

CITY COUNCIL AGENDA

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

Monday, May 1, 2023 at 1:00 PM

Council Chambers



City of Las Cruces®

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

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

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

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.

Page

1. OPENING CEREMONIES

- 1.1. Pledge of Allegiance - Councilor Corran.
- 1.2. Pets of the Week.
- 1.3. Jobs of the Week.
- 1.4. Presentation of Certificates of Appreciation/Proclamations - Councilor Corran.

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

3. PUBLIC PARTICIPATION

4. READ CLOSED MEETING STATEMENT

- 4.1. Read April 17, 2023, Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

- 6.1. Work Session of March 27, 2023. 5 - 22
[Work Session - Mar 27 2023 - Minutes - Pdf](#)
- 6.2. Regular City Council Meeting of April 3, 2023. 23 - 59
[City Council - Apr 03 2023 - Minutes - Pdf](#)

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 60 - 64
[Resolution No. 23-116 - Pdf](#)
- 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. 65 - 74
[Resolution No. 23-117 - Pdf](#)
- 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. 75 - 84
[Resolution No. 23-118 - Pdf](#)

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. 85 - 119
[Resolution No. 23-119 - Pdf](#)
- 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. 120 - 149
[Resolution No. 23-120 - Pdf](#)
- 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. 150 - 158
[Resolution No. 23-121 - Pdf](#)
- 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. 159 - 259
[Resolution No. 23-122 - Pdf](#)

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.

10. **BOARD APPOINTMENTS**

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. COUNCIL BILL NO. 23-025; ORDINANCE NO. 3031: AN ORDINANCE 260 - 366
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.

[Ordinance No. 3031 - Pdf](#)

- 11.2. COUNCIL BILL NO. 23-026; ORDINANCE NO. 3032: AN ORDINANCE 367 - 544
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.

[Ordinance No. 3032 - Pdf](#)

- 11.3. COUNCIL BILL NO. 23-027; ORDINANCE NO. 3033: AN ORDINANCE 545 - 635
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.

[Ordinance No. 3033 - Pdf](#)

- 11.4. COUNCIL BILL NO. 23-028; ORDINANCE NO. 3034: AN ORDINANCE 636 - 687
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.

[Ordinance No. 3034 - Pdf](#)

- 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.

688 - 739

[Ordinance No. 3035 - Pdf](#)

12. **CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT**
13. **CITY MANAGER REPORT**
14. **ADJOURNMENT**

City of Las Cruces
MINUTES

Work Session

Monday, March 27, 2023 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Johana Bencomo, and Councilor Becki Graham

ABSENT: Councilor Tessa Abeyta, Councilor Yvonne Flores, and Councilor Becky Corran

1. PETS OF THE WEEK

1.1

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

2. JOBS OF THE WEEK

2.1

Irene Parra, Economic Development presented Jobs of the Week.

3. AGENDA ITEM

3.1 9-1-1, 988, LIGHT COLLABORATION.

Hugo Costa, MVRDA gave the overhead presentation.

Councilor Bencomo said I was hoping to see perhaps see the similar graph, flowchart for how your dispatchers are then determining calls that come to 911 that will go to Project LIGHT. That is something that I would be really interested in understanding how that would work and where Project LIGHT could really fit in a lot of these in-betweens that you are saying no, we are not transferring to 988, yet I feel that could potentially go to Project LIGHT instead.

Hugo Costa said this is the chart that we started the program with and this is the chart we continue with. Our weekly meeting that I had told you about that we are meeting with 988, the Crisis Triage Center and we have brought in Project LIGHT recently at last month. Our meetings have tweaked that. One of the tweaks that we have made is in addition to these automatic no dispatch and the ones to consider dispatch we decided to take a more proactive approach and we looked at over 300 different call types that we have and we did this in coordination with 988 and the Crisis Triage Center. We went down and we were able to pull out like 16 different call types that

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weren't these call types. I will give you an example. One is an incorrigible child to dispatch. We looked at those, we went and we pulled out several months of call data to specifically look at when somebody calls with an incorrigible child, what is going on in the background? For that type code we determined, you know what this is a type code that law enforcement will not respond to and this is something that EMS sometimes responds to because the parents are just totally not able to control the situation. In discussion this is a perfect example of a call that could go to 988. So, we have then looked at it and taken 8 of those type codes and now in our flowchart for the dispatchers when they are doing the interrogation at the end of the flowchart now proactively telling them consider sending this call to 988. As far as Project LIGHT goes, they have very specific type codes that they are going to respond to, behavioral health is one of them. The list that the Battalion Chief went over with you when he did the Work Session with you is now integrated into our computer with dispatch. When that type code comes up it is an automatic now for Project LIGHT to go to those calls and in working with 988 Crisis Triage Center and Project LIGHT we are looking to the future to the future to even possibly expanding that. Project LIGHT is only a month old we are not going to overload them with anything right now.

Councilor Bencomo asked the codes that you are now using for this flowchart I feel that there would be an additional one under yes around what is now going to go to Project LIGHT? Perhaps its Project LIGHT and law enforcement. Who is going and who is playing a lead on that call? I really believe in crisis intervention. I believe that model works to save lives, I have been having great conversations with Director Michaels and at the end of the day a behavioral health call is not a crime, right? Someone who is suffering through a behavioral health episode that is not inherently a crime. I am trying to figure out the process for how Project LIGHT will be tapped into and you are saying that those codes, those came directly from leadership at Project LIGHT?

Hugo Costa said yes. I believe that there are five different codes that they gave us we want to be dispatched always to these types of calls and we have been doing that since the 6th now. As far as MVRDA goes we have always had the philosophy that as Project LIGHT develops and as it gets established, I am sure they are going to look at their data and say maybe these types of codes that we want to be dispatched to. We are fully on board with that. Right now, we are going with the protocol that they gave us and we have been following that.

Councilor Bencomo said I think that is really helpful for me to see how that process is going to play out. I think this is a big culture shift for dispatch I imagine, and so you are having dispatchers that perhaps that have been there for years who have been trained to do this job one way and now are being asked to look at their job differently. The more that we build up the system the more comfortable and the more confident dispatchers will become in order to determine how to code a call. When you are talking about behavioral issues, that is very broad. How are you defining that?

Hugo Costa said you are right the hardest part of the whole process in transition to 988 and even before when we were working with the New Mexico Crisis Line is the paradigm shift for the dispatchers. Dispatch is a very type A personality people. They

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are there to take control of the call and to make decisions as to what needs to be dispatched out. That has definitely been a challenge. Through training and through little tweaks in the protocol we have tried to break that barrier but it has been difficult one. It is not just MVRDA it is nationwide. It has been an issue to getting dispatchers to agree with that. With all things new it is going to take time to get that paradigm shift. The older ones are more set in their ways. As far as your second question, what does behavioral health entail? A lot of things. What happens is when we do the mental interrogation the questions go through a flowchart. It will ask questions if there is violence, if they are on medications, a lot of different questions and then at the end that will help the dispatcher decide what are the resources to send to the call. It is all done in the background of the software that we use. But it is not uncommon that a lot of dispatch centers throughout the country have maybe 3-4 type codes only that deal with behavioral health issues.

Wendy Linebrink-Allison, New Mexico Crisis Line said I am so thankful that Councilor Bencomo mentioned that it is not a crime to request services because you are experiencing mental health you shouldn't necessarily have to go through the behavioral health system and is looking to understand how to better support people that are reaching out to 911, that are experiencing mental health concerns in a different manner and the Crisis Now Response System of care that myself, Corina from RI Crisis Triage and Center the RI Mobile Crisis team and Jamie Michaels of the Dona Ana County Health and Human Services team are working on is a way to ensure that we are creating a different type of response for people with behavioral health needs and as Mr. Costa mentioned change takes time and not only for call takers but people. Right now the people know that when they need support and they are in crisis they call 911. So it is up to all of us as a community to ensure that we are making sure people understand that when they are having a mental health or emotional or behavioral crisis that they can reach out to 988 and to try to find additional pathways in our 911 system to get those engagements streamlined from 911 to 988 because the Crisis Triage Center does have a mobile crisis team that is dispatched through the 988 Crisis Center and I would like to also ensure that we are not just looking at Project LIGHT dispatches that are made through 911 but also taking the public safety aspect out of it completely and putting behavioral health professionals into the field from the Crisis Triage Center that could be dispatched to people through the 988 system. If we can strengthen the engagements to getting 911 to transfer those calls over to 988 to get a behavioral health response to those people.

Councilor Bencomo asked I had a similar question on regard to the broadness of it around unusual behavior and how you're defining that?

Hugo Costa said unusual behavior is subjective to what the dispatcher is hearing and getting information from the caller. For example, a third party calls and says there an elderly gentleman that is walking down the middle of the road. I think everybody would agree that is unusual behavior. People usually don't walk down the middle of the road. Anything that would be considered out of the norm, something that you don't normally hear that people are doing that don't hear that is occurring. As far as behavioral health calls, it basically falls on the dispatcher to be able to listen to what the caller is saying. Sometimes it involves background information that they are hearing from other parties in the background or ambient noise in the background as to what is going on. Then

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they have to make that determination. It is not the only criteria that they use. The other criteria that they use are there known weapons, drug use, different things like that.

Councilor Bencomo asked what would you feel like you need that we could support you with to help make this transition easier? While I know it takes time I also feel that the risk is big and what is at stake here are lives and really moving and taking ownership of this kind of model is critical.

Hugo Costa said I can't tell you what dispatch would need to accomplish what you are saying. I can tell you what we are doing to try and accomplish it. Part of the solution that we thought was very important from day one was this really strong quality assurance system and what we do is we have been pulling all these calls. All the behavioral health calls, all the suicidal ideation suicidal attempt calls and they have been scrutinized by quality assurance. Quality assurance goes through and listens to the audio, they look at the video of the actual data entry, they read the printed copies of the dispatch report. There is certain criteria that they are looking for to see if it was accomplished. The dispatchers or call takers that did that call are brought in and the case call is reviewed with them and one of the things that our quality assurance tries to do is get in the head of that call taker or dispatcher by having them listen to the call, read it and say why did you determine this? Why did you understand that XYZ was happening. That has been a great help to us. We are always looking to tweak the protocol and I think by being partners with both the 988, Crisis Triage Center and Health Department we get some input from them also on how to tweak it. Physically like I said I don't know if there is anything I could say that we need XYZ in front of us because I think our dispatchers get a lot of training. Unfortunately, I think the answer is, it is going to take time getting through the QA process and thinking back on the next call that comes thinking this is what I should have done on the previous call and learning through that. If you look nationwide it has been growing pains with the whole behavioral health and 988 and to be honest with you most of the dispatch centers in the state of New Mexico are not doing what we are doing. I think there is more liability if you dispatch something out that could have gone to 988 and something goes wrong then it is to not dispatch and transfer to 988 because I think a lot of the other centers are hesitant to transfer to 988 because they have perceived liability issues which I personally don't see.

Councilor Bencomo said Wendy, you as the 988 Program Manager could talk about what you see are needed with dispatch centers, ours particularly and also while I am on the microphone will you go to the graph where you had the calls that could have been transferred to 988. I am wondering Wendy if you could talk about these numbers and what you are seeing on your end.

Wendy Linebrink-Allison said in my perspective and one of the things that I have shared with Hugo is that when I hear the conversations about your doing quality reviewing and you are talking to them about why didn't you transfer that or this would have been a good call to have transferred. One of the suggestions I made in one of the recent weekly meetings is that rather than laying the responsibility upon the call taker to make the decision embedding it into the workflow of decisions that they have

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in their system that says if this then this. It is very clear to the call takers to make those changes and make those determinations so it is not them feeling like maybe I should, maybe I shouldn't uncertainty but the system is telling them that this is a good call for 988 to be engaged with. Whether it is engagement with Public Safety or engagement instead of public safety and I think that would be a huge benefit if the software was developed and updated to reflect those changes. That is one of my first thoughts is that you take out the human factor where people are hesitant to make the wrong decision.

Councilor Bencomo asked when you are saying that software does not exist currently?

Wendy Linebrink-Allison said the software does exist, Dispatch Authority from what I understand from our conversations with Hugo it would be just a matter of them needing to make additional programming changes within it.

Hugo Costa said behind the scenes in the software there is the algorithm that the dispatcher doesn't see. They just see the questions that they are asking and depending on the answer the program will jump. In the back of the algorithm there is an opportunity to add things in. We are exploring that right now with the software vendor but the issue is it is going to be a complicated process because if we are going to add 988 as something at the end of that tree we want to make sure we don't break something in the path and something that should have gone to dispatch for example is now broken and goes the other way. It is something that we are looking into doing but is not going to be a quick or easy fix. It is definitely something that is down the road but we did start the process about reaching out to the vendor about cost and for development and engineering.

Councilor Bencomo said will you keep the City Manager informed about that because that is something I would be interested in supporting if I came down to funding if you needed that.

Wendy Linebrink-Allison said the decision tree is something that has been implemented in other communities throughout the nation. Hugo mentioned I think that a decision tree that lends to why did you dispatch Public Safety instead of 988 and a critical instance occurred as a result of that decision which could have been avoided by transferring to 988 is a positive thing to work towards. So, with that we can make sure that we are getting the right people at the right time to engage with the situation that is occurring because sometimes all they need is a conversation which is what our mental health counselors offer. 988 is a lot different than 911, in a sense that our primary goal is to try to deescalate the situation on the call rather than just a determination of who should go to that person. We have decision trees in our processes that determine, are you able to support this call right now? Or if there is a higher level of need or is there a higher risk of need due to medical necessity? Or weapons and other physical violent risks? Then that is when we escalate up to Public Safety responses to make sure that we are looking at how do we get the right people at the right time for their specific situation. I am really feeling relief hearing you

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councilor talk about wanting the desire to continuing to move this forward, so thank you.

Councilor Bencomo said I think now we are in a good place in providing options. We have 988. We have Project LIGHT. We have the 911 system and I think for me the vision is to go deeper on this flowchart and determine what goes only to 988 and what will go to Project LIGHT. When is law enforcement truly necessary and we are talking in the context of behavioral health. I think often when someone is experiencing behavioral health issue the presence of law enforcement in uniform can escalate the situation and now we have Project LIGHT, these trained professionals, EMS folks, fire who are incredibly trusted in our community right with the ability to show up and potentially defuse the situation. I think we are in a really good place and I want us to take full advantage of this environment that we are in and invest in it, fund it and also just really think about the strategy in which we want it to operate.

Councilor Graham asked when we are looking at those behavioral calls and adding in suicidal ideation attempt, ballpark how many of those are unique callers and how many are repeat callers or what we might think of as frequent utilizers?

Hugo Costa said I can't tell you off hand how many of those numbers are the frequent utilizers, but they are significant. One of the most frustrating thing for the dispatcher is dealing with those callers and a lot of those callers have their favorite dispatchers. People that they know that they trust and they want to speak with and our dispatchers I am proud to say take the time to do that. One of the most frustrating thing for the dispatchers is that it sometimes is a revolving door in mental health. MVRDA has been a part of the Crisis Now team here in the county since its inception and that is one of the things that the Crisis Now is trying to alliviate and trying to close that revolving door to get it. We have made referrals in the past to mental health resources. The Police Department also has a list of those frequent utilizers. It is a challenge. I wouldn't say 50% but I would say at least a third of those are the frequent callers.

Councilor Graham said recognizing of course that ideally we are wanting to plug these folks into wrap around services so they are not relying on 911 but that is a long term process, that is gathering of resources and collaboration. I have been doing a lot of side reading on this and just recognizing how crucial dispatch is in this entire system. I was looking at software programs that can create a flagging system, maybe not the best term for it but if we have a frequent utilizer we have deep history with them but maybe not everyone on CAD knows this. I read about some shortcuts to provide background information whether those responders are LIGHT, regular fire, EMS, PD. Can you speak to that at all?

Hugo Costa said we do have that. We call it a CAD Flag. What we do for specific addresses that are known to have frequent utilizers we will flag it. A lot of times the flags will come from the field units. The only weakness of the flags is it is location specific. Another service we provide is we have a system called Smart 911 and we have encouraged mental health providers, care takers that if they have clients or people that they know who have crisis situations they can create an account for them

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that is tied to a telephone number not a location so the person can be anywhere when they call 911 and in addition to any cautions they can put in medication lists, medical histories, anything that they want to share that the dispatcher can't then convey to the first responders and also use that to make an educated decision as to how to dispatch out. That private information is only available for 15 minutes after that call is done. The dispatcher can go and search people and try and find that information. It is a very secure system. That is another alternative to the flagging. The flagging is location specific as to where if you create a Smart 911 profile it follows you wherever you go nationwide in fact.

Councilor Graham asked if PD is dispatched to a scene and feels like this is a great opportunity for Project LIGHT and maybe this is more in their wheelhouse do you have policies, procedures, operations to make that happen?

Miguel Dominguez, Police Chief said the answer is yes. We are always looking at ways to incorporate resources that will not require law enforcement intervention. If Project LIGHT is available, we will call them but we will also call other resources if necessary.

Councilor Graham asked you are doing those types of handoffs in situations where it is warranted?

Chief Miguel Dominguez said yes.

Councilor Gandara asked the Crisis Now process, can you talk specifically about that and what makes it different from other evidence based programming?

Jamie Michael, Dona Ana County Health and Human Services Department said the Crisis Now Model is a national model that is pushed out by the National Substance Abuse and Mental Health Services Administration. It includes three components, one is someone to call, which is Wendy's team at 988. Someone to come to you, which is the Mobile Crisis team at the Crisis Triage Center and the third component is somewhere to go which is the Crisis Receiving Center. This model came to be after many decades at looking at real world data and looking at communities that studied the types of calls and types of circumstances that came as a result of mental health emergencies. In one study there was over a million encounters there were looked at and that is how they came up with what do we need? In all of these circumstances it would have been great to have a crisis counselor and have someone for them to talk to. They looked at how many people needed someone to come to them. The crisis counselor over the phone was not enough and then they looked at how many people the crisis couldn't be resolved with the mobile team so they said now for some people we need somewhere to go. So, it includes those three components, and it is based in real data that was collected and it also part of that process it includes looking at the same things that Hugo looks at. Is this a situation where someone has already taken an overdose, is someone already harmed themselves. So, it also includes when do we need to engage EMS, when do we need to engage law enforcement because it is a public safety. So, the Crisis Now Model has all of this built in. It is also reimbursed

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by Medicaid so that is helpful for local governments when we are looking at how to finance these systems.

Councilor Gandara said you mentioned when you want someone to come to you, you mentioned the County Mobile Unit that you developed through RI but not the LIGHT. Why is that? What sort of conversations have you been having with LIGHT so that we are not duplicating services and addressing the needs of the city as a whole?

Jamie Michael said Project LIGHT is designed as a co-response model so it is embedded within EMS. It is dispatched through 911. It is outside of the Crisis Now Model. One of the original intents of the Crisis Now Model was how do we bring the right services to the person at the right time. So, EMS is not needed at every call. Just like law enforcement is not needed at every call. So that is why the mobile crisis that is designed to be part of the crisis now model includes clinician and appear versus a co-response model with a paramedic or law enforcement and social workers. We have been talking with the city and the folks from Project LIGHT have joined their weekly meetings and we have been trying to figure out how to run these two mobile teams parallel in our community and what services and what circumstances should each respond to.

Councilor Gandara asked where are you at?

Jamie Michael said there is still some grey area. Actually, in the table, the flowchart that Hugo talked about in those three call types, I think we need to do a few more things and again we are way above and far beyond what other communities are doing because of the willingness of all of our partners. It is a big change. When we talk about what kind of training or what kind of conversations should be we be having to help make this change and because I can't just cross my fingers and hope really hard that the change is going to happen, we have to be proactive in making this change. The behavioral suicidal subject I think those two call types I think we need to really change how we look at that. Why isn't 988 the first response to all of those calls and let's look at of those calls. When in doubt let's make them all eligible for 988 or mobile crisis response or behavioral health response and then from there look at which ones need EMS and which ones need public safety that might get us to our end goal sooner. If we are seeing 988 separate from this system and a transfer to 988 and I can see why people would be hesitant to use that service. We also have to remember that 988 on its own is a service. It is an intervention. You should think as a dispatcher, I can dispatch a police officer, I can dispatch a paramedic, or I can dispatch a crisis counselor and that dispatch looks different because it is connecting somebody through a phone to transfer. It is still a dispatch in connecting someone to services versus it kind of being out of the system. How do we get the training and how do we get people to start reflecting on these calls and circumstances differently?

Councilor Gandara asked what conversations are being had related to that very thing? There should be more calls, more transfers to 988 given the data that you showed me. I think it really matters who we are dispatching out as we are trying to address the continuum of care. There is no wrong door and I know that you believe that as well and that is philosophy that we have tried to incorporate in this city and

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how do we get to that point. It feels like we are not quite there yet and if it maybe it's liability I just don't get these opportunities really to visit with you other than these times. I want to be clear about how we need to go and where can we help to move things along.

Hugo Costa said the past two and half months is exactly what the weekly meetings have been doing is we are trying to dissect that and like I stated earlier we looked beyond and tried to be proactive, and we have narrowed down 8 different call types to start that automatically we want the dispatchers to say is this is something that could go over to 988. We have been doing that. When we started pulling the data and crunching at the numbers there is still a lot of public education that has to be done too. One of the things if the public is aware that 988 is there and is available that is going to decrease the need to call 911 and it is going to take it totally out of that decision tree of the dispatchers and also part of that public education still needs to come from the health care side. We are still seeing private practitioners that are using 911 to get their clients into the system and the question is that we don't even know what is going on with the professional but could have some of those calls have gone to 988 as the intervention as opposed to coming to 911. There is a whole list and it's happening in schools to for example school medical staff are calling 911 and not utilizing the 988 system. I think in conjunction to this, we are doing, we are doing this in our weekly meetings trying to dissect this down and as Wendy had mentioned we are looking to putting into the software itself part of that decision tree but I think on top public education is really important and needs to continue.

Councilor Gandara asked where are we at with that and how can the city help and bring folks up to speed about 988 and when to call? I know there are some tools and graphics and those things, and I am wondering if more specific things about if this happens maybe this is where you should go instead of tying up the 911 system. Maybe it is a different public awareness campaign.

Jamie Michael said you are exactly right, we need to do more public education in general. Everyone should know 988 just like they know 911. It took decades for us to be able to understand and know when to call 911. So, we are trying to unwind a system. There is printed material that each of your departments within city government can access through SAMSHA's website for free. The county accesses, we get as much free material as we can and we do have a budget to print material so that we can just scatter the 988 information across the public and then in order to be more precise and targeted outreach the data that Hugo shares with us is extremely important. We looked at what healthcare providers are calling 911, why is this happening? Now we know who those providers are and we have hired a consultant to go out and meet with those providers individually and say look let's figure out how to bring the Crisis Now Model, 988 Crisis Triage, Mobile Crisis. How do you use those as part of your treatment plan for your client? I think we can do the same thing for CYFD and their families. How do we build in this as just a natural resource for families in the community that we think might be most likely to need these services. We have a consultant that will be doing some one on one provider education and again we look at calls and just communication. Now beginning to branch out, we need to talk to the skilled nursing facilities, the rehab hospitals, all of those other organizations that are still thinking 911 is my only option. That is the type of education that we have started.

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Councilor Gandara said I have seen the printed material and I hope that it is accessible to most people, but I am thinking somewhere along the lines as that, something very specific to health care wards and providers. I think people really need aside from spending two days, eight hours plus on mental health first aid some sort of a flowchart for the average person that is encountering these things and we are encountering them so much more. Businesses, residents, we get probably more calls about that and how to address the crisis and who do we call, and I am thinking those types of flowcharts for the different types of categorized people that are encountering these would be helpful. That is outside of those printed materials and the things that SAMSHA has and so it is more specific to our communities. How do we do that in accordance with what you all are trying to do here with the 911 and 988? I don't think that there is anything like that, that I have heard statewide but could be very helpful and I know Wendy is still on the line and maybe she can address some of that.

Wendy Linebrink-Allison said that I know that in your community there is a CCBHC that has been identified which is FYI+ and part of their role will be in helping to support people from birth to death and engagement of care through their lifetime and navigating through crisis as a component of that and so they are still in the implementation stages of mapping that out and so I think that there is more to come where we would be inviting FYI+ to these conversations to help support that mapping out. I think that is part of their role as a CCBHC.

Councilor Gandara said I couldn't help but cringe a little bit when I heard the word "interrogation". That feels like a very serious, it makes me feel that there needs to continue to be this paradigm shift because if you are interrogating people to get information and I feel that is not the most trauma informed way to address mental health calls. Calls with people that are in crisis and it is something that I want to speak to. There is a tremendous amount of trauma informed classes and training that I would recommend that you and dispatch and people who belong to this multidisciplinary team, people from the city, people from the LIGHT that we should contract with somebody to do that training on going. I think it is very important. I don't want anybody to feel like they are being interrogated for calling 911 specific to mental health calls and 988.

Hugo Costa said it is just a term that is frequently used for emergency medical dispatch. When I say interrogation, it is a series of questions that are asked. They are not asked in a threatening manner by any means. I think that if you listen to any calls take recordings they are very compassionate on asking questions that they do ask. I am very welcomed to receive an alternate term. I would be happy to entertain any other term that you might have.

Councilor Gandara said Wendy had a great idea of bringing in FYI+ who really is the leader in trauma informed care and there is just other providers that I know in our community that have received very specific training to trauma and being trauma informed. I think anymore the way we are identifying folks we speak about them and for them and with them has to be very trauma informed. I will definitely reach out to Ifo and others to give you some training opportunities that are coming our way frequently

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related to that, that I would encourage the dispatchers to be a part of. I also believe wholeheartedly in peers and training up our peers and utilizing wherever we can. I know that is not something that we had not had the discussion in its entirety for our Project LIGHT and something that I think that we need to consider and moving through and being more acquainted with what is happening in our community. I would really like to have those conversation in our Health Policy Review Committee related to how Project LIGHT is going to utilize peers in this process. Something I think that is really important where the public and where folks having someone to speak to related to some of the same issues that you are experiencing and it goes so much further, there is all that data out there that suggest that. A peer specialist is so important, and I know we don't have one specifically for Project LIGHT.

Jamie Michael said Hugo, years ago we did a trauma informed training with your team and it's probably time again and the third week of April we are hosting Train the Trainer. So, by the end of April there will be ten new instructors in Las Cruces. It is trauma in the criminal justice system and FYI+ is involved in that and many of the partners involved in the community and we will have more instructors and we will be able to role that out. If the city wants to host a specific training around that we can do that and I think that one specifically in the criminal justice system, I think specifically we can look at other types of trauma training that are available. FYI+ is part of the city/county Crisis Now work group especially now because they are in the process of developing a response team for adolescents. Right now the mobile team and the Crisis Triage Center are adult only so that leaves a huge gap and when we looked at MVRDA schools are calling 911 so we need to create that availability for somebody to respond. Peer support workers, you are absolutely correct. That is why the Crisis Now Model requires peers at the receiving centers and as part of Mobile Crisis and in order to get qualified for Medicaid reimbursement you have to have peers. I think that one benefit that we have in our community is that RI International has more peer employees than other. Most of their employees are peer support workers as opposed to other types of providers. They again have nationally recognized training for peers and are working with state office of Peer Support and Recovery because what they have identified as the most important thing is having the appropriate supervision and support for peers once they are employed with the organization. So, I think there is opportunity for RI and the city to partner in not only creating peer support positions but supervising and supporting peers in employment.

Councilor Gandara said you reminded me about our youth. I am not surprised that is happening. Hugo you made mention of incorrigible youth and I am thinking we should really sift through that a little more because what I am hearing and I hear it from providers, I hear it from family members that, I know what an incorrigible youth is and all of them could be at different points in time but I think it is more serious than just an incorrigible youth. I think it is youth that have a severe mental health issue or maybe have not been quite diagnosed with one. Parents are struggling to contain them at home, and they are becoming aggressive, and I think there is aggression that is occurring in the home and I think parents don't know what quite to do to include the schools. As you know recently, we had a conversation with the schools related to this and we are seeing a huge increase of students who are very aggressive behavior and teachers, EAs cannot contain them and control them. So, what is happening is that we are calling law enforcement to help address that when maybe some of these

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crisis, like our Project LIGHT and our others can help address that very specifically. I think it is becoming a huge issue, one that obviously the schools are now reaching out to others to bring them into the fold address those because they can't contain kids and the level of aggression that they are experiencing in the schools. I would like to see more data specific to that.

Wendy Linebrink-Allison said this is an area that we also requested the MVRDA dispatch center look as potential engagements with 988 in the past because a lot of times parents, our resource parents, foster youth or our school systems are at that point where they don't know what to do. They have gotten to that point where they are just reaching out to anybody who will help them at this moment, and I think a lot of times it is really more of a conversation that is needed rather than a public safety response in some of these situations. How can we encourage some of these, in our program we call these note worthy callers rather than frequent utilizers as Councilor Graham mentioned but I would like to encourage the MVRDA system and the school system to think about engaging 988 and more with those community members so that we are taking the least restrictive approach to work with Hugo to try to find pathways to support those engagements as well.

Jamie Michael said in addition to 988 being a resource for young people and families they do have text and chat and young people have been reaching out a lot through text and chat to 988. Maybe some targeted outreach to the young people at the school letting them know that they can text and chat with 988 call takers is important. Once we looked at Hugo's data and said wow there is a lot of school nurses calling 911, we circled back with FYI+ and asked them if they had the capacity to begin developing a youth mobile crisis response team. The state through CYFD, through the Children's Youth and Families Department and Behavioral Health Services Division they are piloting this in four different counties. Our county was not selected for that pilot but we have been able to plug FYI+ into those conversations so they are part of the design and part of the learning community with the other four counties and we are looking at maybe there is a way local government can help financially support the startup of the those mobile crises teams until the state can add more pilot projects or until the state has figured out Medicaid funding and they are slightly different than the Crisis Response Team for adults. Where the adult team is meant there is a crisis you go out, you address the crisis and you are done. These teams are designed to stay connected with the family for a number of weeks and if the youth is the one who they are calling because there is a crisis at school the team works with the entire family not just with the youth when they are able to. They really are tailoring this model to address young people and their families. That is an opportunity for us to build some resources here, but you are right it is a huge gap right now.

Recess at 2:29 p.m.

Reconvened at 2:30 p.m.

Councilor Bencomo asked there is a behavioral health call in the 911 system and they determine that there is a behavioral health concern but there is a weapon on the scene, as I am understanding that right now, then immediately it just goes to law enforcement? I am wondering if it is not going to 988 that is clear to me, now it's going

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to law enforcement. Who determines when Project LIGHT can be tapped in for a call like that?

Hugo Costa said it is an automatic dispatch. If anything comes in for a behavioral health call regardless of if there is weapons or not LIGHT is on that dispatch team. Now with weapons there is a concern for scene safety. So, the first officer on scene would be the one who will determine whether the scene is safe, and they would say that LIGHT could come in. They are not being withheld from dispatch because there is weapons or any of those yes ones. They are being dispatched automatically and then scene safety will be determined by law enforcement whether they can move in. That is standard protocol for EMS and fire also on calls like that.

Matthew Hiles, Battalion Chief said our five call types that we are dispatched to are high acuity calls. Each call is going to require a level of scene security provided by our police department. They have to deem it safe not only for the person we are responding to but also those responders that are going to be on scene. Once that is deemed clear our team who is outfitted with a firefighter paramedic and a licensed social worker who is trained in de-escalation, holistic trauma informed care therapy with capabilities of transport to any facility in town that is going to be best fit for that person. Once those responders have figured out the scene is safe the LIGHT team can move in and medically clear them and make sure they don't need to transport them to the emergency department and allow our social worker to start interviewing and start deescalating the situation and using their trauma informed care. Each call, behavioral health, suicidal ideation, suicide attempt, CPR and overdose those will require law enforcement to be there. Not from the capacity of being in trouble but making sure nothing goes sideways or anything. Law enforcement has been doing a really good job on being on the background of a scene. Just having them there knowing that if we need them they are there but there have been very good about letting our LIGHT teams go in and letting them do their assessments medically.

Councilor Bencomo said I think for me that is where the biggest uncertainty still lies. Given certain cases we have seen in the past years for me this feels the most critical place for Project LIGHT. Ensuring everybody's safety of course, your folks are not armed and at the same time not escalating a situation to where someone ends up dead.

Battalion Chief Matthew Hiles said just before the launch of LIGHT and a little bit after myself and my team when to PDs briefings, their day shift and swing shifts and we informed them about Project LIGHT and what we are about and how we can help them. How we can integrate on a call and basically make sure that our scene is safe and we can in a sense for lack of a better term take that call from them maybe even allow them to get back in service because they aren't needed. They are actually going to get back in service and do the patrolling that they need to do and what they showed up for. There is a lot of great teamwork with PD and Project LIGHT and AMR. We have a lot of community partners that we have been working with that makes it great. We respond to all ages. We respond to just city limits, but we respond to all ages of incorrigible children. We spent two hours on a call with a child. We had a huge

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compliment from FYI, we work with FYI weekly on trainings as well as PEAK and our teams.

Councilor Bencomo said I am excited to hear that there is incredible teamwork going between all of you and it is really reassuring. It is my understanding that there is a policing legislation on the Governor's desk right now, SB19 that had some sort of dispatching standards on trainings?

Hugo Costa said there is, I am not sure where it is right now on the Governor is signing it or not. It is trying to restructure the law enforcement academy and MVRDA has been part of the conversations that the state has been having. They have had three Zoom sessions in the last six months to get input. I think the positive aspects of it as far as dispatch goes is if it is signed we get some representation on the law enforcement academy board where we haven't before. The standards there are law enforcement standards that are set by law enforcement agencies to dispatch agencies. There has always been a slight disconnect there. In the past there has not been a lot of good back and forth communications between the 911 directors and law enforcement academy. I am very positive for this that if it is at least we will get a voice on that board and hopefully change some things to better the dispatcher training.

3.2 GO BOND QUARTERLY UPDATE

David Sedillo, Public Works Director gave the overhead presentation.

Councilor Bencomo said I wanted to bring up pedestrian safety and crossing some of those roads and really wondered if that is something that we can potentially work on figuring out the cost so that we can put it in the budget. So that we can go out for grants, something because I love these trails. I walk them often and I see people especially now that the weather is really nice. People are out there all the time. In crossing places at least in my neighborhood like Hoagland and McClure it is all sketch. I am just really wondering how we can put that in motion.

David Sedillo said there is going to be a couple of things that we can do. As you recall earlier there was a Work Session on pedestrian safety. That could be another mechanism to utilize and take a look at some of these intersections. We can look at what the effects are after the installation based on what has occurred thus far and then make an assessment from there if there is something that we can address immediately in house. That is something that we can work towards.

Councilor Bencomo said I want to make sure we put this on a list for pedestrian safety priority to look at really what the cost of adding safety mechanisms would add in these big crossing places.

3.3 SUSTAINABILITY QUARTERLY UPDATE

Lisa LaRocque, Sustainability Officer gave the overhead presentation.

Councilor Bencomo asked on the proposed plan how much property do you need for this project?

Lisa LaRocque said that is about 35 acres.

Councilor Bencomo asked that you have highlighted here and that you would need for the community solar project?

Lisa LaRocque said yes.

Councilor Gandara asked what is in the plans and the works to get more third party facilities?

Lisa LaRocque said there is an amazing new program called Direct Pay that allows nonprofits like the city to get an equivalent to the discount that businesses own. So, they would get a 30% deduction for solar if they dedicated the solar to 50% low and moderate income, they would get a 50% deduction. So there are many ways that we can do it ourselves and getting a third party is great but even those third parties they are energy service companies like Johnson Control or Ameresco they are moving towards saying hey I will build it for you and be your contractor and I will maintain it for you and make sure it is running perfectly for the next 25 years but you will own it. That is the best option. Now having said that in all honesty, I have not been planning anything specifically for a large-scale project. I have been impressed with the fact that since I started that those projects right there are projects that have been GO Bond Projects and they are getting their own solar. We are working on some new projects that take advantage of the Inflation Reduction Act Funds that are out there.

Councilor Gandara asked Ifo, can you answer that question? What plans to we have to scale out more solar installation? Any new build that we might be considering or buildings that don't have solar currently but have a high energy or electricity bill?

Ifo Pili, City Manager said I don't know if we have a plan in place that is going to phase or transition to solar but certainly it is something we look at with every new build. Anytime we are going to build we are going to look to see if it's a feasible option. Lisa will tell you sometimes it is not. Especially with community solar coming on board. It is really more feasible to look into something like that now as opposed to putting them on the roof or taking up valuable space. So, with community solar you are allowed to put it on the grid through land and areas that are not so cumbersome or so valuable. As far the plan we don't have a plan to go and retro buildings. I think there is a more efficient way to do this as Lisa has been preaching with community solar.

Councilor Gandara said I think that we should have a plan and probably talk about what that might look like specific to community solar. I think those are some very interesting opportunities and things that we should forecast, potentially four of us may not be here next year. I would really like to see a plan between now and November that solidifies not just this that its embraced but that is what we are going to be looking at in the next three to five years.

Lisa LaRocque said I didn't mean to sound flippant with that at all. I just meant that other people are looking into it too so it isn't something that I have taken the lead on but I do know that the community solar that was talked about was something that was

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tested out right now and was not going to be opening it up again for another set of bids till 2025 but I know that LCU is looking at how they can be poised to take the next iteration on which would be another sizable chunk to the city. If we are an anchor tenant for that, that's 10% more of what we have bitten off for what we do in terms of associating with renewable energy.

Councilor Gandara asked when will we be able to hear Ifo, the energy plan, the diversion to energy through utilities?

Ifo Pili said we have the energy transition plan in the works.

Adrienne Widmer, Utilities Director said right now we are finalizing the RFP that we are going to be taking through SAC for the energy transition plan. We have been working closely with Lisa. She gave us a lot of really good comments and so staff has been trying to work that out with her. It's going to be one phase or two phases. We hope to have that RFP out here within the next couple of months at least a SAC so that we can go through and start getting that taken care of so that utilities knows what direction we want to go forward in. We are leaving it open for any and all types of energy. As you know as a utility it is our responsibility to make sure that power is provided no matter what. If the grid goes down, the wastewater plants, the lift stations, the pumps and the boosters cannot. They must always have the ability to turn on and provide. We don't want wastewater flowing out or having spills or people being without water. We have to open to any and all types of energy.

Councilor Graham said I was so glad to hear that we going above the minimum for low and moderate income households that will benefit from community solar because I bet if your really cool tricked out map if we overlayed the MRA designations I bet some of those gaps in residential solar would line up pretty neatly. I think my own home is a great example that it could be really difficult to retro fit. My house was built in 1950. All of our HVAC is still up on the roof and we got a solar consult. As you pointed out in the MRA report home ownership is significantly lower in the MRA designated districts so the idea that renters can also benefit. I just want to point out that I am really happy that we are going above what we need to and keeping community solar when we get there more accessible.

Mayor Miyagishima asked is the legislation put a minimum size on the purchase power agreements that we can enter into with other companies or developers?

Lisa LaRocque said the limit for a purchase power agreement that is not for the utility for us has to be net metered. It has to be connected to a facility. So, the maximum size of a solar installation that is leased by or purchased from your third party can only be 120% of the total amount of energy that your facility uses. That is the cap of it. You can't go over 120% of what you use annually.

Mayor Miyagishima said the city had done a couple in the past or was looking to do and so for example let's just say we spend \$100,000 on electricity here. Since the city doesn't file tax returns, we can't take advantage of the credit that others can. The developer or investor will come and say listen if you let me own it they can take

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advantage of that 30% so by us working with them it is going to reduce our energy cost let's say \$50,000 a month. That is a lot of savings, and our energy costs are now \$50,000 and we had been budgeting \$100,000 not we have \$50,000 left over that is what we pay the developer. Let's say their debt services \$35,000 a month so we still have \$15,000 left over that we ended up doing better in addition to utilizing solar. I thought that in the past that legislature or somehow the utility companies had gotten the legislature to put a cap or a minimum size of purchase power agreement. Basically, saying it has to be very large for this to happen. There is not that many large buildings in the state. You are telling me that the 120% is applicable to this?

Lisa LaRocque said from my understanding the only way that you can purchase power is if it is for your facility which is always capped at 120%. I agree with you Mayor that for large scale projects it was historically always better to have a third party, a business build solar because they do get the 30% tax credit. They get an accelerated depreciation and some other incentives that allowed it to be the better option but now just this year it's not because we get direct pay, which is the same benefits I just described for us that a business gets but the only other description that I think is there are energy service companies like Johnson Control Company who did retro fits here. They did retro fits in Las Cruces Utilities, and they could have also put on solar. Ameresco had an energy service contract and they put on solar at NMSU. It can be a mix of energy and in that case you can, skies the limit as to how big of how you want that to go. In terms of a purchase power agreement in solar I look at them as unique services. The energy service contract that you described is one that the company assesses all the ways that energy can be more efficient or solar can be put in. They put it in. You get a loan and that savings that you have is so great that you can pay off that loan for many years. That has no cap. If it is just solar attached to a building it does.

Mayor Miyagishima said with the consensus of council maybe you can come back another time and bring us some more information and see there were some changes to the legislation. Johnson Control, what they did is they replaced our old outdated whether it was air conditioners, boilers whatever and put new energy star appliances but purchase power agreements were specifically for solar and that is it. They can take advantage of the discounts and the savings that we have we enter into a contract to pay them. The reason where this came up was because people were having a hard time especially governments trying to come up with a couple of million dollars for solar but when you do it this way now you have investors who want to participate it makes it more advantageous for them. They benefit, the city benefits, the taxpayers benefit but I thought there was a minimum size, not maximum and it was pretty large which I thought that was kind of unfair. Here the people were looking forward to that and somehow then the legislature passed it that they had to be a certain size or larger which I am sure the university has some.

4. ADJOURNMENT

4.1

Councilor Johana Bencomo moved, seconded by Councilor Kasandra Gandara, To Adjourn at 3:27 p.m.

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

Mayor

City Clerk



MINUTES

City Council Meeting

1:00 PM - Monday, April 3, 2023

City Council Chambers, City Hall

The City Council of the City of Las Cruces was called to order on Monday, April 3, 2023, at 1:00 PM, in the City Council Chambers, City Hall, with the following members present:

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

EXCUSED:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR GRAHAM.

1.2 PETS OF THE WEEK.

Amy Defelix, Animal Services 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 GRAHAM.

Mayor Miyagishima presented Eugene House, Israel Hernandez, and Loretta Covarrubia with the Mayor Citation for Community Service.

Councilor Graham presented Albert Flores with a proclamation for Public Safety Telecommunicators Week.

Councilor Graham presented Barbara Toth with a proclamation for Distracted Driving Awareness Month.

Councilor Graham presented Andrew Haggerty with a proclamation for Fair Housing Month.

1.5 CANNABIS CHALLENGES IN THE SCHOOLS - LCPS SUPERINTENDENT RALPH RAMOS.

Presentation given by Dr. Roberto Lozano, Associate Superintendent and Amy Himelright, Executive Director of Behavioral Health.

Councilor Corran said I was lucky last week to see a bunch of former students, I teach at the Community College Public Health, so a bunch of my former students are working with the State Department of Health and the Unified Prevention Coalition to

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do just this work that is messaging around locking it up. They even gave me a little lock case that I took home. They definitely are looking to help support. I hope that you might be able to connect to them, just last week they were bending my ear saying, please let us get in to talk to the schools. So, I hope that connection can actually be made and support you and creating that narrative.

Councilor Bencomo said I just want to thank both of you for coming here and I just want to appreciate that you took a bigger broader approach to what you presented to us today and talking about it in terms of what is the root cause. Often, we talk about trauma being that open door to seeking more dangerous behaviors. I appreciated the behavior health take that you have on this and whatever we can do to work with the schools and with cannabis advocates and I know many of you are here today for how we talk about safe storage. We often have conversations about the black market and it is really important that you came here today and said look this is what we are seeing because often that is what we are missing as opposed to just the normal noise. I really wanted to appreciate the way that you presented here today.

Councilor Gandara said I really appreciate the way you have elevated this and I know there is some serious things happening and looking at the root causes are so important to me. I had a question about how you are recognizing in the vape pen the use of cannabis? Are the youth self-reporting? How are you identifying that it is cannabis specifically?

Amy Himelright said I checked in with my school principals right before this meeting and what they are reporting to me is the vast majority of devices that they are confiscating are labeled. They are labeled with where it came from, what is in it and it was New Mexico Certified. In addition to that there are cases where a student may have engaged in vaping behavior and we don't know what the substance was and we may have concern. Our school resource officers have access to test strips that they can actually test the liquid in the cartridge and find out what was in it.

Councilor Gandara asked as they are testing that they are reporting back to you all or another entity like the Department of Health or the group that controls the cannabis industry?

Amy Himelright said that is a good question, I don't know.

Councilor Gandara asked if that is happening, what are the numbers there? I think those are statistics are important that we have.

Miguel Dominguez, Police Chief said I don't have those numbers with me, but I can get them for you.

Councilor Gandara said lastly, I will say that you know we have Health Policy Review Committee both Councilor Flores and Councilor Corran sit on that Health Policy Review Committee and I am asking that this is an agenda item that we have specific to that so that we are part of the solution and strategies to mitigate this. I think this is

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important to the councilors here that would be what my recommendation would be moving forward.

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

2.1

None.

3. **PUBLIC PARTICIPATION**

3.1

Bruce Fonnest, President of the Vietnam Veterans of America Chapter 431 Las Cruces, said what I have here is some certificates of appreciation for the City of Las Cruces, the Mayor, the Parks Department and the Director from the Parks Department. This is a Certificate of Appreciation for the city for support in our 11th Annual Welcome Home Vietnam Veterans Day which was last weekend.

Lorelei English, Member of the Public said I have been here numerous times over the last 22 ½ years. I would like to remind the City Council of their Mission Statement. The mission of the City of Las Cruces is to provide customer focused municipal services to residents, businesses and guests so they can experience the quality of place to live, work and play. In the last 22 ½ years I am sorry to say that I have seen, and this is not directed to any one particular person with all due respect to the Mayor and the Council, I have seen the city go downhill and the reason that has happened and the reason I am here in civilian clothes because I could have come here in a t-shirt representing a military organization, a civic organization and I have been recognized by the city, by the county by the state and by the federal government for my actions but I am ashamed of the actions of a council that almost unanimously puts their private interest ahead of the public good. When a city council comes up and says we're more involved and interested in changing the name of a street because it offends some people. It has been like that since day one. That compared to fixing a street. Two years ago I challenged anybody on this city council and anybody having anything to do with the City of Las Cruces to come out and drive down Stewards Avenue on the East Mesa between Mesa Grande and Mesa. You cannot drive down that street without losing your front-end alignment. We need a City Council that is going to be proactive on our infrastructure not changing the names of streets, not dealing with things that we the people didn't vote you in office to deal with. We voted you in office to take care of us, to look out for our interest and I would appreciate it if City Council will reconsider minor things yes, street names can be offensive, it happens all over the country, it happens all over the world. Bottom line is that we need an active, progressive, people oriented not personal interest oriented City Council and I would appreciate your looking more at what needs to be done instead of what is being done.

