as the applications came in, that nearly every one of these businesses are not building new structures. They're occupying existing structures that were commercial structures primarily and that were vacant and available for either purchase or lease or rent. And so those existing structures oftentimes were adjacent to residential neighborhoods, or they were adjacent, in close proximity to one and another. And so that is one of the reasons that we've had as many Special Use Permit requests that we've had because of them occupying existing structures.

The other item is that I believe we're going to continue to see this type of development. We found out that there is a successful market out there for this industry. And so I think that will encourage more businesses to establish themselves. But those are some of the reasonings behind the reasoning for this amendment being presented this evening and why we are where we are at this time. Thank you, Mr. Chair.

Kaiser: Thank you. All right, we will go ahead and open it up to public comment.

Acosta: Commissioner Kaiser. Sorry to interrupt. Can I add one more thing?

Kaiser: Please.

Aca I just wanted to add on to what you said actually. Just for the record about pretty much our you know public tax dollars going into City staff and all the hard work that everybody's putting into all of this. I think we have a terrific case study over the last year to see some positive stuff and to free up some friction in some places going forward. As far as Elevate Las Cruces is concerned, I think this super helps get to those points that we want to be. So thank you.

Kaiser: Thank you. Okay, we will go ahead and open it up to public comment. So can I get a raise of hands if there's anybody in the audience that wishes to speak on this item? I see one hand., so please come forward. And please state your name for the record so I can swear you in?

Ruprect: Give me a moment here. My name is Jo Ruprect. I'm speaking as a resident of Las Cruces since 1985. I have a prepared statement if I might, I believe it runs under the three minutes allowed.

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

Ruprect: Yes, in my opinion.

Kaiser: I will give you three minutes. Please go ahead.

Ruprect: Thank you. Mr. Chair, Commissioners. As a Las Crucean since 1985, I respectfully offer these comments. For a number of years I've been an advocate for animal care and welfare. When the City's Animal Control ordinance was thoroughly revised a few years ago, several of us immediately identified mistakes and omissions in the revision. We were told by any City official whom we approached that our concerns would have to wait until the revision came up for scheduled review five years after enactment. Animal advocates, caretakers, and the animals too were made to wait, and five years was a long time to wait. In part we were asked to wait for research into how that revised ordinance was functioning.

Let's turn to a situation before you today. The recreational cannabis industry has been operating in Las Cruces for a single year. City ordinances regulating the industry were thoughtfully crafted to include limitations on the location of cannabis sellers in relation to residences, schools, etc. Little or no research on the effects of the cannabis industry on Las Cruces exists, unless we categorize anecdotes from the industry as research. And yet, you on Planning and Zoning are discussing a significant change to the rules. You are looking at dropping the 300 foot buffer between a cannabis business and a residential area. We already have something on the order of 47 licenses as Mr. Nichols noted, nearly 50 issued to cannabis related businesses, many others are in the pipeline. Most of these that are currently licensed are located near older residential areas of Las Cruces. We can't stop the City from chasing the revenues and jobs

generated by this industry. But we can ask a minimum of respect for our neighborhoods. Please do not alter or drop the 300 foot buffer from the ordinance.

And I want to reply to the Commissioner on my left is that while the industry is asking these favors of us, we're asking this as a matter of respect from the industry. I would ask this of any industry that was proliferating at this pace in this City, because this many businesses makes us the Green Capital, which is not a bad thing necessarily. But it is an industry that has already got predictions of collapse, where many of these buildings that Mr. Nichols has mentioned as having been vacant and unused, will go vacant and unused again when the industry overpopulates itself. Thank you. Any questions?

Kaiser: Thank you.

Ruprect: Thank you.

Kaiser: Thank you. All right, coming back to the Commission. Before we do any final comments or questions for staff, again I just want to reemphasize that the ordinance as it stands now does not prohibit these businesses from entering within a 300 foot buffer, it simply requires them to ask for an additional permission from this body. And this body has time and time again approved those. So just wanted to emphasize that. Even if the buffer remains, it doesn't necessarily prohibit these businesses from going in within 300 feet. So any final thoughts or questions from the Commission?

Acosta: Just to address the final thought about the collapse of the market. I think New Mexico's in a unique situation where we are not a limited license state as far as that is concerned, where there is a free capital market in the cannabis industry, and to those degrees we are a use case of a state in that regard for the buildings

going vacant that are getting you know redesigned, renovated, and taken up another level. All those businesses are putting their all and efforts into all that and I do appreciate that. As far as are we continuously approving this and spending a lot of time and you know City staff research overall to something where we are getting a very good case *(inaudible)* on, I do believe that is the case. So that is why I am in favor of this.

Kaiser: Okay, I'm looking for a motion.

Vega: Make a motion to approve item 10.1, the code amendment.

Bennett: I'll second.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendation and compliance with Elevate Las Cruces.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation, this meets the Cannabis Regulation Act, and Elevate Las Cruces.

Baum: Board Member Acosta.

Acosta: I vote to approve, yes, based on staff recommendation and history of the context of the entire request here.

Baum: Board Member Vega.

Vega: I vote yes based on staff recommendation, hope to see a reduced administrative burden to staff, and the Commission.

Baum: Chair Kaiser.

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

Baum: Motion passes.

3038; Council Bill 23-032

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ **1** ☐ **2** ☐ **3** ☐ **4** ☐ **5** ☐ **6** ☒ **N/A**		
1st Reading:	June 5, 2023	**Adopted:**	June 20, 2023
Drafter:	Christine Rivera	**Department:**	Legal
Program:	Compliance	**Line of Business:**	Office of the City Clerk

Title:	**AN ORDINANCE REPEALING CHAPTER 2, SUBDIVISION XV. DOWNTOWN PARKING COMMITTEE OF THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED.**

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

PURPOSE(S) OF ACTION:
To repeal the Downtown Parking Committee.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The Downtown Parking Committee (Committee) was established on March 19, 2018, via approval of Ordinance No. 2848 to address the needs of the downtown area due to a growing number of events and new retail businesses. At that time, there was no such committee to review policies and make recommendations to City Council. Currently, staff within the Economic Development Department is addressing specific operational issues related to downtown redevelopment and parking, and through department partners such as the Downtown Las Cruces Partnership, additional forums have been created to address broader downtown issues as well as specific issues related to parking. Per Section 2-189(b)(4) "Each board shall meet as necessary, but shall meet at least four times each year." Because of these operational changes, the committee currently is not meeting this provision of the Las Cruces Municipal Code and therefore the committee will be repealed and dissolved.

SUPPORT INFORMATION:
Exhibit "A" - Subdivision XV. Downtown Parking Committee

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 repeal Chapter 2, Subdivision XV of the Las Cruces Municipal Code and dissolve the Downtown Parking Committee.
2. Vote "No"; this will not repeal Chapter 2, Subdivision XV of the Las Cruces Municipal Code and the Downtown Parking Committee will remain an active city committee.
3. Vote to "Amend"; this will require additional direction from City Council.
4. Vote to "Table"; this will require additional direction from City Council.

REFERENCE INFORMATION:

Ordinance No. 2848

ORDINANCE 3038; COUNCIL BILL 23-032

AN ORDINANCE REPEALING CHAPTER 2, SUBDIVISION XV. DOWNTOWN PARKING COMMITTEE OF THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED.

The City Council is informed that:

WHEREAS, the Downtown Parking Committee (Committee) was established on March 19, 2018, to address the needs of the downtown area due to a growing number of events and new retail businesses; and

WHEREAS, staff within the Economic Development Department is currently addressing specific operational issues related to downtown redevelopment and parking; and

WHEREAS, through department partners such as the Downtown Las Cruces Partnership, additional forums have been created to address broader downtown issues as well as specific issues related to parking; and

WHEREAS, Section 2-189(b)(4) of the Las Cruces Municipal Code (LCMC) states "Each board shall meet as necessary, but shall meet at least four times each year"; and

WHEREAS, the committee currently is not meeting the provision of Section 2-189 of the LCMC.

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

(I)

THAT Chapter 2, Subdivision XV. Downtown Parking Committee is hereby repealed as shown in Exhibit "A."

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit “A”

PART II - MUNICIPAL CODE
Chapter 2 - ADMINISTRATION
ARTICLE IV. - BOARDS, COMMISSIONS AND COMMITTEES
DIVISION 3. - NONSTANDARD BOARDS
Subdivision XV. Downtown Parking Committee

~~Subdivision XV. Downtown Parking Committee~~[1]

[1]Editor's note(s)—Ord. No. 2848, § I(Exh. A), adopted Mar. 19, 2018, set out provisions intended for use as subdiv. XIV, §§ 2-577—2-580. Inasmuch as there were already provisions so designated, the provisions have been redesignated as subdiv. XV, §§ 2-576.1—2-576.4, at the editor's discretion.

~~Sec. 2-576.1. Established.~~

~~There is established a downtown parking committee.~~

~~(Ord. No. 2848, § I(Exh. A), 3-19-18)~~

~~Sec. 2-576.2. Boundaries defined.~~

~~The boundaries of the area to be covered by the downtown parking committee shall be consistent with the Las Cruces downtown tax increment development district.~~

~~(Ord. No. 2848, § I(Exh. A), 3-19-18)~~

~~Sec. 2-576.3. Membership.~~

~~The committee shall be comprised of seven members, appointed by the mayor with the advice and consent of council:~~

~~(1) City councilor;~~

~~(2) Owner of a business that is located in the district;~~

~~(3) Owner of property that is located in the district;~~

~~(4) Representative from an adjacent neighborhood (Alameda Depot District or Mesquite Historic District);~~

~~(5) Farmer's Market representative;~~

~~(6) Las Cruces resident living in another district;~~

~~(7) Member-at-large.~~

~~(Ord. No. 2848, § I(Exh. A), 3-19-18)~~

~~Sec. 2-576.4. Duties.~~

~~The parking committee shall advise the city council on matters related to public parking areas in the downtown, including but not limited to making recommendations on:~~

~~(a) Development and implementation of downtown parking studies;~~

~~(b) Lighting and signage;~~

~~(c) Limited time parking;~~

~~(d) Metered parking;~~

~~(e) Parking structure;~~

~~(f) Bicycle parking;~~

~~(g) Accessible parking.~~

(Ord. No. 2848, § I(Exh. A), 3-19-18)

Secs. 2-576.5—2-576.14. Reserved.

3039; Council Bill 23-033

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:	June 5, 2023	**Adopted:**	June 20, 2023
Drafter:	Chris Faivre	**Department:**	Economic Development
Program:		**Line of Business:**	Business Development

Title: **AN ORDINANCE AMENDING CHAPTER 7.8, ARTICLE I, LOCAL ECONOMIC DEVELOPMENT ACT (LEDA), SECTION 7.8-3.-LEDA PLAN, OF THE LAS CRUCES MUNICIPAL CODE (LCMC) 1997, AS AMENDED AND ADOPTING A LEDA PLAN IN ACCORDANCE WITH THE SAME.**

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

PURPOSE(S) OF ACTION:

To add an updated LEDA plan to Las Cruces Municipal Code as required by NMSA 1978 section 5-10-1 to 5-10-13, titled the "Local Economic Development Act".

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In 2004, the City of Las Cruces adopted the Las Cruces Local Economic Development Plan under the authority granted through NMSA 1978, Section 5 -10 -1 to 5- 10 -13, also known as the Local Economic Development Act (LEDA). The plan was codified in Ordinance No. 2122 and allowed the City to be proactive in recruiting, retaining, and growing local business to the benefit of the local economy.

In the 2013 New Mexico legislative session, House Bill 352 authorized municipalities to amend their local economic development plans to include project security requirements. Also known as "49 clawback provisions", these new requirements would allow the City to recover costs put towards an approved economic development project if the terms of the agreement were not met. In order to protect the City's investment in local economic development projects, the project security requirements need to be added. The Las Cruces Economic Development Plan was amended to include the changed enacted under House Bill 352.

At this time, the Las Cruces Local Economic Development Plan will be amended and adopted via ordinance - per New Mexico State Statue - to include two additional funding options:

- Local Model - Public contribution plus private investment in the form of: in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy; and
- Catastrophic model – Public contribution in the form of State allocated Jr. Money, plus private investment in the form of: in-kind services, new or saved jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

The Catastrophic model will be funded with State of New Mexico Junior Money made available in FY24 to the City by way of Senator Carrie Hamblen.

SUPPORT INFORMATION:

Exhibit "A" – Corrected version of code

Exhibit "B" - LEDA Plan
Attachment "A" – Redline version of code

PLAN(S):
Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:
Economic Development PRC

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?
☐ Yes
☒ No

Does this action align with Elevate Las Cruces?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this will amend Section 7.8-3 of the Las Cruces Municipal Code (LCMC) and approve the adoption of the Las Cruces Local Economic Development Plan.
2. Vote "No"; this will not amend Section 7.8-3 of the Las Cruces Municipal Code (LCMC) and will not approve the adoption of the Las Cruces Local Economic Development Plan.
3. Vote "Amend"; this could modify the Ordinance and would need further direction from the City Council to staff.
4. Vote "Table"; this will postpone consideration of the Ordinance and would need further direction from City Council to staff.

REFERENCE INFORMATION:
Ordinance No. 2697

ORDINANCE 3039; COUNCIL BILL 23-033

AN ORDINANCE AMENDING CHAPTER 7.8, ARTICLE I, LOCAL ECONOMIC DEVELOPMENT ACT (LEDA), SECTION 7.8-3.-LEDA PLAN, OF THE LAS CRUCES MUNICIPAL CODE (LCMC) 1997, AS AMENDED AND ADOPTING A LEDA PLAN IN ACCORDANCE WITH THE SAME.

The City Council is informed that:

WHEREAS, in 1993 the New Mexico State Legislature enacted NMSA 1978 section 5 -10 -1 to 5- 10 - 13, titled the "Local Economic Development Act" (the "Act ") to allow for the use of public resources for economic development; and

WHEREAS, in 2004 the City of Las Cruces adopted the Las Cruces Local Economic Development Plan 2004 by Ordinance No. 2122 to implement the authority of the State Act; and

WHEREAS, New Mexico House Bill 352 adopted during the 2013 New Mexico legislative session amended NMSA 1978, Section 5 -10 -10 to incorporate specific requirements relating to the substantive contributions from a qualifying entity and relating to security provided by a qualifying entity to ensure performance of its obligations under a project participation agreement; and

WHEREAS, in 2013 the legislature adopted additional amendments to the State Act requiring security for state and local contributions to local economic development projects; and

WHEREAS, at this time, the Las Cruces Local Economic Development Plan will be amended to include two additional project participation funding models: a Local model and a Catastrophic model; and

WHEREAS, the Local model includes public contribution plus private investment in the form of: in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy; and

WHEREAS, the Catastrophic model includes public contribution in the form of State allocated Jr. Money, plus private investment in the form of: in-kind services, new or saved jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

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

(I)

THAT the Las Cruces Municipal Code 1997, as amended, Chapter 7.8, Article I, Section 7.8-3.-LEDA Plan of the Las Cruces Municipal Code 1997 is hereby amended as indicated in Exhibit "A" and attached hereto.

(II)

THAT the Las Cruces Local Economic Development Plan as indicated in Exhibit "B" and attached hereto is adopted with the proposed additions to the project participation funding models.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit A

ARTICLE I. LOCAL ECONOMIC DEVELOPMENT ACT (LEDA)

Sec. 7.8-1. Short title and legislative intent.

This chapter shall be known as and may be cited as the "Local Economic Development Act."

(Ord. No. 2873 , § I, II(Exh. A), 9-17-18)

Sec. 7.8-2. Enabling legislation.

The New Mexico State Legislature enacted NMSA 1978 sections 5-10-1 to 5-10-13 titled the "Local Economic Development Act" (the "Act") allows for the use of public resources for economic development.

(Ord. No. 2873 , § I, II(Exh. A), 9-17-18)

Sec. 7.8-3. LEDA plan.

The LEDA plan will be adopted by ordinance in accordance with NMSA 1978, Article 5-10-6(A).

(Ord. No. 2873 , § I, II(Exh. A), 9-17-18)

Secs. 7.8-4—7.8-99. Reserved.

EXHIBIT “B”

Local Economic Development Plan 2023

Prepared by

City of Las Cruces Economic Development Department

July 2023

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Local Economic Development Act

The Local Economic Development Act, "the Act," authorizes local governments to use public resources on economic development projects. It was initiated as a constitutional amendment, put to a statewide vote in the 1994 general election and approved by the voters.

Definitions

"Arts and cultural district" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act (Sections 15-5A-1 through 15-5A-7 NMSA 1978);

"Catastrophic Incident" is a sudden and devastating event that can cause significant harm or damage to a business and its assets. Such incidents can result from natural disasters like floods, earthquakes, or tornadoes, human-made events like fires, explosions, or acts of terrorism, or technological failures like equipment malfunctions, power outages, or cyber-attacks. These incidents can lead to significant operational disruptions, loss of critical data, and financial losses. In the case of equipment failure or malfunction, catastrophic incidents can cause significant downtime, increased maintenance costs, or even lead to equipment loss or destruction.

"Cultural facility" means a facility that is owned by the state, a county, a municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;

"Department" means the economic development department;

"Economic development project" or "project" means the provision of direct or indirect assistance to a qualifying entity by the City of Las Cruces includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying entity; payments for professional services contracts necessary for the City of Las Cruces to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural

facilities; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or a publicly owned cultural facility; and the construction of a building for use by a qualifying entity;

“Governing body” means the city council, city commission or board of trustees of a municipality or the board of county commissioners of a county;

“Local government” means the City of Las Cruces;

“Municipality” means an incorporated city, town or village;

“Person” means an individual, corporation, association, partnership or other legal entity;

“Qualifying entity” means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:

A. An industry for the manufacturing, processing or assembling of agricultural or manufactured products;

B. A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in subsection (E) or (F) of this definition, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

C. A business, including a restaurant or lodging establishment, in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in subsection (E) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;

D. An Indian nation, tribe or pueblo or a federally chartered tribal corporation;

E. A telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;

F. A facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;

G. A business that is the developer of a metropolitan redevelopment project;

"Regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement.

"Retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located:

- In a municipality with a population, according to the most recent federal decennial census, of:
  - fifteen thousand or less; or
  - more than fifteen thousand if the economic development project is not funded or financed with state government revenues; or
- in an unincorporated area of the county.

Restrictions on Public Expenditures

A. Local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the Constitution of New Mexico only as provided in the Local Economic Development Act or as otherwise permitted by law. Funds are awarded at the City of Las Cruces' discretion and based on availability of funds.

B. The total amount of public money that may be expended for economic development projects in a fiscal year may not exceed ten percent of the annual general fund expenditures for the same period. The limit does not apply to:

- The value of any land or building contributed to an economic development project;
- Revenue generated through the gross receipts tax local option for advancing economic development plans and projects;

- The proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;
- Funds donated by private entities to be used for defraying the cost of a project

C. In order to fund projects within an arts and cultural district, this can include cultural facilities or retail businesses, the City needs to adopt an ordinance in favor of said projects. In order to qualify for funding, the ordinance for a project must meet the qualifications at the state and local level as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act.

Purpose

LEDA is a tool that is aligned with the Economic Development Strategic Plan and the Comprehensive Plan along with the goals we share with our economic development partners. The Economic Development Strategic Plan strengthens Las Cruces' economic development efforts by making certain public resources available for specific economic development projects. The plan is compatible with the guiding principles of Economic Prosperity from the Compressive Plan. These principles are:

1. Economic Diversity
2. Business & Industry Support
3. Ready Workforce & Environment

Las Cruces Economic Development Strategic Plan anticipates close cooperation and coordination with our economic development partners. These would include the Mesilla Valley Economic Development Alliance (MVEDA), Arrowhead Center at NMSU, SCORE, WESST and other Business Assistance agencies. Some of these organizations work with MVEDA which markets the City and surrounding region to private businesses for expansion and in-turn to promote job growth. Arrowhead Center encourages economic development by serving as an incubator for entrepreneurship and start-up businesses in technology related fields. SCORE and WESST encourage the development of entrepreneurship and start-up businesses in fields other than technology. The City’s involvement with these groups provides additional resources and competencies to fulfill its various economic development strategies.

The City of Las Cruces provides resources of value to individual businesses through LEDA resulting in a higher tax base and the creation of quality jobs; this is assuming the provision of these resources does not violate the anti-donation clause. The resources Las Cruces may offer include land, buildings, infrastructure, and financial incentives.

Goals

The basic overall strategy is focused on three goals outlined in the City's current comprehensive planning document.

- **Economic diversity**: Identify opportunities, partnerships and policies that encourage diversification of the local economy toward industries and businesses that develop and use advanced technology with the expectation that such diversification will sustain local economic growth into the future. Develop and diversify the economy in likely sectors such as aerospace, high technology, professional and technical services, value-added agricultural processing, supplier businesses to maquiladora manufacturers, and local retail. Jobs in preferred clusters raise the average salary level and promote self-sustaining growth into the future.
- **Business and industry support**: Identify possible incentives, innovate and develop methods that encourage retention, expansion and attraction of businesses that can develop the infrastructure and enhance economic growth. Business Retention and Expansion builds capacity and brings the community together to identify barriers and opportunities for growth.
- **Ready workforce and environment**: Encourage those members of the community who are eligible to participate in the workforce but do not. Identify and create adaptable and responsive business climate through training, education and partnerships.

Las Cruces Resources Available for Economic Development Project

Public contribution or support for an economic development project shall be provided in exchange for a substantive contribution from the qualifying entity. Public contribution can include public resources, services, and financial incentives. The plan envisions that public benefits from economic development projects will equal or exceed public costs.

Resources

- Land
- Buildings
- Infrastructure

Services

- Engineering, architectural, legal, appraisal, environmental assessment, and various professional services
- Liaise with state economic development programs and services
- Workforce Development

Financial Incentives

- Property tax abatement
- Waiving of infrastructure hook-up fees
- Waiving of various Permit fees
- Provision of cash grants
    - General Fund
    - Program funds from private donation and any revenue derived by the program

Criteria of Eligible Project

There are four models for project participation as follows:

1) Preferred model - Public contribution plus private investment in desired industry clusters equals new jobs with above average salaries.
2) Basic model - Public contribution plus private investment equals new jobs.
3) Local model – Public contribution plus private capital investment of at least $250,000 plus an investment in the form of: in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.
4) Catastrophic model – Public contribution in the form of State allocated Jr. Money, plus private investment in the form of: in-kind services, new or saved jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

- Business must be registered and in compliance with Las Cruces and New Mexico business regulations.
- Project must be executed by a qualifying entity
- Preferred and Basic model Projects must result in new jobs which are intended to be permanent. Contract jobs such as project construction jobs do not count as new jobs; the cost of construction is part of the private business investment.
- Funding in all four models will be distributed on a case-by-case basis depending on the needs of qualifying entity and the availability of funds.