Dr. Earl Nissen, Member of the Public said I have spoken from this lectern many times for having a civil discourse about a community issue. Recently I have seen this lectern sullied with malicious and sexist remarks made to you as councilors coming from the underbelly of Las Cruces. These remarks even had the attention of the New Mexico

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State Democratic Party President who on Saturday denounced such attacks and requested that the community react to these behaviors. All of you councilors have shown due diligence to the offices for which you were elected. We stand by you against the un-Americans using the freedom of speech to hide their vitriol against you as councilors. If they are present today, I suggest they desist from any other vicious outbursts.

Michael Hayes, Member of the Public said from 1973-2007 when I moved to Las Cruces I was a civic activist and a writer in Colorado Springs, Colorado, McLean, Virginia, Cleveland Heights, Ohio and Ashland, Oregon. Nothing in my background prepared me for a city with a government scornful of its citizens and duplicitous in its professed commitment to transparency and accountability. Item, officials have not explained or even announced the departure of the City Attorney. Ironically several councilors have told me that I am naive for not knowing that they do much of their work out of public sight. If so, the affects are also out of public sight. So much for transparency and so little for accountability. Despite council's talk about police reform in the past two or three years not one Council Member has publicly moved a single reform for a vote. Despite councils talk about transparency and accountability not one Council Member has publicly asked about cases of citizens abuse or killed by police officers. Not one has asked about the K-9 mauling of a citizen after he had surrendered. Such questions and their answers would provide the kind of information which city and police officials release elsewhere in major cases. The refusal of Las Cruces officials and officers to inform the public about these and other cases shows their contempt, hypocrisy, and complicity in coverups. It also shows their priority, protect the police not the public. Given this council's dereliction of duty, responsible citizens are proposing a Citizens Police Review Board to form a public service which council refuses to perform. Given its enactment which tolerates police abuse and killings, I believe the council will continue to resist the board which would at least make such information available to the public. So given this chance to do right, I believe that this council will persist in doing wrong.

Paul Borunda, Member of the Public said I was born and raised here in the city of Las Cruces. In 1965 I was sent to Vietnam as part of Operation Rolling Thunder. That was a long time ago but that set me on a course of finding justice and fighting for justice. The problem that I am having here is that I have come before the City Council to address many issues. I had high hopes that when we elected an all women City Council that things would change but they haven't. Each one of these City Council women that sit before us is representing a particular district. Mine is District 1 and I have contacted Councilor Gandara hundreds of times on many issues. I have come before City Council to address the issue when a police officer by the name of De La Rosa but he was one of the officers that was shot a while back and was honored by the City of Las Cruces yet when he committed perjury in Municipal Court and before Judge Ryan, I appealed. This is the matter in which we are treated. I am going to ask one thing because the City Council cannot do the job that they are to do they rely on the City Manager who is unavailable to the citizens and there is no transparency.

Lynn Warner, Member of the Public said I am a resident of District 1. I thank you and salute you for your work. My thanks and salutations also go to our presiding Municipal Judge Goldbaum and city staff. I have experienced interacting with many

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governmental agencies in several states at the federal, state, regional, county, and municipal levels. While I do not always agree with your final decisions City Councilors and Mayor or agree fully with the way you prioritize issues I unfailing respect your work and the deliberative democratic process. I know from watching others try it that poisonous insults, condescension, sarcasm, scolding and coarse language never persuade. Rather they shine a bright light on the weakness of the insulter's argument. They also tend to show the shallowness of the insulter's character and frequently their small vocabulary. I respectfully encourage all of you who think disparagement and insults are appropriate behavior to run for office yourself and see how many people think your character, wits and stamina are sufficient to represent them adequately. Mayor and City Councilors I also salute your patience and allowing a few citizens to repeatedly vent about concerns that do not fall within the jurisdiction of city government and instead should be directed to their state legislator, federal legislator, or the judicial system. From my perspective all of you are more than worthy of your office and make our city very proud. Thank you for your hard work and never ending commitment to our city and each of its citizens and thank you for your grace in rising above smallness.

Jennifer Kreie, Member of the Public said I am here today because I don't always come to say thankful things and cheerful things, but I always appreciate the work that you do. I appreciate the new fire station that is going to be built, the work you guys put in to collect all the information that would make up the GO Bond that was passed by the voters. We also had a new fire station a couple of years ago. Park improvements across the city and I have to say every time I drive by it every day I am so excited about the Animal Services Center, the dog park is open and people are there every time I go by. You make me very proud, and this is why I when retired, I said I was staying in Las Cruces, thank you.

Terry Miller, Member of the Public said I am speaking today because of a recent conversation I had with a man about voting. Something he said made me realize that after I vote in an election, I rarely let my elected officials know how much I appreciate all the time and effort you put into helping me and my community. I have seen many changes in our beautiful city since we moved here in 1972, nearly 51 years ago. Many of the changes have enriched our lives by creating the city trails system, adding more parks and sports venues for our youth. Creating a downtown mall where families can gather at the Farmer's Market on Saturdays and for celebrations and activities in the Downtown Plaza. But the City Council's work is not just about providing citizens with pretty parks and walking trails. For our city to function it needs to be fiscally solvent and thanks to our City Council and Mayor it is. For a city to thrive the City Council needs to focus on the health and wellbeing of everyone who lives here, and these are the issues that our City Council and Mayor address every day. When each of you decided to run for office you pretty much chose to give up your personal lives to serve all of us citizens in Las Cruces. So, I am grateful to every one of you for all the time, effort, and dedication you have put into making Las Cruces such a great place to live. Thank you, Mayor Miyagishima, for your sixteen years of commitment of service to our city. I am grateful for the many good changes through the years, best wishes to you.

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Lynda Huff, Member of the Public said in 1995 we had the privilege to purchase the only house in Las Cruces with Lake front property. Living on the edge of Burn Lake Park was so fun being able to watch the families and the children enjoying the water, the fish and the birds. In about 2008 or so the lake dried up and caused families to quit using the east end of the park. Illicit activities forced the city to close this section of the park to vehicle traffic, also overnight camping and campfires were prohibited. This basically caused the 7 small shelters that are on the 10 foot by 10 foot concrete bases to be abandoned, also Parks and Rec seems to have quit maintaining the fence at the east end of the park next to Golden Corral. Once this fence started falling down and showing neglect people started cutting holes in it and now vehicles are driving through these holes. The homeless started establishing camps in the bottom of the lake among the salt cedars. They also dug terraces midway down the east bank and established shelters along the salt cedars. In December of 2020 they set the east end of the lake bottom on fire. The fire threatened our home and filled it with smoke. Three months after the fire Officer Brian Klimeck with LCPD organized a community cleanup of the trash that had accumulated at the park. More than 60 volunteers collected more than 2.45 tons of trash. Two weeks ago homeless encampments moved in and occupied all of the seven previously abandoned shelters and the restricted area here at Burn Lake. For the last two weeks we have had to endure the campfire smoke blowing into our house, the smell of human feces and watch trash blow down the neighborhood. Last Saturday for the first time since we moved in in 1995 not only did I lock the front door which I usually do but I also set the house alarm and did the deadbolts because I was there alone for several hours. I should not have to live in fear because these illegal homeless camps are outside our bedroom window.

Fred Huff, Member of the Public said my wife just talked about the slow decay and neglect of the east end of Burn Lake Park that led up to the illegal occupation of the seven abandoned shelters two weeks ago. I want to talk about the nightmare that we have been living in for the last two weeks because of these homeless people living outside our bedroom window. Once these camps moved in, I went over and politely had conversations with several of the residents. What I learned that at around March 17th the LCPD evicted the encampment behind the fire station on Valley Drive. They told me that they then moved from the fire station to these abandoned shelters at Burn Lake where they are now. On top of the people living there illegally the vehicle traffic has increased tenfold. One particular guy driving a grey Chevy Trailblazer drives around here like it is a grand pre rally race creating massive dust clouds. The Chevy guys seems to be delivering stuff to other residents. One afternoon a resident of nearby Glendale Gardens confronted the Chevy guy about his deliveries, and they got into a big verbal argument. I called the police on this one and they sent an officer out. The Chevy guy was long gone by then though. I took Rob Wood from the Mayor's Homeless Taskforce with me on Friday and one of the residents called us over and threatened me and my home for taking photographs. Once this mess is cleared out the Parks and Recreation Department needs to be directed to rebuild the fences at the east end of Burn Lake and the end of Brown Road. The abandoned shelters are the magnet that brought these encampments to this area, and they also need to be removed. My wife and I should not have to be living in fear for our home and safety. I really think this city has more pressing needs than worrying about an offensive street name.

Floyd Rivera, Member of the Public said I live at 1805 West Brown Road. My property is adjacent to the Burn Lake property. I want to give you a brief history of the Burn Lake Development. We bought the property in 1967. The property there at that time was about 40 acres, owned by a farmer and it was a cotton field. The property was bought by Mr. PR Burns. Mr. Burns sold the property to the highway contractor for the interstate. One morning without any of us being notified the bulldozers and the ground movers moved in and started pulling dirt out of the Burn Lake property to build the interstate from where it intersects with I-25 up to the hill. When the project was over Mr. Burns tried to establish an amusement park. My message is that Mr. Burns built a fence around that property and that fence is in real bad shape.

Clarice Francis, Member of the Public said we have been living here in Las Cruces since 93. I just want to make a comment about the people on the streets holding up signs. I was crossing over to Hobby Lobby the other day and there was like 12 people holding up signs and one even crossed catacorner where I was turning to the right and I almost hit him and he was making rude gestures and waving and tossing rocks at my car and the people on the other corner there was a woman with a child about 12 years old, she was crossing to come over to Walmart or Arbys and they were harassing her. Later on, I was coming up to Marshalls and the same thing was happening up Telshor and Lohman. There was about six people on the corner. I did call the Police Department because it is a danger to them and us and the guy was not very supportive. He was almost condescending, and he says ya, we will try and check on that and that is the response I got. So, this is just the beginning, and I thought a few years ago this was illegal. I thought we weren't supposed to have these people on the corner. There are so many agencies that I have been involved in different times to help these people get off the street and they do have agencies and they choose not to because it is easier to do this. I would like you guys to do something about that.

Lori Martinez, Member of the Public said I live in Councilor Corran's district. I am also the Executive Director of Ngage New Mexico, a non-profit focused on transforming education outcomes in Dona Ana County. I am here today to express my thanks to our City Council because I am encouraged and hopeful about the state of our city in a way that I haven't been since I moved here over twenty years ago. I would like to point out a few things many may not realize. As we learned last week unemployment in the city of Las Cruces was 3.1% in December a decrease of over one and half percent from recent years, multiple years. Just a few weeks ago our City Council approved a designation of two areas as Metropolitan Redevelopment Areas. This decision will draw resources and revitalization to parts of the city that desperately need it and the MRAs are a strategy which many of us view as key to economic development and prosperity. The City Council I have appreciated has been addressing affordable housing, public safety, poverty, and mental health in meaningful ways. Looking at root causes and holistic solutions and not simply ignoring poor families or engaging in solutions that only shuffle human beings that are struggling out of the way. The work we do at Ngage New Mexico is in education. We work to align education systems in Dona Ana County from early childhood all the way to the workforce. It is beyond encouraging to me therefore and refreshing to have a City Council that doesn't run from tough topics like generational poverty, racism, sexism, the challenges our small businesses are facing and many more. These things have

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been done during and in the immediate aftermath of a global pandemic that up ended all of our lives and are a credit to the staff but to the City Council who have worked to partner with entities all over the city and state to ensure residents of Las Cruces get what they need. To be a City Councilor means that you understand that conflict and disagreements will come, that our city has real challenges to work through and you will work through them. Despite frequent disrespect and blatant attempts to police the body language and the words they use, these women have repeatedly asked who is not represented here and then gone out to the community and asked what concerns all of us and not just the people who agree with them. In all my time living in Las Cruces I have never seen a more visible and accessible City Council then in the last few years. As a resident of Las Cruces, I am here to ask you the same question I have heard you ask over and over, how can I help? As the Director of a nonprofit committed to a community as well being in prosperity, I am here to tell you that we are proud to stand with you and greatly looking forward to the work that we continue to do together.

Abraham Sanchez, Member of the Public said I am born and raised here in Las Cruces, New Mexico and live in District 2. I wish I could say that I always agree with the statements and decisions that our council makes but I don't. Sometimes I get frustrated and often think our city government moves too slow to truly meet the needs of our community. With that said I also want to thank our mayor and council for this time and space to share concerns and grievances. I realize that this opportunity doesn't exist everywhere in the world and is vital to our democracy especially at the local level that we have this space to talk to our elected leaders about the city we want to live in. Growing up in Las Cruces I was taught strong values of respect and democracy. Unfortunately, over the last few weeks I have continued to see residents approach this council with disrespect and baseless accusations. I have seen residents who seem to think insulting language and temper tantrums are appropriate substitutes for real policy discussions and reasoned arguments. I don't know where these ideas and behaviors came from but I am here to tell you that the people doing this do not represent the Las Cruces values I have been taught my whole life. My commitment to this council is to live these values every day and teach them to younger members of our community. Just a couple of weeks ago I was blessed to be able to spend the day with my nine year old nephew. I took a moment that day to show him a video of a recent City Council meeting. I taught him that in this world people will often grant special privileges to men to disrespect women, especially women leaders and that this is wrong. He was upset to think that people could treat his mom and grandmother and women in our community this way. He was also excited however when I told him that we all have the power to change this and that disrespectful people in our community don't get to decide our values. We decided that we will continue to build a city that allows us to voice our concerns over local government while also respecting our local elected leaders who have chosen to serve our community. These are the Las Cruces values that I am proud to pass on to my nephew and I am excited to keep working towards respecting democracy in Las Cruces.

Rev. Carolyn Wilkins, Member of the Public said I believe in the separation of church and state as things are written but I want to bring to your attention that this is a week of multiple holidays. All of those holidays are a time of reflection, forgiveness, elevation of love and in some it is to reach out to the community in how they can

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serve. I bring that up as a clergy leader myself I have fought in countless situations for justice and equality for many decades. I totally appreciate the leadership that has been shown by the female, all female, all powerful Council Members that I stand before. In my time I just want to say the verbal assault of this all female councils is disturbing, it's insulting, it's disrespectful and it's disheartening. I don't hold that opinion, my message is one of standing in solidarity for the strong, intelligent, and powerful women that have been elected for this city. Thank you for your service, thank you for your intelligence, thank you for being prepared for this job and thank you for being a model for young women that come behind you.

Dr. Amanda Lopez-Askin, Dona Ana County Clerk said I understand, unfortunately I have the experience of being in your shoes a lot the last three to four years and I have had insults to my appearance, my intelligence, my moral compass. I have been accused of things. I will tell you probably the worse was when I was with my six year old daughter in a parking lot being screamed at that I was a liar. I was also, you all may know that there was the leaders in the northern part of our state that their homes were shot at. When I am here I come to saying I see you, I know that you are up at night worrying. I know you hear the criticisms, and it feels personal. I know that your family has suffered, and your friends have suffered. People who support you have suffered because of your innate desire to lead and help our community. I want to know that I see you. I appreciate the work and that I am here in solidarity basically to support you. I also want to tell you that you represent New Mexico values, inclusivity, compassion and seeing people as people and wanting that quality of life that is in your mission statement for everybody. I look forward to working with you moving forward.

Rochelle Arellano, Member of the Public said thanks to several friends of mine I have been following the politics, not only the national but the state and local politics so the discourse has been very divisive as we all know as citizens. I did want to take this moment to say despite the fact that we have much progress, and we can celebrate a lot of progress, progress is not static. Progress is progress and so the work that you do as Council Members and Mayor and everybody who serves with you. This is a work in progress. I arrived here four years ago as a resident even though I have been in and out of New Mexico for the last almost forty years. I am proud to call myself a New Mexican transplant from California and I was the wife of an elected official in California, so I do understand the pressure that you are under, the discourse that many of you are the targets of and your families of. I did want to come here again and say thank you again for your service, for your continuing service and I also want to thank the citizens of Las Cruces who have given me such a warm and wonderful community in which to live.

Noreen Dresser, Member of the Public said I am a folklorist, retired university professor and the author of an awarding winning LA Times column and book by the same name called Multicultural Manners. Both the book and the column attempt to demystify the cultural differences of people who are unlike themselves. The goal is to create respect so that we may communicate with one another without offense. To build bridges between communities. Of course, I am aware that there is a disagreement as to the original meaning of the word that we all know. There are those who even claim that it is not even a Native American word at all. However, I accept the meaning proffered by Secretary of the Interior Deb Holland. She says that

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historically the word has been used as an offensive ethnic, racial, and sexist slur. I'm sure that those who named that street had no clue as to its derogatory meaning, alas now that we know how degrading not just to Native Americans women but to all women. Therefore, I am here to support those who desire to change the name of that street however I would question what procedures would be in place so that people living there are not unnecessarily inconvenienced. Especially those who depend on regular mail delivery for medications, checks, benefits, and other necessities.

Miriam Chaiken, Member of the Public said I live in Yvonne Flores's district. I just want to support the council and the mayor for all you are doing for the city. I lived overseas for more than a decade of my life. I lived under martial law in the Philippines. I lived in Kenya where there was a one party system and president was for life and no elected officials we elected legitimately. I know that the arc of justice is long, but it tips to the right to quote Dr. King. I want to support you all for what you are doing to try and make this community better and make the interactions with each other more civil, more respectful, more inclusive, and I thank you for your work.

Bobbie Green, Member of the Public said I am the President of the Dona Ana County NAACP, Vice Chair of the New Mexico Law Enforcement Academy. I stand in solidarity with you today and I want you to know that, but I also have a request. We are working on a Citizens Review Board and I would like to give you a little bit of an overview of what happens when the NAACP receives a complaint. We have a website where we can complaints from citizens and lately, we have received quite a few. When I receive a complaint regarding excessive use of force I go and do an IPRA request. I get the body cam footage and the police reports redacted but there is enough information there that I can see what is going on and once I get those documents and videos I usually if there is contradictions between what is in the report and what is on the camera then I contact attorneys and I have had to do that quite a few times here recently and so I am here to request that we have a Work Session so that we can establish a communication, a dialogue so we can hear, I have met with several of you, you have come to our council meetings, I want to say thank you for that. What we are looking for is a Work Session and consideration placement on agenda of a resolution of that has been developed by lawyers, by members of the NAACP, by members of the Las Cruces School Board, members of the ACLU. We have worked on resolution. We would like that resolution to be placed on the agenda. We would like to part of the solution. We want to work with you. This is a matter of public safety. It is a matter of financial liability to the taxpayers. What we are trying to accomplish is to get something in place that is a solution. That is a win, win for the members of City Council, the LCPD, the community and all of us, that is the goal.

Liz Rodriguez-Johnson, Member of the Public said I am the first Vice President of the NAACP Dona Ana County. I just want to reiterate what Dr. Green just said. That we are concerned about the obvious excessive use of force within the Police Department. I would like to repeat what Dr. Green just said, which is that we are looking for a Work Session where we can discuss this, the community with the Council Members and we come to some sort of a resolution where we can have more preventative measures put in place so we minimize this kind of atrocity.

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Zeke Rodriguez, Member of the Public said a big part of my job is to be involved with the local city governments and public school systems. For those who don't know the Las Cruces Public School system is the worst public school system in all of New Mexico and given that New Mexico is the worst educated state in the entire country we cannot proudly say that Las Cruces is the worst public school system in the entire country. That means that are kids are starved, they are physically abused, sexually abused and they are uneducated at a level that is unprecedented around the country. Obviously, the public school department is beholden to the public education department, the schools have to go through them so they can't do anything so they always push it to the state. I am here asking the City Council and I saw Councilor Bencomo extend her olive branch to work with the city school system to work with the cannabis usage. I would hope that you would hope that you would extend that same olive branch with the public school system particularly with what I learned recently that there was vandalism at a particular middle school, and I could leave it up to you all figure out what it is and you will find out really quick. During this vandalism these children that were vandalizing the school with pornography and calling out teachers. I would hope that you could have that same kind of cross jurisdictional influence with having the Police Department have a proper response because there is no training. I learned that there is no training for administrators if there was a school shooting, there is no training. There is no way for them to deal with it. They get out of high school with a six grade reading level I believe it is and now they are vulnerable and they are going to get a free for all. I am fearful that we are going to have a school shooting here and it is just going to be terrible. Please consider what I am saying here for the sake of the children and for those of you who don't try to pursue that we are going to see what kind of government official you are and furthermore what kind of human being you are because this is all politics aside. Everyone is so proud of our city government meanwhile we have the most abused children in the country, I think it is very sad state that we are in to cheer on our city government when our children are being molested at the highest level of the country.

Mayor Miyagishima said I don't normally brag about my children but one of them in particular. She went to Desert Hills, Camino Real and back then Onate it is Organ, New Mexico State University. She will graduate in less than a year as a Medical Doctor and a PhD from Yale Medical School. This is from our Las Cruces Public School system. Our schools are really good, I am sorry, but I just needed to say that to defend our schools. Our teachers are hardworking, and I will say that the Las Cruces Public Schools had the highest graduation rate than any school in the state.

Councilor Gandara said I am very proud of both my kids. My daughter went to one of the poorest schools in this district, Booker T. Washington. Then to Sierra Middle School and to Las Cruces High. She is now a Medical Doctor at her last residency at the University of Colorado, where in July she will be moving to a northwestern to attend her last fellowship there to be a Pathologist, so I think we turn out many excellent students that go on and do tremendous things not only in this community but in all over the nation.

Councilor Abeyta said with three kids in the public school system including two who are going to a community school I know that our teachers work hard every day and whether it is them doing a lockdown drill that they have to do, whether it is them

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teaching math or working with interpersonal relations for middle schoolers which is no easy task. They work hard every day for our children and I see that as a parent and an engaged parent how hard that these teachers are working for our children. I see how our students are trying to thrive in environments that are sometimes full of support and sometimes are very challenging. I see a student that I drive home with my own child that goes to band that walks to and from his house to the University so that he can make it to All City Band and he did that without any parent support but he was trying to thrive in the environment that he is in. We have good students and great kids, and we have fantastic teachers.

Juan Garcia, Member of the Public said I want to state that in no way shape or form do I support any disrespect of anyone by anyone. Our differences are on policies and issues, and I do thank you for your engagement. Today I am here to talk about the forgotten victims of the Las Cruces criminal element. The victims that have become a statistic, a report number and quickly forgotten. Victims like the Chinese restaurant, Rising Star on El Paseo who was attacked for the third time, about \$3,000 worth of damage. Or So Glam Boutique on Missouri whose owner Gabe and his wife who were woken up at 4 o'clock in the morning to the news that their lovely shop had been vandalized, destroyed glass, theft, about \$5,000-\$10,000. Same old story you have heard it before, just a different day in a different location. Look at the report obtained from the IPRA dated 20 March 2023. In comparing stats year to date 2022 against 2023, the total property crime has gone up 14%, this is the first quarter of the year, at which commercial burglary itself has gone up 54%. When statistics are presented, we often hear, "not as bad as last year, crime is going down or remains steady", this news may be good for politicians but not for the victims. Last year one of our State Senators proclaimed in these chambers, affordable housing is a right. So why is it that the safety and security of our citizens a right? Why isn't it a right to walk out your home and find your vehicle parked where you left it? Or a right to come to work and find your small business in the same condition as when you left it when you closed u? Why haven't our elected officials and I am talking about the state, I am not necessarily talking about the council, enacted strong legislation with consequences to deter or prevent crime. Some of the legislators were here, maybe they can explain why they didn't do it. Victims calling the police after a crime is committed against them is too late. I recommend to the council that you add two slides to the presentations. A presentation that states the name of each small business, victim of crime is identified by name not number so those names are called out at each meeting and not forgotten. The second, a slide with the arrest and convictions. Since 2018 the violent crime trend has increased and this goes to all our elected officials if you don't have the will or your ideology prevents you from taking decisive action to protect your citizens, all your citizens, not just those you align with please step aside and allow someone that can take your place.

William Norris, Member of the Public said I am a Catholic Evangelist and part of a lay religious order called Mary's Little Remanent that resides in Truth or Consequences. The reason I am here today is to voice my protest against the \$10 million abortion clinic that is coming to Las Cruces. First let me say that my faith is my primary motivation in protesting abortion, unlike most all the people in the prolife movement I don't believe these aborted babies go to heaven. As a true catholic we believe that aborted unbaptized babies go to the fires of hell due to the guilt of original sin on their

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soul. With this being the case, you can see why I have more than enough incentive to try and stop abortion. As far as secular reasons go, I take a page out Carla Sonntag's book, Carla is the President and founder of the New Mexico Business Coalition and asks a very simple question. Why are taxpayer funds being used to fund a for profit business? This is unfair to taxpayers and every other New Mexican business that is not being funded. When I called the Governor's office to get an answer to this question, I got passed around from a receptionist to a staff member who didn't pick up their phone. I ended up leaving a voicemail and never received a call back. Then there is this question of why is this clinic coming to Dona Ana instead of Bernalillo? According to an article from Missoula Current, abortion clinics in Bernalillo County are strained due to over capacity of patients. Bernalillo County has a population of just over 647,000 people and five abortion clinics. Dona Ana has a population of just over 221,000 and they have four abortion clinics. Despite having more clinics per capita than Bernalillo, Kayla Herring, Director of the Public Affairs for Planned Parenthood of Rocky Mountains had this to say about the new abortion clinic "the southern part of New Mexico has lacked access to the full spectrum of reproductive health care for generations, directing money to help our southern New Mexico families is critical for patient care". Recently Planned Parenthood of Las Cruces closed down on December 27, 2022 and isn't expected to reopen until April of 27th. This shows that the demand for abortion is not great here in southern New Mexico and according to the New Mexico Selected Health statistics abortions overall were trending downward from 2014-2018. This is not a matter of the Governor trying to "help New Mexicans". Bernalillo County is clearly more central to the state however the clinic is being built in Las Cruces because we are closest to the Texas border. The bottom line is that the Governor is trying to fund Texas abortions with New Mexico taxpayer dollars. We as New Mexicans should be outraged that we again are funding yet another abortion clinic but one that caters to the "needs of another state".

Patricia Jimenez, Member of the Public said I own a small business here in town, the Little Shop on Main Street and I am here to represent all of the businesses for downtown. I actually started my company down the street in 2020 and I was there for two years, relocated to Taos for one year and thanks to the Downtown Las Cruces Partnership and Kasandra, I came back to town because a lot of my community wanted me back. Last week I was terrorized by a known person in the community named Noah Jimenez, he has a big rap sheet, and he actually has been taken down by the SWAT team. He tries to come in my store. I run to my store and lock the doors, call 911, call my security company. They come to my rescue and stand by me and I have never felt victimized by the police ever in my life. I felt like they were questioning why I was calling, they refused to do a report. They questioned who I knew on the council, and I mentioned I knew Kasandra and I was going to report this to the mayor's office and Kasandra. They asked me for my ID. They didn't ask the ID for the perpetrator and their excuse was the perpetrator said that your business hours were from 9-6 and that is why he wanted to come in your store. I cited my rights as a citizen and a business owner saying I refused any service to somebody especially if someone is a known offender and someone who is very dangerous to the community. From now on I carry pepper spray. I carried pepper spray just to come to this meeting because the crime, the homelessness has risen dramatically since I have been here. I have called the police more than ten times. They refuse to file reports. It is being investigated by internal affairs actively. It is also being investigated by the Mayor's

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office and it is also being investigated by the Attorney General. My request to you as a business owner, I am a single woman, it's very scary, I don't have that presence and luxury in my store to protect myself. I ask that you allocate funds to protect businesses not only after but before. What can we do to increase security? What can we do to increase the public safety around our businesses when we have families walking down the street when there is a known offender as Noah Jimenez going into not only my store but five other stores that same day including the Boys and Girls little center down the street. Business safety for the community and also the business owners and I am terrified as a business. I have a successful business and I feel like as if not only paralyzing me but it's paralyzing the community.

Jazelle Nance, Member of the Public said this is my first Council Meeting and I am here because of Johana Bencomo. I saw your posting yesterday and I am the one who messaged you in support of women too because of what is going on. I am also here to thank you all for your great job but as a mother too because I am volunteering now as a community leader, and I wanted to make sure what is going on in schools as a parent. I have grown children which I just heard a parent saying about our schools, I am very sorry of what he thinks about our school districts. I have been here only for 23 years, and I have grown children that did go to somewhat impoverished schools but they have all graduated from NMSU. I have a son that is in Intelligence and one that has autism and has his PhD in History and Linguistics, and he is with a current program to try to get a job with DVR. There is things out there for our children. The reason I am here is I know we come from divided different political views, and I don't think that maybe we should come together as a community. I know we have a lot of issues going on in our community, but we have a lot of hate going on and maybe if we come together instead of attacking our council maybe let's work together in the community. I welcome you to come into CAFÉ New Mexico Organize and maybe become leaders and we can come together in the community.

Linda Sanchez, Member of the Community said I just bought some property on Mesquite Street and I would love to see the Historical Mesquite District blossom. A few of us attended the MRA meetings. We haven't heard much more about it and so would it be possible that we could raise our Mesquite District as an Arts and Cultural District just as the Main Street was raised? I would like incentives put out for artists in the Mesquite District. Kasandra Gandara talked about a possible historical renovation on property I guess the city owns and that could be turned into an artist residency or artist homes or where art could flourish and beatify the Mesquite District. I am just asking that you not forget the Historic Mesquite District. I think we have been passed by.

Wacique Bemende, Member of the Public said I am here to share some good news. The City Council has an initiative to increase community prosperity. NMSU just opened a Financial Innovation Lab and my company, I am retired military and a new entrepreneur, so my company is part of the first cohort, and we have created Financial LEED which stands for Leadership in Economic Empowerment Design. We have two products. These products have been evaluated by the national labs in a program called NMSBA or New Mexico Small Business Assistance where we had on our team economist and scientist. This financial innovation lab is open to community members of not only Las Cruces but El Paso and Juarez. So that makes this initiative

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an international initiative. Since the Las Cruces City Council already has an initiative in place and I especially love goal #10, which is to create an office of wealth building. We are offering our skills, knowledge, and insight to help the Las Cruces City Council but also are focusing from Lordsburg to Van Horn in terms of we will launch a pilot.

Nicole Jordan, Member of the Public said I am the Brand Advocate for High Horse Cannabis Company. As part of the cannabis industry, I would like to say to the community that we reside with the concerns of cannabis use and the youth. We believe that responsible dispensaries set the standard such as us by following a seed to sale program known as Bio Track. Many dispensaries use this program, and it is the way of tracking from the moment it leaves a farm to the moment it hits the shelves and leaves into the hands of our customers. With that comes a proper checking of IDs, things like this, medical cards and we believe that responsible dispensaries are not really causing the problem of giving cannabis to underage. This is why we believe that working with the community and giving educational workshops to not only our customers but also parents on how they can approach the topic of cannabis use within the youth or if they have some questions on, they saw this product maybe what is this and want to educate themselves on what it looks like. It is important to educate the parents so they can pass along the proper information to their children. We have also built a reputation with working with community which I said we believe brings safety. We have opened up a location on South Valley which has a population of the unhoused which can sometimes be misconstrued if you are not familiar with the area. We work in the area and have brought safety to the neighbors and we have talked to them. They are happy that there are lights and motion going on in those neighborhoods where usually it was dark and drug use going on. That is one way we have brought safety into the neighborhood. Another way has been walking the neighborhoods in future locations such as Main and there we talked to every single resident in that neighborhood that we will open up in and we received positive feedback on us opening because it will be so close to them. Lastly to close off I would like to say thank you to City Council and Mayor for always listening and taking the time to meet with the community and as somebody who attended an all girls school I would like to say I admire the fierce example of leadership that the women in this council have provided. It is because of you that I feel inspired to be able to come up and talk about the things that I am passionate about, thank you.

Chad Lozano, Member of the Public said I am here to talk about cannabis in schools. I have been a part of New Mexico's cannabis industry since 2013. I have been an advocate and part of leading the way in the state trying to get legalization. I run a podcast called Ask Chad Grassy Logic. I really drive on education and trying to get the community involved and trying to ensure that we kill the stigma of cannabis and kids getting cannabis inside the schools is something that I touch on quite a bit and also parents needing to speak to their kids about cannabis. I even had my father on fairly recently and he was a teacher in Alamogordo for over 20 years and we would discuss this all the time. His twenty something years as a teacher he only encountered it about 15 times. Kids bringing cannabis to school and getting caught with cannabis and even I remember having cannabis in school and that being an issue. For him the issue for them was alcohol and really not cannabis and he only retired a couple of years ago. That is one thing that we really need to look back to. These kids not only get cannabis they get other things to, and it is alarming that they

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are getting cannabis but as Nicole said through legal means it is really not where they are getting it from. About 99% of the time they are getting it from a family member, either giving it to them or if there is no permission given and it is the same way with alcohol. I think there just needs to be an initiative when it comes to parents and I will leave you with this, it's 420, do you know where your kids are?

Henry Young, Member of the Public said I am here to talk to you about Senior Olympics. I have seen several seniors in the audience today, some have left but I have an issue that I want to bring to your attention. In Las Cruces we are the only senior citizen group in the entire state that is self-supporting. Dona Ana County Senior Olympics has been doing this for years. The mayor knows because his father was part of Senior Olympics many years ago. We are the only one who is a nonprofit that is not supported in the state either by the city entity, county entity or a tribal group and we are running out of money. We probably can only continue self-supporting for this year and maybe part of next year so what I am doing is asking if council will take up the mantle and we can talk and I would be able to give you a proposal. I also want to go to the county. There are no joint entities also in the state where the city and the county jointly support Senior Olympics but I would be willing to do that also. We would have a very modest budget for the entire year of approximately \$20,000 because when we produce the games everyone pays a fee. We don't have to maintain an office year-round, although I would like to. We go through a group called Fuesport to sign up for the Olympic games we do locally. This year I went out and garnered some support from independent insurance agents and United Health Care but I think I would want the city to back us and provide some of this. If we can work together, I would be glad to come to a Work Session, present a proposal, whatever you need but that is what I really want to do, thank you.

Roberta Graham, Member of the Public said I left here three years on the infamous day of July 29, 2019. I started looking for real estate the minute I sold my house to come back to New Mexico because I missed Las Cruces and New Mexico and my friends here so very much. I am back at the good grace of my friends who welcomed me into their homes and I am looking for real estate. My purpose in coming up to you today is to say thank you. I was here from 2004 till the end of July 2019 and I loved every minute of it. I became very involved in the community. I served on the Planning and Zoning Commission, I volunteered at Ngage and a number of other organizations. I want to thank you for all of your hard work. I have known quite a number of you, both with the council and the Planning and Zoning Commission and I have never once met someone on either of these panels who was self serving. You work extremely hard, you are extremely dedicated and I love you and I love the city of Las Cruces.

Jennifer Garcia-Kozlowskai, Member of the Public said I am the Executive Director for the Downtown Las Cruces Partnership and we actually do have an Arts and Cultural District that we oversee as well. I did want to come here today to talk to you all about how grateful we are for our partnership with the City Council and let you know the DLCP has been working with LCPD as well as Mayor Pro Tem Gandara in regard to creating a proactive Downtown Business watch group. We stood this up a couple of months ago, it is not very big yet but we have had a few business owners that wanted to be proactive in the matter of the situation of the unhoused, mental illness, and other issues that we may see in downtown and understanding that these are not all one

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thing. We have set up a discord account and with the help of Scott Johnson of Rad he has graciously offered to put this group together. If there is any businesses in the downtown and in the Arts and Cultural District that are interested in being a part of this group please reach out to me at director@dlcp.org. The idea of this group is to help protect each other, to help build up our community of businesses. Our downtown is getting bigger and better, but it is still a fragile place so every day we want to make sure that we are helping our merchants. The big thing that we are trying to do in this is educate our merchants to use the LIGHT Program and LC Cares. As it is easy to come to these chambers and create division it is important to leave our anger behind and have a meaningful conversation about all of the issues before us. If we have the people on one end we definitely need the people at the other. I thank you again City Council for your partnership in all the work that you do to keep us going, thank you.

Lucas Herndon, Member of the Public said I live in District 2. I jumped up a little bit but I have to go and get my daughter from school. She is a middle schooler here in town. She has had a great education just like her old man who is also a product of Las Cruces Public Schools. I mostly came here today to say thank you to this amazing body who has continued to make Las Cruces an amazing place to live and raise my family and do my business. I just wanted to flag that my uncles just moved here after spending their whole lives in California. They love it here and wanted to move here. They sold their home and said goodbye to all their friends and they moved here to Las Cruces because that is how much this place means to their family which is me. Some of the things I heard that do have some potential practical solutions brought up by folks who maybe aren't supportive or unhappy with the body. I attended the Las Cruces Neighborhood Leadership Academy in 2017 and it was great. We spent 15 weeks learning about every department in the city. We went and visited those departments, specifically somebody earlier was talking about the roads. It is very easy to be frustrated about road situations not only here but in any municipality anywhere in the world because asphalt is a terrible material that we use to pave our roads because we are car centric society. The metrics though that the Roads Department use here at the city is top notch. It is very scientific. You all have very expensive machine that measures these things and takes data about how which road is under what condition and there is a whole graph about if a road should be repaved or redone. I found that all fascinating. I didn't know all that stuff. I think a lot of people don't, right? I would encourage the city to reintroducing the Neighborhood Leadership Academy and especially for folks who don't understand how sometimes these things work. It was really cool to learn how these decisions are made, not at this level because you all are an elected body who do business like this and not the workers who make these decisions on the ground day in and day out. Thank you for the time and the work you do, keep it up and we all support you.

Susan Cabello, Director of the Las Cruces Arts and Cultural District said Jennifer Kozlowski and I are fresh back from Boston. We were invited to speak at the national conference this year. A few highlights of our presentation, it started as a question and maybe a riddle. We did our community survey. We expected that safety was going to be the biggest concern that people had about not wanting to return to downtown more, we found that wasn't true. People are considering coming downtown more, wanted more dining, wanted more retail, and wanted more entertainment. We are not

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minimizing the problem of safety of downtown. We started this last April, this kind of research project. In September I had an incident that many of you know about because I have talked about it several times where my backpack was stolen at the library by an unhoused person. I chased that person down. I did everything that we tell people not to do and it was a really traumatizing experience. When talking about this we really came down to the conclusion that narrative matters. We are the stories that we tell and for us we really want to be sure that we highlight the stories of our businesses, of our people, of our arts and culture, of everything that makes Las Cruces wonderful because I feel that is all downtown. Our research project kind of concluded that although these incidents of crime and vandalism and other situations are extremely traumatic, and we live them over and over in our minds and they have a real intensity when we speak about them that we don't want that to be a self-fulfilling prophecy for our downtown. Also, we feel that all of this discussion about safety although it is very important it also kind of distracts from the barriers we know the businesses have which is access to capital, access to the workforce, access to physical space and access to education.

Peter Goodman, Member of the Public said I wanted to urge you again as Bobbie Green did earlier and Liz and Earl to set a Work Session to really look at the issue of a Citizens Police Oversight Committee and Police Accountability and really take an honest look, so I do hope you do that. Then I heard some things about the last meeting, and I watched the video. I talked to one of the conservative gentlemen and I wanted to be here both to express my support of you as people and commissioners even though we obviously disagree at times. I heard a couple of stupid things such as the ideas that you guys follow your private interest. The whole Squaw Mountain Drive and the renaming like it or not that is not you guys lining your pockets or following your private interest. That is differing opinions about public issues and that only the people that live on there should have a say in it is idiotic. I like the idea Councilor Gandara that you might meet with some of the conservatives who have been critical. I have been thinking I wanted to invite some of you and some of them on to our radio show for a nice collegial discussion. I am in favor of you guys and I just hope you do have that Work Session soon.

Rob Wood, Member of the Public said a little over a year ago a wrote the Mayor offering criticism as well as suggestions regarding our homeless situation. He wrote back inviting me to join a Community Homeless Taskforce to investigate the situation. Seeing this as a great opportunity to learn more from a more in depth perspective I eagerly volunteered. The committee never had more than a handful of participants which it appears that I am the only one still actively pursuing the community involvement. It appears that the others have abandoned the group once their personal issues were corrected or failed the futility in it. I did not abandon it because this issue goes far beyond what is behind our yards. I want to take this opportunity to thank Mr. Mayor and City Manager Pili for addressing the negative situation brought by to light by two of our participants involving the EBID ditch road that runs behind their homes between Brown Road and Avenida de Mesilla. The exact remedial projects agreed upon with the Mayor were completed and I hope it alleviated their problem. The next comment I wish to make is in addition to Fred Huff's story regarding at Burn Lake. I was present at that confrontation with the Burn Lake homeless or unhoused or just plain simply vagrants we encountered. I did not mention this to him at the time but as

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he and his home were being threatened standing behind the tent was another person brandishing a pitchfork. I didn't say anything at the time because I did not want to create a more worry regarding, he and his wife safety but now feel that the public should be aware that there are people living on our streets willing to do them harm.

Amanda Varela, Member of the Public said I have met a wonderful couple of you and I would like to present today the Trichome Alliance. We are a cannabis nonprofit that has just been formed to branch together the cannabis businesses along with the community leaders and the community themselves to educate as we have spoken about today about the education of our children and how we can better instill what they are needing rather than what we are finding is a reaction to issues and problems. We do recognize that there is a lot of education that needs to happen along with the development of programs to acknowledge when there are issues coming up with children in school and what I would like to present today is the opportunity for any of you who would like to speak with us at the Trichome Alliance to further educate yourselves along with the opportunity to get together with any of the board members of the school districts to speak along with the businesses in the cannabis industry. So that we can achieve the goals to make sure that the kids in the community are not having access to cannabis in a way that is detrimental to their futures.

Daniel Varela, Member of the Public said I am here to essentially represent Botanics, which is a class 4 cannabis manufacturing company. It is our precedence essentially to give you a little history. I am a CCO of the company and I am also an Engineer and a Biochemist. It is no longer the hippies that you are used to out there creating these products and so forth. We are science driven and science based company unlike a lot of the manufacturers that are out there. We strive on a daily basis to provide a cleaner process to use cannabis products. This is where you get concentrates, your vaporized products and so forth. We find that it is important thing that we educate from a production level and all the way through to an end user level so that we can make these products safer for the human consumption and remove the ability to intoxicate ourselves with poisonous chemicals and things that are not found that the cannabis product cannot be useful essentially. There are things that have been found to be helpful for humanity in the cannabis product and that is what we have come to create and to concentrate so that we can have these products more readily available. The less that we can get people to smoke anything whether it be tobacco or cannabis the better human society will be. Botanics as a company, a female owned company, its owner is a Biologist and not just a bottom line. I follow that leader with integrity. The company also stands behind the Trichome Alliance. We will fund this alliance so that we can better educate the entire community on best practices to use cannabis and keep it out of the hands of our children.

Nia Rucker, Member of the Public said I am the Policy Counsel and Regional Manager of the Americans Civil Liberties Union of New Mexico. The mission of the ACLU of New Mexico is to protect and advance justice, liberty, and the equality as guaranteed by the constitutions of New Mexico and the United States. As an organization we are disturbed by the hateful attacks on the Las Cruces City Council members. To be clear disagreements with policy proposals and decisions the council makes is an important part of our democratic process and something the ACLU encourages and supports. However, threats and personal attacks against our City

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Council members do not fit our New Mexico values of treating people with kindness and respect and only erode the foundation of our community and our democracy. We can and we should disagree with our elected officials when we feel strongly. We can also vote against them. We can run against them, that is the beauty of our process. The solutions to our city's problems will not come from hostility but from respectful collaboration and discussions with our elected leaders. The ACLU is grateful for the work for the work of each of our councilors here today not because we agree on everything but because we know that our strength as a community exists because you are here participating in a process that is vital to our continued progress.

Carrie Hamblen, District 38 State Senator said as the first out lesbian to represent District 38 in Southern New Mexico in the senate I am reminded everyday about the importance of representation in public office. Women of color have always been at the forefront of social movements throughout history. I am not saying anything that you don't understand and know but I would like it for the record. We witnessed racial injustice to economic inequality, reproductive health and often dealing with the condescending explanation of something to us that even though we already understand the issue we have most likely lived it, experienced it, and fought against it. As leaders of the community, you stand on the shoulders of these and countless other woman who have dealt with personal attacks, threats, and questioning of their integrity and yet because of them our world has become to move past the status quo and towards a more representative society and are we there yet? No, but I know I can feel a little more protected, a little more heard and a little more effective in getting this toward a little more just and equitable city and state and I have you to thank for it. So, keep it up. You have more support than you do opposition and I ask you to remind yourselves of our foremothers who have given us the strength, the resiliency, and the sisterhood to withstand anything.

Naomi Valdez, Member of the Public said I am the Director of Public Policy for the American Civil Liberties Union of New Mexico but today I am here to speak purely on my personal capacity because I am very proud to be from Las Cruces. I am a mother of two queer children in the public school system, I am a homeowner, I am a taxpayer and I have had the privilege of doing policy work all around this state and even nationally to some extent and here is what I can say. The work that is done in this room requires nuance, it requires commitment to do and say and do hard things in moments when people feel scared and want to resort to what we have done and guess what? If what we had done had worked, we would not be dealing with these problems now. So, criminalizing the unhoused, further criminalizing poverty, more police when what we need is investment, it's not going to solve our issues. I want to thank you for being my City Council and be willing to do the hard things. It is not always easy but we deeply appreciate it and we do see it.

Israel Chavez, Member of the Public said I just want to express my heartfelt gratitude for this council for leading on issues like zero fares. For understanding that families come in all shapes and sizes and for enduring a very small but vocal group who has plenty of opinions but frankly doesn't represent the folks who have been here for generations. I want to encourage the council to look at issues of collaboration because I know a lot of these challenges that folks are describing don't rest solely on the shoulders of city but we do see an immense struggle amongst agencies like the

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Mesilla Valley Public Housing Authority, the County and other agencies that seem less willing and frankly less well led as the city and I want to thank you for the work you do to lead on issues and really work to bring those agencies who are less willing along with you. A stark example is we have zero fares now and it has been an incredible boost for families but LCPS doesn't and the bus schedules don't work together so there are youth in this community who take the city bus because they cannot be forced to move when they are experiencing homelessness but they can't get to school on time because the buses and schools start times are not the same. The more that we can see that intergovernmental collaboration I think is going to be incredibly important. I would also encourage the city to see that we are growing beyond the model that we may have employed for many years, looking at larger cities such as Albuquerque, who have an Office of Neighborhood Coordination that is designed to support neighborhood associations. Then also I know you all are working hard and you need staff. The experiment of government is that the legislative branch and the executive branch should be coequal but separate branches and I think it works best when the city moves to that model as it grows and I don't think it is fair that you all have to spend so much of your personal time trying to answer some of the frankly erroneous questions that get put your way and so I want to consider staff for council because I do think that will help with constituent access and it will also help keep the executive accountable.