Economic Development Project Application

A qualifying entity interested in participating in a project must meet with the City's Economic Development Department as part of the LEDA Application process. The business must submit a completed application form to the Economic Development

Department supplied by the City. The application will seek to gather information that will help the City evaluate the:

- applicant's financial strength,
- applicant's management capability,
- applicant's commitment to the community,
- feasibility of the proposed economic development project, and
- project benefit(s) to the City.

The information required are details on the company including general facts such as type of ownership, management team members background information, operational profile, financial information along with proposed project specific details. Additional information may be required and requested by the City to aid in its evaluation of the business or the project itself. The City will maintain business sensitive information to the degree allowed by law. The City will conduct due diligence with respect to the applicant by using well established credit analysis firms to make that determination.

Safeguards

The review and evaluation of the application guided by prudent lending practices will provide the foundation for safeguarding public resources. However, the City will require formal security instruments to safeguard public resources and indemnify the City from loss if the qualifying entity ceases operation, relocates or otherwise defaults or reneges on its contractual obligations to the City. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement and shall reflect the amount of public support provided to the qualifying entity and the substantive contribution expected from the qualifying entity.

The City of Las Cruces shall retain a security interest to protect its investment. The type of security will depend on the type of project and the type of assistance provided by the City. The type of security may include but not necessarily be limited to:

- Letter of credit in the City's name;
- Performance bond equal to the City's contribution to the project;
- A mortgage or lien on property or equipment;
- Pro-rated reimbursement of City's contribution should the company reduce the work force or leave the community prior to the agreed-upon term;
- Various forms of insurance;
- MOU or signed agreement between City and participating business;
- Other security agreeable to both parties.

Project Participation Agreement

Following an evaluation and approval of an application, the City and the applicant will develop a project participation agreement. The agreement is the formal document that sets out the contributions and obligations of both parties to the economic development project. The economic development project requires approval by ordinance of the Las Cruces City Council. The City Council will approve the project participation agreement. The project participation agreement will include but not be limited to the following items:

- The economic development goals of the project; these would include but may not be limited to:
    a. Job creation
    b. Wage considerations
    c. Public to private investment ratio
- The contributions to the project from the City and qualifying entity;
- The PPA will define when and how City resources will be distributed;
- Schedule for project development and completion;
- Measurable performance objectives;
- Performance review procedures and actions to be taken to correct unsatisfactory performance;
- Security provided to the City;
- Manner by which the project may be terminated and the City's investment may be recovered; and
- The period in which the City will retain an interest in the project.

Termination

At any time after approval of the local economic development plan, the Las Cruces City Council may enact an ordinance terminating the local economic development plan and dissolving or terminating any or all projects.

Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of the plan and termination or dissolution of a project shall be transferred to the economic development fund.

Severability Clause

If any section, paragraph, clause, or provision of this Local Economic Development Plan, or any section, paragraph, clause, or provision of any regulation promulgated hereunder shall for any reason be held to be invalid, unlawful, or enforceable, the invalidity, illegality, or unenforceability of such section, paragraph, clause, or provision shall not affect the validity of the remaining portions of this Local Economic Development Plan or the regulation so challenged.

Attachment A

ARTICLE I. LOCAL ECONOMIC DEVELOPMENT ACT (LEDA)

Sec. 7.8-1. Short title and legislative intent.

This chapter shall be known as and may be cited as the "Local Economic Development Act."

(Ord. No. 2873 , § I, II(Exh. A), 9-17-18)

Sec. 7.8-2. Enabling legislation.

The New Mexico State Legislature enacted NMSA 1978 sections 5-10-1 to 5-10-13 titled the "Local Economic Development Act" (the "Act") allows for the use of public resources for economic development.

(Ord. No. 2873 , § I, II(Exh. A), 9-17-18)

Sec. 7.8-3. LEDA plan.

A plan will be adopted by ~~resolution~~ ordinance.

(Ord. No. 2873 , § I, II(Exh. A), 9-17-18)

Secs. 7.8-4—7.8-99. Reserved.

3040; Council Bill 23-034

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	June 5, 2023	**Adopted:**	June 20, 2023
Drafter:	Cilicia Villegas	**Department:**	Economic Development
Program:	LAND MANAGEMENT AND REAL ESTATE SERVICES	**Line of Business:**	LAND MANAGEMENT AND REAL ESTATE SERVICES

Title: **AN ORDINANCE AUTHORIZING A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND BHD LAND DEVELOPMENT LLC, FOR THE SALE OF APPROXIMATELY 17.53 ACRES OF MUNICIPALLY-OWNED LAND WITHIN THE LAS CRUCES INNOVATION AND INDUSTRIAL PARK FOR THE PURCHASE PRICE OF $581,700.00, IN ACCORDANCE WITH PROVISION OF LCMC 1997, SECTION 2-1312.**

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

PURPOSE(S) OF ACTION:
Approve the sale of City real property.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
Among the top strategic plan goals of the City is to stimulate and entice additional business development at Las Cruces Innovation and Industrial Park.

This Ordinance, if approved, authorizes the sale of approximately 17.53 acres of municipal land located at 401 and 431 Alliance Drive within the City's Las Cruces Innovation and Industrial Park to BHD Land Development LLC (BH DEVCO) for Five Hundred Eighty-One Thousand Seven Hundred dollars ($581,700.00). The property is legally described as Lots A-3 and A-5, West Mesa Industrial Park No. 26, Replat No. 1.

The property was appraised by a local appraiser in March 2023. The appraisal concluded a value of $581,700.00. A second appraisal was conducted in May 2023 by the City Land and Real Estate Office at a value of $600,000.00.

BHDEVCO intends to develop this property as a distribution facility.

This Ordinance has been prepared in accordance with LCMC 1997, Section 2-1312. The timeframe for the land sale will occur on a mutual agreeable date between 45 days after adoption, and within 30 days of the end of the Inspection Period. This Ordinance has been published prior to the adoption and will be published at least once after its adoption.

SUPPORT INFORMATION:
Exhibit "A" Real Estate Purchase Agreement Draft

Attachment "A" Summary of Appraisals
Attachment "B" Plat Map
Attachment "C" Aerial Vicinity Map

PLAN(S):
City Council Strategic Plan, Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:

Funding Source(s):

Does this action amend the Capital Improvement Plan (CIP)?
☐ Yes
☒ No

Does this action align with Elevate Las Cruces?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this action will approve the Ordinance and Real Estate Purchase Agreement to sell 17.53 acres of land in the Las Cruces Innovation and Industrial Park to BHD LAND DEVELOPMENT LLC for Five Hundred Eighty-One Thousand Seven Hundred dollars ($581,700.00).
2. Vote "No"; this action will not approve the Ordinance and Real Estate Purchase Agreement and City will retain ownership of the land.
3. Vote to "Amend"; this action will modify the terms of the Agreement based on direction from Council.
4. Vote to "Table"; this action will postpone the Ordinance and Council will need to direct staff.

REFERENCE INFORMATION:
Sale Proceeds to be split 50/50 between:
Fund 2013 Org 2013 Object 599900 and
Fund 1030 Org 1030 Object 599900
See Municode Section 13-207 (2)g

ORDINANCE 3040; COUNCIL BILL 23-034

AN ORDINANCE AUTHORIZING A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND BHD LAND DEVELOPMENT LLC, FOR THE SALE OF APPROXIMATELY 17.53 ACRES OF MUNICIPALLY-OWNED LAND WITHIN THE LAS CRUCES INNOVATION AND INDUSTRIAL PARK FOR THE PURCHASE PRICE OF $581,700.00, IN ACCORDANCE WITH PROVISION OF LCMC 1997, SECTION 2-1312.

The City Council is informed that:

WHEREAS, an interest of purchase offer was received from BHD Land Development LLC for 17.53 acres of municipal land in the Las Cruces Innovation and Industrial Park; and

WHEREAS, the City desires to sell the 17.53-acre parcel to BHD Land Development LLC for development; and

WHEREAS, the negotiated purchase price is $581,700.00 for the City property; and

WHEREAS, the fair market value of the City property, having been determined by a local appraiser is $581,700.00; and

WHEREAS, the closing date for the sale of the property will not occur until forty-five (45) days after the adoption of the Ordinance and would occur no later than 30 days of the end of the Inspection Period.

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

(I)

THAT the Real Estate Purchase Agreement between City and BH Land Development, LLC., as shown in Exhibit "A", attached hereto and made a part of this Ordinance, is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"

PURCHASE AND SALE CONTRACT ("**Contract**")

This Contract is entered into by the **CITY OF LAS CRUCES**, a New Mexico municipal corporation ("**Seller**"), and **BHD LAND DEVELOPMENT LLC**, an Arizona limited liability company, and/or its assigns ("**Purchaser**").

W I T N E S S E T H:

IN CONSIDERATION of the promises and mutual covenants herein set forth, Seller and Purchaser agree to the purchase and sale of the Property (defined below), in accordance with the following terms and conditions:

1. Property. The property will be comprised of the following:

Land totaling approximately 16.62 acres located at 401 and 431 Alliance Drive, in Las Cruces, Dona Ana County, New Mexico (the "**Land**"), as more particularly described on **Exhibit "A"**, together with any and all improvements situated on the Land (the "**Improvements**"); and all right, title and interest of Seller, if any, in and to any and all appurtenances, strips or gores, roads, easements, streets, alleys, drainage facilities and rights-of-way bounding the Land; all utility capacity, utilities, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the "**Additional Interests**"); all transferable consents, authorizations, variances or waivers, licenses, permits and approvals from any governmental or quasi-governmental entity in connection with the Land or the Improvements held by or granted to Seller, its predecessors in title, and/or the agents thereof with respect to the Land or the Improvements (collectively, the "**Permits**"); all right, title and interest of Seller in and to all site plans, surveys, soil and substratus studies, and engineering and architectural drawings, plans and specifications, in Seller's possession or control, relating to the Land (the "**Plans**"); all equipment and other personal property owned by Seller located on and exclusively used in connection with the operation of the land and improvements (collectively, the "**Personal Property**"); all written service and maintenance contracts and other written contracts, if any, relating to the Property that have been approved by Purchaser during the Inspection Period (as defined below) (collectively, the "**Service Contracts**"). The Land and other items described in the preceding paragraph together constitute the "**Property**."

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2. Purchase Price. The purchase price ("**Purchase Price**") will be approximately $581,700.00. The Purchase Price will be payable to Seller in cash or by wire transfer of good funds to the Title Company for payment to Seller at Closing, with the exact Purchase Price to equal the product of $35,000.00 multiplied by the total number of "net acres" and fractional portion thereof contained within the Land as certified in the Survey (as defined in Section 4(b)). "Net acres" as referenced herein shall mean the gross acres of Land less any portion of the Land that is located in public roads or rights of way or located within any easements, flood plains, or wetlands, including without limitation, any of the foregoing to be dedicated by the Plat of Subdivision (as defined in Section 5) (whether such dedication is in fee or by easement) or subjected to a designation for common area pursuant to any Permitted Exception (as defined in Section 4(d)).

3. Earnest Money and Independent Consideration.

(a) Earnest Money. Within 3 business days after the Effective Date, Purchaser will deposit with Chicago Title Insurance Company, Attention: Darnella Ward, Email: Darnella.Ward@ctt.com ("**Title Company**"), the sum of $30,000.00 as earnest money hereunder. The Earnest Money will be deposited by Title Company in an interest-bearing account, with the interest credited to Purchaser and as part of the

EXHIBIT "A"

Earnest Money. The entire Earnest Money will be applied towards the Purchase Price at Closing, or will be otherwise held and disbursed as herein provided.

(b) Independent Consideration. As independent consideration for the rights granted to Purchaser, Purchaser has paid to Seller the sum of $100.00, the receipt and sufficiency of which are hereby acknowledged. The independent consideration is non-refundable and will be applied against the Purchase Price at Closing.

4. Due Diligence Documents. The following documents will be delivered to Purchaser:

(a) Title Commitment. Within 10 days after the Effective Date, Purchaser will, at Seller's expense, order a current commitment from the Title Company for an ALTA owner's policy of title insurance to the Purchaser, together with legible copies of all listed title exceptions (the "**Title Commitment**").

(b) Survey. Within 10 days after the Effective Date, Seller will deliver to Purchaser, Purchaser's legal counsel, and the Title Company a true and correct copy of Seller's most recent survey of the Property. Purchaser may have prepared a current survey of the Property that complies with the 2016 "Minimum Standard Detail Requirements of ALTA/NSPS Land Title Surveys", and including Table "A" items 1 (monuments), 2, 3, 4, 6(a) and (b)(zoning), 7(a), 7(b)(1), 7(b)(2), 7(c), 8, 9, 11, 13, 14, 16, 17, 18, 19 and 20, or in such other form acceptable to Purchaser (the "**Survey**"). The Survey will be certified to Seller, Purchaser and Title Company and will show the total number of acres comprising the Land. The Survey will also contain a "Survey Notes" list on the face of the survey confirming the following:

> "Note 1: The subject property has access to public utilities from the public streets adjacent to the subject property. Note 2: The subject property abuts, without gaps gores or strips, and has vehicular and pedestrian ingress to and egress from _____, which is/are completed, dedicated and accepted public right(s) of way. and/or The subject property abuts, without gaps, gores or strips, an access easement through which the subject property has both vehicular and pedestrian ingress and egress to and from _____, a dedicated and accepted public right-of-way and such access easement abuts said public right-of-way without gaps, gores or strips, [If not, so state]. Note 3: Except as shown and noted on this Survey, based on a careful physical inspection of the subject property and matters of record or provided by the title company or client, there are no visible: (i) height or bulk restrictions, setback lines, parking requirements, party walls, encroachments or overhangs of any improvements upon any easement, right-of-way or adjacent land or encroachment of the improvements located on adjacent land onto the subject property, other than as noted on the Encroachment Table; or (ii)easements, rights-of-way, party walls, or building structures or other improvements, conflicts, officially designated 100 year flood plans or flood prone areas, springs, streams, creeks, rivers, ponds, lakes cemeteries or burial grounds; Note 4: [Except as shown on the survey,] the subject property does not serve any adjoining property for utilities, drainage, structural support or ingress or egress; Note 5: The legal description on and depiction of the subject property contained in the survey describe and depict the same property described in the legal description contained in that certain Title Commitment/Preliminary Report issued by _____ on _____ under Order No. _____; Note 6: The record description of the subject property forms a mathematically closed figure; and Note 7: There is no observed evidence of the site being used as a solid waste dump, sump or sanitary landfill."

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For purposes of the property description to be included in the Deed, Title Policy and other documents to be delivered pursuant to Section 9, the field notes prepared by the surveyor will control any

conflicts or inconsistencies and will be incorporated upon completion and included as the property description in the Deed and the Title Policy.

(c) Documents. Within 3 days after the Effective Date, Seller will deliver to Purchaser copies of all documents pertaining to the development, ownership, or operation of the Property, including but not limited to, any leases, licenses or other agreements permitting any party to possess, occupy or enter into all or any portion of the Property; any service contracts; any existing survey of the Property; existing title commitments and/or policies; soils reports; feasibility studies; environmental reports, studies, assessments, and notices; any documentation regarding water, sanitary sewer, gas and other utilities serving the Property; engineering studies; evidence of zoning for the Property; and ad valorem tax notices and receipts for the last 3 years, together with the tax bill for the current year, if any (collectively, the "**Documents**").

(d) Review of Title, Survey and Documents. Purchaser will have until 11:59 p.m., Eastern Standard Time on that date which is twenty (20) days prior to the expiration of the Inspection Period ("**Approval Period**"), to review and approve the matters reflected in the Title Commitment, Survey and Documents. If Purchaser determines that the Title Commitment, Survey and/or Documents reflect or disclose any defect, exception or other matter affecting the Property unacceptable to Purchaser in its sole discretion, then Purchaser will notify Seller of Purchaser's objections prior to the expiration of the Approval Period ("**Objection Notice**"). If Seller fails to cure Purchaser's objections within 5 days after Seller's receipt of the Objection Notice (the "**Seller's Cure Period**"), Purchaser may, as its sole and exclusive remedy, terminate this Contract by providing written notice of termination to Seller within 10 business days after the expiration of Seller's Cure Period, whereupon this Contract will be terminated, Seller will retain the Independent Consideration and the Earnest Money will be refunded to Purchaser, and thereafter neither Seller nor Purchaser will have any continuing rights or obligations other than Purchaser's indemnity of Seller as provided in Section 5. If Purchaser fails to terminate this Contract within that period, Purchaser will be deemed to have approved and waived any objections to the matters contained in the Title Commitment, Survey and Documents. If the Title Company issues a supplement or amendment to the Title Commitment showing additional title exceptions (each, an "**Amended Report**"), Purchaser will have 10 days from the date of receipt of each Amended Report and a copy of each document referred to in the Amended Report in which to give written notice (each, a "**Supplemental Title Notice**") to Seller of its objection to any additional matter affecting the Property that is unacceptable to Purchaser, in Purchaser's sole discretion, shown in such Amended Report. All matters shown under Schedule B – Section II of the Title Commitment and by the Survey to which Purchaser has not objected or Purchaser has waived as provided herein will be considered to be "**Permitted Exceptions**." Notwithstanding the foregoing, under no circumstances will Purchaser be required to object to any existing liens reflected in the Title Commitment or other matters shown on Schedule "B – Section I" thereto, all of which (except for the lien or liens for taxes not yet due and payable) will be released or satisfied by Seller at its expense prior to Closing.

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5. Feasibility Contingency. Seller and Purchaser acknowledge that they entered into an Early Access Agreement dated March 10, 2023, by and between Seller and Purchaser granting Purchaser early access to the Property prior to the Effective Date of this Contract, subject to the terms and conditions set forth therein. The obligations of Purchaser under this Contract and consummation of Closing are, at Purchaser's discretion, subject to Purchaser performing due diligence, completing an inspection of the Property and determining, in Purchaser's sole discretion, that it is feasible for Purchaser to own and operate the Property in a manner and upon terms and conditions satisfactory to Purchaser. Purchaser will have until 11:59 p.m., Eastern Standard Time, on that date which is one hundred eighty (180) days after the Effective Date (as may be extended hereunder, the "**Inspection Period**"), to inspect the condition of the Property and to perform such other investigations as Purchaser may desire in its sole discretion, including, but not limited to invasive testing, such as soil borings, installation of groundwater monitoring wells and collection of soil and groundwater samples in connection with a Phase II environmental assessment. Seller shall, within 5 days after Purchaser's request, complete an owner disclosure form to enable Purchaser to order a Phase I or Phase

II Environmental Site Assessment for the Property. During the Inspection Period, Purchaser may file applications with applicable governing authorities for a lot line adjustment, plat or replat of the Property to adjust the common lot line between the two parcels of property that comprise the Land, for its planned development (the "**Plat of Subdivision**"), and to obtain all development commitments, entitlements, permits and approvals, all as may be deemed necessary by Purchaser in connection with its contemplated use and development of the Property (collectively, all of the foregoing commitments, entitlements, permits, and approvals are the "**Approvals**"), and Seller agrees to cooperate with Purchaser and execute such documents reasonably required in connection with the Approvals. Such Approvals will not impose any burden or be binding upon the Property prior to Closing, nor impose any cost or liability on Seller, except to the extent consented to by Seller, which consent will not be unreasonably withheld.

Prior to any entry upon the Property by Purchaser, or its contractor, agent, employee, consultant or other third party at Purchaser's direction (each a "**Purchaser Consultant**"), Purchaser and any Purchaser Consultant entering the Property will deliver to Seller evidence that Seller is included as an additional insured on a primary and noncontributory basis on Purchaser's and such Purchaser Consultant's liability insurance coverage issued with combined single limits of not less than Two Million Dollars ($2,000,000) per occurrence. Any Purchaser Consultant that seeks to perform invasive testing or collect samples from the Property shall maintain pollution liability insurance with limits of not less than Two Million Dollars ($2,000,000), and shall provide evidence that Seller is named as an additional insured on such policy prior to entering the Property.

Purchaser and its duly authorized agents or representatives may enter upon the Property at all reasonable times during the term of the Contract to conduct engineering, environmental, and geotechnical studies, or any other inspections or tests. Purchaser will indemnify and hold Seller harmless from and against any and all losses or costs incurred by Seller due to any injuries to persons or damage to the Land or Improvements resulting from such studies, inspections and/or tests, and if Purchaser fails to close its acquisition of the Property pursuant to this Contract, Purchaser will restore any material damage to the Land or Improvements caused by Purchaser, its agents or representatives to a reasonable equivalent of its pre-inspection condition; provided, however, that Purchaser shall not be obligated to indemnify or hold Seller harmless from any losses or costs arising out of or relating to (i) acts or omissions of Seller, its agents, or representatives; (ii) Hazardous Materials not first placed on the Property by Purchaser, its agents, or representatives; or (iii) mere discovery of conditions, facts or circumstances that adversely affect (or may adversely affect) the value of the Property.

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Prior to the expiration of the Inspection Period, Purchaser will provide to Seller a list of the service contracts, if any, which Purchaser desires Seller to assign to Purchaser at Closing (the "**Service Contracts**"). Seller will assign the Service Contracts at Closing. Seller will terminate all other agreements and contracts for services at the Property, effective at or prior to Closing.

Purchaser may extend the Inspection Period for up to two (2) additional periods of 30 days each by (i) delivering to Seller and the Title Company written notice of Purchaser's election to extend the Inspection Period then in effect, prior to the expiration of the Inspection Period, and (ii) depositing with Title Company the sum of $10,000.00 ("**Extension Fee**"), within 5 business days after the expiration of the Inspection Period then in effect. The Extension Fee (and interest on such Extension Fee) will constitute additional Earnest Money and will be applied against the Purchase Price at Closing. If the Inspection Period is extended as set forth herein and if Purchaser elects a discretionary termination of the Contract during the Inspection Period as provided in this Section, then the Earnest Money will remain refundable but any Extension Fee will be non-refundable to Purchaser.

Seller will cooperate with Purchaser in executing any applications or other materials prepared by Purchaser for submission to government authorities in connection with Purchaser's development plans.

If Purchaser elects to proceed with Closing, then Purchaser will notify Seller and Title Company in writing (the "**Approval Notice**") prior to the expiration of the Inspection Period. Unless the Approval Notice is previously delivered to Seller, upon the expiration of the Inspection Period Title Company will promptly return the Earnest Money to Purchaser and will disburse any Extension Fee to Seller, and all obligations of the parties under this Contract will terminate, excepting those obligations that expressly survive termination. In addition, if Purchaser notifies Seller during the Inspection Period that it does not intend to proceed with the acquisition of the Property (for any reason or no reason), then Title Company will promptly return the Earnest Money to Purchaser and will disburse any Extension Fee to Seller, and all obligations of the parties under this Contract will terminate, except for those obligations that expressly survive termination.