Bill Soules, State Senator said I represent the East Mesa side of Las Cruces. I came to talk about the good things that happened up in Santa Fe. First the local legislators have brought back millions of dollars to the City of Las Cruces in Capital Outlay. There is money at the airport. There is money for roads. There is money for parks. Lots of good things that happened during this Legislative Session that directly affect the city. Also, very proud of other things that we accomplished up there including support for our public schools, support for behavioral and mental health, for voting rights, for women's health and other types of issues that matter to everyone in these communities. Mostly I would also like to talk about how appreciative I am of you Mayor and this City Council that is looking up and out to what Las Cruces can be in the future and making those things happen and really trying to improve the quality of life for all people within this community recognizing that we do for the least among us helps all of us live a better life. Thank you for what you do, for sitting through hours and hours of public testimony today and for all the support that you have. I hope that it continues. I am very proud and in Santa Fe regularly we got to hear about comments about what are you all doing in Las Cruces? There are so many good things happening down there. How do we get our communities to start doing some of those same things? Thank you again for everything that you do and again I think it will payout in the Legislative Session was very good and effective for the City of Las Cruces.

Sharon Thomas, Members of the Public said during the last couple of weeks there has been a discussion on a local neighborhood listserv about the behavior of our City Councilors. It started under this topic, the arrogance and disrespect shown by our City Councilors at yesterday's meeting was appalling. According to most of the people on this particular topic City Councilors are social warriors. They are bringing disasters to our community. Their work needs to be stopped. They need to be immediately removed and on and on. What are these people so upset about? They didn't like the

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removal of a term that was part of a name of a street. Currently there are 228,480 Native populations in New Mexico, 10% of our population. The use of that term is offensive to a significant number of people. It is so offensive it has been removed from scores of towns, roads, parks, mountains across the country. So, it is not about whether or not you personally find the word offensive a whole lot of people find it offensive. Let's be respectful to those people and let's not offend them with a cruel offensive ethnic, racial, and sexist slur. Our councilors did the right thing and then there is the constant refrain connecting progressive with socialist against all of you. I am extremely offended by that. There are two fully socialist countries in the world Russia and China. I don't think any of our councilors are pushing to become that. Five years ago my daughter and her wife, yes, she is a lesbian and their children, yes, they are multi racial and moved to Costa Rica. Over the past five years they have watched with escalating fear of what the conservatives are doing to our country. So far in 2023 more than 650 anti LGBTQ bills have been introduced in 46 states. Now my daughter and her family, they are never coming back. Please hear what I have to say due the conservative movement in this country and the hateful rhetoric against gays, my daughter and her family are never coming back. I am tired of don't say gay. I am tired of preventing people of color from voting. I am tired of replacement of LGBT. I am tired of the constant attacks of my City Council. I am tired, I'm tired and I'm tired and my daughter and her family are never coming back.

Lisa Parrot, Member of the Public said I am here to talk about priorities. My husband and I live in council District 6 and have BEEN residents of Las Cruces since early August 1997. Due to a defense industry layoff in Bristol, Tennessee our family had to relocate three times in three states in four and half years when we arrived here. In all these relocations we spent a lot of time researching the cities, purchased our home and proceed to sell all but the current one we are living in now. Had we not done our due diligence going in we could not have done this in such a short time. Street names were an integral part of our decision making process when we purchased our homes. Our home in Las Cruces was built on possibly another objectionable street, Cherokee Circle. Cherokee Circle adjoins possibly another objectional street, Cheyenne Drive. We did not purchase a home on a street when we were looking at the city on a street with a name that we did not care for and demand that the city and residents that are already living there change their existing street name to suit us. We simply kept looking until we found the home that we thought was a good investment and fit for our family's needs on a street name that we liked and then we bought it. Have you thought about the practical aspects of changing someone's street name will have an impact in their life? How many entities will they have to contact for one decision. What gives you the right to say that just cause someone possibly objects to the name of the street that we city residents, your constituents who choose to invest our lives and our families fortunes who support this city, who pay real estate taxes on our properties, why do we have to up end our lives because someone somewhere else doesn't like the name of the street we chose to live on? The last time I looked no one was being forced to live on Squaw Mountain Drive, Cherokee Circle or Cheyenne Drive or any other potentially objectionable street in the city against their will. In my humble opinion you should be seriously concerned with the crime and drug ridden, plywood covered closed businesses, shopping cart storm, organized panhandling on every corner, human trafficking, trash covered.

4. ACCEPTANCE OF AGENDA

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

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

5. CITY COUNCIL MINUTES

5.1 WORK SESSION OF FEBRUARY 27, 2023.

5.2 REGULAR CITY COUNCIL MEETING OF MARCH 6, 2023.

5.3 WORK SESSION OF MARCH 13, 2023.

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

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

7.1 RESOLUTION NO. 23-111: A RESOLUTION APPROVING THE MAYOR'S APPOINTMENT OF ANTHONY F. FILOSA TO ACT AS MUNICIPAL JUDGE II, IN ACCORDANCE WITH THE CITY CHARTER, ARTICLE IX, SEC. 9.02(C).

Anthony Filosa gave a short bio.

Councilor Corran said thank you for being here and I really appreciate you coming and showing interest and caring about being in this position. Thank you, Mayor, for bringing Mr. Filosa here and putting thought into this and including the things and I know if have been critical in the past and so I appreciate you bringing Mr. Filosa here.

Councilor Bencomo said I want to say thank you as well for being interested and to let you know you have very credible folks from the community contact me with their full endorsement of you. That means a lot that folks were reaching out to let me know that you would be a good fit.

Peter Goodman, Member of the Public said I have heard good things about this gentleman. I think that Judge Goldbaum will work well with him. I think like he said it is a good background for the position and I will get time off.

Councilor Flores said I just want to welcome you and I think you will bring a lot to the bench given your background and your presentation today is stellar.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, To Approve Resolution No. 23-111.

RESULT:	Carried
MOVER:	Councilor Becki Graham

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

7.2 RESOLUTION NO. 23-112: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT VARIOUS GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023 BUDGET.

Cherrall De La Cruz, Budget Analyst gave the overhead presentation.

Councilor Flores asked on the police you did say that it was the revenue and expenses and FICA and that it was something from the state? Can you please elaborate on how exactly those funds are going to be implemented?

Cherrall De La Cruz said I do know the funds will be used for some of the benefits to subsidize the General Fund but perhaps Chief Dominguez has a little more insight on that.

Miguel Dominguez, Police Chief said the funds that we are receiving are part of House Bill 68 and they are intended to pay out to officers with 5, 10, 15, and 20 years of service. They get 5% of their base pay as the House Bill states and the funding represented here is for that.

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to Approve Resolution No. 23-112.

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

7.3 RESOLUTION NO. 23-113: A RESOLUTION AUTHORIZING AN AMENDMENT TO THE FY2023 BUDGET AND CAPITAL IMPROVEMENT PLAN (CIP) FOR THE BONDS DESIGNATED AS GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2023 (2023 GO BONDS).

Leeann DeMouche, Finance Director gave the overhead presentation.

Councilor Bencomo said I hope that as we continue to receive updates on the GO Bond that we continue to include the Housing GO Bond because I think there has been some miscommunications around the reasons we are waiting. Two questions for you. Can you just talk one more time about why we are waiting and two, if you have an update on what that is looking like in terms of the market and all of that for the Housing GO Bond?

Leeann DeMouche said yes, we are going to be going after this. We have been advised from our financial advisor to wait a little bit because these are taxable bonds, and they are going to be at a much higher rate however I would like to assure that if there is any funding needed for the affordable housing we have the mechanisms in

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place here that we can go ahead and start those projects. I don't want anybody to think that we don't have that mechanism to do that and so with that.

Councilor Bencomo asked if you have any sense of a timeline or just how things are shaping up for that?

Erika Jaquez, Treasurer said we are just waiting on the market to stabilize so we don't have to pay that high of an interest rate but as Leeann mentioned earlier, we can do a reimbursement resolution and reimburse ourselves for those expenses incurred prior to the issuance of the bond. One thing to keep in mind that it takes about three months of the start date of the bond to the time that we do get those proceeds so our financial advisor, he is an expert in the market and so I am sure that when he thinks we can start the process to get a good rate and this will help us complete those projects on a timely manner then we will go ahead and come to council with those options.

Councilor Bencomo said I would just ask that you keep us up to date and the public up to date given that is who voted for this project so that we can continue to provide that information for them.

Erika Jaquez said as soon as I hear something from our financial advisor, I will make sure that information is pushed out. I know we do have an update, a portion in our City web page. I will make sure to get with Mandy and keep those updates there for any information that I may get.

Ifo Pili City Manager said just to make the point clear for the public I just want to point out if we had the project ready to go and we had expenses ready to roll, it wouldn't matter what the rate was we would issue that debt and so because we are in that process of getting that projects together we want to time it because we can afford to wait right now and we have the mechanism right now as mentioned by our Finance Director and Treasurer. I just wanted to make that clear that we are not putting projects on the back burner because of the rate it is because we are working through the project, we can afford to wait till the rate comes down or to some future, it may not come down depending on where we are we will issue that bond immediately if and when we need to. I just want to make that clear for the public.

Mayor Miyagishima said it is almost as if you are going to build a house, you don't want to take out a building loan or construction loan if you don't have the project yet. Then you have to work fast to get that and every month that interest just accumulates and you are paying on something that you are not utilizing yet. So, when they said reimbursement what I believe is what they meant is if there is a project that we can do right away we have that flexibility to take the money from the Telshor Fund to do the project and then reimburse through this money here.

Councilor Flores said I just want to reiterate what Mr. Pili has reported. I don't want the public to believe that City Council or City Management is looking at the interest rate only. It is a factor without a doubt. It is a question of economics and reality and I think that we have to emphasize that the projects will be ready to roll relatively soon, I

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just wanted to clarify that for the public and hopefully Mandy will get the word out correctly to the media to avoid any misunderstandings as to what the city is doing with the bond money allocated for housing.

Jo Galvan Nash, Member of the Public said District 6 and I am a member of the Affordable Housing Subcommittee of the League of Woman Voters. So, the comments now, I am more confused. A couple of questions I have is, who is it that is going to pull yes when the interest rates get to a certain point? Who is that person and what is the interest rate at a maximum or minimum are you looking for? And third, what projects are basically ready to go? I didn't realize that they have already been vetted and discussed in terms of affordable housing.

Ifo Pili said that is the point, we are going through the process of vetting and looking through the projects. Of course, there is a committee that needs to be designated there is a fund the monies need to be designated for. It is not that we are waiting for the right interest rate because nobody can predict the market. It is just that currently it is not a favorable market and so rather like the Mayor mentioned it in his example, rather than issue a debt and let it sit in an account that is just collecting or we are having to pay interest on we would make sure that we have a project new that the timeline is there and we can get that set up to where we issue it in a timely manner. Our Finance Director mentioned if we had that project today fully vetted, chosen, ready to roll as I mentioned, ready for expenses to be made on that project we have a mechanism today that can start spending money as we wait for the bond process to go through. We can afford to wait because we have the mechanism, and we are in the process right now of vetting. We will have more to come on that. Our Housing Manager will make a presentation on these projects that are in the queue, and we will talk about how we time that a little bit better.

Erika Jaquez said if we are ready, we can go ahead and issue these. What I just wanted to emphasize is that our financial advisor is the professional on that. This is his job to advise us when it is best to go out to financing to get a better rate. So, he has been tracking the market constantly and he presented during the Budget Retreat and because these are taxable bonds usually they are about 1-1 ½ percent higher than the nontaxable bonds and also we have that flexibility of reimbursing the city for any expenses related to that for up to a year. So, we do have that flexibility if there is projects to that are ready to go we can allocate some funds and then reimburse once we get those bonds.

Mayor Miyagishima said just to clarify city bonds or municipal bonds are nontaxable, people like to buy them because people don't have to pay taxes on them but because these are different then these aren't as attractive as the other nontaxable bonds and so the interest rate may be a little bit higher. Is that what you are referring to as far as taxable and nontaxable?

Erika Jaquez said yes, that is correct.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 23-113.

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

7.4 COUNCIL BILL NO. 23-023; ORDINANCE 3029: AN ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED (LCMC), SECTIONS 2-496 THROUGH 2-499 TO REVISE THE AFFORDABLE HOUSING LAND BANK AND TRUST FUND ADVISORY COMMITTEE, RESPECTIVELY, WITHIN CHAPTER 2, ARTICLE IV, DIVISION 3, NONSTANDARD BOARDS DIVISION OF THE LCMC.

Natalie Green, Housing Manager gave the overhead presentation.

Councilor Bencomo said this did come to the Housing PRC and we did have a lengthy discussion around the necessary updates for this committee to work well and one of them was as to how many members to have. Whether we wanted 7 or 5. I really was supportive of five members, given that I just pulled up our City Clerk's email around current board vacancies and we currently have 9 board or committees that have vacancies and so recognizing that it is incredibly hard to go and ask people to volunteer their time during the day and a lot of people can't unfortunately serve in these committees and so five members seems like the right number right now especially given that there is not necessarily a ton of urgency around this but this committee really is critical in terms of how we move projects forward, how we select projects for GO Bonds. I think for me I am comfortable moving forward with five, though I guess that is a discussion the City Council can have but for me it was just really important given that we have 9 committees or boards that have vacancies. Some of them even more than one vacancy. I am glad that you took out the explicit requirement for some of those industries though I think it is really important that we go to folks that absolutely know, that understand how complicated, Natalie can tell us how complicated this whole affordable housing conversation can be with federal law, state law and so we want folks who are knowledgeable and I also want folks who have an understanding of what it is like to live in affordable housing. What it is like to need affordable housing, so I think it is important that those folks meet some of those requirements as well.

Councilor Flores said I would also like to address the number of members and those who would be a part of that and also the process as to how it would flow in terms of before it coming to the full council for vote. I think as it was explained in our PRC somehow the nine members eight alternates didn't work out because of this reason or another and the reasons for the five included the fact that we have a lot of boards right now that are lacking the necessary number. However, this one is quite different. I don't think we have ever had anything like this, and I think that we should have members from the public. We have highly intelligent people who have been following and tracking this issue and I think that they would serve the public well. They would serve the purpose well and they would be very helpful to City Councilors who do sit on the Housing Committee, the PRC. For that maybe keep it at five but I think right now

the boards that have those vacancies they are just not attractive. This is a very important issue for our community and our people in the city for our human condition and I think we need people from the public to participate. So, my recommendation would be to assure that one of those seats or increase the number of seats to have one or two persons from the public. I think that we should increase it or ensure that we have a community member because I will bet my bottom dollar that the people who apply are going to be the ones who belong to the current committee. There is nothing wrong with that however, it doesn't represent the interest of the entire community and that is why I think those changes need to be made.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Ordinance No. 3029.

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

8. BOARD APPOINTMENTS

8.1 EDWARD HAWORTH

Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to appoint Edward Haworth to the Capital Improvement Advisory Committee.

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

8.2 JACK CRABTREE

Councilor Yvonne Flores moved, seconded by Councilor Johana Bencomo, to Appoint Jack Crabtree to the City Art Board.

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

8.3 NICHOLAS PEARCE

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Appoint Nicholas Pearce to the Convention and Visitors Bureau Advisory Board.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Tessa Abeyta

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

Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to Appoint Dr. Jerry Wallace to the Historic Preservation Commission.

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

9. NOTICE OF PROPOSED ORDINANCE(S)

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

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

10.1 MAYOR MIYAGISHIMA

I was talking to Ifo and earlier you heard some of the discussion about as far as some security downtown and I think you Mayor Pro Tem and Ifo have been working on this. We are going to have a TIDD Meeting next week.

Ifo Pili, City Manager said it is going to be presented as an option for security down there and really, we found out that there is an opportunity to use TIDD money for security and that wasn't the thought before. The thought was that we couldn't that it was for infrastructure. I know Ikani and our ED team found out there may be option to use TIDD money for security. That is going to be presented next TIDD meeting item on the agenda.

Mayor Miyagishima said years ago the city used to be in partnership with the Town of Hatch regarding our gas. It was called the Rio Grande Natural Gas Association and we never had problems filling that board. Let me tell you why because they use to get paid. Just something to think about, the board members got paid \$500 month, the chair got paid about \$750.

Regarding the Citizens Review Board, I had mentioned to Dr. Nissen that if he gives me the information that I would take a look at it and then from there if I wanted to move forward I would take it to the Public Safety Committee and if the Public Safety Committee gives it a thumbs up then to a City Council Meeting for Work Session.

10.2 COUNCILOR GANDARA

I appreciated the numerous people that came today for public comment, I felt the support and the love. There have been some solutions and strategies that were brought up that I thought were great ideas and some that we have had that have fallen off given the vacancies, differences in different leaders leaving, our staff leaving the city. One is the Leadership Academy. It is something we were very passionate

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about as councilors back then in a way that would build up our leadership in community but also to help recruit for these numerous committees and boards and City Council. So, I am asking Ifo, for that to be looked at again and reinstate the Leadership Academy and frankly it was an ambassador program for the City of Las Cruces. It provided a way by which everyday people could learn about their city and municipality the various departments and then they would go out and speak about the numerous departments.

I wanted to make reference to the forgotten victims, which according to Mr. Garcia, our business community. There are numerous things that are happening in our community that I never hear from the business community about. We all have a shared responsibility in this community and people and I am always astonished that a number of folks don't know who their city council members are and I don't know Mayor and Ifo if Mandy or PIO could help provide the community with the information so that if you are a victim of a crime of course we are very compassionate and concerned about that but I don't know if that is happening or not. So, I think one of the ways that would be helpful and I know that we had Chris Faivre and I specifically with our Las Cruces Cares Advocates and you have heard from them, Grace and David and they asked at our retreat for two more Las Cruces Care Advocates. I think there is something there that we can really build as a way to really reach out not only to our business community but residents who fall victim to a crime and the victim advocates that are associated with LCPD. I am hoping that maybe we can talk about that at our Public Safety Select Committee meeting that is what my recommendation is.

I did let Gayle know that I would let community know and council that on Saturday April 22nd there will be an Earth Day event with a hike and picnic to the Organ Mountain Desert Peaks National Monument.

This weekend I was alarmed to hear the numerous complaints and concerns regarding our detention center related to the administration there has removed books from the detention center

This coming week we will have our Public Safety Select meeting on Wednesday and a Health Policy Committee in the afternoon. I wanted to reach out to Ifo, Casa de Peregrinos, Lorenzo Alba reached out to me. They would like to do popups at our Lift Up Las Cruces area. The popups would consist of fresh produce, which I am really excited about which we have known District 1 is a food desert and access to good healthy nutrition and more specifically fruit.

I am for a stipend, I think that is an excellent idea for our committee members our board members and I am encouraging Dr. Earl Nissen to get that information over to Mayor if that has not happened yet so we can hear that at Public Safety Select and I will be pushing to a Work Session. I agree that Work Session needs to happen specifically to a Citizen Review Board.

Mayor Miyagishima said I forgot to mention Dr. Nissen, I know that you have tried and wanted to have a meeting with Ifo. It is true that Ifo is the City Manager and oversees

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all employees, including the Chief but he can't just unilaterally put a Citizens Review Board together. That is a policy issue and that comes before council.

10.3 COUNCILOR FLORES

It is of paramount importance to me to look into or establish an Oversight Committee consistent with the model that was presented by Dr. Nissen. This is really an issue of transparency and I think I have publicly stated that and if I haven't I will now. The Public Safety and the other Oversight Committee, whatever happens there does not get to the rest of the City Council. We need transparency and I have looked through the materials that the Anaheim California Oversight has and the board and all that. I would like to see Mr. Mayor if possible and Mr. Pili whether there can be any communication with the City Council of that city to see how they work. I do believe that we need to do that and if we can move on that as swiftly as possible it would be really appreciated by me and by members of our community.

The other is the street name change. Exactly a month ago today, Mr. Nichols and Mr. Pili on March 3rd that resolution was passed to change or it didn't change the existing 1980 resolution because that was a completely different resolution. It had nothing to do with what was created that we voted on and passed on March 3rd. Mr. Weir made it clear that it takes 30 days for it to go into effect and today is exactly 30 days. I believe that we should move swiftly and expeditiously Mr. Nichols. I just want to make sure that this gets on the road and gets done as expeditiously as possible. One comment was made at Public Participation that people on that street, there are 20 households, and those 20 households will have to change all sorts of information and the 911 issue is very important.

10.4 COUNCILOR CORRAN

Just as a note I think the idea of inconvenience is a pretty appalling thing to see on the other side of a scale of justice that includes things like forced sterilization and residential schools, so I am particularly offended when people suggest that there is a parallel between those two things.

Last week Councilor Abeyta and I had the privilege to travel to DC and meet with the National League of Cities and hear a lot of things there as well as both of our Senators and/or their staff and Gabe sends love to everyone here and in the city. We had a really positive conversation with all of them and they are really excited about what we are doing in Las Cruces and they were grateful to hear of all the things they could invest in our community.

One interesting thing that Public Comment that someone made that was that we might follow up on is going to visit specific agencies later and one of the agencies that was mentioned was the National Endowment of the Arts and so I think just to the question of the idea of arts and cultural districts and leveraging our resources I am curious if we might be able to find a niche to support some of those things in our community that would be really cool and different from our dynamic from maybe what we have always thought of.

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Other notes tomorrow morning here upstairs TSI PRC will be meeting to discuss primarily energy rebates including from El Paso Electric but also the ways that the city is working to make these more accessible and more useable for people in Las Cruces that is at 8:30 tomorrow morning if you would like to join us. I walked through the new Animal Services Building which is nearly complete. It is going to be amazing. It has a number of things built in that I know we all hoped for and so I really want to thank the voters of Las Cruces for investing in the ASCMV. Also, the Rinconada Dog Park, thank you to the project managers and Parks and Rec for getting that up and running. I know that there is still some outstanding things to happen but I know people are visiting and it is really popular already.

Another thing remains on Rinconada Boulevard and the district there are two resurfacing projects happening on Rinconada Boulevard from Settlers Pass to Villa Del Valle approximately and on Mercury Lane and Ewy Lane to Northpoint approximately that will be happening on Wednesday.

Last week I had the opportunity to participate in a DACC student documentary project about water and so I just want to thank Adrienne Widmer for providing a bunch of information as well as ACM Delgado and Robert Nunez, he also provided a bunch of great information. We will let you know when the documentary is done so that you can see it. I think the City of Las Cruces can be proud of our contribution to water conservation in the region.

I just want to elevate the discussion of police reform and lend my voice to the importance of having a Work Session. I hope that Work Session can include both the idea of a Community Oversight Board as well as a number of other potential policy changes that could be in order. It sounds like there will be four councilors ready to support this so I would argue that we would skip other conversations and call it right to the Work Session. I would be happy to organize it and bring folks who are experts on these issues as well as the folks who have been doing the research that has already been done including Dr. Nissen, Peter, and Bobbie Green. I hope that we can just prioritize that and put the Work Session on the calendar now.

10.5 COUNCILOR BENCOMO

I would agree. I would also like a Work Session Mayor, that does make four folks who have said that. The one thing that I do want to note that when I talked to community members who are talking about this Oversight Committee and even though we might not see eye to eye on these things, but I hear is there is a huge lack of transparency and access to information and your suggestion is to take the decision to a committee that meets privately. So, I feel that it only adds to the confusion about why these decisions are being made privately behind closed doors when we should be having a community wide discussion around what is best for our community, particularly for me it is around use of force, use of force data and I think that is where we start. Start with how do we collect force of use data and how do we share use of force data. At the end of the day this is about better policing and I deeply believe that is what we are all looking for. Full transparency, Councilor Corran and I have been working on research around what would best fit our city and we would love to if you gave us some time and bring some of that and bring experts like the ACLU who can help facilitate some of these conversations.

There was a very unfortunate mistake on the mailer that went out regarding my District 4 council meeting, so I deeply apologize to people. The address MacArthur Elementary is wrong on there. MacArthur Elementary is 655 North Fourth Street so I hope that folks are listening.

We will not have a Housing PRC meeting this month because we are having a round table discussion with Senator Martin Heinrich around the importance of affordable housing and a lot of the issues going on. So, I'm really excited to get not only my colleagues in front of him but also members of our community who have a lot of expertise around this.

I met with the owners of Save Mart Grocery Store, and they are such great people. They are experiencing some difficult things so this idea that we don't listen, all that is completely wrong. I met with these folks and really what I found is that we are not putting information out there as much as we should be. People don't quite yet know how Project LIGHT is going to work and that they are still going to use the 911 system. People don't know about the Mano y Mano Program and the Hot Spot Truck and how they can access it. I love telling people about ask Las Cruces App and people know very little about it. I just want to make sure that if we are working with PIO to do as much cool stuff as possible whether it is word media, TV, newspaper, social media to get the word out about all of the good things that we are doing in the short term while we are obviously working on longer term solutions for the challenges we are currently facing.

Lastly, I just really want to thank folks who came today and had such kind and beautiful words to say. People don't have to do that. We sort of chose this job and people can disagree with us and criticize our decisions all they want. That is what democracy is. I think for me what felt important today was that we are pushing back against this desire to be hateful. I was reading some of the Nextdoor app comments myself and some of them were unkind and awful and I just want to appreciate the counter narrative that came here today and tell people thank you for showing up for your city and showing up for democracy.

Mayor Miyagishima said I can't just put a blanket Work Session on this Citizens Review Board. I would like to see a proposal. It sounds like you want me to just circumvent what we have done in the past two years and that is from council to PRC Committee and that is the best we can do as far as Public Safety is to go through and share with us the members of the Public Safety Committee and then from there to City Council. What I am saying is that it is important that we stay consistent and that has been the process in the past and I would strongly suggest that it continue to be that way in the process. Once you do that you are going to show precedence.

Councilor Bencomo said if I may say it is not written in stone, but she may be proving me wrong around to bring policies forth. I also want to point out that Public Safety is not a PRC, a policy review committee and feel like that is the biggest difference between the PRCs versus the Public Select Committees. Which I sit on one as well, the Finance Committee and everything we talk about comes to City Council. So, I just

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want to make sure for the sake of transparency, that is what I hear people say. Information is not transparent in public enough. I feel like doing this it only makes that worse.

Mayor Miyagishima said the reason also is that it allows our City Attorney's Office to be able to digest and see exactly what is being proposed and what could be possibly illegal and something that couldn't be done. It gives them a chance to have that ironed out before we go and have a Work Session and a lot of this stuff might not be able to be allowed. That is why I think it is important to run to the process that we have established in the past.

Councilor Abeyta

Said in full transparency I am not one of the four that is agreeing to this but with that being said in our City Charter in Section 2.08 Procedure in Meetings, it does say that special meetings may be held at the call of the Mayor or four or more members. Which in this case would seem like what is being issued here and is allowed in the charter and when practical upon no less than twelve hours notice to each member, all meetings are subject to state statute regarding open meetings. So, with that in mind if there was an issue with legal then we could schedule it within a few weeks time but obviously not next week would not be admirable but in a couple of weeks to give staff enough time to do that but according to the charter I do believe if there is four more members, they can call for that special meeting.

10.6 COUNCILOR GRAHAM

I am also in favor of a stipend for board participation. I think that is a great idea and way to ease the barriers that can really shut out true participation from everyone in the city. Along those lines too I am really intrigued as well with the Neighborhood Leadership Academy. When Mr. Herdon was speaking it sounded like he said it was 15-16 weeks, if I heard that correctly and I would just suggest that maybe we look at ways to thorough but perhaps not so daunting. In terms of access and barriers not everyone has the time to commit to a sixteen-week academy. So, if there are ways that we can think about that as accessible as possible too I would appreciate that.

I also want to say thanks to everyone who comes out to participate but it was really heartening to see so many folks come out and again not in opposition to opposition, that is why we are here. That is in fact democracy but in opposition to disrespect to words and rhetoric and narratives that are not intended to make real change. They are intended to be performative, to be cut into clips to be posted to YouTube, to be spread through social and that is another thing that I wanted to mention briefly. I have had a lot of what I would have thought were productive conversations with people very opposed to what I was doing, to what the larger council was doing and I have seen the social media presence and some of those folks and I would just ask them the words they are putting out. Maybe you personally would never try to incite violence against someone, maybe the people you know in real life would not be moved to that but you cannot and do not know scope of the words that you put out on social media and on the internet and it is not that hard to trigger an unhinged person. Even if you are not that unhinged person, I would ask folks to think carefully about what they are putting out in the ethers of the internet.

Agenda Item #6.2.

Finally, I am not sorry for the people I serve with, and I am proud of what we are doing even when it kind of brings down the house. I do want to acknowledge staff to the people who share the dais with the council, those who are out waiting for all of this to be done. Those who I know are listening in your offices, I recognize the decisions we make affect your lives too and that sometimes I worry. We make a lot of waves and I know that can make staff's lives a little more difficult. You handle it with grace, poise, expertise, and far beyond what I am capable of, but I just wanted to acknowledge and thank you for taking this ride with us.

10.7 COUNCILOR ABEYTA

I don't have anything to report for Oversight Committee since we have not met since the last time. I do want to note a special thank you to our City Clerk Christine Rivera who has made new reporting documents. I know there has been a critique of that and I have been using the new reporting system on everything that has been shared and I really do appreciate it. It is quite robust and I am sure Christine if you would love to send that out to the other councilors if they would like to use that as there is many chairs for other organizations including Councilor Flores on Economic Development if you would like to use that type of system to report out to council it has been quite effective.

Councilor Corran did mention that we went to the National League of Cities. I went in dual capacities here as a Councilor and with the Municipal League itself. From that we heard a few narratives and common problems within the western municipal group which kind of expands from Washington, Nebraska, California, Arizona, ourselves. It is quite large and robust, but we are seeing similar problems in all of these areas. There is issues with housing. In Montana they had a boom of individuals come over because of shows like Yellowstone apparently and billionaires pricing out millionaires, that priced out workforce and now they have whole towns that have no available housing for a workforce that can no longer serve a bunch of people. We are seeing housing in urban areas to that is a problem. I am very happy to see that we are addressing housing in different ways that we are working with the GO Bond I think we are on the right track to look at that housing first model which seems to be doing a little bit better than obviously nothing at all. The second portion on message that we got was that about ARPA and how our city is using that fund and that is one of the ways that I know our delegation has been very curious about. All the ways that is going and what that progress looks like and how can we share how this has helped our community and looking at that transparency and the third item we talked about was that of the Federal Budget. They are expecting robust conversations about the budget and it is expected that there will be no final decisions until almost the end of entire session. There are a lot of people that are confident that they are going to reach a solution about it but it is going to be at the end of the wire.

My second item is that I will be having a District 2 meeting tomorrow from 6-7:30 at the Papen Center. We will be going over public safety, our budget process. We are going to be giving information about those issues for businesses in different ways that we can help, those who have experienced different things like vandalism. We will be having a public work date because we have a few projects including the University Waterline and over mill replacement that are going on as well.

11. CITY MANAGER REPORT

11.1 IFO PILI

I need to read this as a requirement for our bond ordinance. This is the final requirement report back to you the details of our pricing certificate and award certificate. So, for our State Shared Gross Receipts Tax Approval Revenue Bond series 2023, bonds were sold by competitive bid on March 7, 2023, Morgan Stanley provided the lowest interest cost to the city. The sale amount \$12 million as directed with the premium of \$919,481.10, net effective interest rate of 3.383 which is less than the 10% in the parameters. Bond closed on April 11, 2023, the city receives bond proceeds, final payment of bonds specified as of June 1, 2035, which meets the ordinance parameters as well. For the General Obligations Bonds Series 2023, as mentioned by our Finance Director our bonds were sold by competitive bid on February 28, 2023, Fifth Third Security provided the lowest interest cost to the city. The sale cost was at par at \$17million as directed with the premium of \$1,371,678.70 net effective interest rate of .46, again less than the 10% as outlined in the parameters. Bonds closed on March 30, 2023, and final payment on bonds specified as August 1, 2036, which also meets ordinance parameters.

Just a couple of updates from Parks and Rec and I know someone just made a comment about the Senior Olympics. Recently the Parks and Rec hosted the Senior Olympics qualifier for pickle ball, free throw basketball, horseshoes, and softball. Winners will participate in the 42nd annual Senior Olympics held in Las Cruces later this summer June 7th -11th, 2023.

From Visit Las Cruces is hosting an official mural unveiling at 3:30 p.m. Thursday, April 13th at 336 South Main Street which is the Visit Las Cruces Building. Local artist Anahy Nunez winning artwork was chosen following a national search, in addition to her artwork Nunez is also known for her face and body art and as a tattoo artist. The mural name Con Amor captures some of the communities well known features and is a vibrant display of the city.

Mayor Miyagishima said I needed to bring something up before we go the City of Las Cruces logo as far as I know I thought was a registered trademark and for the longest time we have always protected that because what if someone was to use that on their business. It can give the appearance that the city is supportive and behind it. I don't know Ifo but it was probably done very innocently on the City of Las Cruces Facebook on March 14th and it says right here and it doesn't say anything about a business but this is where it gets close about artwork, it says "do you have a special connection to the city of Las Cruces, we would love to see how you have incorporated the Las Cruces logo into your life. Whether you use it on your artwork, tattooed it on your body or displayed it proudly on your car. Share a photo to us". I don't recall us changing that policy if there was one, we always protected it. I have never verified it but I know years ago Communications Office, different Director and Legal they let some businesses know, hey you can't use this logo on your business. I think we might want to look into that.

Ifo Pili said our thought is that we really want to use our logo as sort of a unifying symbol of our city. I am glad you made me aware of that. We can check with Legal

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and maybe have it for discussion. Coming to the City Council for discussion on the logo and changing in the fonts, making it more able to be used and many different places. We really want to plaster this logo all over the city. Even with different departments there is so many different logos with the different departments and what we are trying to is bring it all back. It is kind of this big push to really use that logo as a symbol of pride for the city but I wasn't aware of the issues that happened in the past but we can certainly look into that. If that is an issue this is certainly the time to bring it up.

12. ADJOURNMENT

12.1

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to Adjourn at 5:25 p.m.

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

Mayor

City Clerk



City of Las Cruces

City Council Action and Executive Summary

23-116

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		Adopted:	May 1, 2023
Drafter:	Jason Smith	Department:	Fire Department
Program:	Mobile Integrated Healthcare	Line of Business:	Community Risk Reduction
Title:	A RESOLUTION TO SUPPORT CITY STAFF IN PROVIDING EDUCATION AND REFERRAL INFORMATION TO CITIZENS REGARDING SUBSTANCE ABUSE TREATMENT OPTIONS WITHIN OUR COMMUNITY		

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

PURPOSE(S) OF ACTION:

To direct specific departments and staff within the City of Las Cruces to provide referrals and education to local providers of medication-assisted-treatment and medications for opioid use disorder, which have been identified as best practice by the Centers for Disease Control and Prevention.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Substance abuse adversely impacts residents of Las Cruces in many ways, including negative health impacts, risk of criminal activity, overdose, and deaths. To combat substance abuse and the negative impacts of such abuse, the City of Las Cruces should promote and educate the public on best practices to end such abuse. The Centers for Disease Control and Prevention also reported that Illicitly manufactured fentanyl (IMFs), heroin, cocaine, or methamphetamine were involved in 83.8% of overdose deaths. The CDC reports at least one potential opportunity for intervention was identified in 62.7% of overdose deaths. With the level of contact between the public and the City of Las Cruces's employees, there are multiple opportunities for providing intervention. The Elevate Las Cruces comprehensive plan identifies improving Community Prosperity by supporting programs that improve the health and wellness of all residents. The Elevate Las Cruces comprehensive plan also identifies enhancing Community Livability by providing opportunities for residents to improve their mental and physical health. Targeting crucial opportunities for intervention with evidence-based overdose prevention programs can help reverse increases in drug overdose deaths.

One of the best practices identified by the CDC for treating substance abuse is medication-assisted treatment (MAT) and medications for opioid use disorder (MOUD). Treating opioid use disorder using MAT and MOUD has been shown to reduce mortality by approximately 50%. MAT has also been shown to be effective in the treatment of alcoholism. Las Cruces has MAT, MOUD, and alternative substance abuse treatment providers available.

The City of Las Cruces, through the Police Department, Fire Department, Employee Wellness Program, and Communications Office, have the ability to perform outreach to those that may need substance abuse treatment. Following CDC best practices regarding MAT and MOUD, City personnel and staff shall provide referrals and education to local centers providing those services as practical.

References

Agenda Item #7.1.

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Centers for Disease Control and Prevention. (2022, February 23). Stop Overdose, Stigma Reduction. Retrieved from https://www.cdc.gov/stopoverdose/stigma/index.html?s_cid=DOP_Stigma_Search_Paid_001&qclid=EAlaIqobChMIndSZpdXA_QIVNy6tBh26vAsMEAAAYASAAEgILAfD_BwE

National Academy of Sciences. (2019). National Library of Medicine, National Center for Biotechnology Information. Retrieved from Medications for Opioid Use Disorder Save Lives: <https://www.ncbi.nlm.nih.gov/books/NBK541393/>

samhsa.gov. (2023, February). Retrieved from National Substance Use and Mental Health Services Survey (N-SUMHSS), 2021:: <https://store.samhsa.gov/sites/default/files/pep23-07-00-001.pdf>

Substance abuse and Mental Health Services Administration. (2023, January 25). SAMHSA. Retrieved from Opioid Overdose: <https://www.samhsa.gov/medications-substance-use-disorders/medications-counseling-related-conditions/opioid-overdose>

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Health 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" staff will develop programs and methods for providing educational materials and referrals.
2. Vote "No" specific action or changes in department functions regarding this issue will not take place.
3. Vote to "Amend" staff will require additional and specific direction.
4. Vote to "Table" staff will bring the resolution back for consideration at a later date

RESOLUTION 23-116

A RESOLUTION TO SUPPORT CITY STAFF IN PROVIDING EDUCATION AND REFERRAL INFORMATION TO CITIZENS REGARDING SUBSTANCE ABUSE TREATMENT OPTIONS WITHIN OUR COMMUNITY

The City Council is informed that:

WHEREAS, substance abuse adversely impacts residents of Las Cruces in many ways, including negative health impacts, risk of criminal activity, overdose, and deaths; and

WHEREAS, the Centers for Disease Control and Prevention reported that Illicitly manufactured fentanyl (IMFs), heroin, cocaine, or methamphetamine were involved in 83.8% of overdose deaths; and

WHEREAS, the CDC reports at least one potential opportunity for intervention was identified in 62.7% of overdose deaths; and

WHEREAS, the Elevate Las Cruces comprehensive plan identifies improving Community Prosperity by supporting programs that improve the health and wellness for all residents; and

WHEREAS, the Elevate Las Cruces comprehensive plan identifies enhancing Community Livability by providing opportunities for residents to improve their mental and physical health; and

WHEREAS, targeting crucial opportunities for intervention with evidence-based overdose prevention programs can help reverse increases in drug overdose deaths; and

WHEREAS, medication-assisted treatment (MAT), medications for opioid use disorder (MOUD), and additional recovery options provide evidence-based and effective treatment options for substance abuse; and

WHEREAS, the treatment of opioid use disorder using MAT and MOUD has been shown to reduce mortality by approximately 50%; and

WHEREAS, MAT has also been shown to be effective in the treatment of alcoholism; and

WHEREAS, Las Cruces has a number of MAT, MOUD, and alternative substance abuse treatment providers which are available; and

WHEREAS, the City of Las Cruces, through the Police Department, Fire Department, Employee Wellness Program, and Communications Office, have the ability to perform outreach to those that may be in need of substance abuse treatment.

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

(I)

THAT the City Council of the City Las Cruces supports efforts to maximize access to substance abuse treatment options.

(II)

THAT the City Council of the City Las Cruces requests City staff to provide referrals and educational materials to residents needing substance abuse treatment.

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(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

Agenda Item #7.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



City of Las Cruces

City Council Action and Executive Summary

23-117

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District: ☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A

1st Reading: Adopted: May 1, 2023

Drafter: Erika Jaquez

Department: Financial Services

Program: Treasury

Line of Business: Revenue Management

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

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

PURPOSE(S) OF ACTION:

Approve financial assistance application.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Charter authorizes City Council to borrow funds. The New Mexico Finance Authority (NMFA) has instituted a program for financing public projects which can lead to lower interest costs. As part of the program, City Council is required by NMFA to authorize the submission of the application. The proposed action will allow the City to submit the application for financing of improving, 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. 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.

SUPPORT INFORMATION:

[ATTACHMENT "A" NMFA Public Project Revolving Fund Infrastructure Application](#)

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

Agenda Item #7.2.

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

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

RESOLUTION 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.

The City Council is informed that:

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

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

WHEREAS, the Governing Body has undertaken a plan to enter into a loan agreement for improving, 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 the costs of issuance ("Project"); and

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

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

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

(I)

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

(II)

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

(III)

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

(IV)

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

(V)

THAT this resolution shall take effect immediately upon its adoption.

(VI)

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

Agenda Item #7.2.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

NMFA Use Only:

App. #:	-PP
FA assigned:	
Legislative Authorization	



NEW MEXICO
FINANCE AUTHORITY

PUBLIC PROJECT REVOLVING FUND INFRASTRUCTURE APPLICATION

I. GENERAL INFORMATION

A. APPLICANT/ENTITY

				Application Date:		3/10/2023	
Applicant/Entity:		City of Las Cruces					
Address:		700 N. Main Las Cruces, New Mexico 88001					
County		Dona Ana			Census Tract:		
Federal Employer Identification Number (EIN) as issued by the IRS:							
Legislative District:		Senate:				House:	
Phone:	575-541-2084	Fax:		Email Address:	ejaquez@las-cruces.org		
Individual Completing Application:		Kaeley Weimerskirch					
Address:		6301 Uptown Blvd. NE Suite 110 Albuquerque NM 87110					
Phone:	505-872-5996	Fax:	505-872-5979	Email Address:	Kaeley.weimerskirch@rbccm.com		

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

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

B. BOND COUNSEL PRIMARY CONTACT PERSON:

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

II. PROJECT SUMMARY

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

- 1. Description of the project. Various Street Projects
- 2. Proposed Project Start Date: July 2023 Proposed Project Completion Date: July 2024
When do you need NMFA funds available? June 2023
- 3. How will the ongoing maintenance, operation, and replacement of this project be funded?

By the City

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

B. **Total Project Cost & Sources of Funds Detail.**

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

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Land Acquisition	\$	\$	\$	\$
Utilities (Electric, Gas, Water, etc.)	\$	\$	\$	\$
Engineering and Architectural	\$	\$	\$	\$
Contingencies	\$	\$	\$	\$
Costs of Issuance	\$90,000	\$	\$	\$90,000
Deposit to Refunding Fund		\$	\$	\$
Total Cost:	\$5,090,000	\$	\$	\$5,090,000

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

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

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

- C. Will this project require right-of –way acquisition? Yes☐ No☒
- If yes, specify any right-of-way needs, and whether acquisition may or may not delay beginning of project.

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

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

- E. Does this project require a Joint Powers Agreement (JPA)? Yes☐ No☒
- If yes, provide a copy of (attach) the JPA, which should include a list of the current membership

III. FINANCING

- A. 1. Specify the revenue to be pledged as security for the NMFA loan (a revenue source must be pledged for this type of project).
- ☒ Municipal Local Option GRT – please specify: 1st 0.25% MGRT

☐ County Option GRT – please specify:

☐ Other Tax-Based Revenue:

☐ State-Shared GRT

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☐ Law Enforcement Funds

☐ Fire Protection Funds

☐ Net System Revenues:

☐ Other Revenue:

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

3. Preferred financing term: 13 years

B. Is any debt being repaid from the revenue source(s) referenced in A (1)? Yes ☒ X

Series 2010A, Series 2014A, 2017 (PPRF-3712), Series 2020A (PPRF-5205)

☐☐

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

IV. READINESS TO PROCEED ITEMS

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

☐ Equipment cost breakdown (if applicable)

☐ Three most recently completed fiscal year audit reports

☐ Current unaudited financials

☐ Current fiscal year budget

☐ Verification of ownership of land where project will be located

☐ Documentation that each non-NMFA project funding source has been approved, or is in the process of being approved (if applicable)

☐ Joint Powers Agreement (if applicable)

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

☐ Provide a detailed drawdown schedule for project payments

☐ Final technical information for the project, stamped and approved by a registered engineer

☐ Cost breakdown of the project, certifiable by either an engineer or architect

☐ Area map, site map, and floor map (if applicable)

☐ Verification of ownership of land where project will be located

☐ Documentation that each Non-NMFA project funding source has been approved, or is in the process of being approved (if applicable)

☐ Documentation showing status of right-of-way acquisition (if applicable)

☐ Explanation of land ownership arrangements (if applicable)

Agenda Item #7.2.

- ☐ List all required permits and licenses necessary to complete this project. Detail the status of each item, a plan of action, and time frame for completing incomplete permits and licenses. Also provide a copy of all permits and licenses.
- ☐ Is there litigation pending which would have a bearing on this project or applicant? Yes ☐ No ☐
If yes, provide a complete summary of all circumstances relating to such litigation.
- ☐ Indicate the regular meeting dates for your authorizing body: _____

V.CERTIFICATION

I certify that:

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

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

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

Signature:	_____	Title:	_____
	(highest elected official)		
Jurisdiction:	_____		
Print Name:	_____	Date:	_____
Signature:	_____	Date:	_____
Finance Officer/Director:	_____		



City of Las Cruces

City Council Action and Executive Summary

23-118

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District: ☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A

1st Reading: Adopted: May 1, 2023

Drafter: Erika Jaquez

Department: Financial Services

Program: Treasury

Line of Business: Revenue Management

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

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

PURPOSE(S) OF ACTION:

Approve financial assistance application.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Charter authorizes City Council to borrow funds. The New Mexico Finance Authority (NMFA) has instituted a program for financing public projects which can lead to lower interest costs. As part of the program, City Council is required by NMFA to authorize the submission of the application. The proposed action will allow the City to submit the application for financing of acquisition, construction, maintenance, and completion of various flood control infrastructure projects. 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.

SUPPORT INFORMATION:

[ATTACHMENT "A" NMFA Public Project Revolving Fund Infrastructure Application](#)

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?

Agenda Item #7.3.

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

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

RESOLUTION 23-118

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

The City Council is informed that:

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

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

WHEREAS, the Governing Body has undertaken a plan to enter into a loan agreement for the acquisition, construction, maintenance and completion of various flood control infrastructure projects and to pay the costs of issuance (“Project”); and

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

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

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

(I)

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

(II)

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

(III)

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

(IV)

Agenda Item #7.3.

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

(V)

THAT this resolution shall take effect immediately upon its adoption.