6. Representations, Warranties and Covenants of Seller. Seller represents and warrants to Purchaser that Seller presently has and will have at Closing record title to the Property, and that, at Closing, such title will be free and clear of all liens, encumbrances, covenants, restrictions, rights-of-way, easements, leases and other matters affecting title, except for the Permitted Exceptions. Seller further represents and warrants to Purchaser that the Property will be transferred to Purchaser free and clear of any management, service or other contractual obligations, other than those disclosed to and approved in writing by Purchaser.

Seller further covenants and agrees with Purchaser that, from the Effective Date until Closing, Seller will not sell, assign or convey any right, title or interest whatsoever in or to the Property, or create or permit to exist any lien, security interest, easement, encumbrance, charge or condition affecting the Property (other than the Permitted Exceptions) without promptly discharging the same prior to Closing.

Seller hereby further represents, warrants and covenants to Purchaser as follows:

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(a) No Actions. There are no actions, suits or proceedings pending or, to the best of Seller's knowledge, threatened against Seller or otherwise affecting any portion of the Property, at law or in equity, or before or by any federal, state, municipal or other governmental court, department, commission, board, bureau, agency or instrumentality, domestic or foreign. Until the Closing Date or sooner termination of this Contract, Seller will not seek any zoning changes for the Property without the prior approval of Purchaser.

(b) Authority. (i) the execution by Seller of this Contract and the consummation by Seller of the sale contemplated hereby have been duly authorized, and do not, and, at the Closing Date, will not, result in a breach of any of the terms or conditions of, or constitute a default under any indenture, agreement, instrument or obligation to which Seller is a party or by which any portion of the Property is bound. No consent of any lender or any other party is required for Seller to enter into this Contract; and (ii) as of the Effective Date, the City Council of Seller has adopted an ordinance authorizing Purchaser's acquisition of the Property pursuant to the terms of this Contract (the "**Ordinance**").

(c) Continued Maintenance. From the Effective Date through the Closing Date, Seller will: (i) continue to maintain the Property in its present condition; (ii) not make any alterations or improvements to the Property or on the Land, nor demolish any of the Property, without the prior approval of Purchaser, and (iii) maintain its existing insurance policies for the Property.

(d) Leases. From the Effective Date through the Closing Date, Seller will not enter into any lease, occupancy agreement, license or other agreements or rights with respect to the use or occupancy of any portion of the Property without Purchaser's prior written consent, and no leases affect the Property as of the Effective Date and none will affect the Property at Closing.

(e) No Agreements. From the Effective Date through the Closing Date, Seller will not enter into or amend any oral or written agreements affecting the Property which might become binding on Purchaser or the Property at or after Closing without Purchaser's written consent.

EXHIBIT "A"

(f) Compliance with Laws. The Property complies with all applicable laws and ordinances, and the present maintenance, operation and use of the Property does not violate any environmental, zoning, subdivision, building or similar law, ordinance, code, regulation or governmental permit affecting the Property. There are no unsatisfied requests for repairs, restorations or improvements from any person, entity or authority, including any tenant, lender, insurance carrier or government authority.

(g) Environmental.

(1) "**Environmental Requirements**" means any and all existing or future federal, state, regional, local ordinances, codes, rules, regulations, common law, or other requirements of any governmental entities or legislative authorities relating to the protection of human health or the environment or natural resources or exposure to Hazardous Materials, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*; the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the federal Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 *et seq.*; the federal Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; the federal Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*; the federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act, 7 U.S.C. § 136 *et seq.*; the Federal Endangered Species Act, 16 U.S.C. § 1531, *et seq.*; the federal Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Federal Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; and the Occupational Safety and Health Act 29 U.S.C. § 651 *et seq.*; all state and local counterparts thereto; and any regulations, policies, permits, or approvals promulgated or issued thereunder, as these laws, rules and regulations were in the past or are currently in effect at the relevant time period. "**Hazardous Materials**" means any hazardous or toxic substance, material, waste, pollutant, or contaminant, whether in solid, semisolid, liquid or gaseous form, including without limitation, asbestos, polychlorinated biphenyls, petroleum, petroleum distillate, petroleum by-products, lead-based paint, mold, mycotoxin, fungus, and any material or substance listed or defined as "hazardous substance," "hazardous waste," "hazardous material," "toxic waste," or "toxic substance" under any Environmental Requirements.

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(2) To the best knowledge of Seller, during the period that Seller has owned the Property, there is not now nor has there been any storage, production, transportation, disposal, recycling, treatment or release of any Hazardous Materials on or in the Property. Seller has complied with all Environmental Requirements. To the best knowledge of Seller, there are no wells, sumps, clarifiers, underground storage tanks, covered surface impoundments, or other sources of Hazardous Materials or contaminants on the Property, or previously located on the Property and subsequently removed.

(3) To the best knowledge of Seller, prior to Seller's acquisition of the Property there was no storage, production, transportation, disposal, treatment or release of any Hazardous Materials on or in the Property, including but not limited to any underground storage tank, surface impoundment, lagoon or other containment facility for the storage of Hazardous Materials, or sumps, clarifiers, or on-site wells.

(4) To the best knowledge of Seller, there have been no Hazardous Materials on or in neighboring properties which, through soil or groundwater migration, could have moved to the Property.

(5) The Seller is not the subject of any outstanding order with or from any governmental authority respecting (i) Environmental Requirements, (ii) Remedial Action or (iii) any release or threatened release of a Hazardous Material. "**Remedial Action**" means all actions undertaken pursuant to or in accordance with Environmental Requirements to (w) clean up, remove, remediate, treat or in any other way address any Hazardous Material, (x) prevent the release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (y) perform

pre-remedial studies and investigations or post-remedial monitoring and care and (z) respond to or correct a condition of noncompliance with Environmental Requirements.

(6) Seller has not received any written or oral communication alleging that, with respect to the Property, Seller is in violation of any Environmental Requirement or is otherwise subject to liability under any Environmental Requirement.

(7) Seller has provided to Purchaser all audits, assessments, studies, reports, analyses, results of investigations or other information related to health, safety or the environment with respect to the Property that have been performed during Seller's ownership of the Property, or which relate to periods prior to Seller's ownership of the Property and have been provided to Seller.

(8) Seller will indemnify, defend and hold Purchaser harmless from any claims, damages, and liability of every kind, including all expenses of litigation and attorneys' fees, arising from (i) breach of any Seller representation or warranty; (ii) breach or default under any covenants or agreements set forth in this Contract; or (iii) or incurred under Environmental Requirements to address any release of Hazardous Materials for which Remedial Action is required by Environmental Requirements or any violation of Environmental Requirements.

(h) Condemnation. There is no pending or threatened condemnation or similar proceedings affecting the Property and Seller agrees it will not institute a condemnation or similar proceeding affecting the Property.

(i) Condition of Property. There are no material physical, structural, or mechanical defects in any part of the Property.

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(j) Utilities. The Property is served by water, storm and sanitary sewer, gas, electricity, and telephone supplied directly to the Property by facilities of public utilities. To Seller's actual knowledge, all such utilities are located within the boundaries of the Property or within lands dedicated to public use or within recorded easements for the same.

(k) Personal Property. There is no material personal property owned by Seller and used or associated with the Land.

(l) Documents. To the best knowledge of Seller, the Documents are true, correct and complete in all material respects (and without limitation, Seller has delivered to Purchaser, true, correct and complete copies of each lease and agreement affecting the property an all other material information respecting the Property within its possession or control).

(m) Untrue Statement. None of the representations, warranties or covenants made by Seller under this Contract contains any untrue statements of material fact or omits a material fact necessary in order to make the statements not misleading.

(n) Service Contracts. (i) True and complete copies of the Service Contracts have been delivered to Purchaser, (ii) the Service Contracts are free from default by either party, and (iii) there will be no contracts for services binding upon Purchaser or the Property following Closing except only the Service Contracts expressly approved and assumed by Purchaser pursuant to this Contract.

All of the representations and warranties contained in this Section are made by Seller both as of the Effective Date and as of the Closing Date, and will survive Closing for a period of 12 months thereafter.

EXHIBIT "A"

7. Closing Conditions: Purchaser's purchase of the Property is subject to satisfaction of the following conditions prior to Closing (collectively, the "**Closing Conditions**"):

(a) Representations and Warranties. All representations and warranties of Seller contained herein will be true, accurate and complete in all material respects at the time of Closing as if made again at such time.

(b) Seller Obligations. Seller will have performed all obligations to be performed by each hereunder on or before Closing (or, if earlier, on or before the date set forth in this Contract for such performance).

(c) Condition of Property. At Closing, title to the Property will be in the condition required by this Contract and the Title Company will deliver the Title Policy, or Title Company's irrevocable commitment to issue the Title Policy, to Purchaser.

(d) Suits or Proceedings. No action, suit or proceeding will be pending or threatened before any court, administrative agency or arbitrator wherein an unfavorable injunction, order, decree, ruling or charge would: (i) prevent consummation of this Contract; (ii) cause this Contract to be rescinded following consummation; or (iii) adversely affect the right of Purchaser after the Closing Date to own and control the Property.

(e) Ordinance. The Ordinance is effective and the time period set forth in NMSA 1978, Section 3-54-1 without a petition for a referendum election being filed has lapsed, or in the event a petition is properly filed and certified by the municipal clerk, then after the referendum election has occurred and the sale ordinance has been approved thereunder.

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(f) Plat of Subdivision. The Plat of Subdivision is in final recordable form and has been approved by the applicable governmental authorities.

If Purchaser determines, in Purchaser's sole direction, that any of the above Closing Conditions cannot be met to Purchaser's satisfaction prior to Closing (as defined in Section 8), then Purchaser may terminate this Contract by written notice to Seller, whereupon this Contract will be terminated, Seller will retain the Independent Consideration and the Earnest Money and the Extension Fee(s), if any, will be refunded to Purchaser, and thereafter neither Seller nor Purchaser will have any continuing rights or obligations hereunder other than Purchaser's indemnity of Seller as provided in Section 5.

Seller will join with Purchaser in executing any applications, plats, or related documents necessary to satisfy the Closing Conditions set forth in this Section, including without limitation, requests for zoning changes or other matters related to Purchaser's use of the Property; provided, however, that Purchaser will pay all fees and expenses incurred by Purchaser in attempting to satisfy said Closing Conditions.

8. Closing. The closing ("**Closing**") will take place at the offices of the Title Company on a date ("**Closing Date**") selected by Purchaser which is on or before the later of (i) ten (10) business days after the date that the Plat of Subdivision is in final recordable form and has been approved by the applicable governmental authorities, written notice of which Purchaser shall deliver to Seller and Title Company, and (ii) the date thirty (30) days after the expiration of the Inspection Period (as the same may be extended); provided, however, and notwithstanding the foregoing to the contrary, the Closing Date: (i) must be at least 45 days after the date of the Ordinance and (ii) must occur only after the expiration of the time period set forth in NMSA 1978, Section 3-54-1 (permitting a petition for referendum on the sale of the Property to be filed with the municipal clerk) without a petition being filed, or in the event a petition is properly filed and certified by the municipal clerk, then after the referendum election has occurred and the sale ordinance

approved thereunder, unless Purchaser terminates this Contract prior to such date in accordance with this Contract. Purchaser will notify Seller at least five (5) business days in advance of the exact Closing Date. If a petition for referendum on the sale of the Property is filed under NMSA 1978, Section 3-54-1, Seller shall immediately provide written notice of the same and a copy of the petition to Purchaser.