(VI)

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

NMFA Use Only:

App. #:	-PP
FA assigned:	
Legislative Authorization	



NEW MEXICO FINANCE AUTHORITY

PUBLIC PROJECT REVOLVING FUND INFRASTRUCTURE APPLICATION

I. GENERAL INFORMATION

A. APPLICANT/ENTITY

				Application Date:		4/14/2023	
Applicant/Entity:		City of Las Cruces					
Address:		700 N. Main Las Cruces, New Mexico 88001					
County		Dona Ana			Census Tract:		
Federal Employer Identification Number (EIN) as issued by the IRS:							
Legislative District:		Senate:				House:	
Phone:	575-541-2084	Fax:		Email Address:	ejaquez@las-cruces.org		
Individual Completing Application:			Kaeley Weimerskirch				
Address:		6301 Uptown Blvd. NE Suite 110 Albuquerque NM 87110					
Phone:	505-872-5996	Fax:	505-872-5979	Email Address:	Kaeley.weimerskirch@rbccm.com		

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

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

B. BOND COUNSEL PRIMARY CONTACT PERSON:

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

II. PROJECT SUMMARY

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

- 1. Description of the project. Flood Control Projects
- 2. Proposed Project Start Date: July 2023 Proposed Project Completion Date: July 2024
When do you need NMFA funds available? June 2023
- 3. How will the ongoing maintenance, operation, and replacement of this project be funded?

By the City

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

B. **Total Project Cost & Sources of Funds Detail.**

Construction Activities	NMFA Funds Requested	Other Public Funds*	Private Funds	Total
Planning and Design	\$	\$	\$	\$
Construction	\$3,000,000	\$	\$	\$3,000,000
Equipment	\$	\$	\$	\$
Infrastructure Activities				
Facility Acquisition	\$	\$	\$	\$

Agenda Item #7.3.

Land Acquisition	\$	\$	\$	\$
Utilities (Electric, Gas, Water, etc.)	\$	\$	\$	\$
Engineering and Architectural	\$	\$	\$	\$
Contingencies	\$	\$	\$	\$
Costs of Issuance	\$80,000	\$	\$	\$80,000
Deposit to Refunding Fund		\$	\$	\$
Total Cost:	\$3,080,000	\$	\$	\$3,080,000

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

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

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

C. Will this project require right-of –way acquisition? Yes ☐ No ☒
If yes, specify any right-of-way needs, and whether acquisition may or may not delay beginning of project.

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

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

E. Does this project require a Joint Powers Agreement (JPA)? Yes ☐ No ☒
If yes, provide a copy of (attach) the JPA, which should include a list of the current membership

III. FINANCING

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

☒ Municipal Local Option GRT – please specify: 5th 0.25% MGRT

☐ County Option GRT – please specify:

☐ Other Tax-Based Revenue:

☐ State-Shared GRT

Agenda Item #7.3.

☐ Law Enforcement Funds

☐ Fire Protection Funds

☐ Net System Revenues:

☐ Other Revenue:

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

3. Preferred financing term: 12 years

B. Is any debt being repaid from the revenue source(s) referenced in A (1)? Yes ☒ X

☐☐

Series 2014, Series 2016, Series 2020B (PPRF-5206)

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

IV. READINESS TO PROCEED ITEMS

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

☐ Equipment cost breakdown (if applicable)

☐ Three most recently completed fiscal year audit reports

☐ Current unaudited financials

☐ Current fiscal year budget

☐ Verification of ownership of land where project will be located

☐ Documentation that each non-NMFA project funding source has been approved, or is in the process of being approved (if applicable)

☐ Joint Powers Agreement (if applicable)

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

☐ Provide a detailed drawdown schedule for project payments

☐ Final technical information for the project, stamped and approved by a registered engineer

☐ Cost breakdown of the project, certifiable by either an engineer or architect

☐ Area map, site map, and floor map (if applicable)

☐ Verification of ownership of land where project will be located

☐ Documentation that each Non-NMFA project funding source has been approved, or is in the process of being approved (if applicable)

☐ Documentation showing status of right-of-way acquisition (if applicable)

☐ Explanation of land ownership arrangements (if applicable)

Agenda Item #7.3.

- ☐ List all required permits and licenses necessary to complete this project. Detail the status of each item, a plan of action, and time frame for completing incomplete permits and licenses. Also provide a copy of all permits and licenses.
- ☐ Is there litigation pending which would have a bearing on this project or applicant? Yes ☐ No ☐
If yes, provide a complete summary of all circumstances relating to such litigation.
- ☐ Indicate the regular meeting dates for your authorizing body: _____

V.CERTIFICATION

I certify that:

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

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

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

Signature:	_____	Title:	_____
	(highest elected official)		
Jurisdiction:	_____		
Print Name:	_____	Date:	_____
Signature:	_____	Date:	_____
Finance Officer/Director:	_____		



City of Las Cruces

City Council Action and Executive Summary

23-119

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	Adopted: May 1, 2023		
Drafter:	Valerie Uribe	Department:	Legal
Program:	Administration	Line of Business:	Applicant/Owner
Title:	A RESOLUTION APPROVING A WHOLESALER LIQUOR LICENSE TO PREMIER DISTRIBUTING COMPANY, LLC, LOCATED AT 380 ALLIANCE DRIVE, LAS CRUCES, NEW MEXICO 88007.		

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

PURPOSE(S) OF ACTION:

Approve a Wholesaler Liquor License to Premier Distributing Company, LLC.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for a Wholesaler Liquor License must be accompanied by a resolution of the City Council approving of and consenting after a public hearing.

Premier Distributing Company, LLC., applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC") for a Wholesaler Liquor License. The location for the license is at 380 Alliance Drive, Las Cruces, New Mexico 88007. ABC granted preliminary approval on March 9, 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, May 1, 2023, beginning at 1:00 p.m. Notice of this public hearing was published in the *Las Cruces Sun-News* on March 31, 2023, and April 14, 2023.

Council may approve or disapprove the Wholesaler Liquor License. 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.](#)

Agenda Item #8.1.

[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 Wholesaler Liquor License 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 23-119

A RESOLUTION APPROVING A WHOLESALER LIQUOR LICENSE TO PREMIER DISTRIBUTING COMPANY, LLC, LOCATED AT 380 ALLIANCE DRIVE, LAS CRUCES, NEW MEXICO 88007.

The City Council is informed that:

WHEREAS, Premier Distributing Company, LLC, located at 380 Alliance Drive, Las Cruces, New Mexico 88007, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC") for a Wholesaler Liquor License; and

WHEREAS, ABC granted preliminary approval for a Wholesaler Liquor License by letter dated March 9, 2023; and

WHEREAS, pursuant to law, the application for a Wholesaler Liquor License 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 Wholesaler Liquor License 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 Wholesaler Liquor License to Premier Distributing Company, LLC., located at 380 Alliance Drive, Las Cruces, New Mexico 88007, as evidenced by ABC's letter and the application attached hereto as Exhibit "A", is hereby approved.

(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

Agenda Item #8.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

Agenda Item #8.1.



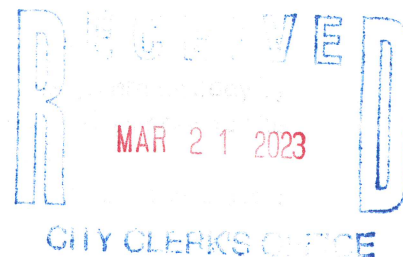
STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
 Linda M. Trujillo, Superintendent
 Andrew Vallejos, Director

March 9, 2023

By USPS Certified Mail No.: 7022 0410 0000 8283 1404

7022 0410 0000 8283 1404

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



Lic. No. /Appl. No.: Wholesaler Application
 Name of Applicant: Premier Distributing Company, LLC
 Doing Business As: Premier Distributing Company, LLC
 Proposed Location: 380 Alliance Dr., Las Cruces, NM 88007

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

Agenda Item #8.1.

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 WHOLESALER LIQUOR LICENSE.

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,

Tammy M. Sandoval

Tammy M. Sandoval

Admin Law Judge | Hearing Officer

NM Regulation & Licensing Department

Alcoholic Beverage Control Division

Phone: (505) 476-4548 | Fax: (505) 476-4595

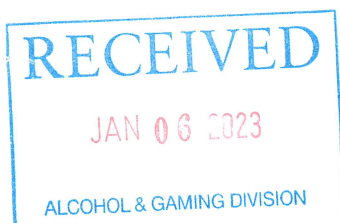
Email: Tammy.Sandoval@rld.nm.gov

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



NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT



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

Wholesaler Liquor Location Application | \$200.00 Application Fee, non-refundable

ABC USE ONLY: Application Fee \$ 200.00 Received on: 1-20-23 Receipt No. _____
License Fee \$ _____ Received on: _____ Receipt No. _____
Application Number: _____ Local Option District: _____

Check appropriate boxes:

TYPE OF WHOLESALER: [Licensing Fee due at Final] ☐ Beer [\$1,000] ☐ Wine [\$750] ☐ Beer & Wine [\$1,500]

☐ Spirits [\$1,500] ☐ Spirits & Wine [\$1,750] ☒ Spirits & Beer & Wine [\$2,500]

☐ Limited Beer* Based on Production, Master License No. _____ and _____

☐ Limited Wine** Based on Production, Master License No. _____ and _____

☐ §66-6A-29 Wine** Based on Production, Master Winegrower License No. _____

To Qualify for Limited Wholesaler, Applicant must hold a*Small Brewer / **Winegrower and a Restaurant or Dispenser type License

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

NAME OF APPLICANT: PREMIER DISTRIBUTING COMPANY, LLC

D/B/A Name to be used: PREMIER DISTRIBUTING COMPANY, LLC Business Phone No: 602-264-1635

Mailing Address: 4201 N. 45TH AVENUE, PHOENIX, AZ 85031

Email (required) THOLTRUP@HENSLEY.COM

Physical location where license is to be used: 380 ALLIANCE DR., LAS CRUCES, NM 88007

County: DONA ANA (Include street number / highway number / state road, city, state, and zip code)

Are alcoholic beverages currently being dispensed at the proposed location ☐ Yes ☒ No If Yes, License # / Type: _____

Contact Person: THOMAS HOLTRUP Phone #: 623-245-8026 Email: THOLTRUP@HENSLEY.COM

I, (print name) THOMAS HOLTRUP, as (title) VICE PRESIDENT- SECRETARY/TREASURER 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.

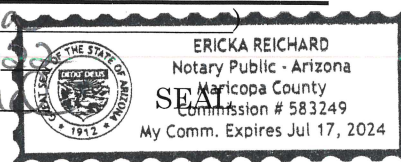
Signature of Applicant: Thomas Holtrup Date: 12/22/22

Notary Public Use Only: (State of Arizona, County of Maricopa)

SUBSCRIBED AND SWORN TO before me this 22 day of December, 2022

By: Thomas Holtrup Notary Public: Ericka Reichard

Date my Commission Expires: July 17, 2024



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: _____



COPY

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): _____
B. Date and Term of Lease: _____

3. Premises location is Zoned (example C-1, see Zoning Statement): WMIP - F ZONE
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: FAIRACRES BAPTIST CHURCH Miles/feet: 4.90 MILES
Address/location of Church: 5100 W PICACHO AVE. LAS CRUCES, NM 88007

5. Distance* from nearest School: (Property line of school to closest point of licensed premises—shortest distance)
Name of School: FAIRACRES ELEMENTARY SCHOOL Miles/feet: 5.41 MILES
Address/location of School: 4501 W. PICACHO AVE., LAS CRUCES, NM 88007

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.





COPY

STATEMENT OF ZONING

The property located at 380 Alliance Dr, and having a Map Code Number or Account ID Number of R0240358, in Las Cruces, New Mexico, is zoned as follows:

**LCIIP-MWD/AOD (Las Cruces Innovation & Industrial Park Overlay Zone
Manufacturing/Warehouse/Distribution/Airport Overlay Zone District)**

Comments: The purpose of the Las Cruces Innovation and Industrial Park Overlay Zone District is to guide development within the Park and implement the policies found in the LCIIP Master Plan. It aims to promote the natural and existing environment within the Park, and encourage employment options for residents while enhancing the overall aesthetic features of the Park. The Manufacturing/Warehousing/Distribution district is located south of Interstate 10 in the southwestern portion of the Park. It is intended to accommodate manufacturing, warehousing, and distribution types of uses. It offers a range of parcel sizes and has good access to the interstate.

The purpose of the Las Cruces International Airport Operations district is to protect the operations of the Las Cruces International Airport ("Airport") from encroachment of land uses that could inhibit or restrict present airport operations or negatively affect the future growth and operation of the airport. Since the boundaries associated with this district are dependent upon the physical boundaries of specific airport features, the boundaries shall change as necessary with respect to any changes in these features.

A Warehousing, Logistics, and Distribution is an allowed land use in the AOD and Las Cruces Innovation & Industrial Park Overlay Zone Manufacturing, Warehouse and Distribution Overlay districts, provided all FAA regulations are observed and 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.

December 20, 2022
Date


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.

Text of Ad: 03/23/2023

**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 Wholesale Liquor License to Premier Distributing Company, LLC located at 380 Alliance Dr., Las Cruces, NM 88007.

The Public Hearing will be held as part of the regularly scheduled meeting of the City Council on Monday, May 1, 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 22nd day of March 2023.

Christine Rivera, MS, CMC
City Clerk
#5641699, Sun News,
March 31, & April 14, 2023



MEMORANDUM

To: Jennifer Vega-Brown, City Attorney

From: Gary Skelton, P.E., Engineer **Initials:** GS

Date: February 24, 2023

Subject: Traffic Investigation Report – Wholesaler Liquor Location Application
- 380 Alliance Drive, Las Cruces, New Mexico, 88007 – Premier
Distributing Company, LLC

As requested, Traffic Management has completed a traffic investigation for Wholesaler Liquor Location Application submitted by Premier Distributing Company that will be located at 380 Alliance Drive in Las Cruces, New Mexico. The following information is submitted for review:

- The location of the proposed license will be located at 380 Alliance Drive. According to the Mesilla Valley MPO Traffic Flow Map, the nearest location with measured traffic volumes would be S. Crawford Boulevard with a measured traffic volume of 1,360 vehicles per day.
- The Mesilla Valley MPO classifies Alliance Drive as a local road arterial roadway near the subject location. Alliance Drive primarily serves commercial use near the subject property.
- The subject property has two full access driveways located on Alliance Drive leading to dedicated parking facilities on site. No sight distance or operational problems are currently known at the access points.
- The speed limit along Alliance Drive is unposted near the subject property therefore assumed 30 MPH per NMSA 1978 Section 66-7-301.

The approval of a Liquor License Application at this location does not appear to adversely impact traffic operations along this roadway segment. Feel free to contact me at 575-541-2508 if additional information is needed.

Agenda Item #8.1.

Valerie Uribe

From: Jose Leos
Sent: Wednesday, March 22, 2023 8:39 AM
To: Valerie Uribe
Cc: Michael Landavazo; Bobbie Munoz
Subject: RE: Premier Distributing Company, LLC

Good morning

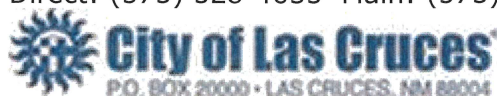
Valerie, the Las Cruces Fire Department approves the wholesaler Liquor Location Application pending a fire department inspection prior to opening.

Respectfully,

Jose A. Leos Jr.

Lieutenant/Prevention Bureau/Las Cruces Fire Department

Direct: (575) 528-4055 Main: (575) 528-3473, jleos@las-cruces.org



From: Valerie Uribe <vrube@las-cruces.org>
Sent: Tuesday, March 21, 2023 4:47 PM
To: Adam Ochoa <aocchoa@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 <krrogers@las-cruces.org>; Kendle Arellano <kmclurg@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 <hterrzas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jennifer Lucero <jenlucero@las-cruces.org>
Subject: Premier Distributing Company, LLC

Good afternoon,

Attached please find a request from Premier Distributing Company, LLC seeking a Wholesaler Liquor License at 380 Alliance Dr., Las Cruces, NM 88007.

Please provide reports no later than March 31, 2023.

Thank you,

Valerie Uribe

Senior Legal Assistant/Legal Department/City Attorney's Office

Direct (575) 541-2020, Main (575) 541-2128, Email vrube@las-cruces.org

700 N. Main Street, Suite 3200, Las Cruces, NM 88001

Agenda Item #8.1.

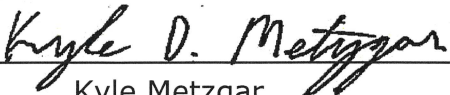


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**MEMORANDUM**

To: Jocelyn Garrison, City Attorney
From: Kyle Metzgar, Planning Technician Sr
Initials:
Date: April 7, 2023
File #: M-23-033
Subject: Liquor License Impact Report, Premier Distributing Company LLC

Attached, please find the Liquor License Impact Report for a Wholesaler Liquor License from the Community Development Department for Premier Distributing Company, LLC located at 380 Alliance Dr. If you have any questions, please contact me at (575) 528-3064.



Kyle Metzgar
Planning Technician Sr.

3-30-2021
Date

cc: David Weir, AICP, Chief Planning Administrator
Katherine Harrison-Rogers, AICP, Senior Planner

Initials:
Initials:

**City of Las Cruces
Community Development Department**

LIQUOR LICENSE IMPACT REPORT

**Application
Wholesaler Liquor License**

**Premier Distributing Company, LLC
380 Alliance Dr.**

April 6, 2023

LIQUOR LICENSE IMPACT REPORT
Wholesaler Liquor License
Premier Distributing Company, LLC
380 Alliance Dr.

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: 380 Alliance Dr.
Applicant: Premier Distributing Company, LLC
Business Name: Premier Distributing Company, LLC

LAND USE AND ZONING INFORMATION:

Subject Property Zoning: LCIIIP-MWD/AOD (Las Cruces Innovation & Industrial Park Overlay Zone Manufacturing/Warehouse/Distribution/Airport Overlay Zone District)
(See attached Statement of Zoning and Vicinity Map)

Subject Property Current Land Use:

<u>Adjacent Land Uses</u>	<u>Zoning</u>	<u>Land Use</u>
North	LCIIP-MWD/AOD	Vacant/Undeveloped
South	LCIIP-MWD/AOD	Vacant/Undeveloped
East	LCIIP-MWD/AOD/M-1C	Industrial
West	LCIIP-MWD/AOD	Vacant/Undeveloped

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 COUNT AND ACCESS INFORMATION:

Roadway: Alliance Dr.
Classification: Local Roadway
Number of Lanes: 2
Site Access: 2
Nearest Intersection: Alliance Dr. & Industrial Park Ave.

PARKING REQUIREMENTS:

The Las Cruces Innovation and Industrial Park Code, as amended, outlines that no parking supply minimums are required. Accessible parking shall be provided according to Federal ADA parking standards. Parking areas are to be separate from truck delivery and maneuvering areas. Loading docks and service areas are to be concealed from major street. As the business currently exists, there is no apparent change in land use and parking is not an issue.

IMPACT ANALYSIS:

The applicant is requesting a Wholesale Liquor License. The subject property is located on Alliance Dr., designated as a local roadway, a street of relatively short length that provides access to a collector street and is designed to discourage its use by through traffic. The subject property is zoned LCIP-MWD/AOD, which allows for this land use, provided all requirements as prescribed for liquor establishments by the State of New Mexico are met. In terms of a transportation and land use perspective, this seems an appropriate location and request.

STATEMENT OF ZONING

The property located at 380 Alliance Dr, and having a Map Code Number or Account ID Number of R0240358, in Las Cruces, New Mexico, is zoned as follows:

LCIIP-MWD/AOD (Las Cruces Innovation & Industrial Park Overlay Zone Manufacturing/Warehouse/Distribution/Airport Overlay Zone District)

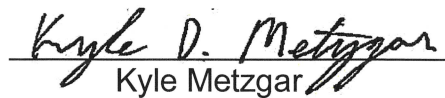
Comments: The purpose of the Las Cruces Innovation and Industrial Park Overlay Zone District is to guide development within the Park and implement the policies found in the LCIIP Master Plan. It aims to promote the natural and existing environment within the Park, and encourage employment options for residents while enhancing the overall aesthetic features of the Park. The Manufacturing/Warehousing/Distribution district is located south of Interstate 10 in the southwestern portion of the Park. It is intended to accommodate manufacturing, warehousing, and distribution types of uses. It offers a range of parcel sizes and has good access to the interstate.

The purpose of the Las Cruces International Airport Operations district is to protect the operations of the Las Cruces International Airport ("Airport") from encroachment of land uses that could inhibit or restrict present airport operations or negatively affect the future growth and operation of the airport. Since the boundaries associated with this district are dependent upon the physical boundaries of specific airport features, the boundaries shall change as necessary with respect to any changes in these features.

A Warehousing, Logistics, and Distribution is an allowed land use in the AOD and Las Cruces Innovation & Industrial Park Overlay Zone Manufacturing, Warehouse and Distribution Overlay districts, provided all FAA regulations are observed and met.

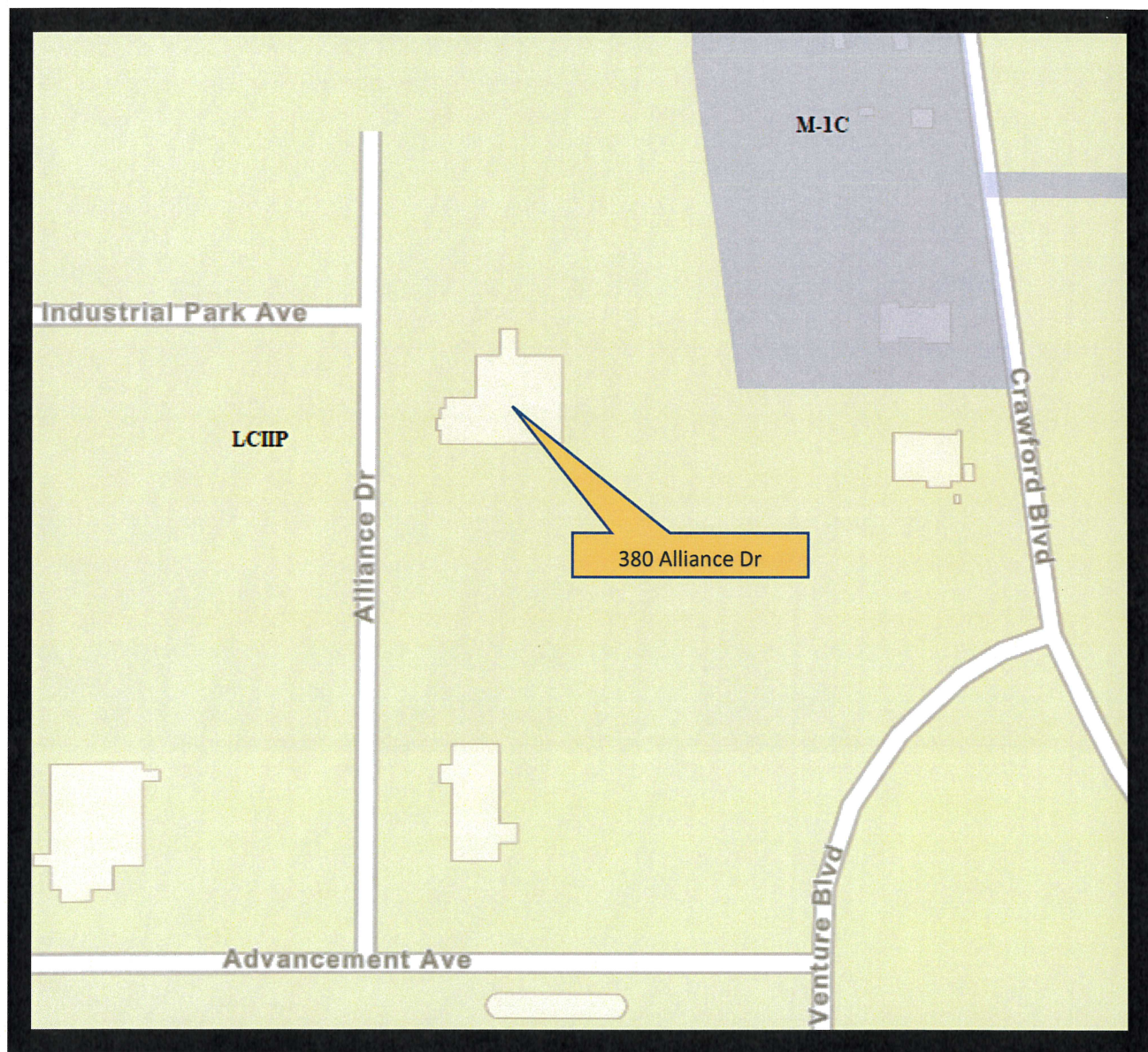
The above described property located in the City of Las Cruces, New Mexico, has been reviewed and found to be zoned as indicated above in accordance with the Las Cruces Zoning Atlas. Accordingly, I do hereby approve and issue this Statement of Zoning.

April 6, 2023
Date


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.

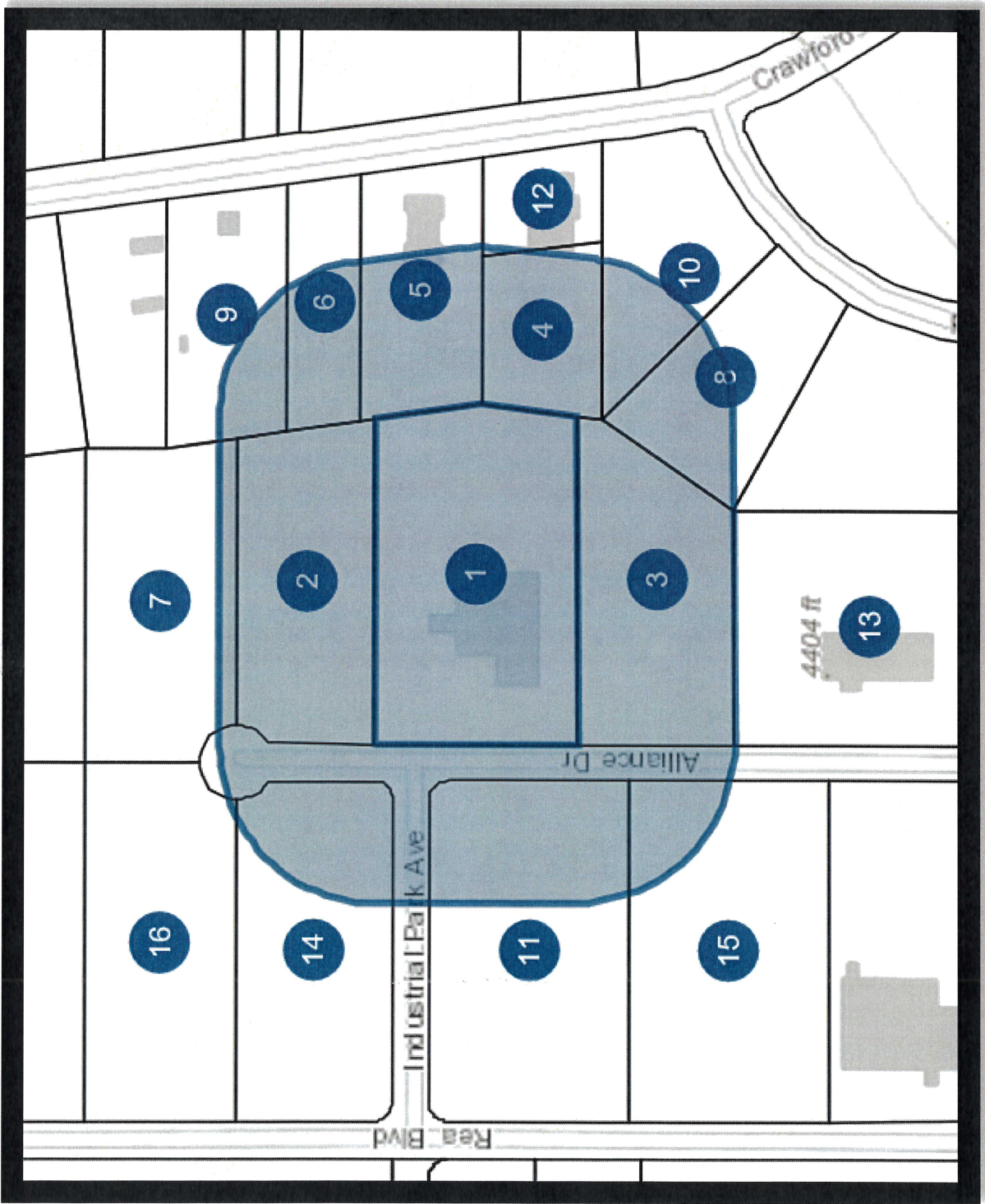
ZONING MAP



LCIIP – Las Cruces Innovation & Industrial Park Overlay Zone

M-1C – Industrial Standard-Conditional

Notification Map



Agenda Item #8.1.

FID	ACCOUNTNUM	PARELNUM	MAPCODE	NBRHD
19357	R0240358	3.00E+12	3-003-138-078-195	V23
19361	R0240357	3.00E+12	3-003-138-075-151	V23
19356	R0240359	3.00E+12	3-003-138-082-246	V23
19352	R0227778	3.00E+12	3-003-138-008-200	V23
19347	R0224508	3.00E+12	3-002-138-520-182	V23
19341	R0224507	3.00E+12	3-002-138-525-153	V23
19342	R0240355	3.00E+12	3-003-138-077-110	V23
19353	R0227922	3.00E+12	3-003-138-014-269	V23
19348	R0223689	3.00E+12	3-003-138-001-125	V23
19355	R0225460	3.00E+12	3-002-138-500-240	V23
18281	R0238979	3.00E+12	3-003-138-175-211	V23
19346	R0227777	3.00E+12	3-002-138-500-200	V23
19360	R0238977	3.00E+12	3-003-138-087-303	V23
19362	R0240356	3.00E+12	3-003-138-173-153	V23
18280	R0238978	3.00E+12	3-003-138-171-263	V23
19343	R0240354	3.00E+12	3-003-138-168-110	V23

Agenda Item #8.1.

SCHOOLDIST	TAXAREA	OWNERNAME
2 2IN_NR		DMS REALTY,LLC
2 2IN_NR		CITY OF LAS CRUCES
2 2IN_NR		CERTOPLAST NORTH AMERICA INC
2 2IN_NR		CRAWFORD PARTNERS LLP
2 2IN_NR		DOAK RENTAL LLC
2 2IN_NR		DOAK RENTAL LLC
2 2IN_NR		CITY OF LAS CRUCES
2 2IN_NR		TOP DOG REALTY - NM LLC
2 2IN_NR		DUCROSS INVESTMENTS LLC
2 2IN_NR		TOP DOG REALTY - NM LLC
2 2IN_NR		CITY OF LAS CRUCES
2 2IN_NR		CRAWFORD PARTNERS LLP
2 2IN_NR		CERTOPLAST NORTH AMERICA INC
2 2IN_NR		CITY OF LAS CRUCES
2 2IN_NR		CITY OF LAS CRUCES
2 2IN_NR		CITY OF LAS CRUCES

Agenda Item #8.1.

CAREOFNAME	MAILADDR1	MAILADDR2	CITY	STATE
	PO BOX 25806		ALBUQUERQUE	NM
	PO BOX 20000		LAS CRUCES	NM
	9030 ADVANCEMENT AVE		LAS CRUCES	NM
	1155 S TELSHOR STE B		LAS CRUCES	NM
	350 S CRAWFORD		LAS CRUCES	NM
	350 CRAWFORD BLVD		LAS CRUCES	NM
	PO BOX 20000		LAS CRUCES	NM
	2400 W OXFORD AVE		ENGLEWOOD	CO
	PO BOX 9825		ALBUQUERQUE	NM
	2400 W OXFORD AVE		ENGLEWOOD	CO
	PO BOX 20000		LAS CRUCES	NM
	1155 S TELSHOR STE B		LAS CRUCES	NM
	9030 ADVANCEMENT AVE		LAS CRUCES	NM
	PO BOX 20000		LAS CRUCES	NM
	PO BOX 20000		LAS CRUCES	NM
	PO BOX 20000		LAS CRUCES	NM

Agenda Item #8.1.

ZIP	DEEDHOLDER	SITUSADDRS
87125		380 ALLIANCE DR
88004		410 ALLIANCE DR
88007		350 ALLIANCE DR
88011		CRAWFORD BLVD
88005		350 S CRAWFORD BLVD #1
88007		300 CRAWFORD BLVD
88004		440 ALLIANCE DR
80110		361 VENTURE BLVD
87119		250 CRAWFORD BLVD #1
80110		381 VENTURE DR
88004		9045 INDUSTRIAL PARK AVE
88011		400 CRAWFORD BLVD
88007		9030 ADVANCEMENT AVE
88004		401 ALLIANCE DR
88004		370 REA BLVD
88004		431 ALLIANCE DR

Agenda Item #8.1.

SUBNAME	LOT
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	A-7
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	A-6
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	A-8
WEST MESA INDUSTRIAL PARK NO 15 (BK 19 PG 441 - 0011319)	1
WEST MESA INDUSTRIAL PARK SUBDIVISION PLAT No 4 BK 18 PG 232-233 - 956656)	PARCEL 4
WEST MESA INDUSTRIAL PARK SUBDIVISION PLAT No 4 BK 18 PG 232-233 - 956656)	PARCEL 3
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	A-4
WEST MESA INDUSTRIAL PARK NO 18 (BK 19 PG 533 - 0021985)	1
WEST MESA INDUSTRIAL PARK SUBDIVISION PLAT No 4 BK 18 PG 232-233 - 956656)	PARCEL 2
WEST MESA INDUSTRIAL PARK NO 6 (BK 18 PG 592 - 9627285)	PARCEL 6
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	5
WEST MESA INDUSTRIAL PARK NO 13 (BK 19 PG 439 - 0011317)	1
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	3
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	A-5
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	4
WEST MESA INDUSTRIAL PARK NO 26 REPLAT NO 1 (BK 22 PG 413-414 - 0802938)	A-

Agenda Item #8.1.

BLOCK	UNIT	TOWNSHIP	RNGE	SECTION	TRS
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	35	23S 1W 35
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34
	23S		1W	34	23S 1W 34

Agenda Item #8.1.

TOTALACRES	TOTALSQFT	BLDGVALUE	LANDVALUE	TOTALVALUE	Shape__Area
11.22	0	2805182	404280	3209462	63775.33984
7.13	0	0	0	257000	40614.05859
7.4	0	0	266400	266400	41951.90234
3.29	0	0	85800	85800	18633.76172
5	217800	1058683	130000	1188683	28360.09766
3	130680	6800	78000	84800	17006.71875
7.8	0	0	0	280800	44287.66406
5	217800	0	130000	130000	28487.99219
0	5	131900	130000	261900	28353.07813
5	217800	0	130000	130000	28475.54688
11.19	0	0	0	224000	63604.20313
2	87120	851404	52000	903404	11338.13281
10.61	0	920421	212400	1132821	60278.77734
7.8	0	0	0	304200	49386.00781
11.19	0	0	0	224000	63603.07031
8.81	0	0	0	344000	50081.66016

Agenda Item #8.1.

Shape__	Length	DISTANCE
1029.25709	1.1 Feet (approximate)	
867.1443502	460.87 Feet (approximate)	
873.7741841	483.12 Feet (approximate)	
554.5569045	681.23 Feet (approximate)	
718.0807908	782.12 Feet (approximate)	
622.3117458	840.93 Feet (approximate)	
898.9183789	853.44 Feet (approximate)	
717.3506502	855.57 Feet (approximate)	
718.0411593	970.38 Feet (approximate)	
742.2662224	992.22 Feet (approximate)	
1029.003234	1017.81 Feet (approximate)	
430.3886767	1025.55 Feet (approximate)	
977.9626561	1068.71 Feet (approximate)	
931.6661682	1098.1 Feet (approximate)	
1043.682275	1215.77 Feet (approximate)	
971.432305	1299.98 Feet (approximate)	

Agenda Item #8.1.

OWNERNAME	MAILADDR1	CITY	STATE	ZIP
CERTOPLAST NORTH AMERICA INC	9030 ADVANCEMENT AVE	LAS CRUCES	NM	88007
CRAWFORD PARTNERS LLP	1155 S TELSHOR STE B	LAS CRUCES	NM	88011
DMS REALTY,LLC	PO BOX 25806	ALBUQUERQUE	NM	87125
DOAK RENTAL LLC	350 S CRAWFORD	LAS CRUCES	NM	88005
DUCROSS INVESTMENTS LLC	PO BOX 9825	ALBUQUERQUE	NM	87119
TOP DOG REALTY - NM LLC	2400 W OXFORD AVE	ENGLEWOOD	CO	80110

Agenda Item #8.1.

Valerie Uribe

From: Sean Mullen
Sent: Wednesday, March 22, 2023 11:52 AM
To: Valerie Uribe
Subject: RE: Premier Distributing Company, LLC

Approved.

Sean Mullen

Deputy Chief of Administration/Las Cruces Police Department
 Direct: 575-528-4101 Main: 575-528-4200, smullen@las-cruces.org



From: Valerie Uribe <[vuribe@las-cruces.org](mailto: vuribe@las-cruces.org)>
Sent: Tuesday, March 21, 2023 4:47 PM
To: Adam Ochoa <[aochoa@las-cruces.org](mailto: aochoa@las-cruces.org)>; Adrian Arias <[aarias@las-cruces.org](mailto: aarias@las-cruces.org)>; Bobbie Munoz <[romunoz@las-cruces.org](mailto: romunoz@las-cruces.org)>; Christina Abeyta Corella <[cabeyta@las-cruces.org](mailto: cabeyta@las-cruces.org)>; Cody Haver <[chaver@las-cruces.org](mailto: chaver@las-cruces.org)>; Daniel Balderrama <[dbalderrama@las-cruces.org](mailto: dbalderrama@las-cruces.org)>; Elena Sanchez <[ESanchez@las-cruces.org](mailto: ESanchez@las-cruces.org)>; Gary Skelton <[gskelton@las-cruces.org](mailto: gskelton@las-cruces.org)>; Jackie Baylon <[jdelmuro@las-cruces.org](mailto: jdelmuro@las-cruces.org)>; Jason Smith <[jasmith@las-cruces.org](mailto: jasmith@las-cruces.org)>; Jose Leos <[jleos@las-cruces.org](mailto: jleos@las-cruces.org)>; Katherine Harrison Rogers <[krogers@las-cruces.org](mailto: krogers@las-cruces.org)>; Kendle Arellano <[kmclurg@las-cruces.org](mailto: kmclurg@las-cruces.org)>; Sean Mullen <[smullen@las-cruces.org](mailto: smullen@las-cruces.org)>; Kyle Metzgar <[kmetzgar@las-cruces.org](mailto: kmetzgar@las-cruces.org)>; Mark Dubbin <[MDubbin@las-cruces.org](mailto: MDubbin@las-cruces.org)>; Miguel Dominguez <[midominguez@las-cruces.org](mailto: midominguez@las-cruces.org)>; Soogyu Lee <[sglee@las-cruces.org](mailto: sglee@las-cruces.org)>; Hector Terrazas <[hterrazas@las-cruces.org](mailto: hterrazas@las-cruces.org)>; Jeremy Story <[jstory@las-cruces.org](mailto: jstory@las-cruces.org)>; Jennifer Lucero <[jenlucero@las-cruces.org](mailto: jenlucero@las-cruces.org)>
Subject: Premier Distributing Company, LLC

Good afternoon,

Attached please find a request from Premier Distributing Company, LLC seeking a Wholesaler Liquor License at 380 Alliance Dr., Las Cruces, NM 88007.

Please provide reports no later than March 31, 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](mailto: vuribe@las-cruces.org)
 700 N. Main Street, Suite 3200, Las Cruces, NM 88001



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Agenda Item #8.1.

Valerie Uribe

From: Jennifer Lucero
Sent: Thursday, March 30, 2023 3:54 PM
To: Valerie Uribe
Subject: RE: Premier Distributing Company, LLC
Attachments: Premier Distributing Company, LLC Reciept.pdf

Good afternoon Valerie,

Please find report below for Premier Distribution – 380 Alliance Dr.
 Business Registration License is ACTIVE and expires 02/27/2023.

They have completed the online application for their wholesaler license and paid all required fees. Please see attached receipt.

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>



From: Valerie Uribe <vuribe@las-cruces.org>

Sent: Wednesday, March 29, 2023 8:15 AM

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 <jbaylon@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Katherine Harrison Rogers <kgrogers@las-cruces.org>; Kendle Arellano <kmcllurg@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 <hterrzas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jennifer Lucero <jenlucero@las-cruces.org>

Subject: RE: Premier Distributing Company, LLC

Good morning,

A reminder these reports are due by Friday (March 31)

Thank you,

From: Valerie Uribe

Sent: Tuesday, March 21, 2023 4:47 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>;

Agenda Item #8.1.

jleos@las-cruces.org; Jackie Baylon <jdelmuro@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Katherine Harrison Rogers <krrogers@las-cruces.org>; Kendle Arellano <kmclurg@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: Premier Distributing Company, LLC

Good afternoon,

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Please provide reports no later than March 31, 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



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).

Agenda Item #8.1.

Valerie Uribe

From: Lopez, Debra, RLD <Debra.Lopez@rld.nm.gov>
Sent: Wednesday, March 22, 2023 10:59 AM
To: Koroneos-Martinez, Charmaine, RLD; Valerie Uribe
Cc: Sandoval, Tammy, RLD
Subject: RE: [EXTERNAL] Application No/License No. Wholesaler Application, Premier Distributing Company, LLC

The request for extension, as outlined below, is hereby granted. Thank you for all that you do.



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: Valerie Uribe <vuribe@las-cruces.org>
Sent: Wednesday, March 22, 2023 9:51 AM
To: Koroneos-Martinez, Charmaine, RLD <Charmaine.Martinez2@rld.nm.gov>
Cc: rick.velarde@premierdistributing.com; THOLTRUP@HENSLEY.COM
Subject: [EXTERNAL] Application No/License No. Wholesaler Application, Premier Distributing Company, LLC

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 wholesaler liquor license for Premier Distributing, LLC located at 380 Alliance Drive, Las Cruces, NM 88007.

The City Attorney's Office received the Preliminary Approval from ABC along with the request March 21, 2023. The forty-five (45) day requirement would mean that the hearing would be held by April 17, 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 March 18, 2023. However, due to publishing deadlines, we are unable to make the deadline.

Therefore, we are requesting an extension to hold a hearing on May 1, 2023, Instead of April 17, 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

Agenda Item #8.1.



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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.



City of Las Cruces

City Council Action and Executive Summary

23-120

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District: ☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A

1st Reading: **Adopted:** May 1, 2023

Drafter: Valerie Uribe

Department: Legal

Program: Administration

Line of Business: Applicant/Owner

Title: **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.**

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

PURPOSE(S) OF ACTION:

Approve a Craft Distiller Liquor License to Icebox Brewing LC, d/b/a Icebox Distilling Company.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for a Craft Distiller Liquor License 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 Liquor License. The location for the license is at 2825 W. Picacho Avenue, Las Cruces, New Mexico 88007. ABC granted preliminary approval on March 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, May 1, 2023, beginning at 1:00 p.m. Notice of this public hearing was published in the *Las Cruces Sun News* on March 31, 2023 and April 14, 2023.

Council may approve or disapprove the Craft Distiller Liquor License. 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.](#)

Agenda Item #8.2.

[Attachment "E". Criminal Activity Report from 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 Liquor License 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 23-120

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.

The City Council is informed that:

WHEREAS, Icebox Brewing LC, d/b/a Icebox Distilling Company, located at 2825 W. Picacho Avenue, Las Cruces, New Mexico 88007, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC") for a Craft Distiller Liquor License; and

WHEREAS, ABC granted preliminary approval for a Craft Distiller Liquor License by letter dated March 6, 2023; and

WHEREAS, pursuant to law, the application for a Craft Distiller Liquor License 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 Liquor License 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 Liquor License to Icebox Brewing LC d/b/a Icebox Distilling Company., located at 2825 W. Picacho Avenue, Las Cruces, New Mexico 88007, as evidenced by ABC's letter and the application attached hereto as Exhibit "A", is hereby approved.

(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

Agenda Item #8.2.



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

March 6, 2023

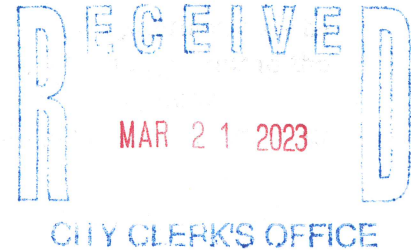
Via USPS Certified Mail No.: 7022 0410 0000 8283 1350

City of Las Cruces

Christine Rivera, Acting City Clerk

PO Box 20000

Las Cruces, NM 88004



Lic. No. /Appl. No.: **Craft Distiller Application**
 Name of Applicant: Icebox Brewing LC
 Doing Business As: Icebox Distilling Company
 Proposed Location: 2825 W. Picacho Ave., Las Cruces, NM 88007

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

Agenda Item #8.2.

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 LIQUOR LICENSE.

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,

Tammy M. Sandoval

Tammy M. Sandoval

Admin Law Judge | Hearing Officer

NM Regulation & Licensing Department

Alcoholic Beverage Control Division

Phone: (505) 476-4548 | Fax: (505) 476-4595

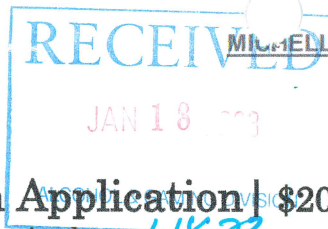
Email: Tammy.Sandoval@rld.nm.gov

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



NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT



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 \$ 300 Received on: 1/18/23 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 _____

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: 2825 W Picacho Ave, Las Cruces NM 88007

County: Dona Ana County (Include street number / highway number / state road, city, state, and zip code)

Contact Person: Brian Weidauer Phone #: 575-526-7129 Email: brian@iceboxbrewing.com

I, (print name) Brian Weidauer, as (title) Resident Agent / General Manager 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: [Signature] Date: 1/12/23

Notary Public Use Only: (State of New Mexico, County of Dona Ana)

SUBSCRIBED AND SWORN TO before me this 12th day of January, 20 23

By: Brian Weidauer Notary Public: [Signature]

Date my Commission Expires: 04-01-2024

JESSICA SPIRES
NOTARY PUBLIC
STATE OF NEW MEXICO
COMMISSION # 1114623
COMMISSION EXPIRES: 04-01-2024

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



COPY

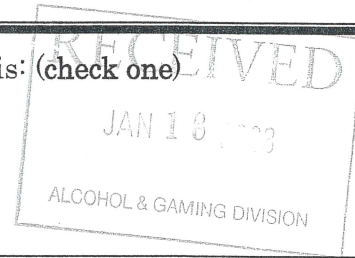
Premises Location, Ownership, and Description | NMSA §60-6B-10 | Page 2

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): John Wright Revocable Trust

B. Date and Term of Lease: Renewed February 2021 - 3 year term (Expires Feb. 28th 2024)

3. Premises location is Zoned (example C-1, see Zoning Statement): M1 / M2

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: The Pentecostals of Las Cruces Miles/feet: 1,905 ft.

Address/location of Church: 2407 W Picacho Ave, Las Cruces NM 88001

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

Name of School: Picacho Middle School Miles/feet: 479 ft.

Address/location of School: 1040 N Motel Blvd, Las Cruces NM 88007

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.



STATEMENT OF ZONING

The property located at 2825 W Picacho Ave, and having a Map Code Number or Parcel ID Number of R0200394, in Las Cruces, New Mexico, is zoned as follows:

M/1M2 (Industrial Standard)

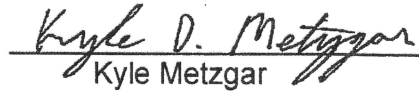
Comments: The M1/M2 district is intended to provide for industrial uses that consist of full-scale fabrication, manufacturing, packaging and processing of products that can be conducted in a generally clean, quiet, and safe environment with minimal negative impacts on the surrounding environment and uses.

A wholesale trade of beer, wine and distilled spirits is a permitted use within the M1/M2 zoning district, provided all requirements as prescribed for liquor establishments by the State of New Mexico are met.

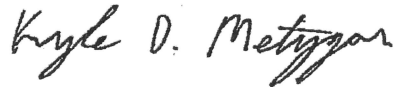
The above described property located in the City of Las Cruces, New Mexico, has been reviewed and found to be zoned as indicated above in accordance with the Las Cruces Zoning Atlas. Accordingly, I do hereby approve and issue this Statement of Zoning.

February 1, 2023

Date


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.



Text of Ad: **03/22/2023**

**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 Liquor License to Icebox Brewing LC d/b/a Icebox Distilling Company located at 2825 W. Picacho Ave., Las Cruces, NM 88007.

The Public Hearing will be held as part of the regularly scheduled meeting of the City Council on Monday, May 1, 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 22nd day of March 2023.

Christine Rivera, MS, CMC
City Clerk
#5641571, Sun News
March 31 & April 4, 2023

Agenda Item #8.2.



MEMORANDUM

To: Jennifer Vega-Brown, City Attorney

From: Gary Skelton, P.E., Engineer **Initials:** GS

Date: March 31, 2023

Subject: Traffic Investigation Report – Craft Distiller Permit Application
2825 W. Picacho Avenue, Las Cruces, NM 88007 – Icebox Distilling Company

As requested, Traffic Engineering has completed a traffic investigation for a Craft Distiller permit application for the Icebox Distilling Company operating at 2825 W. Picacho Avenue in Las Cruces, New Mexico. The following information is submitted for review:

- The Icebox Distilling Company will be located at 2825 W. Picacho Avenue on Las Cruces, New Mexico between Roadrunner Lane and Motel Boulevard. According to the Mesilla Valley MPO Traffic Flow Map, the most current traffic volume on W. Picacho Avenue near this location is approximately 9,310 vehicles per day. The most current traffic volume on Motel Boulevard near the subject location is approximately 12,610 vehicles per day. The traffic volume on Roadrunner Lane near this location is approximately 3,180 vehicles per day.
- The Mesilla Valley MPO classifies W. Picacho Avenue as a principal arterial road while Motel Boulevard is classified as a minor arterial road near the subject location. Roadrunner Lane is classified as a collector road near the subject location. All roadways primarily serve commercial use near the subject location.
- The location can be accessed through a driveway located on W. Picacho Avenue. The property has parking facilities on site. No other sight distance or operational problems are currently known at the driveways.
- The speed limit on W. Picacho Street is 45 mph near the subject property. Speed limits on all other adjacent roads range from 25 to 35 mph near the subject property.

The approval of the Craft Distiller permit at this location does not appear to adversely impact traffic operations along this roadway segment. Feel free to contact me at 575-541-2561 with any questions.

Agenda Item #8.2.

Valerie Uribe

From: Jose Leos
Sent: Thursday, March 30, 2023 9:17 AM
To: Valerie Uribe
Cc: Justin Allen; Bobbie Munoz; Michael Landavazo; Jason Smith
Subject: RE: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good morning,

Valerie, the Las Cruces Fire Department approves the Craft Distiller Liquor License at 2825 W. Picacho Ave., pending the building/location meeting the International Building and Fire Code before the Distillation process begins.

Respectfully,

Jose A. Leos Jr.

Lieutenant/Prevention Bureau/Las Cruces Fire Department
 Direct: (575) 528-4055 Main: (575) 528-3473, jleos@las-cruces.org



From: Valerie Uribe <vuribe@las-cruces.org>
Sent: Thursday, March 30, 2023 8:03 AM
To: Jose Leos <jleos@las-cruces.org>
Subject: RE: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good morning,

Sure, no that's no problem at all! You can let me know next week.

Thank you,

From: Jose Leos <jleos@las-cruces.org>
Sent: Wednesday, March 29, 2023 5:51 PM
To: Valerie Uribe <vuribe@las-cruces.org>
Subject: RE: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good evening,

Valerie, I did not get a chance to review the plans today. Can I get an extension I can meet with Deputy chief Allen and Chief Smith please.

Respectfully,

Jose A. Leos Jr.

Agenda Item #8.2.

Lieutenant/Prevention Bureau/Las Cruces Fire Department

Direct: (575) 528-4055 Main: (575) 528-3473, jleos@las-cruces.org



From: Brian Weidauer <brian@iceboxbrewing.com>

Sent: Wednesday, March 29, 2023 10:51 AM

To: Valerie Uribe <vuribe@las-cruces.org>; Jose Leos <jleos@las-cruces.org>

Subject: RE: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Hello Valerie and Lt. Leos –

Attached is the floorplan that I submitted to Alcoholic Beverage Control that we received preliminary approval on. We of course still have some modifications and remodeling that will take place to meet current codes...we hope to proceed with that in the next few weeks or so. We will set up a meeting to discuss locations of doors, electrical outlets, ventilation, etc.

Let me know what else you may need at this time...thanks!

Brian Weidauer
General Manager
Icebox Brewing Co.
Mobile (575) 644-8016

From: [Valerie Uribe](#)

Sent: Wednesday, March 22, 2023 2:28 PM

To: [Brian Weidauer](#)

Subject: FW: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Hi Brian,

Please see below, Can you please send me a floor plan?

From: Jose Leos <jleos@las-cruces.org>

Sent: Wednesday, March 22, 2023 2:24 PM

To: Valerie Uribe <vuribe@las-cruces.org>

Cc: Michael Landavazo <mlandavazo@las-cruces.org>

Subject: RE: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good afternoon,

Valerie, I did not see the detailed floor plan for this request. Can you request the floor plan for the Fire Department? Thank you in advance.

Respectfully,

Agenda Item #8.2.

Jose A. Leos Jr.

Lieutenant/Prevention Bureau/Las Cruces Fire Department

Direct: (575) 528-4055 Main: (575) 528-3473, jleos@las-cruces.org



From: Valerie Uribe <vuribe@las-cruces.org>

Sent: Tuesday, March 21, 2023 4:47 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 <kr Rogers@las-cruces.org>; Kendle Arellano <kmclurg@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 <hterrzas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jennifer Lucero <jenlucero@las-cruces.org>

Subject: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good afternoon,

Attached please find a request from Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company seeking a Craft Distiller Liquor License at 2825 W. Picacho Ave., Las Cruces, NM 88007.

Please provide reports no later than March 31, 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



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.



MEMORANDUM

To: Jocelyn Garrison, City Attorney
From: Kyle Metzgar, Planning Technician Sr
Date: March 30, 2023
Subject: Liquor License Impact Report, Icebox Brewing LC

Initials:

File #: M-23-032

Attached, please find the Liquor License Impact Report for a Craft Distiller Liquor License from the Community Development Department for Icebox Brewing LC located at 2825 W. Picacho Ave. If you have any questions, please contact me at (575) 528-3064.

Kyle D. Metzgar

Kyle Metzgar
Planning Technician Sr.

3-30-2021

Date

cc: David Weir, AICP, Chief Planning Administrator
 Katherine Harrison-Rogers, AICP, Senior Planner

Initials:

Initials:

**City of Las Cruces
Community Development Department**

LIQUOR LICENSE IMPACT REPORT

**Application
Craft Distiller Liquor License**

**Icebox Brewing LC
2825 W. Picacho Ave.**

March 30, 2023

LIQUOR LICENSE IMPACT REPORT
Craft Distiller Liquor License
Icebox Brewing LC
2825 W. Picacho Ave.

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: 2825 W. Picacho Ave.
Applicant: Icebox Brewing LC
Business Name: Icebox Distilling Company

LAND USE AND ZONING INFORMATION:

Subject Property Zoning: M-1/M-2 (Industrial Standard)
(See attached Statement of Zoning and Vicinity Map)

Subject Property Current Land Use:

<u>Adjacent Land Uses</u>	<u>Zoning</u>	<u>Land Use</u>
North	C-2	Commercial
South	C-2	Mobile Home Park
East	C-2	Mobile Home Park
West	M-1C	Industrial

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 COUNT AND ACCESS INFORMATION:

Roadway: W. Picacho Ave.
Classification: Principal Arterial Roadway
Number of Lanes: 4
Site Access: 1
Nearest Intersection: W. Picacho Ave. & N. Motel Blvd.

PARKING REQUIREMENTS:

The 2001 Las Cruces Zoning Code, as amended, requires one (1) automobile space for every 5 seats inside the business and one (1) bicycle parking space for every 3000-sq. ft. of Gross Floor Area (GFA) for this type of business located in this zoning district. As the business currently exists, there is no apparent change in land use and parking is not an issue.

IMPACT ANALYSIS:

The applicant is requesting a Craft Distiller Liquor License. The subject property is located on W. Picacho Ave., designated as a major arterial roadway, which is designed to accommodate moderate to heavy traffic and land uses such as a what is being proposed. The subject property is zoned M-1/M-2 which allows for this land use, provided all requirements as prescribed for liquor establishments by the State of New Mexico are met. In terms of a transportation and land use perspective, this seems an appropriate location and request.



STATEMENT OF ZONING

The property located at 2825 W. Picacho Ave., and having an Account ID Number of R0200394, in Las Cruces, New Mexico, is zoned as follows:

M1/M2 (Industrial Standard)

Comments: The M1/M2 district is intended to provide for industrial uses that consist of full-scale fabrication, manufacturing, packaging and processing of products that can be conducted in a generally clean, quiet, and safe environment with minimal negative impacts on the surrounding environment and uses. A craft distillery is a permitted use in the M-1/M-2 zoning district provided all requirements as prescribed 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.

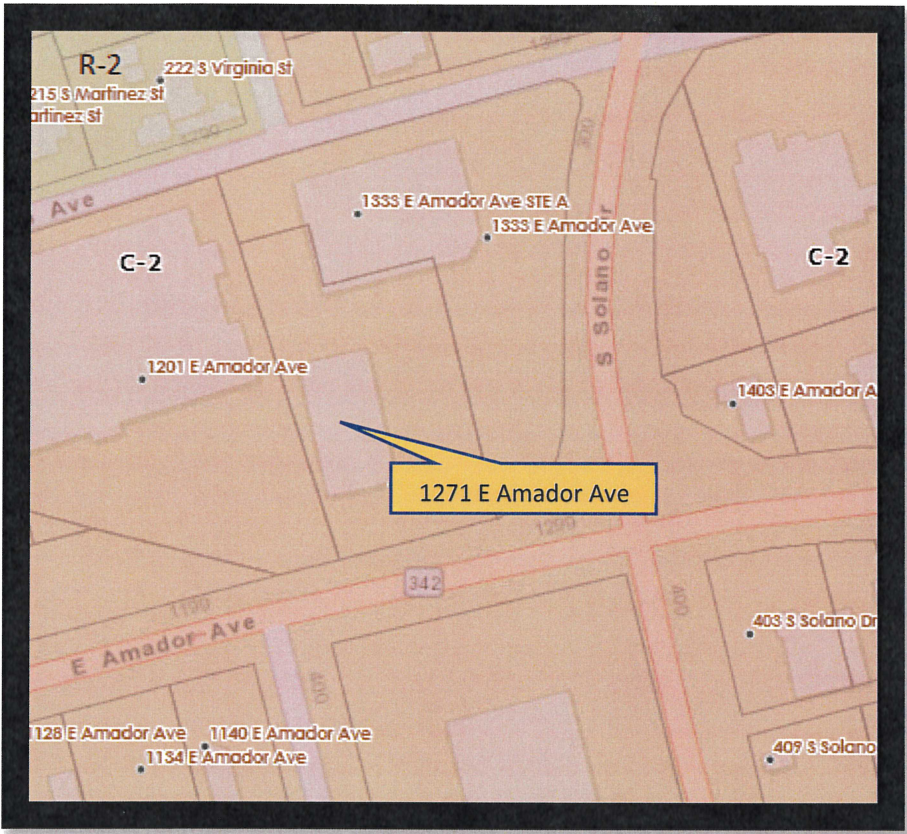
March 30, 2023
Date



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.

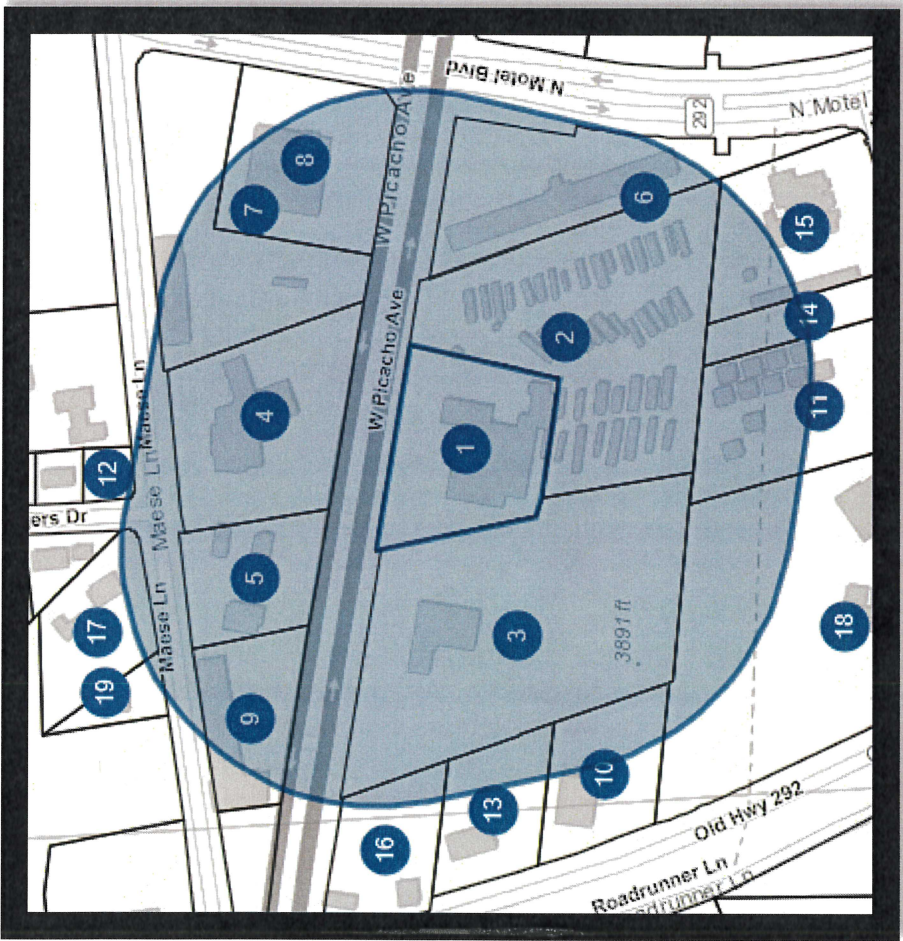
ZONING MAP



C-2 - Commercial Medium Intensity

R-2 – Multi-Dwelling Low Density

Notification Map



Agenda Item #8.2.

OWNERNAME	CAREOFNAME	MAILADDR1	MAILADDR2	CITY	STATE	ZIP
DA BOX LLC		PO BOX 566		MESILLA	NM	88046
ALAMO ESTATES LLC		300 DRAKES LANDING RD STE 172		GREENBRAE	CA	94904
SANCHEZ TRUCKING CO INC		2855-B W PICACHO		LAS CRUCES	NM	88007
CITIZENS BANK OF LAS CRUCES		PO BOX 2108		LAS CRUCES	NM	88004-2108
CLAMON JAMES D		PO BOX 28		FAIRACRES	NM	88033
PLIV LLC		109 N OREGON STE 1200		EL PASO	TX	79901
HOT SPRINGS HOTELS LLC	JAMES F SCHERR	109 N OREGON 12TH FLOOR		EL PASO	TX	79901
PICACHO MANAGEMENT LLC		2700 W PICACHO		LAS CRUCES	NM	88007
GREEN JERRY M		3200 W PICACHO AVE		LAS CRUCES	NM	88007
ALITAK REALTY GROUP LLC		750 N NIGHWAY	292	LAS CRUCES	NM	88005
TRINITY PROPERTIES LLC	LAW OFFICES OF DANA M KYLE P.A.	PO BOX 2277		LAS CRUCES	NM	88004
JAVIER A CASSANOVA		5865 SHALEM COLONY TRL		LAS CRUCES	NM	88007
ALTAMIRANO ADOLFO & RITA		5455 SHENANDOAH TRL		LAS CRUCES	NM	88005
TRINITY PROPERTIES LLC	LAW OFFICES OF DANA M KYLE P.A.	PO BOX 2277		LAS CRUCES	NM	88004
FARM CREDIT SERVICES OF NM FLBA & PRODUCTION CREDIT ASSOC OF S NM		PO BOX 94330		ALBUQUERQUE	NM	87199-4330
SANCHEZ TRUCKING CO INC		PO BOX 1347		FAIRACRES	NM	88033-1437
CHACON RAUL & GLORIA H		3013 MAESE LN		LAS CRUCES	NM	88007
TRINITY PROPERTIES LLC	LAW OFFICES OF DANA M KYLE P.A.	PO BOX 2277		LAS CRUCES	NM	88004
LUCERO JOHN H		3150 MAESE LANE		LAS CRUCES	NM	88007

Agenda Item #8.2.

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HOT SPRINGS HOTELS LLC C/O James F Scherr	109 N OREGON 12TH FLOOR	EL PASO	TX	79901
JAVIER A CASSANOVA	5865 SHALEM COLONY TRL	LAS CRUCES	NM	88007
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SANCHEZ TRUCKING CO INC	PO BOX 1347	FAIRACRES	NM	88033
TRINITY PROPERTIES LLC C/O LAW OFFICES OF DANA M KYLE P.A.	PO BOX 2277	LAS CRUCES	NM	88004

Agenda Item #8.2.

Valerie Uribe

From: Sean Mullen
Sent: Wednesday, March 29, 2023 8:25 AM
To: Valerie Uribe
Subject: RE: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

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



From: Valerie Uribe <vuribe@las-cruces.org>
Sent: Wednesday, March 29, 2023 8:15 AM
To: Adam Ochoa <aoschoa@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 <jbaylon@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Katherine Harrison Rogers <kr Rogers@las-cruces.org>; Kendle Arellano <kmclurg@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 <hterr azas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jennifer Lucero <jenlucero@las-cruces.org>
Subject: RE: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good morning,

A reminder these reports are due by Friday (March 31)

Thank you,

From: Valerie Uribe
Sent: Tuesday, March 21, 2023 4:47 PM
To: Adam Ochoa <aoschoa@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 <kr Rogers@las-cruces.org>; Kendle Arellano <kmclurg@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 <hterr azas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jennifer Lucero <jenlucero@las-cruces.org>
Subject: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good afternoon,

Agenda Item #8.2.

Attached please find a request from Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company seeking a Craft Distiller Liquor License at 2825 W. Picacho Ave., Las Cruces, NM 88007.

Please provide reports no later than March 31, 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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Agenda Item #8.2.

Valerie Uribe

From: Jennifer Lucero
Sent: Monday, April 3, 2023 10:23 AM
To: Valerie Uribe
Subject: RE: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good morning Valerie,

Please see below report for Icebox Brewing Co – 2825- W Picacho.

Liquor License is ACITIVE. Expires 04/30/2023
 Business License is ACTIVE. Expires 01/30/2024

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>



From: Valerie Uribe <vuribe@las-cruces.org>
Sent: Monday, April 3, 2023 8:53 AM
To: Jennifer Lucero <jenlucero@las-cruces.org>
Subject: FW: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good morning Jennifer,

I apologize if you have already sent this, but I was going through the approvals and I don't believe I have the business approval from you, would you please send it again?

Thank you,

From: Valerie Uribe
Sent: Monday, April 3, 2023 8:34 AM
To: Kyle Metzgar <kmetzgar@las-cruces.org>; Gary Skelton <gskelton@las-cruces.org>
Subject: FW: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good morning,

I am going over the approvals and I may have missed them, but I don't seem to have your reports for this company, would you please send those over as soon as you can. I would appreciate it. 😊

Thank you!

From: Valerie Uribe
Sent: Friday, March 31, 2023 10:46 AM

Agenda Item #8.2.

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 <jbaylon@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Katherine Harrison Rogers <krogers@las-cruces.org>; Kendle Arellano <kmclurg@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: FW: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good morning,

A reminder these reports are due today.

If you have already provided these, please disregard this email.

Thank you!

From: Valerie Uribe

Sent: Wednesday, March 29, 2023 8:15 AM

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 <jbaylon@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Katherine Harrison Rogers <krogers@las-cruces.org>; Kendle Arellano <kmclurg@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>
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Good morning,

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Thank you,

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Sent: Tuesday, March 21, 2023 4:47 PM

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Subject: Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company

Good afternoon,

Attached please find a request from Icebox Brewing LC, d/b/a Icebox Brewing Distilling Company seeking a Craft Distiller Liquor License at 2825 W. Picacho Ave., Las Cruces, NM 88007.

Agenda Item #8.2.

Please provide reports no later than March 31, 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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Agenda Item #8.2.

Valerie Uribe

From: Lopez, Debra, RLD <Debra.Lopez@rld.nm.gov>
Sent: Wednesday, March 22, 2023 11:00 AM
To: Koroneos-Martinez, Charmaine, RLD; Valerie Uribe
Subject: RE: [EXTERNAL] Application No/License No. Craft Distiller Application, Icebox Brewing LC

The request for extension, as outlined below, is hereby granted. Thank you for all that you do.



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: Valerie Uribe <vuribe@las-cruces.org>
Sent: Wednesday, March 22, 2023 9:51 AM
To: Koroneos-Martinez, Charmaine, RLD <Charmaine.Martinez2@rld.nm.gov>
Cc: brian@iceboxbrewing.com
Subject: [EXTERNAL] Application No/License No. Craft Distiller Application, Icebox Brewing LC

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 liquor license for Icebox Brewing, LC located at 2825 W. Picacho Ave., Las Cruces, NM 88007.

The City Attorney's Office received the Preliminary Approval from ABC along with the request March 21, 2023. The forty-five (45) day requirement would mean that the hearing would be held by April 17, 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 March 18, 2023. However, due to publishing deadlines, we are unable to make the deadline.

Therefore, we are requesting an extension to hold a hearing on May 1, 2023, Instead of April 17, 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

Agenda Item #8.2.



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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.



City of Las Cruces

City Council Action and Executive Summary

23-121

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		Adopted:	May 1, 2023
Drafter:	Kevin Wilson	Department:	City Manager's Office
Program:	Housing and Neighborhood Services	Line of Business:	Housing and Neighborhood Services
Title:	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.		

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

PURPOSE(S) OF ACTION:

Award funds.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On September 7, 2021, City Council approved Resolution No. 22-028 earmarking up to \$600,000 a year from the Telshor Facility Fund to fund health-related public service programs for Fiscal Year (FY) 2023, FY24, FY25 and FY26. This program is for the specific purpose of providing funding to eligible non-profit organizations in exchange for providing qualified healthcare and supportive services to the sick, indigent, and low-income residents of Las Cruces.

The City of Las Cruces conducted a competitive application process to provide responsive, cost-effective, quality health-related public services through partnerships with the non-profit sector. Grants are awarded on a two-year funding cycle, with renewed funding based on overall program performance, quality of data collection methods and record keeping, satisfactory monitoring reviews, and availability of City funding.

The applications were solicited in accordance with the adopted Health Related Public Services Policy Guide. The Health and Human Services Advisory Committee (HHSAC) reviewed and evaluated the applications. On March 8, 2023, HHSAC recommended the grants listed in Exhibit "A" be awarded to local providers of health-related public services for FY24 for up to \$600,000. City Council approval is required to award funds and execute a purchased services agreement between the City and the respective non-profit organizations.

SUPPORT INFORMATION:

[EXHIBIT "A" HHSAC Recommendations](#)

[ATTACHMENT "A" 03-08-23 HHS Minutes](#)

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

Health & Human Services

DOES THIS AMEND THE BUDGET?:

- ☒ Yes
- ☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: \$600,000 **AVAILABLE AMOUNT:** \$600,000 **EXPENDITURE AMOUNT:**
\$599,000

Funding Source(s):

Health Care (FUND 2700) 20435016-721080 - (Various)

Overall Budget Impact:

Funds are proposed to be taken from the Telshor Facility Fund (2705) and transferred to the Health Care Fund (2700) pending adoption of the FY24 budget.

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. Such action would adopt the FY23 health-related funding recommendations of the HHSAC.
2. Vote "No"; this will not approved the Resolution and not adopt the FY23 health-related recommendations of the HHSAC.
3. Vote to "Amend"; this would modify the Resolution based on City Council's discretion and then vote "Yes" on the amended Resolution.
4. Vote to "Table"; this would postpone the Resolution and the City Council would need to provide direction to staff.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachment or exhibits.

1. Resolution No. 05-128
2. Resolution No. 08-112
3. Resolution No. 14-105
4. Resolution No. 22-028
5. Resolution No. 22-132

RESOLUTION 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.

The City Council is informed that:

WHEREAS, on September 7, 2021, City Council approved Resolution No. 22-028 earmarking up to \$600,000 a year from the Telshor Facility Fund to fund health-related public services programs for Fiscal Year (FY) 2023, FY24, FY25 and FY26; and

WHEREAS, the City of Las Cruces Health and Human Services Advisory Committee (HHSAC) conducted a competitive application process for awarding grants to the non-profit sector for a two-year funding cycle; and

WHEREAS, on May 2, 2022, the Las Cruces City Council approved Resolution No. 22-132 adopting the HHSAC's recommendation for year one awards as part of the FY2023 budget for health-related public services and stipulated that year two funding was contingent on overall program performance, other measures and availability of City funding; and

WHEREAS, the HHSAC evaluated program performance and each agency had a satisfactory monitoring review.

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

(I)

THAT area non-profit organizations recommended by the HHSAC be awarded grant amounts for FY24 as shown in Exhibit "A", attached hereto and made part of this Resolution, are hereby adopted.

(II)

THAT these funding recommendations are authorized to be incorporated into the FY24 budget.

(III)

THAT City staff is authorized to develop purchased service agreements with each non-profit agency for FY24 specifying services to be delivered and the City Manager is authorized to execute said agreements on the City's behalf.

(IV)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

	Organization	Program	Recommended award
1	Casa De Peregrinos	Food Security Program	\$32,000.00
2	Catholic Charities of SNM	Crime and Domestic Violence Program	\$32,000.00
3	Boys and Girls Club	More Members, More Often	\$32,000.00
4	Roadrunner Food Bank	Childhood Hunger Initiative in Las Cruces	\$32,000.00
5	Jardin de los Niños	Healthy and Wise Wellness Program	\$32,000.00
6	Mesilla Valley Community of Hope	SOAR Program	\$32,000.00
7	Mesilla Valley CASA	Volunteer Development & Support	\$32,000.00
8	New Mexico Legal Aid	Improving Health of Low-Income Residents through Civil Legal Services	\$32,000.00
9	Big Brothers Big Sisters	One-to-One Mentoring for Low-Income, At-Risk Youth	\$32,000.00
10	La Casa, Inc.	Domestic Violence Service Program	\$32,000.00
11	El Calvario UMC	Afghan Health Services	\$32,000.00
12	Mesilla Valley Hospice, Inc.;	Pain control and comfort Care for Hospice Patients	\$32,000.00
13	La Pinon	SANE Program	\$32,000.00
14	Southern New Mexico Diabetes Outreach	Diabetes Detection Prevention Education and Support	\$32,000.00
15	El Caldito	Food Insecurity	\$32,000.00
16	Third Judicial	Veterans Treatment Court	\$32,000.00
17	CARE	CARE Support Program	\$32,000.00
18	Amador Health Center	Amador Care Connection	\$30,000.00
19	Families & Youth Inc.	El Crucero	\$25,000.00
		Total	\$599,000.00

**HEALTH AND HUMAN SERVICES ADVISORY COMMITTEE
MINUTES
March 8, 2023**

MEMBERS PRESENT: Mary Katherine Papen
Samantha Teresa Fields
Joe Castillo

MEMBERS ABSENT: Miriam Chaiken

STAFF PRESENT: Natalie Green, CLC
Catrina Godinez
Becky Baum, RC Creations, LLC, Recording Secretary

OTHERS PRESENT: Members of nonprofits were in attendance.

I. CALL TO ORDER (5:40)

Baum: At 5:40 we will call the meeting to order.

II. ROLL CALL

Baum: The roll call. Joe Castillo.

Castillo: Present.

Baum: Mary K. Papen.

Papen: Present.

Baum: Samantha Fields.

Fields: Present.

III. CONFLICT OF INTEREST INQUIRY

Baum: We will move on to conflict of interest. Does anybody on the Board have a conflict of interest or staff member, with tonight's meeting or anything therein?

Papen: No. I told that my daughter is going onto the board of Hospice, but I am not on the board of Hospice, but daughter is going on that board.

1 Baum: Okay, thank you Ms. Papen. Mr. Castillo, and Ms. Fields.

2
3 Castillo: No conflict with me.

4
5 Baum: Thank you.

6
7 **IV. APPROVAL OF MINUTES - FEBRUARY 22, 203**

8
9 Baum: Next we have approval of the minutes. Are there any changes or
10 corrections? And if not, I will need a motion and a second please.

11
12 Fields: Motion to accept the minutes.

13
14 Papen: Second.

15
16 Baum: All those in favor say "aye."

17
18 MOTION PASSES UNANIMOUSLY.

19
20 Baum: Thank you.

21
22 **V. FINAL RANKING FOR HEALTH RELATED PUBLIC SERVICES YEAR 2**
23 **APPLICATIONS**

24
25 Baum: And now we're going to hand it over to Catrina for the final ranking.

26
27 Godinez: Okay. Good evening everyone. I'm sharing the screen with you all just to
28 show what we, we're here today to recommend funding for year two for the
29 Health Related Public Service grants. And on our screen is what was
30 awarded for year one. And Ms. Papen I'm sharing it with you as well.

31
32 Papen: Yes. Thank you.

33
34 Godinez: And everyone, all of our grants have been in compliance and have turned
35 invoices on time and all that good stuff. So the recommendation from
36 myself is to recommend for year two. Do you have any questions? Ms.
37 Papen you have any questions or anything?

38
39 Papen: No, I don't. Thank you. And I did print out all that you sent us Catrina.
40 Thank you. So I have that in front of me as well.

41
42 Godinez: Okay. And I did do a year one assessment of the performance of each
43 grant.

44
45 Papen: Right.

46

Godinez: And everyone was either excellent or good for the reviews. The only issue that I think that we want to let everyone know is some of the grantees, we just want to remind everyone that the money has to be spent by June 30th. So there was quite a bit that had, they should have spent at least half of the grant by now, or by January, and many of the grantees still had a lot of funds to spend. That's the only thing that we ask.

Papen: So Catrina, may I ask a question. If they don't get the money that they have from last year's monies that they got, what happens to them getting new monies? They don't get any new money or they don't get it until they get it spent. What are the repercussions of them not getting that money spent?

Godinez: No ma'am. That's not, normally everyone spends all their funds.

Papen: Okay. All right.

Godinez: the only thing is, is that toward the end of the year like you know June 30th, we're still getting invoices. So we always ask that all the grantees spend their funding within 10 months of the grant, that way towards the end we're not still turning invoices in July basically.

Papen: Okay. Thank you.

VI. FINAL RECOMMENDATION FOR APPROPRIATION OF FUNDING

Castillo: Motion that second year funding be completed.

Fields: Second.

Baum: All those in favor say "aye."

MOTION PASSES UNANIMOUSLY.

Baum: Passes.

VII. OTHER DISCUSSION

Baum: Then we move on to other discussion. Is there any thing else the Board needs or wants to discuss tonight?

Godinez: Not at this moment.

VIII. ADJOURNMENT (5:45)

Baum: Then we're at adjournment. Can I have a motion to adjourn?

1 Fields: Put a motion to adjourn.
2
3 Castillo: I second.
4
5 Baum: We are adjourned at 5:45. Thank you everybody.
6
7
8
9
10
11 _____
Chairperson



City of Las Cruces

City Council Action and Executive Summary

23-122

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A						
1st Reading:				Adopted:	May 1, 2023		
Drafter:	Cynthia Villanueva			Department:	City Manager's Office		
Program:	Housing and Neighborhood Services			Line of Business:	Housing and Neighborhood Services		
Title:	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.						

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

PURPOSE(S) OF ACTION:
Approve 2023 Action Plan

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
This Resolution approves the 2023 Action Plan, as part of the 2021-2025 Consolidated Plan for the City of Las Cruces (City). The 2023 Action Plan, as mandated by the U.S. Department of Housing and Urban Development (HUD) addresses the City's housing and community development needs. Action Plans are required to be completed annually by each entitlement community in order to utilize the funds for both the Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) programs.

The City adopted the 2021-2025 Consolidated Plan on May 3, 2021, which contains the following five identified strategic plan goals:

- 1. Low-to-moderate-income residents will have access to safe, decent, and affordable housing.
- 2. Improve access to current programs for health and safety, information, transportation, and recreation services.
- 3. Enhance the overall economic well-being of all residents through education and training, employment opportunities, and business development.
- 4. Enhance the quality and use of the physical infrastructure in Las Cruces.
- 5. Prevent and reduce homelessness.

The 2023 Action Plan is the funding mechanism for the allocation of CDBG and HOME funds from HUD and must be consistent with the strategic plan policies established within the Consolidated Plan. The 2023 Action Plan Program Year (PY23) is from July 1, 2023, through June 30, 2024, and coincides with the City's Fiscal Year 2024 (FY24). The 2023 Action Plan has estimated funding amounts, by program, as follows:

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HUD Entitlement		Program Income	Program Total
CDBG	\$1,076,372.00	\$35,000.00	\$1,111,372.00
HOME	\$581,581.00	\$55,000.00	\$636,581.00
FUNDING TOTAL	\$1,747,953.00		

The 2023 CDBG Public Service activities proposed were developed following the City's adopted CDBG Public Services Guide. The activities listed are those recommended for funding by the City's Health and Human Services Advisory Committee (HHSAC). The recommended CDBG Public Service funds are awarded based thru a competitive application cycle in accordance with the Public Services Guide.

The HHSAC recommends the following CDBG Public Services agencies for funding as part of the 2023 Action Plan:

AGENCY RECOMMENDED	FUNDING AMOUNT
Mesilla Valley Community of Hope (MVCH)	\$30,000.00
La Casa	\$30,000.00
Casa de Peregrinos	\$30,000.00
Jardin de Los Ninos	\$30,000.00
Mesilla Valley CASA	\$30,000.00
Catholic Charities	\$20,000.00

The 2023 Action Plan was developed using criteria that provides a balance between applications received by the City and the respective project's ability to meet the priorities of the Consolidated Plan and public input provided.

The 2023 Action Plan was advertised and subject to a 30-day public comment period and three (3) public input hearings were held in accordance with the City's adopted Citizen Participation Plan.

The Resolution authorizes the 2023 Action Plan, once approved, to be submitted to HUD no later than May 15, 2023. The Resolution further authorizes staff to develop and execute standard agreements without future City Council approval in accordance with Resolution 21-147 and the City's P-Code.

SUPPORT INFORMATION:

[Exhibit "A" Draft Action plan](#)

[Attachment "A" FY23HUDFundingAwardLtr](#)

[Attachment "B" Meeting Minutes](#)

[Attachment "C" FEB HHS Minutes](#)

[Attachment "D" Summary of Public Comment](#)

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

Health & Human Services

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
\$1,747,953.00	\$1,747,953.00	\$1,747,953.00

Funding Source(s):
FUND 2000 (CDBG); Various account numbers;\$1,111,372.00
FUND 2000 (HOME); Various account numbers;\$636,581.00

Overall Budget Impact:
The \$1,747,953.00 represents the estimated combined total budget for both the CDBG and HOME Programs within the next FY budget (i.e., this is HUD funds expected to be received on July 1, 2023, and projected program income amounts to be received for each program). The proposed use of CDBG funds are for, public services, Home Rehabilitation Program, administration and projects, public and private facilities improvements, infrastructure projects, and land acquisition. The proposed use of HOME funds is for administration, CHDO operating, and multi-family development.

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. Such action would adopt the 2023 Action Plan for the City, as required for all CDBG and HOME entitlement communities by HUD. This includes authorizing the Assistant City Manager to sign the necessary submittal forms and agreements.
2. Vote "No"; this will not approve the Resolution. Such action would not adopt the 2023 Action Plan for the City, as required for all CDBG and HOME entitlement communities by HUD.
3. Vote to "Amend"; this modification would be at the Council's discretion and would need to provide direction to staff.
4. Vote to "Table"; this action is not recommended as an option. Due to submission deadlines, tabling or postponing this Resolution could result in non-compliance with HUD regulations and jeopardize receipt of funding.

REFERENCE INFORMATION:

1. Resolution No. 21-162.

RESOLUTION 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.

The City Council is informed that:

WHEREAS, the City of Las Cruces is an entitlement community as defined by the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) and HOME Investment Partnerships Act (HOME) Programs; and

WHEREAS, entitlement communities are required to develop, adopt, and implement a Consolidated Plan every three to five years, and corresponding annual Action Plans, to address the City's housing and community development needs in order to continue to receive the CDBG and HOME funding; and

WHEREAS, Public Input Hearings were held, and the 2023 Action Plan was advertised and subject to a 30-day public comment period as required by the City's Citizen Participation Plan; and

WHEREAS, for the 2023 Action Plan, the City estimates it will receive an entitlement and program income for both the CDBG and HOME Programs from HUD funding in the amount of \$1,747,953.00, to address the City's affordable housing and community development needs for its low- and moderate-income areas and residents.

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

(I)

THAT the 2023 Action Plan and all necessary support documentation, as shown in Exhibit "A" attached hereto and made part of the Resolution, is hereby approved and adopted.

(II)

THAT City staff is hereby authorized to secure necessary signatures and transmit the 2023 Action Plan to the U.S. Department of Housing and Urban Development on the City's behalf.

(III)

THAT City staff is hereby authorized to develop and execute the standard agreements/contracts in accordance with the 2023 Action Plan and the Assistant City Manager is authorized to sign said agreements on the City's behalf in accordance with Resolution 21-147 and the City's P-Code, without further consideration by the City Council.

(IV)

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

Agenda Item #8.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

2023 **City of Las Cruces**
Action Plan

Year 3: 2021-2025

Consolidated Plan

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Executive Summary

AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

1. Introduction

The City of Las Cruces, City Managers Office, Housing & Neighborhood Services Program (City) oversees the Consolidated Plan process for the city. The city is submitting its 2023 Action Plan, Year 3 of the 2021-2025 Consolidated Plan. This Plan has been prepared according to HUD requirements. The Plan will govern the City's investment of federal funds for persons experiencing homelessness, housing and non-housing community development activities for the next year.

Annually, the city as a participating jurisdiction is entitled to receive an allocation of the Housing and Urban Development (HUD) Community Development Block Grant (CDBG), and the HOME Investment Partnerships Program (HOME) funding. In 2023, the City expects to receive \$1,076,372 in CDBG and \$581,581 in HOME funds. In addition, City staff estimates program income of \$35,000 for CDBG and \$55,000 for the HOME Program.

CDBG is both the oldest and largest of the HUD programs for housing and community development. CDBG can be used for a variety of activities including:

- Public Infrastructure improvements (streets, sidewalks) in CDBG eligible areas or to support affordable housing development;
- removal of accessibility barriers;
- loans or grants to business for hiring of lower income workers;
- provision of supportive service dollars to social service organizations;
- demolition of property;
- construction and rehabilitation of community facilities including those that help special needs populations (e.g., homeless shelters); and
- down payment assistance for homeownership.

The HOME Program provides federal funds for a variety of housing activities including construction of affordable housing; rehabilitation of affordable housing; acquisition of buildings for affordable housing; first time homebuyer assistance and counseling; and tenant based rental assistance.

2. Summarize the objectives and outcomes identified in the Plan

This could be a restatement of items or a table listed elsewhere in the plan or a reference to another location. It may also contain any essential items from the housing and homeless needs assessment, the housing market analysis or the strategic plan.

High priority needs identified in the Las Cruces Five-Year Consolidated Plan include both housing and non-housing community development, infrastructure, persons experiencing homelessness and special

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population needs. Las Cruces has developed and managed a robust Citizen Participation process to solicit resident input on priority needs. The City has integrated that Citizen Participation process with substantial research efforts to acquire hard data on the scope of those needs.

Proposed uses of HUD funding for PY2023 are below.

	CDBG	HOME	Benefit/Location
Anticipated funding amount from HUD*	\$1,076,372	\$581,581	
Program Income Estimate	\$35,000	\$55,000	
Total Funding Available	\$1,111,372	\$636,581	
Administration	\$175,372	\$63,658	
Mesilla Valley Habitat for Humanity (MVHFH)		\$200,000	Land Acquisition and Single Family New Const scattered sites tentative in the Los Enamorados, Rincon Mesa, Tierra Grande, Cox's First Subdivision, and other nearby subdivisions
Casa De Peregrinos Solar Panel Project	\$200,000		Public Facility Improvement- renovations 18,000 people. 991/999 W. Amador Ave.
La Pinon	\$35,000		Public Facility Rehabilitation. Flooring upgrades at 850 N. Motel Blvd.
Home Rehabilitation (includes Mobile Home ADA Ramps)	\$431,000		City wide; sites to be determined. Estimated benefit 25 people
Thomas Development	\$100,000	\$200,000	Site Improvement and accessibility and construction costs for senior 55+ apartment community for low to moderate income seniors with incomes ranging from 30% to 60% AMI. El Paseo Corridor/El Paseo and Farney
CHDO OP		\$14,000	Mesilla Valley Habitat for Humanity Operating assistance. 720 Santa Fe St.
Mesilla Valley Community of Hope		\$158,923	Tenant Based Rental Assistance for approx. 10 homeless households at scattered sites City wide

CDBG PUBLIC SERVICES GRANTS TO NON-PROFITS	\$170,000 NOT TO EXCEED 15%	PROPOSED ACTIVITIES	BENEFICIARIES
Mesilla Valley Community of Hope	\$30,000	03T Homeless Programs	999 West Amador Community of Hope Campus; Est. 530 people to benefit
Jardin De Los Niños	\$30,000	05T Child Care Services	999 West Amador Community of Hope Campus; Est. 220 children to benefit
Casa de Peregrinos	\$30,000	05W Food Banks	999 West Amador Community of Hope Campus Est. 18,000 people to benefit
MVCASA	\$30,000	05N Abused & Neglected Children	2640 El Paseo Est. 200 children will be assisted City wide (Third District Court Jurisdiction)
La Casa, Inc.	\$30,000	05G Battered & Abused Victims of Domestic Violence	800 S. Walnut Est. 50 victims of DV will be assisted
Catholic Charities	\$20,000	05Q Subsistence Payments	125 West Mountain Avenue, 60 people to benefit

3. Evaluation of past performance

This is an evaluation of past performance that helped lead the grantee to choose its goals or projects.

Overall, during the last five-year reporting period for Consolidated Annual Performance Evaluation Reports (CAPERs) the City has received satisfactory reviews regarding its performance in meeting goals set forth in the Five-Year Consolidated Plan and each year's Annual Action Plan. Additionally, HUD continues to conclude that the City of Las Cruces is administering its programs in a manner consistent with the applicable regulatory requirements. Review and conclusions are based solely on information available to HUD, and do not constitute a comprehensive evaluation or approval of specific activities. The City of Las Cruces has responded to all technical assistance provided as a part of any HUD review and evaluation.

The city continued to experience the negative effects of the pandemic regarding the construction of owner-occupied single-family homes. Specifically with our development partner, Mesilla Valley Habitat for Humanity who relies on volunteer labor for the majority of construction efforts. They were able to complete construction on 2 homes during the program year when normally they can complete 5 units each program year. The two homes completed are located in the Aurora Subdivision at 4157 and 4161 Aurora Star Court. The increased costs of construction materials combined with the lack of volunteer labor has hindered Habitats efforts to get back on track after the pandemic. Tierra Del Sol Housing Corporation focused on design work for the Skylark subdivision and has had difficulty in securing a contractor through the bidding process. We anticipate subdivision construction to begin by the 2nd quarter of PY2023.

CDBG funds used to preserve existing affordable housing stock were used for the rehabilitation of 7 owner-occupied units and the installation of 1 mobile home ramp. There are an additional 2 Home Rehabilitation projects anticipated for completion prior to the end of PY22. Out of those applicants served, 8 mobile home and 27 home rehabilitation applicants were found ineligible for assistance for different reasons during this period. The Home Rehabilitation projects proved to be more challenging than in previous years due to supply and manpower shortages caused by CV-19. Additionally, there was a noticeable reduction of Mobile Home Ramp Applications due to CV-19. CDBG funds in the amount of \$173,879 were used by Mesilla Valley Habitat for Humanity to acquire two lots in the Dos Suenos Subdivision and 3 lots in Metro Central Phase 1 on which they will construct affordable owner-occupied single-family homes. CDBG Public Services funding was provided to non-profit agencies who provided a variety of activities including funding to homelessness services providers including a homeless day care center, homeless day shelter, domestic violence, food bank/rescue, and case advocacy for abused and neglected children. Approximately 19,450 individuals benefited from the services provided. The City provided Fair Housing awareness training to all new employees of the City.

4. Summary of Citizen Participation Process and consultation process

Summary from citizen participation section of plan.

Prior to the development of the 2023 Action Plan two public input meetings were held on October 12, 2022 at 5:30 PM at City Hall and October 13, 2022 at 2:30 pm at Branigan Library, Roadrunner Room, 200 E Picacho Ave.

The draft 2023 Action Plan was available for public review starting Thursday, March 9, 2023, from 8:00 a.m. to 5:00 p.m., Monday through Friday at the Las Cruces City Hall, Economic Development Department, 700 N. Main, Suite 1100 or City Clerk's Office, Suite 1200 and the Branigan Library, 200 E. Picacho. It was also on the City's website at www.las-cruces.org under the "Discover Housing and Community Resources" section (this page is ADA compliant for the visually impaired).