9. Seller's Obligations at Closing. At the Closing, Seller will furnish or deliver to Purchaser, at Seller's expense, the following:

(a) Deed. A general warranty deed covering the Property (the "**Deed**"), duly signed and acknowledged by Seller, which Deed will be in form acceptable to Purchaser, and will convey to Purchaser, its designee and/or its assigns good and indefeasible fee simple title to the Property free and clear of all liens, rights-of-way, easements, leases, and other matters affecting title to the Property, except for the Permitted Exceptions.

(b) Title Policy. An ALTA Owner's Policy of Title Insurance (with extended coverage) (the "**Title Policy**") issued by the Title Company, insuring good and marketable fee simple title to the Property in the Purchaser, in the amount of the Purchase Price, subject only to the Permitted Exceptions and the standard printed exceptions, except:

(i) Seller will comply with all Schedule B General Requirements (and equivalents) and such requirements will be removed;

(ii) All general exceptions will be removed;

(iii) The exception relating to standby fees and ad valorem taxes will except only to taxes owing for the current year and subsequent assessments for prior years due to change in Property usage or ownership;

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(iii) There will be no exception for rights of parties in possession or for visible or apparent roadways or easements not shown on the Survey; and

(iv) Purchaser may receive, at its expense, such other endorsements as may be permitted by applicable insurance regulations as Purchaser may desire.

(c) Non-Foreign Affidavit. A non-withholding statement that will satisfy the requirements of Section 1445 of the Internal Revenue Code so that Purchaser is not required to withhold any portion of the purchase price for payment to the Internal Revenue Service.

(d) Evidence of Authority. Such documents as may be reasonably required by Purchaser or the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the sale of the Property.

(e) Assignment of Additional Interests. An assignment of the Additional Interests in a form acceptable to Purchaser, free and clear of all liens, encumbrances, easements and other matters other than the Permitted Exceptions.

(f) Assignment and Assumption Agreement. Assignment and Assumption Agreement covering any of the Permits and any Service Contracts approved by Purchaser in a form acceptable to Purchaser, free and clear of all liens, encumbrances, easements and other matters other than the Permitted Exceptions (the "**Assignment and Assumption Agreement**");

(g) Originals. Originals of all of the Service Contracts;

(h) Other Documents. Such other documents as the Title Company may reasonably require to consummate this transaction.

(k) Possession. Possession of the Property shall be delivered at Closing. It shall be Seller's responsibility, at Seller's cost, to vacate all tenants occupying the Property prior to Closing. Seller shall remove any garbage, debris and waste from the Property prior to Closing.

10. Purchaser's Obligations at Closing. At the Closing, Purchaser will deliver to Seller, at Purchaser's expense, the following:

(a) Purchase Price. The Purchase Price.

(b) Evidence of Authority. Such documents as may be reasonably required by Seller or the Title Company evidencing the status and capacity of Purchaser and the authority of the person or persons who are executing the various documents on behalf of Purchaser in connection with the purchase of the Property.

(c) Assignment and Assumption Agreement. A counterpart of the Assignment and Assumption Agreement.

(d) Other Documents. Such other documents as the Title Company may reasonably require to consummate this transaction.

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11. Costs and Adjustments.

(a) Taxes and Closing Costs. All ad valorem taxes levied or assessed against the Property by applicable taxing authorities will be prorated between Purchaser and Seller on the basis of the latest available tax assessments. The apportionment of taxes will be upon the basis of (i) the tax rate for the current year of Closing (or the preceding year if the current year's statements are not available) applied to the latest assessed valuation, and (ii) if the Land is assessed as a part of a larger tax parcel, then taxes will be prorated based on the Land's percentage of the total land area included in the tax parcel; and adjustments in the prorations will be made if necessary upon receipt of the tax statements for the year of Closing, and both parties agree that payment of the amount of such adjustments will be made within 30 days of receipt of such tax statements for the year of Closing. If the Land is assessed as a part of a larger tax parcel, Seller will pay at Closing, or deposit in escrow with the Title Company, the prorata share of the taxes attributable to that portion of the tax parcel not constituting a part of the Land. Notwithstanding the foregoing, Seller will be responsible for and will indemnify Purchaser against any and all rollback taxes and other taxes assessed from and after Closing which are attributable to the period prior to Closing due to a change in land use, ownership or otherwise. If rollback taxes will be assessed, Seller will pay or escrow with the Title Company an amount determined by the Title Company to be sufficient for payment in full of the rollback taxes assuming a change in use at Closing. Seller and Purchaser will each be responsible for the fees and expenses of their respective attorneys, one-half of the escrow fees charged by Title Company and one-half of the Survey costs. Seller will pay for the costs of (i) the tax certificates, (ii) all documentary and other transfer taxes payable in connection with the recordation of the Deed; (iii) all recording fees; and (iv) the Title Policy. Purchaser will pay the premium for any endorsements Purchaser desires to obtain to the Title Policy. Any other expenses, charges and fees of Closing not otherwise specifically allocated herein or incurred by a specific party, will be borne by the parties in accordance with the general custom and practice in Dona Ana County, New Mexico, or if no such custom or practice exists, they will be borne equally between the parties, or as otherwise agreed to by the parties.

(b) Other Income and Expenses. All other income and ordinary operating expenses for or pertaining to the Property, including, but not limited to, public utility charges, maintenance and service charges and all other normal operating charges of the Property will be prorated as of the Closing Date; provided that Purchaser will not be obligated for payments under any management, service or other contractual agreements affecting the Property and the same will be terminated prior to Closing unless Purchaser expressly elects to assume the same.

(c) Adjustments. If any adjustments pursuant to this Section 11 are determined to be erroneous, then the party who is entitled to additional monies will invoice the other party for such additional amounts as may be owing, and such amounts will be paid within 20 days from the receipt of any such invoice; provided that no amounts may be so billed following the expiration of 1 year after the Closing Date, and either party may dispute any such claim.

12. Indemnification.

(a) Seller agrees to indemnify, defend and hold Purchaser harmless of and from any and all liabilities, claims, demands and expenses, of any kind or nature, including, but not limited to, court costs and attorneys' fees, arising or attributable to (i) the period prior to the Closing Date and which are in any way related to the ownership, maintenance or operation of the Property, and all expenses related thereto, and (ii) Seller's breach of the representations and warranties set forth in Section 6 of this Contract.

(b) Purchaser agrees to indemnify, defend and hold Seller harmless of and from any and all liabilities, claims, demands and expenses, of any kind or nature, including, but not limited to, court costs and attorneys' fees, arising or attributable to the period on or subsequent to the Closing Date and which are in any way related to the ownership, maintenance or operation of the Property, including, but not limited to, court costs and attorneys' fees. The terms set forth in this Section 12(b) shall survive Closing for a period of twelve (12) months.

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13. Destruction/No Condemnation of Property. If all or any portion of the Property is damaged or destroyed by any casualty after the Effective Date but prior to the Closing Date, Seller will have no obligation to repair or replace any damage or destruction caused by the foregoing, but the following will apply at the Closing: Seller will assign the insurance proceeds to Purchaser. Notwithstanding the foregoing, if such casualty is a "Material Event" (as defined below), then Purchaser may elect to terminate this Contract by written notice to Seller given on or before the Closing Date, and upon such termination, any Earnest Money and Extension Fees will be returned to Purchaser and the parties will have no further liability or obligation hereunder. As used in this Section, a "**Material Event**" means either of the following: (a) a casualty resulting in damage or destruction to the Property, if the cost to restore the Property to its condition immediately prior to such casualty is reasonably estimated to exceed $100,000.00; or (b) a casualty which would impede access to the Property, reduce available parking below that required by laws or any applicable agreements affecting the Property, or otherwise impede Purchaser's planned use of the Property. Seller agrees it will not institute a condemnation or similar proceeding affecting the Property.

14. Notices. All notices, demands or other communications of any type given by the Seller to the Purchaser, or by the Purchaser to the Seller, whether required by this Contract or in any way related to the transaction contracted for herein, will be void and of no effect unless given in accordance with this Section. All notices will be in writing and delivered to the person to whom the notice is directed, either in person, by overnight delivery service, electronic mail with confirmed receipt, or by mail as a registered or certified item, return receipt requested. Notices delivered by mail will be deemed given upon the date when deposited in a post office or other

depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed, and notices delivered by other means will be effective when received by the party to whom the same is addressed, and such notices will be addressed as follows:

Seller: The City of Las Cruces
Attn: Land Management Administrator_____
_____ [NEED STREET ADDRESS FOR NOTICES]
Las Cruces, NM 88044
Telephone: _____
Email: _____

Purchaser: BHD Land Development LLC
Attn: Steve Backman/Tracy Hammer
2425 E. Camelback Rd., Suite 2200
Phoenix, AZ 85016
Telephone: 602.510.8908
Email: sbackman@bhdevco.com; thammer@bhdevco.com

With a copy to: Daspin & Aument, LLP
Attn: Nicole Brown
300 W. Wacker Drive, Suite 2200
Chicago, IL 60606
Telephone: (312) 258-3760
Email: nbrown@daspinaument.com

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15. Remedies. If Seller fails to timely comply with all conditions, covenants and obligations hereunder, or if any of the representations and warranties of Seller contained herein are untrue, such failure or misrepresentation will be an event of default by Seller and Purchaser may (i) terminate this Contract by providing written notice of such termination to Seller, whereupon this Contract will be terminated, Seller will retain the Independent Consideration, the Earnest Money (including any Extension Fees) will be refunded to Purchaser, and Seller will reimburse Purchaser for its reasonable out-of-pocket expenses incurred in connection with this Contract and its due diligence during the Inspection Period, and thereafter neither Seller nor Purchaser will have any continuing rights or obligations other than Purchaser's indemnity of Seller as provided in Section 5 and/or (ii) exercise any rights or remedies as may be available to Purchaser at law or in equity, including but not limited to enforcing specific performance of this Contract. Notwithstanding anything to the contrary contained herein, an event of default by the Seller will not be deemed to have occurred unless and until Seller has failed to cure within 10 days of receipt of notice from Purchaser of such default.

If Purchaser fails to close the transaction contemplated hereunder, except due to a default by Seller and subject to the termination right set forth in Section 16, such failure will be an event of default by Purchaser ("**Purchaser Default**") and Seller, as its sole and exclusive remedy, may terminate this Contract and receive from the Title Company the Earnest Money (including any Extension Fees) deposited with the Title Company as liquidated damages. Notwithstanding anything to the contrary contained herein, a Purchaser Default will not be deemed to have occurred unless and until Purchaser has failed to cure within 10 days of receipt of written notice from Seller of such default. The Earnest Money is agreed upon by and between the Seller and Purchaser as liquidated damages due to the difficulty and inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof, and no other damages, rights or remedies will in any case be collectible, enforceable or available to the Seller against Purchaser, and the Seller will accept the Earnest Money as the Seller's total damages and relief, Seller hereby waiving any other rights or remedies

to which it may otherwise be entitled. The foregoing limitations will not apply to Purchaser's indemnities pursuant to Section 5.

16. Referendum Election Contingency**.** Seller and Purchaser acknowledge that if a referendum election is held pursuant to NMSA 1978, Section 3-54-1 and the Ordinance is disapproved under such election, Seller or Purchaser may terminate this Contract at any time after the date of such election, by delivering written notice of such termination to the other party, in which case this Contract shall terminate and be of no further force or effect, the Earnest Money and any Extension Fees will be refunded to Purchaser within five (5) days after delivery of the notice of termination, and the parties shall be forever released and discharged of any obligations under this Contract other than any obligations which expressly survive such termination.

17. Miscellaneous.

(a) Interpretation and Applicable Law. This Contract will be construed and interpreted in accordance with the laws of the state where the property is located and the jurisdiction and venue with respect to any disputes arising hereunder will be proper only in the city or county in which the Property is located. Where required for proper interpretation, words in the singular will include the plural; the masculine gender will include the neuter and the feminine, and vice versa. The terms "successors and assigns" will include the heirs, administrators, executors, successors and permitted assigns, as applicable, of any party hereto. Time is of the essence in this Contract in all respects. Seller has complied or will comply with the requirements of the Las Cruces Municipal Code and New Mexico state statutes in connection with its obligations under this Contract. Any liability of Seller under this Contract is subject to the immunities and limitation of the New Mexico Tort Claims Act.

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(b) Amendment. This Contract may not be modified or amended, except by an agreement in writing signed by the Seller and the Purchaser. Each party may waive any of the Contract's conditions or obligations of the other party, but any such waiver will be effective only if in writing and signed by the party waiving such conditions and obligations.

(c) Attorneys' Fees. If it becomes necessary for either party to file a suit to enforce this Contract or any terms contained herein, the prevailing party may recover, in addition to all other remedies or damages, reasonable attorneys' fees and costs of court incurred in such suit.

(d) Descriptive Headings. The descriptive headings of the several sections contained in this Contract are inserted for convenience only and will not control or affect the meaning or construction of any of the terms hereof.

(e) Entire Agreement. This Contract (and the items to be furnished in accordance herewith) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Contract will be binding upon the parties hereto or will affect or be effective to interpret, change or restrict this Contract.

(f) Multiple Originals and Counterparts; Electronic Documents. This Contract may be executed in any number of copies and counterparts, each of which will be deemed an original and all of which counterparts together will constitute one agreement with the same effect as if the parties had signed the same signature page. This Contract and related documents may be executed by electronic copy, including DocuSign, unless otherwise specifically provided for herein or if an original is required by local custom or law.

(g) Real Estate Commission. Except for KBC Advisors (the "**Broker**") to whom Seller will pay a commission equal to 5% of the Purchase Price (the "**Commission**") pursuant to a separate written agreement, each party represents and warrants to the other that no broker or finder is connected with or has been engaged by it in connection with any of the transactions contemplated by this Contract. Seller will be obligated to pay any and all commissions or fees which may be due Broker in connection with the transactions contemplated herein. In the event of a claim for any other broker's or finder's fee or commissions in connection herewith, each party will indemnify the other against any such claims made based upon any act, statement, or agreement alleged to have been made by the indemnifying party.

(h) Confidentiality. Seller will not, without the prior written consent of Purchaser, make any public announcement about the purchase and sale transaction contemplated hereby or of any of the terms or conditions hereof, including without limitation, the Purchase Price, or the results of any inspection, test, survey, or study conducted by Purchaser pursuant to this Contract. Seller will not transmit any of the information contained in this Contract or any document obtained by Seller or Purchaser in connection with this Contract to any third party except Seller's counsel, consultants, lenders, and other advisors engaged to help Seller in connection with the sale of the Property pursuant to this Contract (collectively, the "**Permitted Parties**"), on a need-to-know basis, provided such Permitted Parties are advised of the confidentiality and nondisclosure obligations of Seller and agree to be bound thereby. Seller agrees to indemnify and hold Purchaser harmless from and against any loss, injury, damage, claim, lien, cost or expenses, including attorneys' fees, arising from a breach of the foregoing confidentiality agreement. The covenants set forth in this Section will survive the termination of this Contract or Closing.

(i) Exclusivity. Between the Effective Date and the Closing Date (or earlier termination of this Contract as provided herein), Seller will not negotiate, or enter into, any agreement pertaining to the sale, exchange, lease or transfer of all or any portion of the Property to any person or entity other than Purchaser or its assigns.

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(j) Assignment. Purchaser may, at its option and at any time during this Contract, assign this Contract without the consent of Seller.

(k) Effective Date. All references in this Contract to the "**Effective Date**" will mean the later of the dates upon which Seller and Purchaser execute this Contract as set forth on the signature page below.

(l) Legal Holidays. Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Contract falls on a Saturday, Sunday or federal legal holiday, then such date will be extended to the next following date which is not a Saturday, Sunday or federal legal holiday.

(m) Binding Effect. This Contract will be binding upon and will inure to the benefit of the parties hereto and their successors and assigns.

(n) Waiver of Consequential Damages. Notwithstanding any provision in this Contract to the contrary, neither party will be liable to the other party for consequential damages, such as lost profits or interruption of the other party's business, except that this sentence will not apply to Seller's breach of its confidentiality obligations under this Contract.

(o) Waiver of Jury Trial. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF SELLER AND PURCHASER WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN SELLER AND PURCHASER ARISING OUT OF THIS

CONTRACT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

(p) Anti-Corruption. Seller will not knowingly permit anyone to pay bribes to anyone for any reason, whether in dealings with governments or the private sector, or otherwise violate any applicable anti-corruption laws in performing under this Contract. Seller will maintain true, accurate and complete books and records concerning any payments made to another party by Seller under this Contract, including on behalf of Purchaser. Purchaser and its designated representative may inspect Seller's books and records to verify such payments and for compliance with this Section.

[Signature Page to Follow]

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EXHIBIT "A"

EXECUTED to be effective as of the Effective Date.

SELLER:

THE CITY OF LAS CRUCES,
a New Mexico municipal corporation

By: _____
Name: _____
Title: _____
Date Signed: _____

PURCHASER:

BHD LAND DEVELOPMENT LLC,
an Arizona limited liability company

By: _____
Name: _____
Title: _____
Date Signed: _____

DRAFT

RECEIPT OF ONE (1) EXECUTED COUNTERPART OF THIS CONTRACT IS HEREBY ACKNOWLEDGED:

TITLE COMPANY:

Chicago Title Insurance Company

By: _____
Name: _____
Its: _____
Effective Date: _____

EXHIBIT “A”

EXHIBIT “A”

LEGAL DESCRIPTION

DRAFT

This report is made following my on-site inspection, and an investigation into recent pertinent market information, primarily sales data of properties exhibiting legal, physical, locational, and economical characteristics judged to be similar to the subject.

"As Is" Market Value

After considering the merits of the data and information contained within our files, and the application of conventional appraisal approaches, I estimate the "as is" individual Market Value for each of the 27 subject parcels, as of March 28, 2023, to be as presented in the following table:

City Property No.	Map Code	Street Location	Size (Ac.)	Value Indication per Acre	Final Value Estimate (R)
I-1	3002138374410	S. Crawford Blvd.	88.18	$9,360	$825,365
I-2*	3002138187440	S. Crawford Blvd.	82.75*	$10,400	$860,600
I-3	3002138489311	S. Crawford Blvd. & Venture Dr.	10.26	$35,000	$359,100
I-4	3003138134441	Advancement Ave.	112.20	$9,880	$1,108,500
I-5	3003138403248	Robert Larson Blvd., Rea Blvd. & Advancement Ave.	104.06	$10,036	$1,044,350
1-6	3003138260224	Rea Blvd.	4.28	$38,500	$164,800
I-7	3003138171263	Rea Blvd. & Alliance Dr.	11.20	$35,000	$392,000
I-8	3003138175211	Industrial Park Ave., Rea Dr. & Alliance Dr.	11.20	$35,000	$392,000
I-9	3003138173153	Industrial Park Ave., Rea Dr. & Alliance Dr.	7.80	$35,000	$273,000
I-10	3003138168110	Rea Dr. & Alliance Dr.	8.82	$35,000	$308,700
I-11	3003138167061	Robert Larson Blvd. & Rea Blvd.	15.30	$36,225	$554,250
I-12	3003138075151	Alliance Dr.	7.14	$35,000	$249,900
I-13	3003138077110	Alliance Dr.	7.80	$35,000	$273,000
I-15	3003137293442	North Frontage Rd.	66.29	$11,440	$758,360
I-16	3003137408396	Armory Rd.	5.05	$35,000	$176,750
1-17	3003137162287	Easement off of N. Crawford Blvd.	90	$9,360	$842,400
I-18	3002137426366	N. Frontage Rd. Harry Burrel Blvd. & Rocket Dr.	28.86	$12,480	$360,175
I-19	3002137442277	Harry Burrel Blvd. & Rocket Dr.	3.36	$35,000	$117,600
I-20	3002137450234	Harry Burrel Blvd.	3.16	$35,000	$110,600
I-21	3002137418212	Harry Burrel Blvd.	3.00	$35,000	$105,000

NON-RESIDENTIAL
RESTRICTED APPRAISAL REPORT

This is a Non-Residential Restricted Appraisal Report which complies with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice. As such, it does not present discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's working file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser in not responsible for unauthorized use of this report.

SUBJECT: Appraisal of Two Tracts of Vacant Land, Legally Described as LOTS A-3 and A-5 WEST MESA INDUSTRIAL PARK No. 26, Replat No. 1, located at 431 and 401 Alliance Dr., Las Cruces Innovation and Industrial Park, Las Cruces, Dona Ana County, NM. LOTS A-3 and A-5 contain 8.8264 acres and 8.7039 acres, respectively, totaling 17.5303 acres.



CLIENT: City of Las Cruces, PO Box 20000 Las Cruces NM 88004

INTENDED USE: To meet Las Cruces Municipal Code requirements in assisting the intended users in facilitating a real estate purchase agreement between the City of Las Cruces and BHD Land Development LLC for the subject property.

INTENDED USER: City of Las Cruces and BHD Land Development LLC

PROPERTY RIGHTS: Fee Simple

TYPE OF VALUE: Market Value

DEFINITION OF MARKET VALUE: Although the appraisal communicated in this report was not prepared for a financial institution, the definition of market value specified in regulations pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) has been use in this assignment.

CONDITIONS OF APPRAISAL: The appraisal was performed "as is"; no extraordinary assumptions or hypothetical conditions were used.

SALE AND LISTING HISTORY: The subject property is pending Las Cruces City Council consideration for a sale to a private party for development that is in alignment with the Las Cruces Innovation and Industrial Park Master Plan. The property has not been sold within the past three years and is under contract for a reported $581,700.

SCOPE OF WORK: The scope of this assignment is to prepare a **appraisal report** supporting an "as is" market value for the subject property. In preparing this appraisal, the appraiser:

- reviewed prior appraisals on the subject property;
- conducted an on-site inspection of the subject property;
- gathered information on the subject's market area;
- gathered and confirmed information on comparable sales;
- as detailed below, applied the Sales Comparison to value. The Income Approach and Cost Approach were not applicable due to the subject being vacant land with a Highest and Best Use of future Industrial development. Exclusion of these approaches does not limit the credibility of the conclusion in this report. Documentation of the analysis performed on this property remains in the appraiser's work file.
- reconciled the pertinent data to arrive at a final value estimate

To develop the opinion of value, the appraiser performed a complete appraisal process, as defined by the Uniform Standards of Professional Appraisal Practice. This means that no departures from Standard 1 were invoked.