The 2023 Action Plan can be translated, upon request, for Limited English Proficient (LEP) persons for review during the public comment period. The 2023 Action Plan can also be provided in alternate formats for the disabled (i.e. Braille, large print, audio tape) upon request.

Three public hearings to receive comments on the on the 2023 Action Plan were held. The first was Wednesday, March 29, 2023, from 5:30 at the Munson Senior Center, 975 S. Mesquite. Another hearing was held for Thursday, March 30, 2023, at 2:30, at City Hall, 700 N. Main St., room 2007-A. The third hearing was held for Thursday, March 30, 2023, at 5:30, at the Sage Cafe, 6121 Reynolds Dr., Las Cruces, NM. These facilities meet the requirements for wheelchair accessibility. A Spanish interpreter was available and, upon request, interpreters for other languages can also be made available during the hearings.

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The City Council meeting was held on May 1, 2023 and provided an additional opportunity for the public to comment.

5. Summary of public comments

This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.

Members of the public attended Public hearing, asked questions regarding electrification and LIHTC

6. Summary of comments or views not accepted and the reasons for not accepting them

All citizen comments and views received during the Action Plan public input process and the public hearings are accepted.

7. Summary

Las Cruces has historically depended upon federal funding to support housing and community development activities. On average, the City of Las Cruces receives approximately \$1.3 million annually between the federal Community Development Block Grant (CDBG) and HOME Investment Partnership Program (HOME). CDBG and HOME are entitlement funds received from the U.S. Department of Housing and Urban Development (HUD). In addition to these federal block grants, through funding received by nonprofit agencies/developers and Mesilla Valley Public Housing Authority, the City's low to moderate income residents benefit from the federal Section 8/Housing Choice voucher program, Continuum of Care funding, Veterans VASH Vouchers, Neighborhood Stabilization funding, Neighbor Works, USDA, and Federal Low Income Housing Tax Credit (LIHTC) program.

The awarding of CDBG and HOME funding is an annual competitive application process that starts in November and continues through a public process which concludes with City Council approval of the recommended projects. Applications for funding are generally accepted in December for HOME and January for CDBG and Public Service projects. The process begins with the solicitation of Request for Application/Letter of Intent to apply for funding. City entities, other governmental entities and private nonprofit organizations may submit proposals. Non-profit entities, to be eligible, must also have the organizational capacity to carry out the proposed activity and to meet the record keeping and reporting requirements of CDBG and HOME programs. Applications for funding are accepted from all eligible organizations whether they have previously received grants or not. The Request for Application/Letters of Intents are reviewed for initial determination of program eligibility. After the initial determination of program eligibility, City staff distributes electronic applications for funding to the eligible applicant agency. Staff reviews, scores and recommends CDBG and HOME applications for funding. The Health and Human Services Advisory Committee reviews, scores and recommends CDBG Public Service applications. Information regarding the application process is available on the City's website with program staff contact information.

PR-05 Lead & Responsible Agencies – 91.200(b)

1. Agency/entity responsible for preparing/administering the Consolidated Plan

Describe the agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
Lead Agency	LAS CRUCES	
CDBG Administrator	LAS CRUCES	Housing and Neighborhood Services
HOPWA Administrator		
HOME Administrator	LAS CRUCES	Housing and Neighborhood Services
HOPWA-C Administrator		

Table 1 – Responsible Agencies

Narrative (optional)

The Housing and Neighborhood Services Section of City Manager's Office is responsible for administering both the CDBG and the HOME programs.

Consolidated Plan Public Contact Information

Natalie Green
Housing and Neighborhood Services Manager
City Manager's Office
City of Las Cruces
P.O. Box 20000, Las Cruces, NM 88004
Phone: 575-528-3086 Fax: 575-528-3101
ngreen@lascruces.gov

AP-10 Consultation – 91.100, 91.200(b), 91.215(l)

1. Introduction

The development of the 2023 Action Plan included several opportunities for citizen and stakeholder input. On October 12 and 13, 2022, two public hearings were held to provide an overview of the Plan process and to solicit input. On February 22, 2023, the City's Health and Human Services Advisory Committee held a public hearing to make funding recommendations for the CDBG Public Service Funds for the 2023 Program Year. Public hearings were also held on March 29 and 30, 2023 to gather input on the draft 2023 Action Plan, along with a 30-day public comment period on the draft plan. Public comments could also be made at the May 1, 2023 City Council meeting in which the 2023 Action Plan will be considered for adoption.

Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(l))

The City of Las Cruces coordinates city funded housing activities through the Affordable Housing Land Bank and Trust Fund Advisory Committee, and public service activities through the Health and Human Services Advisory Committee. The City will provide public service funding over the next three years to local non-profit agencies that serve special needs populations, primarily to the homeless, victims of domestic violence, and the disabled. Additionally, the City will provide HOME funds to non-profit housing providers for the development of single-family and multi-family housing, and affordable rental housing assistance.

The City will continue to coordinate efforts in the areas of homeless services and ending homelessness, including chronic homelessness, veteran homelessness for the Mesilla Valley Community of Hope campus and other homeless providers working in the City.

The City will continue to participate in meetings with outside partners in efforts to improve overall delivery of CDBG and HOME-funded projects, as well as public service and homeless providers on a regular basis

Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.

The City falls under the jurisdiction of the New Mexico Coalition to End Homelessness (NMCEH), the New Mexico Balance of State Continuum of Care (CoC). The City participates with staff representation in the regular NMCEH meetings held as well as the NMCEH CoC Board meetings. Governmental and

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nonprofit agencies in the Balance of State cities and counties can apply annually for HUD Continuum of Care grants through the NMCEH.

Consultation with the CoC takes place with the NMCEH for the City's jurisdiction.

Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS

The City currently does not receive ESG funding. CoC funds are also provided directly to our outside partnering agencies. The NMCEH administers the operations of the HMIS system.

2. Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdiction's consultations with housing, social service agencies and other entities

Table 2 – Agencies, groups, organizations who participated

1	Agency/Group/Organization	LA CASA, INC
	Agency/Group/Organization Type	Housing Services-Victims of Domestic Violence
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homeless Needs - Families with children
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	La Casa staff were key informants providing information about the needs of victims of domestic violence in Las Cruces. La Casa coordinates with the City of Las Cruces and other providers of services.
2	Agency/Group/Organization	MESILLA VALLEY COMMUNITY OF HOPE
	Agency/Group/Organization Type	Housing Services-homeless
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Staff from the Mesilla Valley Community of Hope (MVCH) were key informants, providing insights and data related to the needs of homeless citizens in Las Cruces. MVCH coordinates with all other homeless service agencies and the City through the Continuum of Care and to ensure coordinated homeless service provision. MVCH is also the Coordinated Entry lead agency for Southern New Mexico.

3	Agency/Group/Organization	Veterans Administration
	Agency/Group/Organization Type	Services-homeless Other government - Federal
	What section of the Plan was addressed by Consultation?	Homelessness Needs - Veterans
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The VA VASH staff participated as key informants and coordinate with other homeless services providers, the City, and the Mesilla Valley Housing Authority to provide coordinated services to homeless veterans in Las Cruces.
4	Agency/Group/Organization	CASA DE PEREGRINOS
	Agency/Group/Organization Type	Services-Elderly Persons Services-homeless
	What section of the Plan was addressed by Consultation?	Homeless Needs - Chronically homeless Homeless Needs - Families with children Non-Homeless Special Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Casa de Peregrinos staff provided information about food insecurity in Las Cruces and the high priority needs of low and very low income households. The agency coordinates with other service providers in Las Cruces and with the City.
5	Agency/Group/Organization	JL Gray
	Agency/Group/Organization Type	Housing Business Leaders
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Market Analysis

	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	JL Gray property management and development staff were key informants who provided information and insights into the need for affordable housing.
6	Agency/Group/Organization	NMSU Economics Department
	Agency/Group/Organization Type	Business Leaders University Major Employer
	What section of the Plan was addressed by Consultation?	Economic Development
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	A representative from the NMSU Economics Department was a key informant discussing the employment needs in Las Cruces and the economic climate.
7	Agency/Group/Organization	FAMILIES AND YOUTH, INC.
	Agency/Group/Organization Type	Services - Housing Services-Children Services-homeless Services-Health Child Welfare Agency Publicly Funded Institution/System of Care
	What section of the Plan was addressed by Consultation?	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Unaccompanied youth

	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Staff from FYI were key informants, and provided information about the needs of homeless youth, homeless youth programs, and programs for at risk youth.
8	Agency/Group/Organization	Housing Policy Review Committee
	Agency/Group/Organization Type	Housing Other government - State Other government - County Other government - Local
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Market Analysis
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Las Cruces Housing PRC provided insights into the housing market and housing needs in Las Cruces.
9	Agency/Group/Organization	TRESCO, INC
	Agency/Group/Organization Type	Services - Housing Services-Persons with Disabilities Services-Employment
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Non-Homeless Special Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Staff from Tresco were key informants providing information about persons with disabilities, and their needs for housing and services in Las Cruces.

10	Agency/Group/Organization	EL CALDITO SOUP KITCHEN
	Agency/Group/Organization Type	Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-homeless
	What section of the Plan was addressed by Consultation?	Homeless Needs - Families with children Non-Homeless Special Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The staff and board of El Caldito provided insights into the need for food and meals for homeless and low income persons and households in Las Cruces. The agency works with other homeless and service providers to coordinate services in Las Cruces.
11	Agency/Group/Organization	Health and Human Services Advisory Committee
	Agency/Group/Organization Type	Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Service-Fair Housing Services - Victims
	What section of the Plan was addressed by Consultation?	Non-Homeless Special Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The HHSAC Committee met to provide insights into high priority public services needs within Las Cruces. The committee helps the city coordinate and prioritize funding requests for public services dollars.

12	Agency/Group/Organization	New Mexico Department of Health
	Agency/Group/Organization Type	Services-Persons with HIV/AIDS
	What section of the Plan was addressed by Consultation?	Non-Homeless Special Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Doctors and Health Promotion program managers provided information and insights into the challenges faced by persons with HIV/AIDS in Las Cruces and coordination for service delivery for this population.
13	Agency/Group/Organization	Dona Ana County Health and Human Services
	Agency/Group/Organization Type	Health Agency Agency - Emergency Management Other government - County Business Leaders
	What section of the Plan was addressed by Consultation?	Non-Homeless Special Needs Economic Development
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Dona Ana County HHS provided information about gaps in the healthcare system for low-income residents of Las Cruces, and the challenges of bringing high quality care to the community.
14	Agency/Group/Organization	JARDIN DE LOS NINOS
	Agency/Group/Organization Type	Services-Children Services-homeless
	What section of the Plan was addressed by Consultation?	Homeless Needs - Families with children

	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Jardin de los Ninos staff were key informants providing information regarding homeless children and families that they serve, and their services. The agency coordinates with other homeless providers and the City to ensure that families are accessing all services available to them.
15	Agency/Group/Organization	League of Women Voters
	Agency/Group/Organization Type	Civic Leaders Neighborhood Organization
	What section of the Plan was addressed by Consultation?	Housing Need Assessment
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The League of Women's Voters provided a Housing Needs report that they prepared and observations about housing needs throughout Las Cruces.
16	Agency/Group/Organization	Amador Health Center
	Agency/Group/Organization Type	Housing Services-Elderly Persons Services-Persons with Disabilities Services-Persons with HIV/AIDS Services-homeless Services-Health Health Agency

	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Staff from Amador Health Center (FKA St. Luke's Health Care Clinic) were key informants providing information related to homeless health needs and programs available at the clinic. The agency coordinates services with other homeless providers and the city. SAMSA Recipient
17	Agency/Group/Organization	TIERRA DEL SOL HOUSING CORP
	Agency/Group/Organization Type	Housing Community Development Financial Institution
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Market Analysis Economic Development Anti-poverty Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Tierra del Sol, as a nonprofit housing developer, provided insights into housing needs, the housing market, and development challenges in Las Cruces. Tierra del Sol coordinates with other housing and service providers and the City to construct new housing units.
18	Agency/Group/Organization	Precision Mortgage Group
	Agency/Group/Organization Type	Business Leaders Private Sector Banking / Financing
	What section of the Plan was addressed by Consultation?	Market Analysis Economic Development

	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Precision Mortgage Group was a key informant providing information related to the housing market and economic conditions in Las Cruces.
19	Agency/Group/Organization	MESILLA VALLEY PUBLIC HOUSING
	Agency/Group/Organization Type	Housing PHA
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Public Housing Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The Mesilla Valley Housing Authority provided data related to residents, properties and waiting lists and needs for affordable housing in Las Cruces.
20	Agency/Group/Organization	Las Cruces Home Builders Association
	Agency/Group/Organization Type	Housing Business Leaders Business and Civic Leaders Neighborhood Organization Private Sector Banking / Financing
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Market Analysis
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Staff from the Las Cruces Home Builders Association provided insights into the housing development market and challenges related to building housing in Las Cruces.

21	Agency/Group/Organization	MESILLA VALLEY HABITAT FOR HUMANITY
	Agency/Group/Organization Type	Housing
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Market Analysis
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Habitat for Humanity staff were key informants to provide insights into the housing needs of residents, construction of housing units, and the development challenges in Las Cruces. Habitat coordinates with other housing and service agencies and the City to provide housing.
22	Agency/Group/Organization	City of Las Cruces
	Agency/Group/Organization Type	Housing Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services - Broadband Internet Service Providers Services - Narrowing the Digital Divide Agency - Managing Flood Prone Areas Agency - Management of Public Land or Water Resources Other government - Local Planning organization Grantee Department Major Employer

	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs HOPWA Strategy Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Staff from many City departments in Las Cruces, including Planning, Public Works, Housing, Community Development, Parks & Rec, Transit, Senior Programs, Land Management, the City Council, Mayor's Office, and Metropolitan Planning Organization provided data, insights, programmatic information, and priorities for development of the Consolidated Plan.
23	Agency/Group/Organization	MESILLA VALLEY COURT APPOINTED SPECIAL ADVOCATES (CASA), INC.
	Agency/Group/Organization Type	Services-Children Services - Victims Child Welfare Agency
	What section of the Plan was addressed by Consultation?	Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Mesilla Valley CASA staff was a key informant providing information related to children in need and in the court system in Las Cruces.

24	Agency/Group/Organization	New Mexico Cafe
	Agency/Group/Organization Type	Housing Services - Narrowing the Digital Divide Neighborhood Organization
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Non-Homeless Special Needs
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	New Mexico CAFE staff was a key information related to the housing and service needs of the Spanish speaking community in Las Cruces. The agency has also worked to provide foreclosure prevention assistance in the past, and are proponents of economic development and minimum wage increases.
25	Agency/Group/Organization	Enchanted Sun Realty
	Agency/Group/Organization Type	Housing Business Leaders
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Market Analysis
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Enchanted Sun Realty provided information related to the homeownership market in Las Cruces and availability of land for development.
26	Agency/Group/Organization	Las Cruces Economic Development Office
	Agency/Group/Organization Type	Other government - Local
	What section of the Plan was addressed by Consultation?	Economic Development Anti-poverty Strategy

Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	The City of Las Cruces Economic Development Director was a key informant providing information and insights into the economy in Las Cruces and economic development needs.
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Identify any Agency Types not consulted and provide rationale for not consulting

Efforts were made to include all agency types. No specific agencies were excluded from this process.

Other local/regional/state/federal planning efforts considered when preparing the Plan

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	NM Coalition to End Homelessness	The efforts to end homelessness including chronic homelessness overlap. Providing Affordable Housing to Homeless Persons and special needs populations also overlap
Elevate Las Cruces	City of Las Cruces	Elevate Las Cruces is the City's Comprehensive plan which is approved and in its first phase of implementation to establish baseline data. It includes a section on Economic Development, Affordable housing development and anti-poverty strategy.

Table 3 – Other local / regional / federal planning efforts

Narrative (optional)

The City benefits from having a small group of established non-profit organizations specializing in serving homeless, special needs, and other low-income populations.

The City has worked diligently to foster and develop strong relationships with the organizations that provide housing and supportive services to low-income and special needs populations. City staff are accessible to housing and social service providers and continue to make the CDBG and HOME application processes straightforward and transparent. In recent years, the City has been very proactive in implementing policies and

programs that remove barriers and support the provision of needed housing and services, such as the establishment of a land bank, an affordable housing trust fund, streamlining the development process and implementing fee waivers for affordable housing development. These efforts will continue during the five-year Consolidated Plan period.

AP-12 Participation – 91.105, 91.200(c)

1. Summary of citizen participation process/Efforts made to broaden citizen participation Summarize citizen participation process and how it impacted goal-setting

Input from a broad range of citizens and citizen groups were collected during the development of the Five-Year Consolidated Plan. The public was encouraged to participate through multiple modes, including an online and paper Community Survey sent to 7,800 residents in low-income census tracts (in Spanish and English); Public Hearings and Meetings; submittal of written comments regarding the draft Five-Year Plan; and the City Council Public Hearing to adopt the plan. The Housing and Neighborhood Services Division notified the public about opportunities to participate in the process on the City website, through utility bill mailings (in English and Spanish) to 39,000 residents, Facebook and Instagram Marketing Campaigns, through publications in local newspapers, through non-profit and service providers, and through other means. Input from citizens and key informants was used along with data to determine high priority needs and five-year goals to meet needs.

Prior to the development of the 2023 Action Plan two public input meetings were held on October 12, 2022 at 5:30 PM at City Hall and October 13, 2022 at 2:30 pm at Branigan Library Roadrunner Room 200 E Picacho Ave.

The draft 2023 Action Plan was available for public review starting Thursday, March 9, 2023, from 8:00 a.m. to 5:00 p.m., Monday through Friday at the Las Cruces City Hall, Economic Development Department, 700 N. Main, Suite 1100 or City Clerk's Office, Suite 1200 and the Branigan Library, 200 E. Picacho. It was also on the City's website at www.las-cruces.org under the "Discover Housing and Community Resources" section (this page is ADA compliant for the visually impaired).

The 2023 Action Plan can be translated, upon request, for Limited English Proficient (LEP) persons for review during the public comment period. The 2023 Action Plan can also be provided in alternate formats for the disabled (i.e. Braille, large print, audio tape) upon request.

Three public hearings to receive comments on the on the 2023 Action Plan were held. The first was held Wednesday, March 29, 2023, from 5:30 at the Munson Senior Center, 975 S. Mesquite. Another hearing was scheduled for Thursday, March 30, 2023, at 2:30, at City Hall, 700 N. Main St., room 2007-A. The third hearing was scheduled for Thursday, March 30, 2023 at 5:30, at the Sage Cafe, 6121 Reynolds Dr., Las Cruces, NM.

These facilities meet the requirements for wheelchair accessibility. A Spanish interpreter was available and, upon request, interpreters for other languages can also be made available during the hearings.

Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
1	Newspaper Ad	Non-English Speaking - Specify other language: Spanish Non-targeted/broad community	English and Spanish Ads were published in the local newspapers	No comment received to date	n/a	

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
2	Public Meeting	Non-English Speaking - Specify other language: Spanish Persons with disabilities Non-targeted/broad community	Meetings were held on October 12 and 13. One member of the public attended	No public comments Received	n/a- All comments are accepted	
3	Public Hearing	Non-English Speaking - Specify other language: Spanish Persons with disabilities Non-targeted/broad community	3 meetings were held on March 29, 2023 and March 30, 2023	No comments received to date	n/a- All comments are accepted	

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
4	Interagency List Serv	Non-English Speaking - Specify other language: Spanish Persons with disabilities Non-targeted/broad community	Meetings and information were advertised on the Interagency List Serv	No comments received to date	n/a- All comments are accepted	
5	Internet Outreach	Minorities Non-English Speaking - Specify other language: Spanish Persons with disabilities Non-targeted/broad community	All Drafts and Ads were placed on the City's Website	No comments received to date	n/a- All comments are accepted	https://www.las-cruces.org/2222/Discover-Housing-and-Community-Resources

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
6	Public Hearing	Minorities Non-English Speaking - Specify other language: spanish Persons with disabilities Non-targeted/broad community	City Council will adopt the Action Plan as part of their May 01, 2023 regular meeting.	No comments received to date	n/a- All comments are accepted	

Table 4 – Citizen Participation Outreach

Expected Resources

AP-15 Expected Resources – 91.220(c)(1,2)

Introduction

HOME Investment Partnerships grant program has flexibility to assist in housing programs; participating jurisdictions decide how to use money for: Acquisition, Rehabilitation, New Construction, Tenant Based Rental Assistance (TBRA), Home Buyer Assistance, Planning, and Operating Assistance for CHDOs. For 2023, the City anticipates it will receive \$581,581 of HOME Entitlement funds. The City anticipates receiving approximately \$55,000 in estimated program income from previous Home Rehabilitation projects that are paying off their mortgages or other HOME projects (rental properties) with loans that require repayment to the City's HOME Program. This will give the City's 2023 HOME Program a full funding amount of \$636,581.

CDBG program funds may be used to address neighborhood revitalization, economic development, provisions of improved community facilities, prevention and elimination of slums or blight, and activities aiding low- and moderate-income families. For 2023, the City anticipates receiving \$1,076,372 of CDBG Entitlement funds and an anticipated \$35,000 of program income from houses which have been previously rehabilitated. This will give the City's 2023 CDBG Program a full funding amount of \$1,111,372.00

The City has an Affordable Housing Land Bank and Housing Trust Fund will have approximately \$6,732,000 in funds available for implementation in accordance with the City's Affordable Housing General Oversight Ordinance once the City has a written Affordable Housing Plan approved by MFA. Other efforts include an impact fee waiver program for developers of affordable housing in the City of Las Cruces (approximately \$50,000 in value).

Las Cruces has a local Health and Human Services funding source for health-related public services. The annual amount available for allocation is

up to \$600,000.

Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	1,076,372	35,000	0	1,111,372	3,088,779	CDBG funding is used for a variety of programs and projects in Las Cruces. Prior Year Resources are excess program income.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
HOME	public - federal	Acquisition Homebuyer assistance Homeowner rehab Multifamily rental new construction Multifamily rental rehab New construction for ownership TBRA	581,581	55,000	0	636,581	1,473,213	HOME funds are used for both homeownership and rental housing projects and programs. Prior Year Resources is excess program income.
Other	public - local	Acquisition Housing Multifamily rental new construction Multifamily rental rehab New construction for ownership	3,142,907	0	0	3,142,907	6,000,000	The Affordable Housing Trust Fund dollars are used for affordable housing related projects. Council Has made a preliminary commitment for 2.4M for an affordable housing project.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
Other	public - local	Housing	50,000	0	0	50,000	100,000	The City provides impact fee waivers for specific projects.
Other	public - local	Public Services	600,000	0	0	600,000	1,800,000	These funds are used to provide public service funding to a variety of human service organizations working in Las Cruces.

Table 5 - Expected Resources – Priority Table

Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

HOME and CDBG funds will leverage additional resources including Low Income Housing Tax Credit funding (multi-family years,) private investors, private donations, and local funds.

HOME funds normally require a 25% match; however, due to federal guidelines for HOME match waivers, the City of Las Cruces currently receives a 100% reduction in match liability waiver for Federal fiscal year 2022 and we assume there will be a match reduction for 2023-2024 as well. Match requirements may be satisfied through various sources to including TBRA supportive services, local loan amounts in conjunction with MFA Mortgage Revenue Bond Program, volunteer labor and sweat equity, amounts discounted from sales prices of land to value amount for lot purchases for affordable housing development and other non-federal sources. The City currently has \$1,078,289 in excess match contributions.

Beginning in 2015, the City requires a CDBG match of 50% for infrastructure programs.

If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

Public owned land and facilities are used for homeless services including, medical, childcare, homeless day shelter, food services, meals, and victims of domestic violence emergency shelter and services. Additionally, public owned land or the proceeds from the sale of public owned land may be used for the development of affordable housing.

Discussion

Due to limited funding, the City of Las Cruces may require that no more than \$200,000 of HOME funds may be dedicated to a single project (but not necessarily one single agency in one program year). Should the dedication or financing of a land bank and trust fund be established, the City may evaluate and update this policy as appropriate.

In an effort to address the limited HOME funding each program year, the City of Las Cruces will alternate the priority between dedicating HOME funds between affordable rental housing development and single-family homeownership developments. Starting in Program Year 2017, funding will be priority to affordable rental housing development and continue in odd numbered years (2021, 2023, 2025). Single family housing development will receive priority in even numbered program years (2022, 2024). However, given the number, type, and quality of applications for funding and any undedicated funds available, HOME funds may be provided to the other priority in any given year.

The City of Las Cruces requires that no more than 50% of CDBG funds may be dedicated to infrastructure, public facilities, or economic development activities that result in capital or facility improvements and that the remaining 50% or more may come from other sources. Other sources can include other federal, state, local, and private funds. For improvements made to City-owned facilities that are occupied by non-city operated programs, the other 50% must come from other federal, state and private (non-City of Las Cruces) sources or will provide full funding from CDBG funds with 50% of the funding provided as loan, resulting in program income upon payback.

Annual Goals and Objectives

AP-20 Annual Goals and Objectives

Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Access to Affordable Housing	2021	2025	Affordable Housing Public Housing	Citywide	Public Improvements and Public Infrastructure	CDBG: \$531,000 HOME: \$414,000	Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit: 80 Households Assisted Homeowner Housing Added: 5 Household Housing Unit Homeowner Housing Rehabilitated: 20 Household Housing Unit
2	Access to Health and Safety	2021	2025	Non-Homeless Special Needs Non-Housing Community Development	Citywide	Community Services (Public Services)	CDBG: \$90,000	Public service activities other than Low/Moderate Income Housing Benefit: 18420 Persons Assisted
3	Enhance Quality of Infrastructure	2021	2025	Non-Homeless Special Needs Non-Housing Community Development	Citywide	Public Improvements and Public Infrastructure Homeless Needs and Services	CDBG: \$235,000	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 100 Persons Assisted

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
4	Prevent and reduce homelessness	2021	2025	Affordable Housing Homeless	Citywide	Homeless Needs and Services	CDBG: \$80,000 HOME: \$158,923	Public service activities other than Low/Moderate Income Housing Benefit: 530 Persons Assisted Public service activities for Low/Moderate Income Housing Benefit: 500 Households Assisted Overnight/Emergency Shelter/Transitional Housing Beds added: 20 Beds

Table 6 – Goals Summary

Goal Descriptions

1	Goal Name	Access to Affordable Housing
	Goal Description	Overall, the biggest need mentioned by providers in community stakeholder interviews, community focus group meetings, and the community survey was for additional affordable housing units for very low-income households, accessible units for those with physical disabilities, transitional or permanent housing for persons experiencing homelessness and/or mental health/substance use disorders. To improve access to safe, decent, and affordable housing, the City of Las Cruces will preserve existing affordable housing options, provide incentive programs to develop to encourage building of multi-units and mixed-use development, and offer programs to help homeowners modify units for rehabilitation and accessibility.
2	Goal Name	Access to Health and Safety
	Goal Description	There is great need for easy access to community services that serve large swaths of the population. Additionally, the need for recreation is greater than ever, with social isolation and lack of community activities. The City of Las Cruces will improve access to current programs by increasing awareness about available services in the community, provide free or low-cost services to qualified individuals, and expand current services.

3	Goal Name	Enhance Quality of Infrastructure
	Goal Description	Many community leaders and stakeholders have expressed the need for greater infrastructure to serve the diverse communities in Las Cruces. Improved transportation and facilities will increase flow throughout the city, allowing Las Cruces residents of all types to access services more easily. The City will work to develop and/or improve youth centers and recreation facilities, ensure bus routes are tied to housing and areas of employment, and work to provide transit for those who cannot afford it.
4	Goal Name	Prevent and reduce homelessness
	Goal Description	There is great need to increase resources available for individuals and households experiencing repeated episodes of homelessness, episodic homelessness and the threat of homelessness. Presently it is challenging for households in this situation to obtain stable decent housing and the accompanying needed supportive services to maintain stability in an independent living environment. The City has had to resort to supporting an overflow tent village to provide a basic level of safety and sanitary living conditions for those who are unable to obtain stable permanent housing through the homeless support system in the community. The City will focus on homeless prevention through short term assistance to pay rent, utility bills and other items which could force a household into homelessness.

Projects

AP-35 Projects – 91.220(d)

Introduction

The City of Las Cruces has allocated CDBG and HOME funds to projects in 2022 that meet its Priority Needs and Annual Goals. These projects include homeowner rehabilitation, land acquisition for new construction of for-sale affordable homes, public service activities, and public facility repairs.

Projects

#	Project Name
1	City of Las Cruces Admin
2	CHDO Operating Funds
3	Habitat for Humanity SFD Acquisition/ New Construction
4	HOME TBRA
5	City Home Rehabilitation
6	CDBG PUBLIC SERVICES
7	MVCOH (CDP) Solar Project
8	La Pinon Public Facility Improvement
9	Thomas Development

Table 7 - Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

Allocation priorities were made based upon annual goals and priority needs, agency funding requests and needs, current opportunities to meet goals and the amount of funding to be received. The City will continue to work with supportive service providers to enhance service delivery models and expand the services available to underserved households. Obstacles include a limited amount of resources and limitations in the agencies capacity to expand services to those in need.

AP-38 Project Summary

Project Summary Information

1	Project Name	City of Las Cruces Admin
	Target Area	Citywide
	Goals Supported	Access to Affordable Housing Access to Health and Safety Enhance Quality of Infrastructure
	Needs Addressed	Housing Needs Community Services (Public Services) Economic Development Community and Public Facilities Public Improvements and Public Infrastructure Homeless Needs and Services
	Funding	CDBG: \$175,372 HOME: \$63,658
	Description	In Las Cruces, NM, HOME and CDBG funds allocated for City entitlement program staff for administration and program implementation. Includes a set-aside for Fair Housing activities. CDBG Activity code 21A. HOME PA will be used for TBRA admin. \$2,000 funding will be set aside for Fair Housing Administration.
	Target Date	6/30/2024
	Estimate the number and type of families that will benefit from the proposed activities	All CDBG and HOME beneficiaries from other activities will benefit from expenditure of CDBG and HOME funds for administration of the programs.
	Location Description	All program year 2022 CDBG and HOME funded activities will be located in the City of Las Cruces with the exception of any travel expenses for training purposes.

	Planned Activities	CDBG and HOME eligible administrative expenses including a set aside for Fair Housing Activities and the Consolidated Plan.
2	Project Name	CHDO Operating Funds
	Target Area	Citywide
	Goals Supported	Access to Affordable Housing
	Needs Addressed	Housing Needs
	Funding	HOME: \$14,000
	Description	In Las Cruces, NM, CHDO operating funds for Habitat for Humanity. Funding will be used for staff salaries for their Home-ownership Coordinator and Accountant for Habitat.
	Target Date	6/30/2024
	Estimate the number and type of families that will benefit from the proposed activities	At least 5 families will benefit working with MVHFH employees
	Location Description	CHDO operating assistance will take place at Habitat's main office at 720 Santa Fe.
	Planned Activities	Assistance is getting families qualified for HOME-assisted building single family building projects.
3	Project Name	Habitat for Humanity SFD Acquisition/ New Construction
	Target Area	Citywide
	Goals Supported	Access to Affordable Housing
	Needs Addressed	Housing Needs Economic Development
	Funding	HOME: \$200,000

	Description	In Las Cruces, NM, the Land Acquisition/ New Construction project will utilize \$90,000 in CHDO reserve funds to assist in meeting the City's >15% CR requirement.
	Target Date	6/30/2025
	Estimate the number and type of families that will benefit from the proposed activities	Up to 5 low-income households, below 80% AMI will be assisted.
	Location Description	Land Acquisition and Single Family New Const scattered sites tentative in the Los Enamorados, Rincon Mesa, Tierra Grande, Dos Suenos, Metro Verde and other nearby subdivisions.
	Planned Activities	Habitat for Humanity Property Acquisition and Single Family New Construction
4	Project Name	HOME TBRA
	Target Area	Citywide
	Goals Supported	Access to Affordable Housing Access to Health and Safety
	Needs Addressed	Housing Needs Community and Public Facilities
	Funding	HOME: \$158,923
	Description	In Las Cruces, NM, HOME Funds will be used to provide Tenant Based Rental Assistance for clients with special needs. PROGRAM INCOME Admin funds may also be used to support the program
	Target Date	6/30/2025
	Estimate the number and type of families that will benefit from the proposed activities	Approx. 10 households experiencing homelessness

	Location Description	Scattered site
	Planned Activities	Tenant Based Rental Assistance including utility assistance and security deposits.
5	Project Name	City Home Rehabilitation
	Target Area	Citywide
	Goals Supported	Access to Affordable Housing Access to Health and Safety Enhance Quality of Infrastructure
	Needs Addressed	Housing Needs Community Services (Public Services) Community and Public Facilities
	Funding	CDBG: \$431,000
	Description	In Las Cruces, NM, CDBG funds will be used for preserving affordable housing stock, mobile home ramp installations, and mobile home utility upgrades. National Objective LMH, CDBG Activity Code 14A.
	Target Date	6/30/2025
	Estimate the number and type of families that will benefit from the proposed activities	The City estimates that 20 households at 80% AMI or less will benefit. Households are selected off annual waiting lists.
	Location Description	Scattered Site
	Planned Activities	Homeowner Rehabilitation, Mobile Home Ramp Program, and Mobile Home Utility Upgrades for households at 80% AMI or less.
6	Project Name	CDBG PUBLIC SERVICES
	Target Area	Citywide

Goals Supported	Access to Health and Safety Prevent and reduce homelessness
Needs Addressed	Community Services (Public Services) Community and Public Facilities Homeless Needs and Services
Funding	CDBG: \$170,000
Description	In Las Cruces, NM, 5 agencies will be provided public services funding. Mesilla Valley Community of Hope, Jardin de los Ninos, Casa de Peregrinos, La Casa Inc, Catholic Charities and MVCASA.
Target Date	6/30/2024
Estimate the number and type of families that will benefit from the proposed activities	Mesilla Valley Community of Hope will assist approx. 530 people to benefit Jardin De Los Niños will assist approx. 220 children to benefit Casa de Peregrinos will assist approx. 18,000 people to benefit MVCASA will assist approx. 200 children will be assisted La Casa, Inc. will assist approx. 500 victims of DV will be assisted. Catholic Charities will assist approx. 60 people to benefit
Location Description	Citywide. All public service activities will be provided in the City of Las Cruces. The majority of service providers are located at 999 W. Amador, Las Cruces, NM on the Mesilla Valley Community of Hope homeless campus. La Casa is a domestic violence emergency shelter located at another city owned facility (Address suppressed). MV CASA provides case advocacy across the 3rd district court jurisdiction. Catholic Charities will office is located at 125 West Mountain Avenue.

	Planned Activities	Program Year 2021 Public services funding to non-profit agencies to provide a variety of services including homeless services, emergency shelter for victims of domestic violence, childcare services, and advocacy for abused and neglected children and food rescue and distribution. • Mesilla Valley Community of Hope will provide homeless day shelter services, housing assistance, mail, showers etc. • Jardin de los Ninos will provide childcare services to homeless and near homeless children. • Casa de Peregrinos will conduct food rescue to supplement their food distribution program. • La Casa Inc will provide emergency shelter services for victims fleeing domestic violence. • MV CASA will provide case advocacy for abused and neglected children who are part of the foster care system in the 3rd district court system. • Catholic Charities will provide subsistence Payments to homeless and low income families.
7	Project Name	MVCOH (CDP) Solar Project
	Target Area	Citywide
	Goals Supported	Enhance Quality of Infrastructure Prevent and reduce homelessness
	Needs Addressed	Community Services (Public Services) Community and Public Facilities Public Improvements and Public Infrastructure Homeless Needs and Services
	Funding	CDBG: \$200,000
	Description	In Las Cruces, NM, Public Facility Improvements will add solar to the Casa de Peregrinos on the Mesilla Valley Community of Hope Campus.
	Target Date	6/30/2024

	Estimate the number and type of families that will benefit from the proposed activities	30,000 low to extremely low income persons, 10,000 of those estimated to be children.
	Location Description	991/999 W Amador
	Planned Activities	Installation of Solar to support the Mesilla valley Community of Hope campus agencies.
8	Project Name	La Pinon Public Facility Improvement
	Target Area	Citywide
	Goals Supported	Access to Health and Safety Enhance Quality of Infrastructure
	Needs Addressed	Community Services (Public Services) Community and Public Facilities Public Improvements and Public Infrastructure
	Funding	CDBG: \$35,000
	Description	Public Facility Rehabilitation Flooring upgrades at 850 N. Motel Blvd. La Pinion serves abused and neglected children and victim of sexual assault
	Target Date	6/30/2025
	Estimate the number and type of families that will benefit from the proposed activities	Approx 100 abused and neglected children and victim of sexual assault.
	Location Description	850 N. Motel Blvd.
	Planned Activities	Public Facility Rehabilitation. Flooring upgrades at 850 N. Motel Blvd.
	Project Name	Thomas Development

9	Target Area	Citywide
	Goals Supported	Access to Affordable Housing Access to Health and Safety Enhance Quality of Infrastructure Prevent and reduce homelessness
	Needs Addressed	Housing Needs Economic Development Community and Public Facilities Public Improvements and Public Infrastructure Homeless Needs and Services
	Funding	CDBG: \$100,000 HOME: \$200,000 Affordable Housing Trust Fund: \$3,000,000
	Description	Site Improvement and accessibility and construction costs for senior 55+ apartment community for low to moderate income seniors with incomes ranging from 30% to 60% AMI. El Paseo Corridor/El Paseo and Farney.
	Target Date	6/30/2025
	Estimate the number and type of families that will benefit from the proposed activities	Approx. 80 senior households
	Location Description	El Paseo Corridor/El Paseo and Farney.
	Planned Activities	Site Improvement and accessibility and construction costs for senior 55+ apartment community for low to moderate income seniors with incomes ranging from 30% to 60% AMI. El Paseo Corridor/El Paseo and Farney.

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AP-50 Geographic Distribution – 91.220(f)

Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed

The City of Las Cruces does not target funding or programs to specific geographic areas within the City. Funds are allocated based upon need, priorities, and goals.

The City is considering a pilot program called Liftup Las Cruces that would target investment in the census tract with the highest poverty concentration and violent crime.

Geographic Distribution

Target Area	Percentage of Funds
Citywide	100

Table 8 - Geographic Distribution

Rationale for the priorities for allocating investments geographically

The City's primary method of allocating CDBG and HOME dollars is to assist low to moderate income and special needs populations. To the extent that specific geographic areas have greater needs than other areas in the City and /or if service and housing organizations are in certain areas, they will receive a larger proportionate share of the funding. For sidewalk improvements, the City will focus on the geographic areas where sidewalks, curb cuts and related ADA accommodations are lacking. Finally, to provide affordable rental and single-family housing, the City's dollars will be allocated in areas of new development where affordable housing is lacking and/or infill areas that can accommodate affordable housing.

Discussion

All priority needs, goals and projects are designed to serve the geographic distribution area.

Affordable Housing

AP-55 Affordable Housing – 91.220(g)

Introduction

The following impediments or potential barriers to affordable housing were identified in the 2021-2025 Analysis of Impediments to Fair Housing Choice.

IMPEDIMENT 1: LACK OF KNOWLEDGE ABOUT FAIR HOUSING ROLES AND RESPONSIBILITIES OF CONSUMERS AND PROVIDERS.

IMPEDIMENT 2: DISCRIMINATION BY PROPERTY OWNERS AND MANAGERS AGAINST PERSONS WITH DISABILITIES AND/OR HOUSING VOUCHER PROGRAMS LIMITS THESE GROUPS FROM EQUAL ACCESS TO HOUSING.

IMPEDIMENT 3: THE INCREASING COST AND SCARCITY OF BOTH RENTAL AND FOR SALE HOUSING DISPROPORTIONATELY IMPACTS LOW INCOME HOUSEHOLDS AS QUANTIFIED IN THE CONSOLIDATED PLAN AND THE HOUSING CONCERNS SECTION OF THE ANALYSIS OF IMPEDIMENTS.

IMPEDIMENT 4: LOAN DENIAL RATES REMAIN RELATIVELY HIGH FOR SOME RACIAL/ETHNIC GROUPS.

For a thorough analysis, please see the Section AP-55 Appendix Attachment.

One Year Goals for the Number of Households to be Supported	
Homeless	1,090
Non-Homeless	18,200
Special-Needs	220
Total	19,510

Table 9 - One Year Goals for Affordable Housing by Support Requirement

One Year Goals for the Number of Households Supported Through	
Rental Assistance	10
The Production of New Units	5
Rehab of Existing Units	20
Acquisition of Existing Units	0
Total	35

Table 10 - One Year Goals for Affordable Housing by Support Type

Discussion

Affordable housing remains a key focus for the City of Las Cruces across its proposed funding and

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partnership initiatives.

AP-60 Public Housing – 91.220(h)

Introduction

The Mesilla Valley Housing Authority owns 248 units of public housing in four developments in Las Cruces and has no plans to dispose of units in the next five years. Tres Arboles is a 64-unit family property, San Pedro Place is 38 units of senior and disabled housing, Walnut Grove is 100 units of family housing and Jardines Alegres is 47 units of elderly/disabled housing. All are low density properties that stay mostly full.

Actions planned during the next year to address the needs to public housing

The Mesilla Valley Public Housing Authority intends to conduct demolition and/or disposition, conversion of Public Housing to Tenant-Based Assistance, conversion of Project-Based Assistance under RAD, and employ Project-Based vouchers to fulfill the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families in Las Cruces.

Actions to encourage public housing residents to become more involved in management and participate in homeownership

The Housing Authority has a Resident Council Board. The Housing Authority has worked with private and public developers of housing to partner on Low Income Housing Tax Credit developments to expand the inventory of affordable rental properties available in Las Cruces.

If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance

n/a

Discussion

The Mesilla Valley Public Housing Authority recently completed a public housing plan to continue serving the needs of low- income, very low- income, and extremely low- income families in Las Cruces. In it, the Housing Authority has committed to expanding initiatives around Public Housing to Tenant-Based Assistance, conversion of Project-Based Assistance under RAD, and employment of Project-Based vouchers.

AP-65 Homeless and Other Special Needs Activities – 91.220(i)

Introduction

Persons who are homeless and at-risk of homelessness in Las Cruces will be primarily assisted by the City through the provision of CDBG Public Services funds to homeless service and housing providers. Funds administered by the City of Las Cruces for activities that assist the homeless include the use of CDBG funds for public service activities, HOME funds for Tenant Based Rental Assistance, and HOME funds for eligible housing development activities. These agencies provide a variety of services including a homeless day shelter for services provided, homeless medical clinic, homeless childcare, legal services for homeless and near homeless, and funding to an emergency shelter for victims of domestic violence.

Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

Program Year 2023 Public services funding to non-profit agencies to provide a variety of services including homeless services, emergency shelter for victims of domestic violence, childcare services, and advocacy for abused and neglected children and food rescue and distribution.

- Mesilla Valley Community of Hope will provide homeless day shelter services, housing assistance, mail, showers etc.
- Jardin de los Ninos will provide childcare services to homeless and near homeless children.
- Casa de Peregrinos will conduct food rescue to supplement their food distribution program.
- La Casa Inc will provide emergency shelter services for victims fleeing domestic violence.
- MV CASA will provide case advocacy for abused and neglected children who are part of the foster care system in the 3rd district court system.
- Catholic Charities will provide direct assistance to currently enrolled Las Cruces Public School District middle school and high school students who are homeless.

Mesilla Valley Community of Hope will assist approximately 530 persons. Jardin de los Ninos will assist approximately 220 children. Casa de Peregrinos will assist approximately 18,000 households. La Casa Inc will assist approximately 500 homeless victims of domestic violence. MVCASA will assist approximately 200 children. Catholic Charities will assist approximately 60 high school students.

The City of Las Cruces provided funding for the Desert Hope, a 40-unit permanent supportive housing that was recently completed. The numbers of rent burdened households indicate the tight market for affordable rentals. With the short supply of affordable units in the Las Cruces rental market, any new affordable units constructed that are targeted to the lowest income will be absorbed rapidly in the current market. Additionally, the COVID-19 pandemic has only exacerbated the need for more

affordable, quality rental units in Las Cruces. The City of Las Cruces will also continue to coordinate with a broad regional approach - Dona Ana County operates a crisis intervention center, and the City Council is aiming to create a behavioral health district which will help with discharge services.

Addressing the emergency shelter and transitional housing needs of homeless persons

La Casa domestic violence shelter can shelter up to 80 people and approximately 26 children for up to 90 days. This includes both men, women, and families. La Casa has transitional housing units which they own (5 units which are scattered site units). It provides non-residential support as well. The shelter itself is typically full about 80% of the time. The shelter expanded in 2009 due to an increasing need to assist more female and male victims of violence. The agency's transitional housing program assists 22 families with tenant based rental assistance through the Continuum of Care process. Residents and those seeking services must have proof of documentation or they cannot be assisted, which agency staff identifies as an issue for undocumented community members in need. The tenant based rental assistance provided through HOME funds allows up to 24-month stay. La Casa also provides non-residential counseling/case management, legal advocacy, immigration specialists to determine status, and a court ordered batterer program. La Casa has an MOU with Catholic Charities who can help undocumented persons and immigrants in Las Cruces.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The City of Las Cruces and its partners provide a continuum of homeless facilities and services for individuals and families experiencing homelessness and those who are at risk of becoming homeless. Programs provided through the Continuum of Care include emergency shelter, supportive services, transitional housing, permanent supportive housing and Housing First (Rapid Rehousing). The New Mexico Coalition to End Homelessness (NMCEH) takes the lead in developing New Mexico's Continuum of Care Plan. NMCEH convenes and manages the Continuum of Care planning process and the Mesilla Valley Community of Hope provides multiple services for the homeless and chronically homeless population in Las Cruces.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services,

employment, education, or youth needs.

The City of Las Cruces and its partners provide a continuum of homeless facilities and services for individuals and families experiencing homelessness and those who are at risk of becoming homeless. Programs provided through the Continuum of Care include emergency shelter, supportive services, transitional housing, permanent supportive housing and Housing First (Rapid Rehousing). The New Mexico Coalition to End Homelessness (NMCEH) takes the lead in developing New Mexico's Continuum of Care Plan. NMCEH convenes and manages the Continuum of Care planning process and the Mesilla Valley Community of Hope provides multiple services for the homeless and chronically homeless population in Las Cruces.

Discussion

Coordinated efforts to provide funding and facilities to the non-profit agencies providing housing and needed services to the homeless population in the City of Las Cruces are on-going. City staff participates in regularly scheduled meetings to discuss facilities provided by the City and services to the homeless population. Opportunities to increase and improve services and address needs to the homeless population are discussed at various levels. On-going technical assistance is provided to the various agencies providing services to the homeless.

AP-75 Barriers to affordable housing – 91.220(j)

Introduction:

IMPEDIMENT 1: LACK OF KNOWLEDGE ABOUT FAIR HOUSING ROLES AND RESPONSIBILITIES OF CONSUMERS AND PROVIDERS.