OPINIONS AND CONCLUSIONS

HIGHEST AND BEST USE: Future mix-use Industrial development

EXPOSURE TIME: Approximately 12 months

EFFECTIVE DATE: April 25, 2023

RESULT OF APPROACHES TO VALUE:

SALES COMPARISON	$580,000
INCOME APPROACH	N/A
COST APPROACH	N/A

RECONCILIATION: Since the subject property is a vacant tract of land with a Highest and Best Use of future development, only the Sales Comparison Approach is applicable to this analysis. The supporting documentation for the analysis and development of the Sales Comparison Approach is retained in the appraiser's work file.

OPINION OF MARKET VALUE: $600,000

ASSUMPTIONS AND LIMITING CONDITIONS:

This Appraisal is subject to the following conditions and to such other specific and limiting conditions as set forth in the report.

- The distribution of the total valuation in this report between land and improvements, if any, applies only under the reported highest and best use of the property. The allocations of value for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.

- The legal description used in this report is assumed to be correct.

- No responsibility is assumed for matters of a legal nature affecting the property appraised or the title thereto, nor is an opinion of title rendered. All mortgages, liens, encumbrances, leases and servitudes have been disregarded unless so specified within the report. Unless otherwise stated in the report, it is assumed that the title of the subject property is in fee simple under single ownership and is good and marketable. The property is appraised as though under responsible ownership and competent management.

- Information, estimates, and opinions furnished by others were obtained from sources considered reliable and believed to be true and correct. A reasonable effort has been made to verify such information. However, no responsibility for accuracy of such items is assumed by the appraiser.

- It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover such factors.

- Full compliance with all applicable federal, state, and local environmental regulations and laws is assumed unless non-compliance is stated, defined and considered in the appraisal report.

- Applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined and considered in the appraisal report.

- All required licenses, consents or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

- Utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted within this report.

- This appraisal is subject to review upon presentation of data which might later be made available, undisclosed or not available at this writing.

- The appraiser is not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraiser that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The appraiser's value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraiser's descriptions and resulting comments are the result of the routine observations made during the appraisal process.

- Mortgage financing, if any, is assumed to be available for the project.

- Upon acceptance of this report, the Assumptions and Limiting Conditions set forth herein have been agreed to by the client and the appraiser.

CERTIFICATION:

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

- I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment

- My engagement in this assignment was not contingent upon developing or reporting predetermined results.

- My compensation for completing this assignment is not contingent upon the reporting

of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

- My analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant professional assistance to the person signing this certification.
- As of the date of this report, I have completed the requirements of the continuing
- education program of the State of New Mexico Real Estate Appraisers Board.

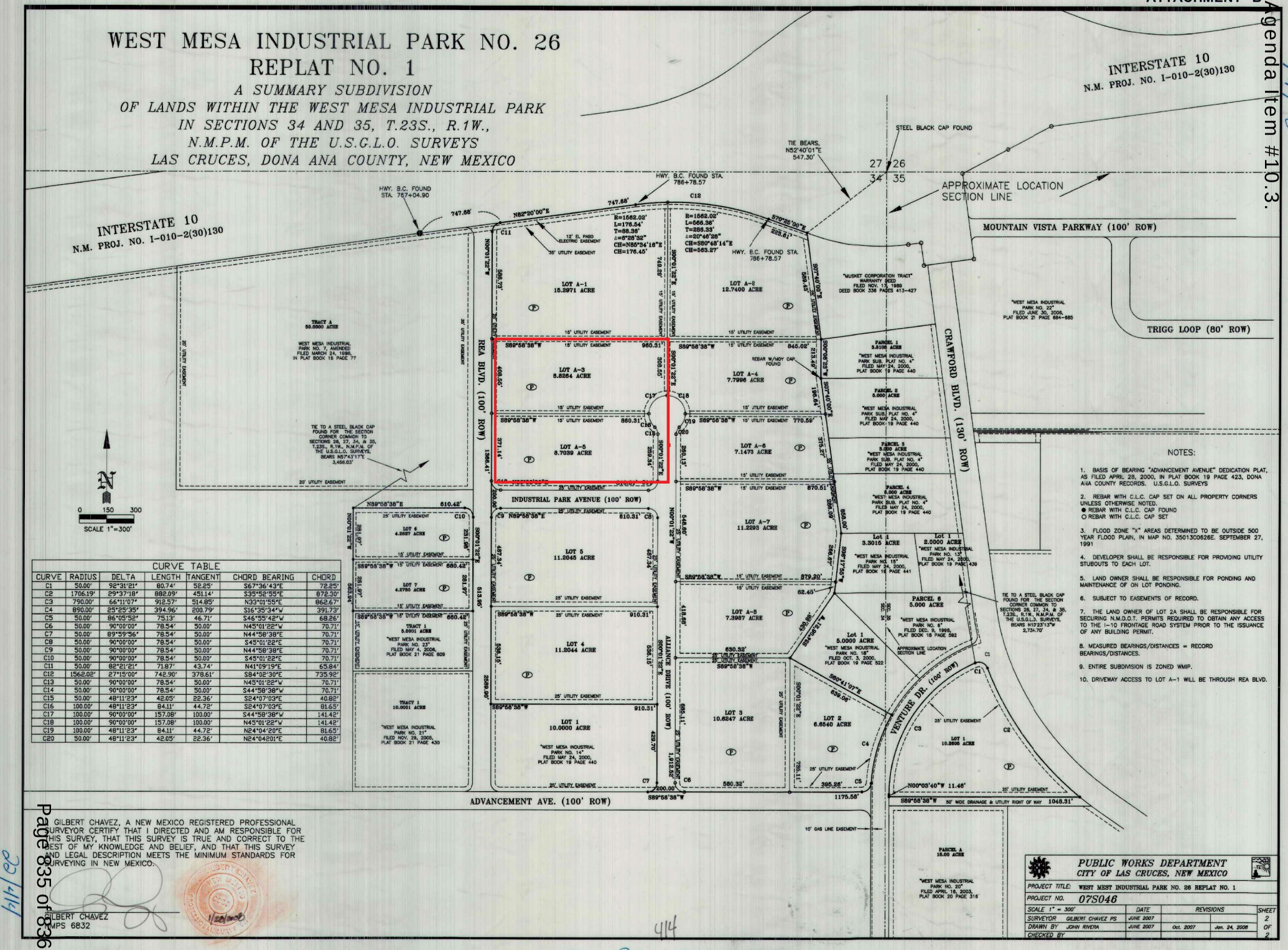
Respectfully submitted,



William “Bill” R. Hamm, NM #1300-G May 10, 2023

WEST MESA INDUSTRIAL PARK NO. 26
REPLAT NO. 1

A SUMMARY SUBDIVISION
OF LANDS WITHIN THE WEST MESA INDUSTRIAL PARK
IN SECTIONS 34 AND 35, T.23S., R.1W.,
N.M.P.M. OF THE U.S.G.L.O. SURVEYS
LAS CRUCES, DONA ANA COUNTY, NEW MEXICO



CURVE TABLE

CURVE	RADIUS	DELTA	LENGTH	TANGENT	CHORD BEARING	CHORD
C1	50.00'	92°31'21"	80.74'	52.25'	S67°36'43"E	72.25'
C2	1706.19'	29°37'18"	882.09'	451.14'	S35°52'55"E	872.30'
C3	790.00'	66°11'07"	912.57'	514.85'	N33°01'55"E	862.67'
C4	890.00'	25°25'35"	394.96'	200.79'	S16°35'34"W	391.73'
C5	50.00'	86°05'52"	75.13'	46.71'	S46°55'42"W	68.26'
C6	50.00'	90°00'00"	78.54'	50.00'	N45°01'22"W	70.71'
C7	50.00'	89°59'56"	78.54'	50.00'	N44°58'38"E	70.71'
C8	50.00'	90°00'00"	78.54'	50.00'	S45°01'22"E	70.71'
C9	50.00'	90°00'00"	78.54'	50.00'	N44°58'38"E	70.71'
C10	50.00'	90°00'00"	78.54'	50.00'	S45°01'22"E	70.71'
C11	50.00'	82°21'21"	71.87'	43.74'	N41°09'19"E	65.84'
C12	1562.02'	27°15'00"	742.90'	378.61'	S84°02'30"E	735.92'
C13	50.00'	90°00'00"	78.54'	50.00'	N45°01'22"W	70.71'
C14	50.00'	90°00'00"	78.54'	50.00'	S44°58'38"W	70.71'
C15	50.00'	48°11'23"	42.05'	22.36'	S24°07'03"E	40.82'
C16	100.00'	48°11'23"	84.11'	44.72'	S24°07'03"E	81.65'
C17	100.00'	90°00'00"	157.08'	100.00'	S44°58'38"W	141.42'
C18	100.00'	90°00'00"	157.08'	100.00'	N45°01'22"W	141.42'
C19	100.00'	48°11'23"	84.11'	44.72'	N24°04'20"E	81.65'
C20	50.00'	48°11'23"	42.05'	22.36'	N24°04201"E	40.82'

NOTES:

1. BASIS OF BEARING "ADVANCEMENT AVENUE" DEDICATION PLAT, AS FILED APRIL 28, 2000, IN PLAT BOOK 19 PAGE 423, DONA ANA COUNTY RECORDS. U.S.G.L.O. SURVEYS
2. REBAR WITH C.L.C. CAP SET ON ALL PROPERTY CORNERS UNLESS OTHERWISE NOTED.
   ● REBAR WITH C.L.C. CAP FOUND
   ○ REBAR WITH C.L.C. CAP SET
3. FLOOD ZONE "X" AREAS DETERMINED TO BE OUTSIDE 500 YEAR FLOOD PLAIN, IN MAP NO. 35013C0626E. SEPTEMBER 27, 1991
4. DEVELOPER SHALL BE RESPONSIBLE FOR PROVIDING UTILITY STUBOUTS TO EACH LOT.
5. LAND OWNER SHALL BE RESPONSIBLE FOR PONDING AND MAINTENANCE OF ON LOT PONDING.
6. SUBJECT TO EASEMENTS OF RECORD.
7. THE LAND OWNER OF LOT 2A SHALL BE RESPONSIBLE FOR SECURING N.M.D.O.T. PERMITS REQUIRED TO OBTAIN ANY ACCESS TO THE I-10 FRONTAGE ROAD SYSTEM PRIOR TO THE ISSUANCE OF ANY BUILDING PERMIT.
8. MEASURED BEARINGS/DISTANCES = RECORD BEARINGS/DISTANCES.
9. ENTIRE SUBDIVISION IS ZONED WMIP.
10. DRIVEWAY ACCESS TO LOT A-1 WILL BE THROUGH REA BLVD.

I, GILBERT CHAVEZ, A NEW MEXICO REGISTERED PROFESSIONAL SURVEYOR CERTIFY THAT I DIRECTED AND AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT THIS SURVEY AND LEGAL DESCRIPTION MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.

GILBERT CHAVEZ
NMPS 6832

1/28/2008

PUBLIC WORKS DEPARTMENT
CITY OF LAS CRUCES, NEW MEXICO

PROJECT TITLE:	WEST MEST INDUSTRIAL PARK NO. 26 REPLAT NO. 1			
PROJECT NO.	07S046			
SCALE 1" = 300'	DATE	REVISIONS		SHEET
SURVEYOR GILBERT CHAVEZ PS	JUNE 2007			2
DRAWN BY JOHN RIVERA	JUNE 2007	Oct. 2007	Jan. 24, 2008	OF
CHECKED BY				2

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T23S R1W SEC 34 & 35

ATTACHMENT "C"