ANALYSIS: Roles and responsibilities of both consumers and housing providers under federal and local Fair Housing rules can be complex and often up-to-date, accurate information is not readily available. Qualitative research through stakeholder interviews, community focus groups, and an online community survey revealed that Fair Housing laws are not widely known, and many community residents don't know who to turn to if they have questions or issues in Las Cruces. The City and many community organizations that work with housing issues report that they do train staff, but general awareness regarding Fair Housing in the community is low. The City would like to increase Fair Housing awareness, roles, and responsibilities for both consumers and providers. The actions outlined below are intended to increase the knowledge base of both consumers and producers.

IMPEDIMENT 2: DISCRIMINATION BY PROPERTY OWNERS AND MANAGERS AGAINST PERSONS WITH DISABILITIES AND/OR HOUSING VOUCHER PROGRAMS LIMITS THESE GROUPS FROM EQUAL ACCESS TO HOUSING.

ANALYSIS: Key informants, community surveys and public meeting comments point to instances of discriminatory practices for individuals and households who have a member with a disability and/or a receipt of a housing voucher. Community focus groups and the community survey revealed that there is a significant stigma about people who have a housing voucher through the Section 8 or other programs. Many private landlords refuse to rent to those who have a housing voucher and with limited public housing options, many eligible individuals who have a housing voucher cannot find adequate housing. Additionally, many of the rental properties in Las Cruces are not accessible and many landlords are reluctant to allow tenants to make modifications to the property. There were several fair housing complaints filed with HUD involving individuals with disabilities.

IMPEDIMENT 3: THE INCREASING COST AND SCARCITY OF BOTH RENTAL AND FOR SALE HOUSING DISPROPORTIONATELY IMPACTS LOW INCOME HOUSEHOLDS AS QUANTIFIED IN THE CONSOLIDATED PLAN AND THE HOUSING CONCERNS SECTION OF THE ANALYSIS OF IMPEDIMENTS.

ANALYSIS: Approximately half of all renters in Las Cruces have one of the four housing issues identified by HUD in the Consolidated Plan (cost burden, overcrowding or lack of kitchen or plumbing). Households earning less than 50% AMI are more likely to experience cost burden and severe cost burden than those earning high incomes, especially among renters. There is a severe lack of quality affordable rental units in Las Cruces and a hot housing market is only increasing the median sale price of homes in the City making homeownership harder for households earning less than the median income. The housing gap charts show that a major barrier to Fair Housing Choice is the lack of units available to households with limited incomes. The lack of affordable units, results in many residents who are cost burdened and

cannot afford the units available in the market.

IMPEDIMENT 4: LOAN DENIAL RATES REMAIN RELATIVELY HIGH FOR SOME RACIAL/ETHNIC GROUPS.
Analysis: Although HMDA data is not conclusive, it does show some racial/ethnic groups may struggle more on the dream of homeownership. Loan denial rates show that American Indian or Alaska Native, Hispanic, and women have slightly higher loan denial rates than other groups. Table 39 shows underlying systemic racism that had hurt people of color for decades. Black or African America and American Indian or Alaska Native individuals are more likely to get denied a loan due to credit history.

Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment

For a thorough analysis, see the Section AP-75 Appendix Attachment.

Discussion:

The City of Las Cruces will work to ensure the goals and strategies of affiliated partners, such as the Elevate Las Cruces Comprehensive Plan and the Mesilla Valley Housing Authority's Housing Plan, are collaborative with the goals and strategies laid out in the Consolidated Plan project.

AP-85 Other Actions – 91.220(k)

Introduction:

The City of Las Cruces identifies several special needs groups that are served in a variety of settings. These populations include persons with physical disabilities, intellectual and developmental disabilities (IDD), mental health disabilities, substance use disorders (SUD), elderly, frail elderly, people with HIV/AIDS, victims of domestic violence, veterans, at-risk youth, migrant/seasonal workers and their families, and immigrant populations. Special needs communities often encounter financial barriers and access/availability of appropriate housing and services.

Actions planned to address obstacles to meeting underserved needs

Housing services:

- Emergency Financial assistance – rental and/or mortgage and utility assistance.
- HOPWA (Housing Opportunities for Persons with AIDS) – long term or short-term assistance for partial or full housing assistance which is determined by need, income, and availability.

Other supportive services:

- Medical and Non-medical case management services
- Early intervention services (EIS)
- ADAP – AIDS Drug Assistance Program
- AIDS Pharmaceutical Assistance
- Health Insurance Premium assistance
- Co-pay assistance for contracted HIV providers and lab visits
- Oral health care
- Food Bank/Food cards
- Medical Transportation (travel reimbursement/bus pass)
- Health education/Risk Reduction
- Referrals for Substance use, Harm Reduction, Behavioral Health, Nutrition, Psychosocial Support

Services

Client's must be enrolled into Ryan White Services to be eligible to receive supportive services (this does not include HOPWA). Client's must be under the 400% FPL, a resident of New Mexico and be diagnosed with HIV to qualify. Once enrolled into services, a medical case manager will meet with the client to complete a detailed assessment of the client's needs. The assessment is then utilized to complete an acuity scale which is then used to determine the supportive services the client needs.

Actions planned to foster and maintain affordable housing

HOME and CDBG funds will be used to construct new for-sale housing, preserve existing affordable owner-occupied housing, and provide TBRA. The City of Las Cruces works with the local housing authority, nonprofit housing agencies and private developers to expand and preserve the affordable

housing stock in Las Cruces.

Actions planned to reduce lead-based paint hazards

Through the City's home rehabilitation program, homeowners occupying units with lead-based paint will have the hazard removed when their units are rehabilitated. This program only benefits low to moderate income owners in the City. Through the creation of new affordable rental and owner-occupied housing, families and individuals occupying units with lead-based paint will have greater opportunities to relocate into lead-free units.

Actions planned to reduce the number of poverty-level families

The City of Las Cruces wants to address poverty by providing access to affordable housing, revitalizing neighborhoods, and developing mixed use sites throughout the city. This plan will serve as the launching pad for an anti-poverty strategy. It is through housing the city can fulfill its anti-poverty initiatives, while making the city more desirable from a housing market and business development standpoint. In PY2022 voters approved a 6 million General Obligation Bond to secure funding for affordable housing. For every dollar of city investment, four dollars of non-city investment are secured. This goal also aligns with the city's Elevate comprehensive plan, which identified goals of Economic Equity, Attainable Housing, Serving Underserved Populations, Diversification, and Entrepreneurship.

Actions planned to develop institutional structure

The City of Las Cruces will need to make substantial changes to its Las Cruces Development Code (UNDERWAY) to achieve sustainable growth through its Elevate Las Cruces Comprehensive Plan. Elevate Las Cruces recommends that the City revise its Development Code using a form-based code approach that incorporates transect-based principles for particular Place Types as identified on the Elevate Las Cruces Future Development Map. The transect-based approach to zoning is already being utilized by the City within the Downtown Development Code.

Actions planned to enhance coordination between public and private housing and social service agencies

The City will provide public service funding over the next year to local non-profit funds for agencies that serve special needs populations, primarily to the homeless, victims of domestic violence, the disabled, and low-income youth and young adults. Additionally, the City will provide HOME funds to private, non-profit housing providers for the development of single-family housing and affordable rental development(s).

The City of Las Cruces requires that no more than 50% of CDBG funds may be dedicated to infrastructure, public facilities, or economic development activities that result in capital or facility

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improvements and that the remaining 50% or more may come from other sources. Other sources can include other federal, state, local, and private funds. For improvements made to City-owned facilities that are occupied by non-city operated programs, the other 50% must come from other federal, state and private (non-City of Las Cruces) sources or will provide full funding from CDBG funds with 50% of the funding provided as loan, resulting in program income upon payback.

Discussion:

The City of Las Cruces' strategy to foster economic growth by supplying accessible mixed use housing and business opportunity sites will ensure the needs of its most vulnerable populations are met while keeping an eye on growing the City in a sustainable fashion.

Program Specific Requirements

AP-90 Program Specific Requirements – 91.220(l)(1,2,4)

Introduction:

As a participating jurisdiction the allocation of CDBG and HOME funds provided to the City of Las Cruces are used in accordance with the guidelines provided by the specific programs. Projects are selected based upon need, capacity, and funding availability. See Discussion for more detail.

The City of Las Cruces adheres to HUD regulations for monitoring requirements and has an adopted Evaluation & Monitoring Guide which identifies the methods in which applications and agencies will be determined to be evaluated each year. In addition to the Evaluation Guide, which determines the number of monitoring reviews that are to be accomplished each year, the Program Monitoring and Compliance staff is charged with conducting the monitoring visits for each agency including sub-recipients, sponsors or administering agents each year as applicable. The monitoring conducted includes both financial and programmatic review in accordance with the requirements of the CDBG, HOME, and applicable OMB circulars. This is in addition to technical assistance provided by the City's HOME, CDBG and Permanent Supportive Housing Program staff.

Goals and objectives identified in the Consolidated Plan are reviewed prior to awarding funds for proposed plans and projects to ensure that the proposed project meets identified goals and objectives of the plan. This process includes underwriting and risk assessments. To ensure timeliness of project expenditures City staff review applicable IDIS reports for HOME and CDBG projects. Written agreements with outside agencies for all programs include specific expenditure requirements as well as project completion deadlines. For HOME projects City staff follows additional guidelines per CPD notice 07-06.

To perform the actual monitoring visit, City staff use Community Planning and Development (CPD) Handbook guideline/exhibit information as applicable for both HOME/CHDO, CDBG, and CDBG Public Services as required in the regulations for each of the programs.

Generally, for all on-site reviews there is a full record(s) review (review of program participant eligibility and supporting documentation), a complete Housing Quality Standards (HQS) for HOME multi-family, TBRA, and SHP rentals, and a walk-through of HOME single-family homes under construction or un-occupied, but where construction has been completed. These on-site inspections ensure long-term compliance with housing codes. If there are problems or issues beyond Program staff's expertise, other City Departments may be contacted. Once the review is complete, a written follow-up letter is provided to the agency, noting any Findings, Concerns, Observations, and/or to the Sub-recipient, with appropriate due dates for correction/compliance as applicable.

For Program Year 2022, City staff began scheduling on-site monitoring visits the 3rd quarter of the program year per the monitoring schedule spreadsheet for the programs. Normally, monitoring is

complete for all projects during the first quarter of the next program year.

Community Development Block Grant Program (CDBG)
Reference 24 CFR 91.220(l)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed	35,000
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan.	0
3. The amount of surplus funds from urban renewal settlements	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan	0
5. The amount of income from float-funded activities	0
Total Program Income:	35,000

Other CDBG Requirements

1. The amount of urgent need activities	0
2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan.	100.00%

HOME Investment Partnership Program (HOME)
Reference 24 CFR 91.220(l)(2)

1. A description of other forms of investment being used beyond those identified in Section 92.205 is as follows:

none

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in 92.254, is as follows:

The City files a Deed Restriction and Covenants agreement against the units that are HOME-assisted

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via grants for the acquisition of land and new construction of individual single family owner-occupied units. Following a resale provision, during the period of affordability, that restricts the purchase price and ensures the original HOME-assisted owner a fair return on investment.

HOME Funding numbers are as follows:

- Fiscal year HOME allocation – \$581,581
- Program income - \$55,000
- Repayments - \$0
- Recaptured funds in local account - \$0

The full resale provisions detailed in the Deed Restriction and Covenants agreement filed against the HOME-assisted units can be found in the Appendix attached in the Grantee Unique Appendices of this document.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR 92.254(a)(4) are as follows:

For single-family owner-occupied units that are provided HOME funds for direct down payment, the City files a Deed Restriction and Restrictive Covenants agreement that contains resale/recapture provisions.

The City's resale recapture requirements are provided in the Appendix.

4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR 92.206(b), are as follows:

The City does not have plans in place at this time to use HOME funds for the refinancing of existing debt secured by multifamily housing that is rehabilitated with HOME funds.

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The City of Las Cruces follows a Standard Operating Procedure for competitive Requests for Proposals (RFPs) that is in accordance with 2 CFR Part 200 and the City's Procurement Code 24.92. RFPs for CDBG and HOME applications will be publicized annually, and all evaluation factors and their relevant importance will be included. Applicants must first submit a standardized Letter of Intent (LOI) which must be received by the published deadline. Staff will review submitted LOIs for terms and conditions of the RFP, grant program guidelines and registration and debarment, and applicable program regulations. Each applicant will be notified in writing of acceptance or rejection of the LOI. If accepted, City staff will inform an applicant for which program the LOI will be considered and provide a blank RFP application for that program to the applicant.

RFPs are accepted each year for CDBG Public Services, and all other HOME and CDBG activities. Each will be reviewed for technical, subjective and risk analysis by City staff according to program guidelines. At completion of the review, City staff will present a CDBG & HOME summary to the Administering Department Director for review and concurrence. City staff will issue a preliminary funding award letter, subject to City Council final approval, or issue a letter of rejection. After council action is completed, City staff will notify each applicant of formal City Council action and the award amount. CDBG Public Services applications are processed for recommended approvals by the Health and Human Services Advisory Committee.

For Program Year 2023 funding, the City of Las Cruces published a notice of funds available and the RFP process that let applicants know that the RFP LOI would be available on September 6, 2022. LOIs were due back to the City no later than 4:30 pm on September 19th, 2022. City staff reviewed LOIs, notified applicants who were eligible to submit an RFP for a specific project or program, and City Council approved projects and the Annual Action Plan on May 1, 2023.

Attachments

Grantee Unique Appendices

Unique Appendices

City of Las Cruces Resale Recapture Provisions 2022

The City of Las Cruces does not currently use recapture provisions for HOME-assisted activities as we are currently not providing HOME funds to direct down-payment assistance activities. The City's subrecipients of HOME-assisted activities are only allowed to follow the City's resale provisions as outlined below:

- 1. Resale Provisions. During the affordability period, the Lender provided the Owner consent to sell the property to another qualified low-income buyer as outlined in Section D, Transfer of Property, of this Agreement, the Lender and Owner agree to the resale provisions as follows:
Ensuring Affordability to Subsequent Buyers: If during the affordability period the property is sold to a subsequent buyer, the price at resale must ensure the original HOME-assisted Owner a fair return on investment (ie., the homebuyer's down payment plus capital improvements made to the house), while also ensuring that the property is sold at a price that is affordable to a reasonable range of low-income buyers. The Fair Return on Investment will be measured by the Consumer Price Index (CPI) for shelter over the period of ownership, for similarly sized cities, not seasonally adjusted. For purposes of calculating the fair return on investment, the types of capital improvements that the City will include in its basis for calculating fair return are limited to value added improvements such as kitchen remodel, bath remodel, new windows, new siding and the addition of living space. The homeowner must document the improvements with receipts for the improvement. The purchase price at subsequent sale during the Affordability Period is required to be at a price that is affordable to a family earning between 45-80% AMI that will not pay more than 30% of their gross income for principal, interest, taxes and insurance and that shall not exceed 95% of median purchase price limits as established by the Department of Housing and Urban Development (HUD). The percentage of AMI is based on income levels adjusted for family size established by the HUD, for the Las Cruces Metropolitan Statistical Area at the time of the proposed sale.

It is important to note that in certain circumstances, such as a declining housing market where home values are depreciating, the original homebuyer may not receive a return on his or her investment because the home sold for less or the same price as the original purchase price.

- 2. Resale Provisions Related to Net Proceeds: Provided that #1 immediately above is complied with, Net Proceeds due to the Owner/Seller and HOME Funds prorations credited to the new buyer are applicable in the following scenarios:
 - i. Net Proceeds of New Sales Price in excess of 10% of the Original Sales Prices: If, during the Affordability Period, the Property is sold to a subsequent buyer at a sales price that is an increase of more than 10% of the original HOME-assisted Owner's sales price, the Owner/Seller shall provide a credit to the new buyer for the full amount of the HOME funds grant provided and must also provide a credit to the

Agenda Item #8.4.

Subsequent Sale Year	Affordability Period (years)		
	5	10	15
	Owner/Subsequent Buyer Proration (%)		
1	20/80	10/90	7/93
2	40/60	20/80	13/87
3	60/40	30/70	20/80
4	80/20	40/60	27/73
5	100/0	50/50	34/66
6		60/40	40/60
7		70/30	47/53
8		80/20	54/46
9		90/10	60/40
10		100/0	67/33
11			74/26
12			80/20
13			87/13
14			94/6
15			100/0

- b. **Transfer of the Property.** Owner agrees that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. Lenders consent shall be granted only if new/subsequent owner meets the obligations specified within Section B above.

- c. **Exception to Transfer Restriction.** Notwithstanding any other provision of this Agreement, the Grant and/or Loan will not be due on transfer of the Property if (1) a transfer of the Property is the result of the death of Owner and the transfer is by devise or operation of

Annual Action Plan
2022

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OMB Control No: 2506-0117 (exp. 09/30/2021)

Annual Action Plan
2023

66

OMB Control No: 2506-0117 (exp. 09/30/2021)

law, (2) the transfer is to a member of Owner's immediate family ("Heir") and, for purposes of this Agreement, the term "immediate family" means parents, siblings or children only, (3) the Heir qualifies for assistance under the federal regulations governing income eligibility for the Grant and/or Loan, and (4) the Heir covenants and agrees in writing to maintain the Property as the Heir's principal residence for the remainder of the term of the Grant and/or Loan and to otherwise comply with all the terms and conditions of this Agreement.

- d. Default. Owner agrees that any default under the terms of the Grant and/or Loan, as those terms are set forth in this Agreement, or under the terms of any other mortgage or encumbrance on the Property, whether superior to or junior to this Agreement, will constitute a default under this Agreement and shall cause the full amount of the Grant and/or Loan to become due and payable.
- e. Right of Redemption. If this Agreement is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months.

Strategy to Remove or Ameliorate the Barriers to Affordable Housing

Proposed Actions the City will take to address Impediment 1:

- The City will continue to be a partner with other agencies and programs to increase awareness of Fair Housing Laws and policies including those at the Federal level, State level and local level. The City will provide an updated Fair Housing website as part of the Las Cruces web portal. The Fair Housing website will contain necessary information in English and Spanish including Fair Housing Laws and Ordinances as well as information on agencies to contact and the steps needed to file a complaint. It will also contain the City's adopted Analysis of Impediments to Fair Housing Action Plan. The City will provide Fair Housing materials and all other informational documents related to its Community Development activities and reports in alternative formats if requested by a disabled person. Ongoing.
- As the administrator and technical assistance provider for Federal and local housing programs the City Economic Development Department will work with subgrantees as well as private housing providers to ensure that housing consumers are dealt with in a non-discriminatory fashion as defined by Fair Housing rules. The City will provide printed and electronic information to landlords and property managers that they can pass on to prospective tenants and purchasers. This information will be a summary of the information contained on the City's Fair Housing website. Fair Housing information will be made available in alternative formats upon request. Ongoing.
- The City Economic Development Department will partner with professional associations and fair housing agencies to provide community forums and meetings educating citizens on Fair Housing laws and their importance in ensuring equal access to housing and the programs and services the City provides. The City of Las Cruces Fair Housing Ordinance (Chapter 13: Article I) will also be explained and highlighted at public Fair Housing events. Annually.

Proposed Actions the City will take to address Impediment 2:

- The City of Las Cruces Economic Development Department will continue its outreach and educational efforts to inform builders, property owners and landlords of the provisions and requirements that must be met in providing equal access to housing for the protected classes of people outlined above. The educational effort will include providing written and electronic information on how housing providers can ensure that advertising, screening processes, lease policies, and general interactions with those seeking housing are treated equally. The City educational effort will also include information for builders on ways to address accessibility requirements through the design and construction of accessible, adaptable units. The City will continue to partner with other agencies serving the Las Cruces area to educate property owners, Mesilla Valley Public Housing Authority, managers, and builders on their Fair Housing responsibilities. Partner agencies may include Las Cruces Homebuilders Association, Las

- Cruces Association of Realtors, New Mexico Human Rights Division, and local community organizations with involvement in Fair Housing Activities. Ongoing.
- Through online and printed Fair Housing materials, the City Economic Development Director or designee, will assist complainants who wish to file a discrimination complaint, in filing the necessary forms and providing guidance and referrals on the process the City and other state and federal agencies will utilize in responding to complaints. Ongoing.
 - The City will post Fair Housing Information at all facilities controlled by the City of Las Cruces. This effort will be extended to City subgrantees which provide housing services. Those agencies will be required to post the Fair Housing sign at all housing facilities assisted with local or federal funds. Ongoing.
 - The City will enforce its Fair Housing Ordinance in cases of discrimination as prescribed in the Ordinance. Ongoing.
 - The City will provide technical assistance and oversight to CDBG and HOME subgrantees to ensure that each agency has a compliant Affirmatively Furthering Fair Housing Marketing Plan (AFFHMP), if applicable. The City will monitor the use of the agency AFFHMP to determine the success of subgrantees in using the plan to encourage participation in housing activities by underserved populations. Ongoing.
 - The City will monitor its communications and public outreach and funding activities to measure the effectiveness of its AFFHMP to ensure that underserved populations are actively recruited to participate in public meetings and housing programs and activities. Annually

Proposed Actions the City will take to address Impediment 3:

- The City will examine current planning and development review procedures to provide fast tracking and concurrent review of affordable rental projects. Elevate Las Cruces has provided some guidelines on affordable housing going forward. The City will work with its stakeholders to update its Affordable Housing Ordinance that more clearly outlines what incentives, concessions and enhancements it will make available to increase the production of affordable rental housing that meets the needs of those with the greatest challenges. Annually.
- The City will continue to serve as lead convener of state level and federal agencies and private sources of capital to create a more robust set of tools to address the development cost of new housing. This enhanced finance approach will focus on Low-income Housing Tax Credits, HOME Investment Partnership Funding, various supportive housing financing sources, various tax-exempt bonds including General Obligation Bonds and affordable loans from lenders doing business in the community. Ongoing.
- The City will review density limitations, minimum lot sizes and other regulations that may constrict housing providers' ability to produce both smaller apartments and for sale homes for sectors of the market which cannot presently afford the products available in Las Cruces. Ongoing.
- Development Readiness Measures: The City through its mapping and property records system will identify vacant and underutilized residentially zoned properties in zoning



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

February 27, 2023

The Honorable Kenneth D. Miyagishima
Mayor of Las Cruces
700 North Main Street
Las Cruces, NM 88001

Dear Mayor Miyagishima:

Congratulations! I am pleased to inform you of your jurisdiction’s Fiscal Year (FY) 2023 allocations for the Office of Community Planning and Development’s (CPD) formula programs. Your jurisdiction’s FY 2023 available amounts are as follows:

CPD Programs:	Amount
Community Development Block Grant (CDBG)	\$1,076,372
Emergency Solutions Grant (ESG)	\$0
HOME Investment Partnerships (HOME)	\$581,581
Housing Opportunities for Persons With AIDS (HOPWA)	\$0
CDBG Recovery Housing Program (RHP)	\$0

These grant funds provide the financial tools to support individuals, families, and communities to address homelessness, affordable housing challenges, aging infrastructure, and economic hardships. CPD is committed to being your partner throughout the process of using these funds. Our local office will assist in finalizing grant agreements, offer technical assistance and training when needed, and monitor and implement grant funds for eligible projects in a timely manner. We will work with you to ensure proper reporting in the Integrated Disbursement and Information System (IDIS) so we can together improve performance data on how these programs are benefitting and touching people’s lives, build trust with stakeholder groups and Congress, and amplify the success stories that you and your jurisdiction are able to accomplish with these vital resources.

Based on your jurisdiction’s CDBG allocation for this year and outstanding Section 108 balances as of February 27, 2023, you also have \$4,358,860 in available Section 108 borrowing authority. Since Section 108 loans are federally guaranteed, this program can leverage your jurisdiction’s existing CDBG funding to access low-interest, long-term financing to invest in your jurisdiction.

Thank you for your continued interest in CPD programs, I greatly appreciate your leadership in using these funds to address your most urgent housing and community development needs, including preventing and reducing homelessness. If you or any member of your staff have questions, please contact your local CPD Field Director.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marion McFadden', with a stylized, sweeping flourish at the end.

Marion Mollegen McFadden
Principal Deputy Assistant Secretary
for Community Planning and Development

2021-2025 Consolidated Plan, Year 3
October 12, 2022

Following are the summary minutes of the Consolidated Plan hearing held on October 12, 2022 at 5:30 p.m.

Staff Present: Natalie Green
Jan Lauterbach
Kevin Wilson
Catrina Godinez
Cynthia Villanueva
Isaias Amaya
Becky Baum, Recording Secretary, RC Creations, LLC.

Consultants/Interpreter: Magdalena Giron (Intra Services)

Public Present: Gregory Shervanick

Natalie Green gave a PowerPoint presentation of the Consolidated Plan, Year 3. The following questions and/or comments were made:

Question if any of these programs target the lift up grouping as?

The City has already received applications and know what people are going to apply for. So the City gets input from the public on how to spend this upcoming years money, but then also doing applications, only fund what applications there are.

Can any of this money be used to increase senior mobility problems? Ramps, curb cuts, housing entrances? Or does that all go through ADA?

We could. The CDBG, the admin and public services off the top and then there they start going through the applications, and then also a balance between home rehab projects, and if money left over start to do infrastructure improvement projects. Not always CIP, but could be MCFEE, Casa de Peregrinos. When he was at Mesilla Valley Public Housing a number of their legacy clients are now where they are having mobility issues and doorways for a walker or riding scooter seems to be at the top of certain conversations. Through the home rehabilitation program and the home ramp program there are accessibility features provided for homes and mobile homes within the City limits of Las Cruces. Mesilla Valley Public Housing authority will have their own or hire their own contractors. With COVID there was a complete loss of applications for mobile home ramps.

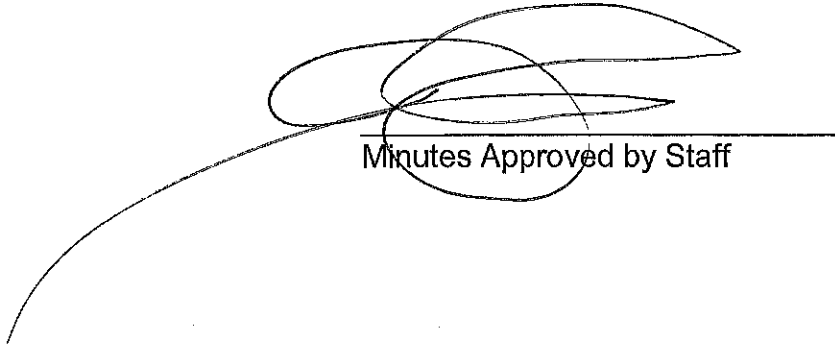
Is there a financial bar in terms of services for seniors in this category?

There is always a financial bar. Everything has to meet people who are below the 80 percentile area median income as established by HUD. This is gross income.

There is now a senior middle group of income that are on a fixed income and their rent is going up. So they will be having affordability issues.

There is governor's commission on disability and they have a RAMP program out of Santa Fe and they do work throughout the state, higher than moderate income people. If the City cannot provide due to income levels, they do provide a referral which necessitates a denial letter which the City will provide to the state program. The City program is the first step, which is the denial. They can help if there is a threat to public or self-safety, and then move that person up the list for assistance.

Meeting ended at 5:45 p.m.



Minutes Approved by Staff

**2023 Action Plan, Public Input Meeting
October 12, 2022**

Following are the summary minutes of the PY23 Action Plan hearing held on October 13, 2022 at 2:30 p.m.

Staff Present Jan Lauterbach
 Kevin Wilson
 Raymond Burchfield
 Catrina Godinez
 Elizabeth Teeters
 Cynthia Villanueva
 Celina Morales

Consultants/Interpreter: Magdalena Giron (Inttra Services)

Public Present: None

Staff waited 20 minutes. No members of public attended

City of Las Cruces Action Plan Public Hearing

March 29, 2023

Following are the summary minutes of the City of Las Cruces Action Plan meeting held on March 29, 2023 at 5:30 p.m.

Staff Present: Natalie Green
Jan Lauterbach
Kevin Wilson
Raymond Burchfield
Cynthia Villanueva

Consultants/Interpreter: Becky Baum, Recording Secretary, RC Creations, LLC.
Magdalena Giron, Interpreter, Intra Services

No Public Present

Note: Staff waited for 15 minutes to ensure ample opportunity for members of the public to attend.

Meeting ended at 5:45 p.m.



Minutes Approved by Staff

City of Las Cruces Action Plan Public Hearing

March 30, 2023

Following are the summary minutes of the City of Las Cruces Action Plan meeting held on March 30, 2023, at 2:30 p.m.

Staff Present: Natalie Green
Jan Lauterbach
Kevin Wilson
Raymond Burchfield
Cynthia Villanueva
Isaias Amaya

Consultants/Interpreter: Becky Baum, Recording Secretary, RC Creations, LLC.
Magdalena Giron, Interpreter, Intra Services

Public Present: Gregory Shervanick
Johnny Coker

Natalie Green gave a PowerPoint presentation of the Action Plan. The following questions and/or comments were made:

Who are the participating partners? Are they only nonprofit? How does J.L. Grey fit in as a property manager?

In the consultation process the information from the Consolidated Plan gets carried forward. J.L Grey is a managing agency for low-income apartment complexes in town. During the development of the Consolidated Plan the consultants do stakeholder interviews, hospitals, home builders. The owners of the complexes hire J.L Grey to manage their properties.

Attended a meeting with Sustainability on electrification for City of Las Cruces and all projects. Under IECC 2021 documentation. Every single project including Thomas, Central and Peach, and home renovations will be under that new ordinance change, therefore physical dollars appropriated to accelerate un-homed people and affordable housing in Las Cruces, will lose their value at least thirty percent.

The project as a total has about \$400,000, and then Public Works will scope to that budget amount. They will buy \$400,000 worth of solar.

A possible ordinance change that is proposed, and these projects must follow the new ordinance change. Since 65 percent of all affordable housing have gas for two

to three vouchers for utilities, it does not seem logical to provide what this document states.

The resolution has not been seen yet and so that will be evaluated when the time comes. The partners who are building are going through a separate process independently. Their job is to manage projects for funding, so the electrification requirements is in their contract. Projects that were under development before the resolution are grandfathered. Those projects will go through Community Development, electric or not electric.

Section AP50 geographic distribution. The statement for rationale priorities for allocating investment geographically, statement says not going to pick an area to prioritize funding for these programs, at the same time based on the City's negotiations for MRA and blighting of certain sections of the City and the census tract for property concentration and violence does not meet up with the statement of the rationale in terms of choosing how to make the selections for sidewalk improvements, curb cuts, ADA compliance.

In larger cities they do certain geographic distributions, or select certain neighborhoods, but Las Cruces is probably too small for that. And so, Las Cruces does not pick where the funding could be used citywide, some cities do pick specific neighborhoods. The decision is based on the applications received.

The statement says, "The City is considering a pilot program called Lift Up Las Cruces that would target investment in the census tract in the highest poverty concentration and violent crime." That is a very specific area of the city.

It does not necessarily say they are going to spend the CDBG money there. The city has not spent any CDBG money there. That can be added in.

The maximum amount of physical money the federal government is giving to the City of Las Cruces will be applicably applied to those projects and individuals who need it the most.

It gets applied to whoever applies to the programming. There are occasions where they can solicit. Some years there are bumpers of money, and the city has gone out to Public Works to ask if they have a project that needs additional funding that would benefit from CDBG. This is approximately every four years.

A lot on Nevada Avenue should be returned to the ability for affordable housing and not left as an open non-infill state.

That should be recommended to others in the city. They do not go out after properties that the City owns unless a specific project is in mind.

Agenda Item #8.4.

Meeting ended at 3:00 p.m.

Minutes Approved by Staff

City of Las Cruces Action Plan Public Hearing

March 30, 2023

Following are the summary minutes of the City of Las Cruces Action Plan meeting held on March 30, 2023, at 5:30 p.m.

Staff Present: Jan Lauterbach
Cynthia Villanueva
Isaias Amaya

Consultants/Interpreter: Becky Baum, Recording Secretary, RC Creations, LLC.
Magdalena Giron, Interpreter, Intra Services

Public Present: Terri Pease

Jan Lauterbach gave a PowerPoint presentation on the City of Las Cruces Action Plan. The following questions and/or comments were made:

Question on funding for the 70-unit senior apartment complex.

The funding would come from tax credits through the New Mexico Mortgage Finance Authority. The City's funding is a "gap piece."

The Habitat for Humanity are going to be single-family and says Rincon, Mesa, Tierra Grande, Cox's First Subdivision, and other nearby subdivisions. Question on what this entails?

This is there for the Department of Housing and Urban Development. Habitat will have the \$200,000 for purchasing land. Next season they will build two homes in Los Enamorados and then in the Metro Verde they have three lots they have purchased. Habitat normally builds about five houses a year. The Habitat has negotiated with the owner of Metro Verde subdivision, and he committed to the city to provide approximately 349 affordable housing units. To do that he found the best way is to sell cheap lots to the nonprofits. Habitat then has to provide a direct reduction in the sales price to the homeowner for that low-cost land. There have been 39 lots sold to Tierra Del Sol in Metro Park Village Phase 4.

Question on if CDBG is direct services to clients.

Yes, it is.

In the newspaper approximately two months ago there was an article about an almost 400-unit apartment complex for low-income families or individuals and was to

be built on the far east side of Metro Park Village, corner of Peachtree and Jornada. No other information seen on this.

The developers are applying for tax credits through New Mexico Mortgage Finance Authority. If they get the credits, the city will put funding to that project, called Peachtree Apartments. There are two kinds of tax credits, one set is nine percent and funds approximately seventy percent of the project; and a noncompetitive four percent tax credit and that is what Peachtree is applying for, and the El Paseo Senior complex. The four percent does not fund the project as much, but it is noncompetitive so greater chance of getting the funds. Peachtree has applied for the nine percent tax credits three other years, and they have not received it. This year they are trying a different route of going with four percent.

Does the City own that piece of property, or will it be purchased from whom owns it?

No, the City does not own rental property. It will be owned by the developer. Partnership between Catholic Charities Housing Inc. and Thomas Development.

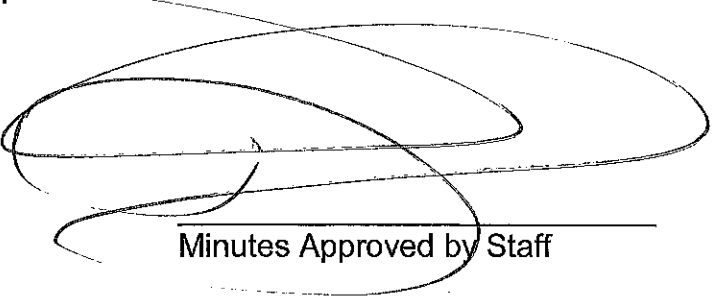
Thought it was an odd place to put low-income as the nearest grocery store is the Walmart on Rinconada, no bus service in the area.

The lack of bus service there has been discussed, and it is being looked at in the future. HUD also looks at all these factors in approving. It is a nice neighborhood.

Will there be a public comment period on that project if it is funded? Also, it will back up onto nice homes and no one wants to see their home values decrease because of low-income housing.

Anybody can go to Council and comment on it. The developers will hold public meetings with the neighbors. Also, it will be built in phases.

Meeting ended at 6:00 p.m.



Minutes Approved by Staff

**HEALTH AND HUMAN SERVICES ADVISORY COMMITTEE
MINUTES
February 22, 2023**

MEMBERS PRESENT: Mary Katherine Papen
Samantha Teresa Fields
Joe Castillo

MEMBERS ABSENT: Marnie Nixon
Miriam Chaiken

STAFF PRESENT: Catrina Godinez, CLC
Becky Baum, RC Creations, LLC, Recording Secretary

OTHERS PRESENT: Brandie White, Mesilla Valley CASA
Nichole Martinez, Mesilla Valley Community of Hope

I. CALL TO ORDER (6:02):

Godinez: This is going to be the first meeting that I lead. First thing we're going to do is call to order, call the meeting to order.

II. ROLL CALL:

Godinez: and then roll call.

Baum: Which would be Marnie Nixon is absent. Joe Castillo.

Castillo: Present.

Baum: Miriam Chaiken.

Godinez: Absent.

Baum: Absent. Mary K. Papen.

Papen: Present.

Baum: Samantha Fields.

Fields: Present.

Baum: We do have a quorum.

III. CONFLICT OF INTEREST INQUIRY:

Baum: Then we ask, does anybody have a conflict of interest with anything on the agenda tonight?

Castillo: No.

Fields: No.

Baum: Ms. Papen, do you have any conflicts of interest tonight?

Papen: No, I do not.

Baum: Thank you.

IV. APPROVAL OF MINUTES:

A. March 1, 2022

B. March 2, 2022

C. March 8, 2022

D. November 10, 2022 - No quorum, meeting cancelled on-site

E. January 9, 2023 - No quorum, meeting cancelled on-site

Baum: I'll just keep going. Next, we have approval of a variety of minutes from 2022, two of them are no quorum minutes. But March 1st, March 2nd, and March 8th, we can do them all together if the Board would like, but I will need a motion and a second or any changes or corrections.

Papen: I so move that we accept that as a group, all of the minutes.

Baum: Okay. Thank you.

Fields: Second.

Baum: Fields, second. All those in favor?

MOTION PASSES UNANIMOUSLY.

Baum: Thank you. Any opposed? None opposed. Okay, minutes are all approved.

V. FINAL RECOMMENDATION FOR CDBG APPLICATIONS:

Baum: Next, we move on to important dates for the 2020 to 2023 HRPS and CDBG public service application. And I guess that's goes to Catrina.

- 1 Godinez: Yes. Okay, so I went ahead and did all the scoring. And the everybody
2 was pretty much scored to fund; the lowest points were for Catholic
3 Charities. So everybody else pretty much got almost a hundred. And so
4 that was the only, the sixth one that was the lowest scoring nonprofit. So
5 the anticipated, it's going to be \$155,000. And so you all can vote to see
6 how much of that amount do you want to give, like we did before. So if we
7 fund everyone evenly, it will be a little bit more than \$26,000, or you can
8 adjust.
9
- 10 And I bought all of our scores. Like I said, it wasn't much to do, there wasn't
11 much to do a spreadsheet up, because everybody was scored pretty much
12 100%. Just the last one was not; it was scored slightly less.
13
- 14 Martinez: Was there just like a difference amount of money that came in?
15
- 16 Godinez: Last year's budget we had \$160,00.
17
- 18 Martinez: Okay.
19
- 20 Godinez: And then so I don't know if you remember that when HUD was doing the
21 cuts, that they had said that we would take like 5% or something. So we
22 lowered it to \$155,00. Because if basically we were going to have to do
23 some more cuts, we weren't too sure where so we just gave it, you know
24 took \$5,000 off. So it brought it down to \$155,000 to fund the six nonprofits.
25
- 26 Papen: And so that'll be split evenly, right.
27
- 28 Godinez: So we can just evenly but between the three of you, you can talk about how
29 you want to fund each one. So the five regular ones we've been funding
30 every year evenly, but now we have the six one. So that's where you would
31 say how you want to fund them. Or like I said it could be even, that's your
32 decision. So you can say just fund them all evenly. It's going to be over
33 \$26,000, or give one a certain amount and then give everybody divided
34 amongst everyone else with the rest. Normally we do like a spreadsheet,
35 we show and we give like the highs and the lows, and like all that good stuff.
36 But with six.
37
- 38 Castillo: Correct, makes it a little easier to see.
39
- 40 Godinez: Right.
41
- 42 Castillo: What's going on.
43
- 44 Godinez: But with six it's just you know, and like I said like last year all we did was
45 had a discussion, and then we voted to find everybody evenly with the five.

1 We only have five though. So this is a little bit. And that's when you all had
2 ...
3
4 Papen: So let me ask you a question. So if we have six, what is that coming out to
5 per agency.
6
7 Godinez: It's like 26,000.
8
9 Papen: And last year it was between \$160,000, but there was only five?
10
11 Godinez: Correct. So this time it will be \$25,833.
12
13 Papen: Well, my question is, I think some of the agencies service a higher
14 percentage of people and the monies that they need to provide those
15 services are probably greater. I don't know how everybody else feels. But
16 I'm a little distressed that the amount of money that they're going to get is
17 going down. Not that I don't want another agency to come in. I don't mean
18 that. But I am concerned about particularly in these days and times and the
19 great needs that we have out there. I'm concerned about them not getting
20 the same amount of money that they were getting in the past, though I don't
21 want to count out the Catholic Charities. Is there any way we can get more
22 money out of the City?
23
24 Godinez: Well, the funding is from HUD, and it's 15% of what we normally get. And
25 so that's all that we can give for Community Development Block Grants for
26 public services. That's the limit is 15% of the total amount we get from HUD.
27 So it was coming out to \$160,000. And now like last year they lowered it.
28
29 Castillo: So even though there's kind of less, there's only six people, this is where a
30 spreadsheet would be helpful in that where we could see who's been funded
31 in the past, how they've been funded in the past, who's new to the group
32 that is seeking new funding.
33
34 Godinez: Okay, I did create a spreadsheet. But then when I was doing it, I was like
35 okay. Like you know it was difficult because it was not like we have so many
36 nonprofits where you know you can see the scores. And like we did before
37 with the House Related Public Service there was 20 applicants and how we
38 didn't give everyone the same amount. We've kind of like spread it out. And
39 this is because it's six. But in the last five years, I can tell you that the five
40 entities have been funded and it has been divided evenly. So it's been Casa
41 de Peregrinos, it's been Jardin, it's been Mesilla Valley CASA, it's been
42 Mesilla Valley Community of Hope, and La Casa. Those five have been
43 receiving the CDBGs funding for the past at least five years. And it's been
44 evenly split.
45
46 Castillo: And so Catholic Charities is the new.

1
2 Godinez: Catholic Charities is a new applicant. And also the fact that the funding
3 went down, so that plays a little bit into it.
4
5 Papen: Well, so next year if we have another group apply then we get down to
6 where we have seven or eight or whatever it is, and so the money that we
7 have going to these entities keeps going down because as we have other
8 agencies applying. Is that ...
9
10 Godinez: That's correct. That's correct.
11
12 Papen: Yes. So I don't know it gives me heartburn to reduce their money and it
13 gives me heartburn to not help the Catholic Charities with the work that
14 they're doing. I don't know. So does the City provide money. How much
15 money? I know they used to provide money to La Casa because I was on
16 that board for eight years.
17
18 Godinez: Yes, ma'am. We do also give Health Related Public Service grants. And
19 they are currently \$32,000. And all the entities, all the nonprofits that have
20 applied, the six have all received Health Related Public Service grants as
21 well.
22
23 Papen: Okay, so what about Catholic Charities? Do they get the Public Service
24 grant as well?
25
26 Godinez: Yes, ma'am. All six. All six get Public Service Grants, health related ones.
27
28 Papen: Okay. What is that amount?
29
30 Godinez: \$32,000 each.
31
32 Papen: \$32,000 each. Okay. I'm just concerned because the need is so great.
33 And really even with the money that the City gives these entities and with
34 this money, it's still a drop in the bucket for the great needs that we have in
35 our community for all of these agencies. But I don't know where we get
36 more money.
37
38 Godinez: Some are also asking for junior funding from the legislature. But this is the
39 two grants is what the city gives, the CDBG Public Service grant and the
40 Health Related Public Service grant. Those are the two that we do get.
41
42 Papen: And so you mean there at, because I used to give money, but the way that
43 the money comes from the legislature from the money that they get, there
44 are only certain things that they can do, because some of it is anti-donation.
45
46 Godinez: Correct.

1
2 Papen: You have to be very careful about anti-donation. So you know again that is
3 something that I know all of the agencies are just desperate for money.
4 Anyway, I'll just let somebody else talk.
5
6 Godinez: Are you on your telephone Ms. Papen?
7
8 Papen: Am I on my telephone? No I'm on my iPad.
9
10 Godinez: Okay.
11
12 Papen: Because I'm on Zoom. So I don't know, does anybody else have any
13 suggestions? Am I the only one talking or can I not hear anybody else?
14
15 Godinez: Yes, ma'am you're only talking. Everybody else is ...
16
17 Castillo: We're working on math.
18
19 Godinez: They're working out their figures.
20
21 Castillo: Working on math.
22
23 Godinez: And I'm going to share my screen with you just to show you.
24
25 Papen: No that's okay. That's all right. I just thought, well am I the only one talking.
26 I hate to be the only one talking.
27
28 Godinez: It's okay. So I'm sharing my screen with you on the spreadsheet of the
29 percentages of what everyone scored. Can you see it?
30
31 Papen: Yes.
32
33 Godinez: Okay.
34
35 Papen: Yes. Yes, I can. Yes.
36
37 Godinez: So that's what they're looking at right now. They're looking, at they're doing
38 some math probably.
39
40 Papen: Yes. Okay. Well, I mean everybody seems to have, you know, I mean I
41 just think that all of these agencies are valuable agencies to our community
42 and I think they all are desperate for money.
43
44 Godinez: Yes, that's for sure.
45

Agenda Item #8.4.

1 Fields: Okay, out of all of the applicants that we have, all of them are getting Health
2 and Human Services funding correct.
3
4 Godinez: Correct.
5
6 Fields: Okay.
7
8 Papen: Yes.
9
10 Fields: And then with the legislative aid all of them are also receiving money from
11 that or (*inaudible*) are.
12
13 Godinez: No. No, no, no.
14
15 Fields: Okay, which ones are?
16
17 Godinez: Mesilla Valley Community of Hope.
18
19 Martinez: But that's not. That's a different program.
20
21 Godinez: Yes it's different money.
22
23 Martinez: We already spend that money. It's gone.
24
25 Godinez: And that's not coming from the City that's coming from ...
26
27 Papen: Yes.
28
29 Castillo: We have \$160,000 total.
30
31 Godinez: \$155.00.
32
33 Castillo: \$155,000.
34
35 Godinez: Sorry, I didn't realize I had \$160,000 over here. I looked at it right now.
36 That's what I'm changing. Because that's what it was. And to be honest
37 with you, we don't know exactly how much money because we haven't
38 received none of it yet. So we haven't got you know, so that's what we're
39 saying we're anticipating that we're going to get \$155,000. So it could be
40 \$160,000. It could be \$155,000. Because when they said they were going
41 to lower us for like, 5%, I'm not too sure that that totally happened. But we
42 don't know exactly how much, but we're anticipating that amount because
43 that's 15% of what we receive.
44
45 Papen: Yes.
46

Agenda Item #8.4.

1 Fields: Do we know when that will be finalized, or is it just kind of?
2
3 Godinez: We're working on our action plan right now.
4
5 Fields: Okay.
6
7 Papen: The other thing I want to ask you is putting an additional entity in there the
8 money that these other entities, the other five entities have been counting
9 on, then they're going to get a reduced amount over what they're hoping to
10 get. Right?
11
12 Godinez: Correct.
13
14 Castillo: In the past, they've gotten \$32,000.
15
16 Godinez: It's been \$32,000 \$31,000, it's been \$30,000. It was less than that probably
17 a few years ago, maybe.
18
19 Martinez:: \$27,000.
20
21 Godinez: \$27,000. So it kind of went up in the last few years. But then now with the
22 sixth nonprofit, it's bringing it back down.
23
24 Castillo: And scoring-wise Catholic Charities was the lowest score.
25
26 Godinez: Correct.
27
28 Castillo: Okay. I've got numbers. Anybody ready for numbers?
29
30 Godinez: I apologize for this. Natalie was supposed to be here, but she, I text her for
31 the password, and she's like, I forgot about that. I was like it's okay, don't
32 worry about it. Because she was doing budget retreat at the convention
33 center. So she wasn't in the office today. So she normally will come.
34
35 Papen: Well, I just worry about you know I think if we keep adding agencies in there
36 pretty soon there's not going to be an awful lot of money that's going to go
37 and I don't know how we limit the agencies so that people really get a good
38 chunk of change to put into their programs. You know, I'm just concerned
39 about that. I'm not concerned about the entities because I think they're all
40 valuable entities. I'm just concerned about our diluting the amount of money
41 that they get that they are counting on getting. And say next year if we have
42 six or seven people that want to be into this, we're diluting the money even
43 further than that.
44
45 Castillo: I think in aspects of that though...
46

1 Papen: But they're all good entities and valuable entities.

2
3 Castillo: That's when it comes into kind of working as a Board, showing up to
4 presentations, seeing what entities are really involved, looking at the
5 research that the entities are providing. Ten entities can apply. I'd still be
6 happy giving five entities, depending on participation, research, and what
7 they're, how they're funding. Right. I mean that's the whole idea of creating
8 this board.

9
10 Papen: Yes. Yes. All right.

11
12 Castillo: I do believe that the five that are represented, the six that are represented
13 are very, very important. You know social worker in the community tied to
14 a lot of these places, I'm trying to figure out numbers. I'm trying not to hear
15 that the lowest we got it was \$27,000 because that kind of works. I'm
16 looking at \$28,000 five ways and \$15,000 for one.

17
18 Fields: That's what my math kind of came up with too.

19
20 Castillo: I was thinking \$28,000 was low and then they got \$27,000 onetime, and I
21 was like I don't want hear that.

22
23 Fields: It's actually doable, but also it's not.

24
25 Castillo: And I think what we have to look here is that everything is getting more
26 competitive, everything is getting more, we're going to have to figure out
27 how to work with what we have until we can get more. And you know
28 unfortunately, I think part of our jobs is breaking hearts and saying, how can
29 we make things work when we really can't? It reminds me of working with
30 families, being in my family in particular, right. It's like when times are hard
31 we you know skip on those luxuries that we really like. And we have to get
32 down to the bare bones. And I think this is kind of the beginning of hopefully,
33 the last time we get down to the bare bones. But I think today that's kind of
34 where I'm at is, I'd rather give something than nothing. I think more so to
35 the five agencies that were you know met the criteria, met the high score,
36 and then we you know trying to fund everybody gives something to the one
37 agency that didn't meet the high score, but I have a feeling they were just
38 right under.

39
40 Fields: Yes, looking at the scores that's exactly what happened.

41
42 Castillo: Yes.

43
44 Godinez: They were.

45

1 Castillo: And so it's, it's, I hear you. It's one of those things that I think that's why
2 they brought us here, right, was to make these hard decisions.
3
4 Papen: Well, can we give a certain amount of money to the, I mean let's go
5 proportionately by the way that the scores came out. Can we apportion the
6 money, not necessarily evenly through everybody, but can we apportion it
7 according to scoring?
8
9 Godinez: Ms. Papen. I don't know if you heard that Mr. Castillo had said that if we
10 can fund the five at, \$28,000, and then Catholic Charities at \$15,000.
11
12 Papen: Well, I could go along with that. I could go along with that.
13
14 Godinez: That would be up to the three of you to decide if you want to do it like that,
15 or if you want to adjust that. But you can vote on that.
16
17 Castillo: Does it need to be brought up as a ...
18
19 Fields: As a vote.
20
21 Godinez: A motion.
22
23 Castillo: I'll make the motion that we fund a coordinately to the five high scoring
24 agencies at \$28,000, and the lowest scoring agency at \$15,000.
25
26 Fields: Second.
27
28 Baum: All those in favor.
29
30 MOTION PASSES UNANIMOUSLY.
31
32 Baum: Okay, motion passes unanimously. That would be your final
33 recommendation.
34
35 **VI. IMPORTANT DUE DATES FOR THE 2022-2023 HRPS AND CDBG PUBLIC**
36 **SERVICE APPLICATION:**
37
38 Baum: I'm going to back up a little bit, important due dates for HRPS.
39
40 Godinez: The next meeting that I would like to you to put on your calendar is of March
41 8th. And then this meeting will vote to fund the Health Related Public
42 Service year two. And then we'll have that in Council. And there won't be
43 no presentations. It will just be same thing, but I'll have a spreadsheet
44 because it's going to be, there's 19.
45
46 Castillo: Okay.

Agenda Item #8.4.

1
2 Papen: So the next meeting will be March 8th.
3
4 Godinez: Yes, ma'am.
5
6 Papen: Okay, you need to know I'll be on Zoom because I'm up here until the
7 session is over, which is I think the 18th of March.
8
9 Godinez: Okay, that'll be fine. Then we're going to have it in Council because I think
10 we'll have more in attendance.
11
12 Baum: She'll be able to call in .
13
14 Godinez: And then you'll be able to call in and that should be easier.
15
16 Papen: Yes. Okay. So you all will send me all the information.
17
18 Godinez: Yes, ma'am. And that's going to be in the next couple of ...
19
20 Papen: Get back on sort of, yes.
21
22 Godinez: Yes, that'll be in the next couple of weeks, so March 8th.
23
24 Papen: Okay. I have it written down.
25
26 Godinez: March 8th is a Wednesday and it'll be at 5:30. Well, you'll will receive the
27 agenda and you'll receive the phone number that you call into.
28
29 Papen: Okay, thank you so much.
30
31 Godinez: And then there's one more thing I want to talk about.
32
33 Baum: And at 5:30, just as a reminder, March 8th at 530 is what we've got.
34
35 Godinez: March 8th, 5:30 in council chambers.
36
37 Martinez: What meeting is that?
38
39 Godinez: This is going to be for the Health Related Public Service year two. You
40 turned in the application really early. And same thing that we're doing here.
41 Now with that we have \$600,000, so it should be the same amount.
42
43 White: Historically, your two has been funded the same as year one.
44
45 Godinez: Yes. Correct. So it should be, it's \$32,000. We should have that; I mean
46 granted the committee votes to fund everybody evenly like we have or in

1 the same manner that we did before. Because it wasn't even. There was
2 a couple that we funded for less.

3
4 Castillo: Yes.

5
6 **VII. DISCUSSION OF CDBG-PS APPLICATION AND GUIDE:**
7

8 Godinez: And then the other thing, next thing I had the discussion of the application
9 and the guide. I wanted to see if we can make some time to set some
10 meetings to go over the application. And I think it's in your binder as well.
11 And I don't know what days are good for you all. And possibly when Ms.
12 Pippin comes back after March, like after March 18th.

13
14 Castillo: After March would be great.

15
16 Godinez: Yes after March.

17
18 Fields: Yes.

19
20 Godinez: Okay. But Wednesdays or Thursdays or like we can meet once a month.
21 We can meet every other week. I mean I don't think it'll take that long. But
22 we can meet.

23
24 Castillo: I'm going to start with after March.

25
26 Godinez: Okay.

27
28 Castillo: Kids on baseball teams.

29
30 Godinez: After March. And then is there a certain day that's good for you all?

31
32 Castillo: You know I'll make time.

33
34 Godinez: Okay.

35
36 Fields: Thursdays are pretty good.

37
38 Godinez: Thursdays.

39
40 Fields: Yes.

41
42 Godinez: Ms. Papen, when you come back, do you have a date preference for the
43 meeting? We want to have a meeting to go over the application for the
44 Community Development Block Grant public service application.
45

1 Papen: You know I don't. I'll be home and I don't have anything at the present time.
2 But in May I'm going to be going to California to hear a concert at the one
3 in Las Angeles. So I'll be out of out of town for a week.
4

5 Godinez: We'll shoot for one meeting starting in April, and then we'll go from there.
6

7 Papen: Okay, that sounds good.
8

9 Godinez: We'll start with one in April on a Thursday possibly, and then we'll set that
10 one and then at that meeting, we'll set another one that works with
11 everybody's schedule.
12

13 Papen: Okay. That works for me.
14

15 Baum: Unless there's anything else?
16

17 **VIII. OTHER DISCUSSION**
18

19 **IX. ADJOURNMENT (6:00)**
20

21 Baum: I guess since we don't have a true chairperson, I will take a motion in a
22 second to adjourn.
23

24 Fields: Make a motion to adjourn the meeting.
25

26 Castillo: Second.
27

28 Baum: Okay, all those in favor.
29

30 MOTION PASSES UNANIMOUSLY.
31

32 Baum: We are adjourned at 5:58.
33
34
35
36
37

38 _____
Chairperson

SUMMARY OF PUBLIC COMMENTS

No additional public comment received



City of Las Cruces

City Council Action and Executive Summary

**3031; Council
Bill 23-025**

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

District: ☐ 1 ☒ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A

1st Reading: May 1, 2023

Adopted: May 15, 2023

Drafter: Vince Banegas

Department: Community Development

Program: Community Planning

Line of Business: Community Planning

Title: 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.

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

PURPOSE(S) OF ACTION:

Zone Change

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Council is required to review and take final action on zone changes per Section 38-10.B.2.b. and 38-13.A. of the 2001 Las Cruces Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulation uniformly governs the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from A-2 (Rural Agricultural District) to C-3C (Commercial High Intensity-Conditional) for property approximately 10.85 acres in size and located at 4003 Tellbrook Road. The existing A-2 zone represents a non-conforming zoning district designation that became defunct upon adoption of the 2001 Las Cruces Zoning Code, as amended. In order to develop the property, a zone change to an appropriate zoning designation will be required. Due to the surrounding area, the subject property being adjacent to a minor arterial/collector roadway intersection, and the development vision proposed by the applicant, the C-3C zoning district is an appropriate designation. In this particular instance, the conditions that were proposed by the applicant, and recommended by the Planning and Zoning Commission, speak to limiting permitted land uses to those listed in an exhibit which will be attached to the Ordinance as Exhibit "B". This list focuses on reducing the types of office and service uses, and significantly reduces the types of retail uses allowed on the property. By implementing these restrictions, land uses and the degree of intensity they may create will be minimized from what the C-3 district would otherwise allow. The conditions also facilitate the development vision the property owners wish to achieve involving the creation of an office, dwelling, botanical gardens, an accessory structure (storage of equipment, etc.), and potentially a small coffee shop to be ancillary to the botanical garden use.

The subject property is presently vacant. Immediately north of the property is a large lot that is predominately vacant and also zoned A-2. Immediately south, are developed and undeveloped properties zoned C-2 (Commercial Medium Intensity), R-2 (Multi-Dwelling Low Density), and R-3 (Multi-Dwelling Medium Density). Of those developed, several are single-family dwellings, and several others are apartments (duplexes, triplexes and one fourplex). To the east, further south, and further north, medium to large lot residential uses are prevalent. Several of these properties are outside the city limits.

Agenda Item #11.1.

The proposed zone change is consistent with the Elevate Las Cruces Comprehensive Plan and several goals, policies, and actions contained therein. Policy supporting the request speaks to encouraging the development of vacant/underutilized property, supporting, promoting, and identifying places of employment to help increase employment opportunities, and promoting a jobs-housing balance. The property is within the Suburban Place Type characterized by low to moderate-density residential land uses intermixed with areas of commercial development.

On January 24, 2023, the case was heard by the Planning and Zoning Commission at their regular meeting. The zone change request had significant opposition from residents in the area. In fact, 39 emails were received by staff. Of those, 37 were opposed to the proposal, 1 was in support, and 1 was simply requesting additional information. Many of those submitting emails were in attendance at the Planning and Zoning Commission meeting. In consideration of all input received (emails, phone calls, meetings), issues raised for the opposition involved increased light pollution, traffic, and noise, lack of compatibility the proposal brings to the surrounding residential area, potential impacts to wildlife and property values, lack of assurances that development will not broaden beyond the stated scope, and whether commercial zoning was even needed in the area. Of the few supporting the request, statements clearly reflect that there was a general acceptance of the development as proposed and that said the development could bring desirable uses closer to residents thereby creating increased walkability in the neighborhood and reducing the need for vehicle miles traveled. Ultimately, the Planning and Zoning Commission voted 4-1-0 (two seats vacant) to approve the request with the aforementioned condition.

Although no appeals were submitted regarding the Planning and Zoning Commission's recommendation, one area resident requested the addition of documentation to this CAES packet. This documentation was not presented to the Commission at the January 24, 2023 meeting. It contains additional information intended to further strengthen the opposition's perspective. This attachment is clearly identified as to its source and content. Please be advised that handling new information in this manner is not normally done, but has been carried out in the past.

SUPPORT INFORMATION:

[EXHIBIT "A" - Vicinity Map](#)

[EXHIBIT "B" - List of Permitted Uses](#)

[EXHIBIT "C" - Findings of Fact](#)

[ATTACHMENT "A" - 4003 Tellbrook Road Staff Rprt](#)

[ATTACHMENT "B" - Unapproved 1/24/23 Minute Excerpts](#)

[ATTACHMENT "C" - Email Correspondence](#)

[ATTACHMENT "D" - Mr. Milligan Submittal](#)

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

Agenda Item #11.1.

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 4003 Tellbrook Road will be rezoned from A-2 (Agricultural District) to C-3C (Commercial High Intensity-Conditional).
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current non-conforming zoning designation of A-2 (Agricultural District) will remain, requiring the property owner to seek an alternate zoning designation prior to development.
3. Vote to "Amend"; this could allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.
4. Vote to "Table"; this could allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3031; COUNCIL BILL 23-025

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.

The City Council is informed that:

WHEREAS, Raylyn and Lezlie Wilcox, property owners, have submitted a request for a zone change from A-2 (Agricultural District) to C-3C (Commercial High Intensity-Conditional); and

WHEREAS, the condition attached to the C-3 designation reduces multiple service uses, and substantially reduces commercial uses otherwise allowed in the C-3 district while allowing the applicant to fulfill his development vision for the property; and

WHEREAS, the subject property is approximately 10.85 acres in size, vacant, and has a defunct zoning district in need of change; and

WHEREAS, the proposed zone change is consistent with the Suburban Place Type per Elevate Las Cruces Comprehensive Plan and is supported by various goals and policies contained therein; and

WHEREAS, the proposed zone change meets the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on January 24, 2023, recommended that the zone change request be approved by a vote of 4-1-0 (two commission seats vacant).

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

(I)

THAT the land as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-3C (Commercial High Density - Conditional).

(II)

THAT the conditions stipulated are identified in Exhibit "B", attached hereto and made part of this Ordinance.

(III)

THAT the zoning is based on the findings contained in Exhibit "C", attached hereto and made part of this Ordinance.

(IV)

THAT the zoning of said property be shown accordingly on the City Zoning Atlas.

(V)

Agenda Item #11.1.

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:

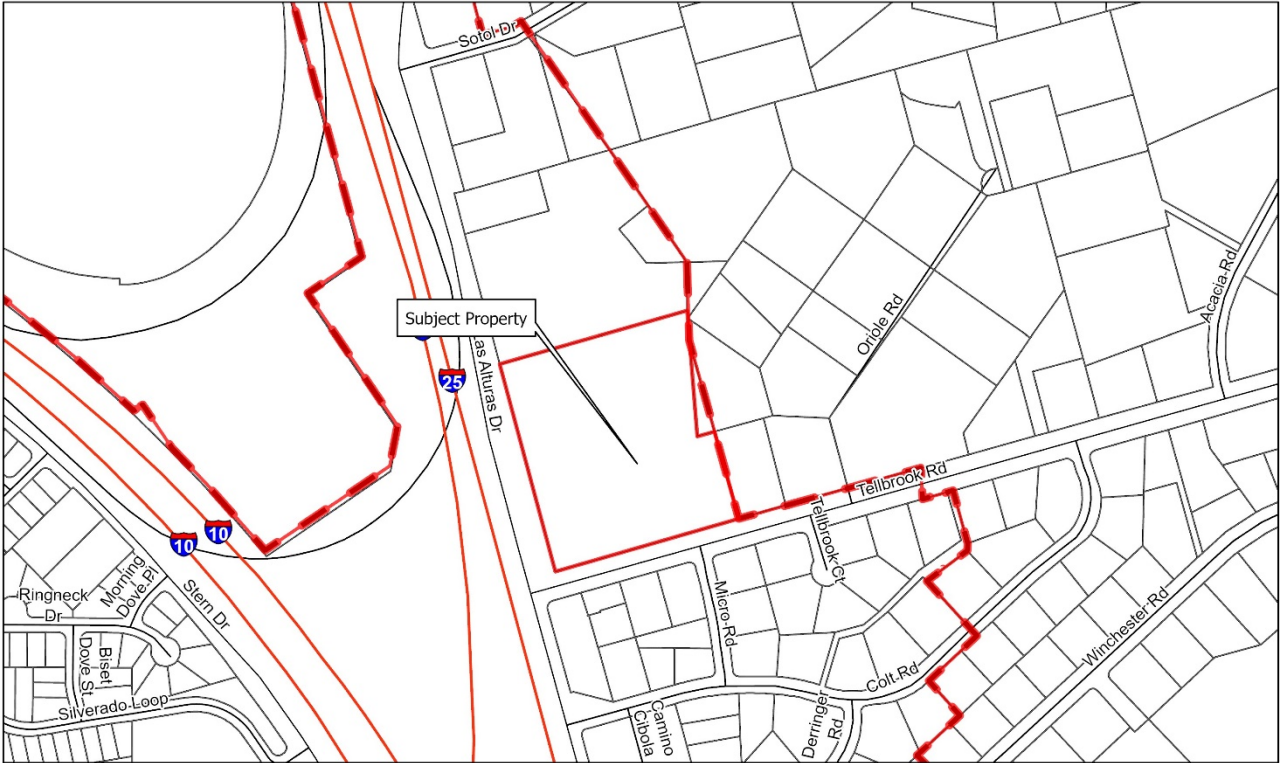
Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"



Note: Subject property is outlined in red.



EXHIBIT "B" – Zoning Condition

Permitted Use List From C-3 District Listing

C-3 COMMERCIAL HIGH INTENSITY: The C-3 district facilitates and encourages development of those uses which provide retail, service, and wholesale activities within the City and a regional market, whose use generally serves a population of over 15,000.

LAND USES ALLOWED

RESIDENTIAL-RELATED LAND USES (See Section 38-33B)

Apartments

Accessory Uses and Structures

Greenhouse, Garden Shed or Tool Shed (ancillary to botanical gardens)

INSTITUTIONAL LAND USES (See Section 38-33D)

Community Buildings Uses

Library/Museum

RECREATIONAL LAND USES (See Section 38-33E)

Health/Exercise Club/Gymnasium/Sports Instruction

Botanical Park

SERVICE LAND USES (See Section 38-33F)

Accounting, Auditing & Bookkeeping

Architectural, Engineering, Planning & Surveying Services

Art Studio

Barber/Beauty/Hair Salon & Related Personal Care

Business Offices

Consulting

Counseling Services

Desktop Publishing & Graphic Design

Institutional Office: Public, Private, Educational, Religious, & Philanthropic Insurance

Legal Services

Lessons (Art, Dance, Music, etc.)

Photography Studio

Real Estate

Tax Preparation

Agenda Item #11.1.

RETAIL LAND USES (See Section 38-33G)

Café, Cafeteria, Coffee Shop, Restaurant, etc. (ancillary to botanical gardens)

Clothing Store (limited to 2,500 sq. Ft. building)

Garden Supply

Plant Nursery

EXHIBIT “C”

FINDINGS OF FACT

1. The property under consideration has a non-conforming zoning designation that no longer exists in the 2001 Las Cruces Zoning Code, as amended.
2. Prior to development, an appropriate zoning district designation needs to be established pursuant to code. The proposed C-3C district designation is the most appropriate zoning district given the surrounding area and the applicant's development proposal.
3. Staff agrees with Exhibit “A” (permitted land uses) in that they will achieve what the applicant seeks to develop on the property while ensuring that any future residential, office, and commercial uses remain compatible with the surrounding neighborhood.
4. The subject property falls within the Suburban place type. This place type is characterized by low to moderate density residential land uses intermixed with areas of commercial development. This place type is consistent with what the proposed C-3C zone seeks to provide.
5. The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2). Goals, policies and actions supporting this case can be found in ATTACHMENT “A” of this CAES packet.
6. The proposal will be compatible with the limited commercial and multi-family zoning south of Tellbrook Road.
7. The proposal will help create a commercial/service node at the intersection of Las Alturas and Tellbrook Road which will serve surrounding residential uses.



City of Las Cruces
MOUNTAINS OF OPPORTUNITY

ATTACHMENT "A"

Planning & Zoning Commission 1/24/2023
CASE 22ZO0500020: TELLBROOK ROAD REZONING:

STAFF CONTACT:	Vincent Banegas, (575) 528-3058, vbanegas@las-cruces.org
OWNER:	Raylyn and Lezlie Wilcox
REPRESENTATIVE:	Same
DISTRICT:	District #2
SITE ADDRESSES:	4003 Tellbrook Road
EXISTING ZONING:	A-2 (Rural Agricultural District)
REQUEST:	Rezone from A-2 (Rural Agricultural District) to C-3C (Commercial High Intensity-Conditional)
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF CASE 22ZO0500020:

A zone change from A-2 (Rural Agricultural District) to C-3C (Commercial High Intensity-Conditional) for property located at the northeast corner of Tellbrook Road and Las Alturas Drive. The property encompasses ±10.85 acres and is in Council District #2. Submitted by Raylyn and Lezlie Wilcox, property owners.

SUMMARY OF RECOMMENDATION:

Staff is recommending **APPROVAL with CONDITIONS** based on the findings listed below:

- The property under consideration has a non-conforming zoning designation that no longer exists in the 2001 Las Cruces Zoning Code, as amended.
- Prior to development, an appropriate zoning district designation needs to be established pursuant to code. The proposed C-3C district designation is the most appropriate zoning district given the surrounding area and the applicant's development proposal.
- Staff is in agreement with Exhibit "A" (permitted land uses) in that they will achieve what the applicant seeks to develop on the property while

ensuring that any future residential, office, and commercial uses remain compatible with the surrounding neighborhood.

- The subject property falls within the Suburban place type. This place type is characterized by low to moderate density residential land uses intermixed with areas of commercial development. This place type is consistent with what the proposed C-3C zone seeks to provide.
- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).
- The proposal will be compatible with the limited commercial and multi-family zoning south of Tellbrook Road.
- The proposal will help create a commercial/service node at the intersection of Las Alturas and Tellbrook Road which will serve surrounding residential uses.

CONDITIONS:

- The subject property is limited to the list of permitted land uses as outlined in Exhibit "A."

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

The property owner is seeking rezoning of property from A-2 to C-3C to facilitate the proposed development of commercial botanical gardens, a small office, and one single-family dwelling. Through the application of proposed land use conditions (Exhibit "A"), other limited multi-family, office, and commercial uses may come to fruition although those uses are not the applicant's focus via this proposal. The present A-2 zoning district designation does not exist within the 2001 Las Cruces Zoning Code, as amended. The A-2 zoning district existed in earlier zoning codes, but was eliminated under the current code. At the time of code adoption, a two-year grace period allowed any non-conforming zoning to remain in full force and effect until rezoning or conversion of zoning took place. Staff initiated rezoning/conversion efforts for related properties and encouraged property owners to come forward with requests of their own to bring about compliance with the 2001 district standards. Due to the sheer number of properties that needed adjustment, staff could not reach out to all applicable property owners within the time frame provided even after extending the time frame for compliance. Originally, the A-2 district was typically used to zone agricultural land. Later, it was also used as a type of holding zone when property owners were uncertain as to the zoning district desired upon the annexation of land. Changing the zoning to C-3C will correct this zoning non-conformity.

The annexation that created the need herein stated was called the I-10 and I-25 Interchange Annexation. The annexation occurred in 1968 containing ± 920 acres.

LAND USE HISTORY:

The subject property was not created as part of any formal subdivision, but rather through a metes and bounds conveyance. The property is currently undeveloped.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
<u>Neighborhood Character and Compatibility</u>	Yes
<u>Elevate Las Cruces Comprehensive Plan</u>	Yes
<u>Thoroughfare Plans</u>	Yes
<u>Purpose and Intent of the Code: Section 38-2</u>	Yes
<u>Criteria for Decisions: Section 2-382</u>	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

In large part, the area surrounding the subject property consists of medium to large lot residential uses. This development pattern exists both east and south of the subject property. Directly north is more vacant A-2 zoning and directly south is C-2, R-2, and R-3 zoning developed as multi-family residential. Given the development pattern described, there should be no adverse impact to the surrounding neighborhood in terms of character and compatibility.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

According to the Future Development Map in the Elevate Las Cruces Comprehensive Plan, the subject parcel falls within the Suburban Neighborhood Place Type. The Suburban Neighborhood Place Type is characterized as providing low-to-moderate density residential land uses intermixed with areas of commercial development.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the proposed Zone Change:

- Community Environment:
 - Goal CE-1: Balanced Growth – Encourage efficient land use development patterns that accommodate projected growth in a sustainable manner.
 - Policy CE-1.2. – Promote investment within older areas of the city through redevelopment.
 - Policy CE 5.1.2 – Provide gradual transitions between developments with residential lots of varying size and building heights.
 - Goal CE-5: Building and Site Design – Establish standards to integrate new development with surrounding built and natural features while mitigating long-term natural resources and climate impacts.
 - Policy CE-5.1 – Promote building form and scale that complements surrounding neighborhoods and creates strong linkages between the development site, the street, and other public grounds.
 - Action CE 5.1.2 – Provide gradual transitions between developments with residential lots of varying size and building heights.
- Community Prosperity:

- Goal CP-9: Housing Diversity – Provide a diverse range of housing options to accommodate residents at all stages in life.

Community Livability:

- Goal CL-2: Neighborhood Conservation - Strengthen neighborhood condition through improvements to the built-environment.
 - Policy CL-2.2 – Encourage redevelopment of vacant properties within neighborhoods.

As the uses surrounding the subject property are congruous to the suburban comprehensive plan place type and well supported by various comprehensive goals and policies, staff feels the application is justified and should pose no conflict with the existing neighborhood.

COMPLIANCE WITH THOROUGHFARE PLAN:

Tellbrook Road is a ± 36' major collector roadway which intersects Las Alturas Drive (± 50'), a minor arterial roadway as designated by the Elevate Las Cruces Thoroughfare Map. In that the subject property is on the northeast corner of this intersection, ingress/egress to the subject property should be attainable and easily accommodate the proposed uses. There is no curb, gutter or sidewalks along either roadway.

CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:

Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed zone change include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- B. Encourage innovations in land development and redevelopment.
- C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- H. Encourage the conservation of energy in the use of structures, buildings, and land.
- J. Improve the design, quality, and character of new development.
- K. Encourage development of vacant properties within established areas.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- N. Conserve the value of buildings and land.

Review by Staff determined the proposed zone change would not adversely impact the surrounding area. Future uses that may be authorized by the proposed district (with applicable conditions) will be in keeping with the surrounding area. Additionally, the proposed action will eliminate the property's non-conforming zoning.

CRITERIA FOR DECISIONS:

Per Section 2-382 of the Las Cruces Municipal Code, the Planning and Zoning Commission shall determine the following:

- A. The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:
 - 1. Impair an inadequate supply of light and air to adjacent property or otherwise adversely impact adjoining properties.
 - 2. Unreasonably increase the traffic in public streets.
 - 3. Increase the danger of fire or endanger the public safety.
 - 4. Deter the orderly and phased growth and development of the community.
 - 5. Unreasonably impair established property values within the surrounding area.
 - 6. In any other respect, impair the public health, safety, or general welfare of the city.
 - 7. Constitute a spot zone, and therefore, adversely affect adjacent property values.
 - 8. Be in harmony with the purpose and intent of the zoning code, sign code, design standards, and other companion codes.
- B. The commission shall take care that the development of the city, in accordance with present and future needs, best promotes the health, safety, morals, order, convenience, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.
- C. The commission shall encourage the proper use and development of land, shall seek to create and maintain an aesthetic urban setting, and protect and preserve the quality of the water, air and other environmental, natural, historical and cultural resources for the city.
- D. The commission shall use the comprehensive plan as a guide in making all future decisions concerning land use and development, and in the financing and location of capital improvements.
- E. Before taking any action concerning land use and development and financing and location of capital improvements, the commission shall review the relationship between the proposed action and the comprehensive plan.

Upon internal review, Staff did not identify any issues that would deter the Planning and Zoning Commission from making an affirmative recommendation to City Council on the zone change with conditions. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate with a recommendation of conditional approval.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is currently zoned A-2 and is approximately 10.85 acres in size. If the subject parcel is to be developed, the rezoning to an appropriate designation is necessary in that the A-2 designation is defunct.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

If the subject property is rezoned as proposed, no further action beyond submitting and receiving the necessary development permits/licenses will be required. The C-3C designation will accommodate the acreage and uses as proposed without the need for any subdivision of land. Staff feels that the change in zoning designation will not negatively impact the surrounding area. Access to the property will likely come from Tellbrook Road in that NMDOT will try and limit curb cuts along Las

Alturas Drive. Doing so helps maintain the functional integrity of this roadway as a minor arterial.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water and gas currently serves the property and will not be negatively impacted by the zone change request and any resulting development. Septic tank(s) will provide the means for sewer service and will be considered by the New Mexico Environment Department (NMED).

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notification letters were mailed to property owners within 500 feet of the subject property on 1/5/23. Staff has not received any input at the time this report was prepared.

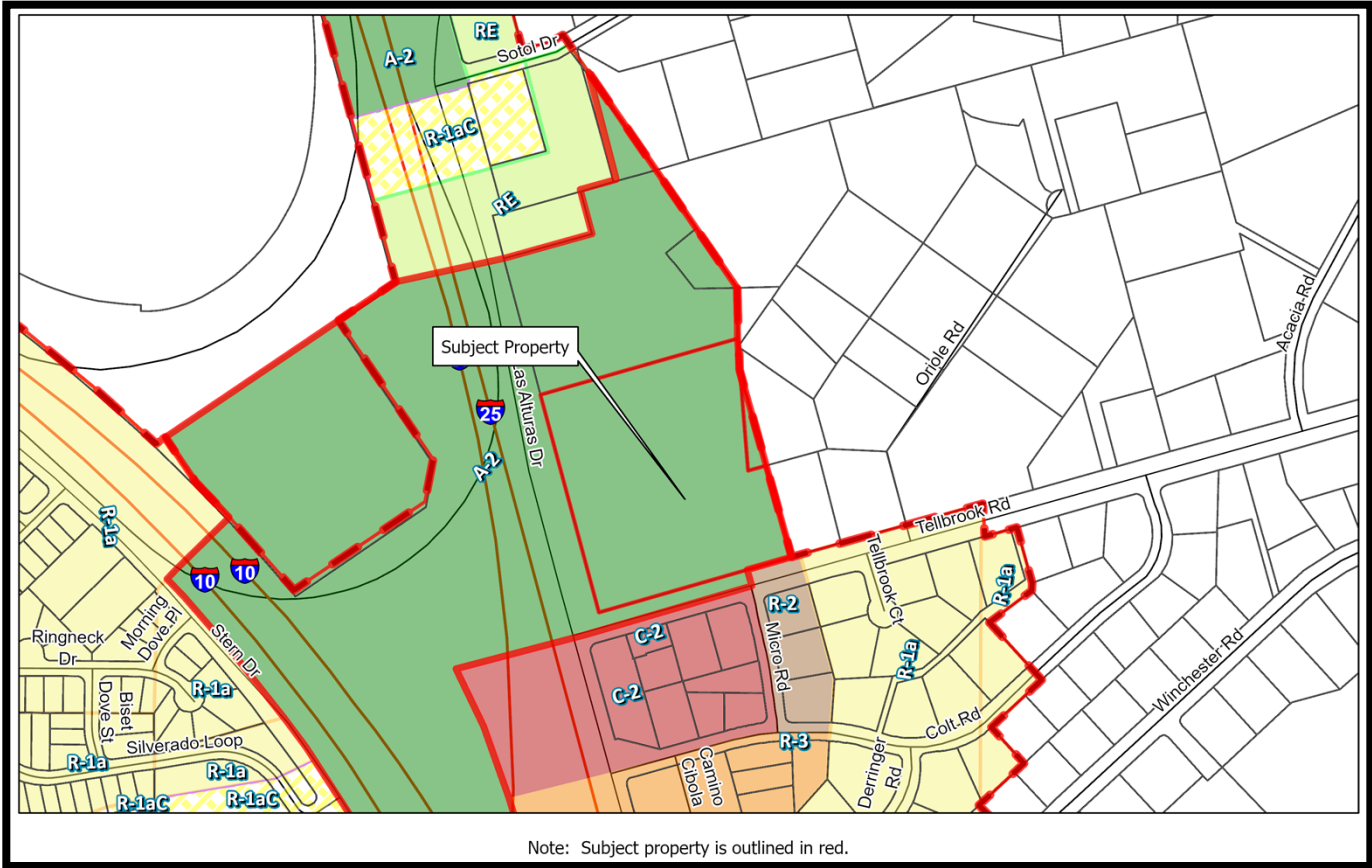
STAFF COMMENTS:

No reviewing department had any negative comments nor have any reviewing staff objected to the proposed rezoning.

ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Exhibit "A" – Permitted Land Uses
4. Department Review Comments

ATTACHMENT 1
Zoning Map



ATTACHMENT 2
Aerial Map



Note: Subject property is outlined in red.

ATTACHMENT 3

EXHIBIT “A” – PERMITTED LAND USES

C-3 COMMERCIAL HIGH INTENSITY: The C-3 district facilitates and encourages development of those uses which provide retail, service, and wholesale activities within the City and a regional market, whose use generally serves a population of over 15,000.

LAND USES ALLOWED

RESIDENTIAL-RELATED LAND USES (See Section 38-33B)

Apartments

Accessory Uses and Structures

Greenhouse, Garden Shed or Tool Shed (ancillary to botanical gardens)

INSTITUTIONAL LAND USES (See Section 38-33D)

Community Buildings Uses

Library/Museum

RECREATIONAL LAND USES (See Section 38-33E)

Health/Exercise Club/Gymnasium/Sports Instruction

Botanical Park

SERVICE LAND USES (See Section 38-33F)

Accounting, Auditing & Bookkeeping

Architectural, Engineering, Planning & Surveying Services

Art Studio

Barber/Beauty/Hair Salon & Related Personal Care

Business Offices

Consulting

Counseling Services

Pg 2

Desktop Publishing & Graphic Design

Institutional Office: Public, Private, Educational, Religious, & Philanthropic Insurance

Legal Services

Lessons (Art, Dance, Music, etc.)

Photography Studio

Real Estate

Tax Preparation

RETAIL LAND USES (See Section 38-33G)

Café, Cafeteria, Coffee Shop, Restaurant, etc. (ancillary to botanical gardens)

Clothing Store (limited to 2,500 sq. Ft. building)

Garden Supply

Plant Nursery

ATTACHMENT 4

Department Review Comments

Department: Planning

Status: YES W/ Contingency

Submit metes and bounds zoning or other means to limit extent of commercial uses.

Department: Flood Zone

Status: YES

Department: Parks and Recreation

Status: YES

Department: Transportation

Status: NOT REQUIRED

Department: Engineering

Status: YES

Department: Utility

Status: YES

Department: Fire

Status: YES

Department: MPO

Status: YES

Department: Economic Development

Status: NOT REQUIRED

ATTACHMENT “B” – UNAPPROVED MINUTE EXCEPTS

**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
January 24, 2023 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Vanessa Vega, Secretary
Joaquin Acosta, Member
James Bennett, Member
Enrico Smith, Member

BOARD MEMBERS ABSENT:

STAFF PRESENT:

Larry Nichols, Director Community Development Department, CLC
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Jocelyn Garrison, CLC Senior Assistant City Attorney
Adrian Guzman, CLC Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:10)

Kaiser: Once again thank you all for your patience. We will now call this meeting to order. It is 6:10 on January 24, 2023. Before we get started, I'd just like to wish everybody a happy new year. This is our first meeting of the year. And it looks like we're going to have some good discussion tonight.

2. CONFLICT OF INTEREST

Kaiser: So before we get started, are there any conflicts of interest from any of the Commissioners? Hearing none.

3. ACCEPTANCE OF THE AGENDA

Kaiser: We'll move down to the acceptance of the agenda. Can I get a motion to approve tonight's agenda?

Bennett: I'll make a motion to approve tonight's agenda.

Vega: Second.

1
2 Baum: Board Member Acosta.

3
4 Acosta: Yes.

5
6 Baum: Board Member Vega:

7
8 Vega: Yes.

9
10 Baum: Board Member Bennett.

11
12 Bennett: Yes.

13
14 Baum: Chair Kaiser.

15
16 Kaiser: Yes.

17
18 **10.2 4003 Tellbrook Road Zone Change Request:** A zone change from A-2
19 (Rural Agricultural District) to C-3C (Commercial High Intensity-
20 Conditional) for property located at 4003 Tellbrook Road. The property is ±
21 10.85 acres and located on the northeast corner of Tellbrook Road and
22 Las Alturas Drive. Submitted by Raylyn and Lezlie Wilcox, property
23 owners. (Case # 22ZO0500020)
24

25 Kaiser: Okay, we are moving on to our final item this evening. This is 10.2 a zone
26 change from A-2 to C-3C at 4003 Tellbrook. Staff, all yours.
27

28 Banegas: Mr. Chairman, members of the Commission. Vincent Banegas, Interim
29 Planner. I'll be presenting tonight's Case 22ZO00500020. It is involving
30 property located at 4003 Tellbrook Road. It is a rezoning request from the
31 current zoning of the property which is A-2, our agricultural district which is
32 defunct in the present code. We no longer have an A-2 designation. That
33 did not carry over from our 1981 Code. And they are seeking to go to a C-
34 3C designation. The C-3C is our commercial high intensity district. And
35 the C at the back end there refers to some conditions that we'd like to
36 have you consider, that is part of the request this evening.
37

38 The property itself is just shy of 11 acres in size. It's 10.85 according to
39 our assessor records. And again it was originally zoned A-2 and staff and
40 based on our research has found that it was A-2 probably as a
41 placeholder at the time of annexation. The A-2 zone back in the day was
42 used as a placeholder when the property owner wasn't quite sure what
43 they wanted to do with the land upon annexation. And so here we are,
44 this evening. Indicated it was a defunct zone currently in the 2001 Code
45 as written. In order for the property owner to develop the property they
46 have to come into compliance and find a suitable district that will meet the

1 need in terms of what they're focusing in on in terms of development
2 perspective and what the rules as written speak to. The property itself in
3 context with the Elevate Las Cruces Comprehensive Plan is within the
4 Suburban Place type. That place type as defined incorporates both low
5 and moderate density residential with intermixed areas of commercial
6 development.

7
8 The property as you'll see here in a moment is vacant. It's part of the I-
9 10/I- 25 interchange annexation that I referenced in terms of annexation
10 back in 1968. And it's part of the Las Alturas Estate Block A Subdivision.
11 At present, there's no sewer service, which is a key point to keep in mind.
12 No sewer service available to the site. So at this point in time any
13 development that takes place on site will have to receive approval, at least
14 from the wastewater perspective from New Mexico Environment
15 Department and/or their counterpart the EHB, which I believe is the
16 Environmental Health Bureau.

17
18 So here we have the zoning map showing Tellbrook Road located to the
19 south of the subject property. The subject property is outlined here in red.
20 Right along the east border is the City limit line. And it does jog out
21 incorporate other properties south of Tellbrook. And then it follows along
22 on the north side upwards towards University Avenue, etc. The areas that
23 are not shaded are in the county. And if I'm not mistaken, almost all of the
24 properties you see in this area are a DL-1 designation which is a single-
25 family, low density residential district, low and moderate I believe.

26
27 The aerial map here shows the property in question. It is vacant at
28 present. You do have some surrounding development both north, you'll
29 have some residential uses. East you'll have some additional residential
30 uses on large lots. And then further south of the subject property you'll
31 have a few apartment complexes in the area, and then it transitions over
32 to a single-family style of development. One thing I wanted to point out on
33 the zoning map is south of Tellbrook you'll see this node, at least on the
34 south side of Tellbrook, of commercial zoning, transitioning over to R-2
35 going east and then to the single-family designation going further east.

36
37 So in terms of the proposal, the original request that came forward to the
38 City from the applicant was a type of conversion request from the A-2 to
39 straight C-3. The idea being in terms of development focus to create a
40 botanical garden, engineering office to accommodate the property owners
41 office needs, and a single-family detached dwelling in terms of residential
42 use where they would reside. And then the accessory building or shed to
43 store some of the equipment to maintain the property, 11 acres, just shy of
44 that anyway, and the botanical gardens that they sought to develop. The
45 request itself in terms of the mixture of uses, etc. is consistent with the
46 Suburban Place type, as found in our Elevate Las Cruces Comprehensive

1 Plan. And then the C-3 designation accommodates the uses, and
2 particularly it accommodates the parcel size. If you recall, our zoning
3 code, at least in the commercial designation, relies on parcel size, relies
4 on uses to an extent, and other development standards to help mitigate
5 the types of uses or the intensity of uses that can occur on site. And so
6 that's what we're dealing with here.

7
8 The applicant was informed by staff back when they originally came
9 forward with their proposal to provide early notification to the surrounding
10 property owners in concert with the zoning code as written. Staff provided
11 a list of property owners that met our notice requirement. Letter was sent
12 out and dated February 27, 2022. In that letter the applicant identified
13 these uses that I've gone over as the focus of their development pattern
14 that they wanted to produce on site. And they also provided some
15 clarification as to what could occur and what could not occur, and sought
16 some recommendations on how to make it better, that kind of thing. They
17 did receive some input from what I was informed and what I was provided
18 in terms of content, it seemed like it was rather limited. But nonetheless,
19 they did go through that endeavor. They also stated that they'd be willing
20 to have a neighborhood meeting if that was indeed going to be helpful to
21 clarify the development proposal.

22
23 So staff took a look at the request, took a look at the overall acreage, their
24 surrounding area, that kind of thing, the transportation network, the zones
25 in the area. And admittedly, we had some concern over the straight C-3
26 designation. We felt that the potential for 10.83 acres of C-3 could indeed
27 overwhelm that particular location with commercial activity and so we
28 started taking a look at what we could do to lessen the potential impact.
29 One of those ideas that came to mind was to try and zone the property
30 through a metes and bounds type of approach whereby through the use of
31 a survey we can identify the exact boundaries for different uses on the
32 property, have those defined, and then seek a zoning designation that
33 pertains to the type of use that would occur within those metes and
34 bounds boundaries. A little bit convoluted, yes, a little bit expensive in
35 terms of the survey effort, absolutely. But that was one option. They
36 countered, they being the property owners, countered with the idea of
37 conditioning the C-3 district and really tying down the types of uses they
38 really sought to provide and incorporating a little possibility for future
39 growth. So that's the approach that staff went with. And we received a
40 conditional listing of permitted uses, that is in your packet, and I'll show
41 here as part of the presentation to help identify and control the impacts
42 that the C-3 zoning might have on the area.

43
44 The use list is called out as Exhibit A. And what it does is seek to remove
45 multiple service land uses that are otherwise identified in the C-3 listing of
46 permitted uses. And it also strikes majority of the retail uses that are

1 found on the existing list. And those retail uses that are identified, some of
2 those are controlled, or at least one of those is controlled by maximum
3 square footage of the use itself. And the others, there's one that pertains
4 to the botanical garden specifically as an accessory to that use. And then
5 the others kind of open it back up and are listed there. So we go from a
6 large number of retail uses down to I believe it's about five. A couple of
7 photos for this case, this is at the intersection of Tellbrook and Las Alturas.
8 Tellbrook of course being here, and Las Alturas here along, adjacent to
9 the interstate. And so we're looking northeast at this location. You can
10 see some of the residential development off in the distance here. This is
11 looking more west/northwest along the property. Looking east. And then
12 looking a little south and southeast. And this one, this is where you start
13 seeing some of the development. This is C-2 presently, and obviously
14 vacant at the present time, but you'll start seeing some of the development
15 shortly thereafter and beyond this property as well.

16
17 So in terms of analysis, staff found no health, safety, or welfare issues
18 specifically identified. We had proposed the development and conditional
19 zoning to help maintain a reasonable, or significant degree actually, of
20 compatibility for the surrounding area. Again, we're citing some of the
21 intersection of some key roadways, in this case Las Alturas being a minor
22 arterial and Tellbrook being a collector status type roadway, and some of
23 the commercial zoning just south of there.

24
25 The property is within the Suburban Place type and is consistent, at least
26 in the zoning and the proposal are consistent was said place type. And
27 the comprehensive plan supports the proposed zoning district, which
28 some of the elements that are identified in there are development of
29 vacant land, potential for housing diversity, balanced growth, integrating
30 new development with surrounding built-in natural features, and the
31 potential for job housing balance in terms of what it could become with
32 some of those uses identified.

33
34 Public notice was distributed per code. Staff received numerous, a great
35 degree of input on this particular case. We received, I think that number
36 needed to be updated by one, a late call came in. And all eight calls that
37 we received that I'm aware of were opposed to the request. We had one
38 walk-in inquiry, simply inquire in the nature, and 38 e-mails that were
39 opposed. One was an inquiry as to the case itself. So those are what we
40 collected as of the preparation or final tweaking of this presentation. And
41 as indicated, the property owner had done their due diligence trying to get
42 the early notification effort out there. And they received four e-mails, two I
43 would classify as general inquiry, and two supportive. And then they also
44 received two phone calls which were supportive in nature.

1 So staff's recommendation this evening is approval with the conditions,
2 and the condition being that the permitted uses are as per Exhibit A.
3 Exhibit A will be this, basically one and a half, two pages of permitted land
4 use listing. This list comes right out of the C-3 district, striking several
5 uses that would otherwise be reflected. And where you see the biggest
6 change is here under the service land uses. There are several that have
7 been struck, and the retail component, and there's a good many that have
8 also been struck. The cafe which was an idea that was originally
9 presented by the property owner, one of the initial discussions I had with
10 them would be ancillary to the botanical garden use. And a clothing store,
11 they wanted to control that and limit it to 2,500 square foot of building
12 square footage or area. And then garden supply and plant nursery but all
13 other retail uses would be eliminated.

14
15 The findings for staff's recommendation is that the property has
16 nonconforming zoning and that zoning no longer exists in the 2001 Zoning
17 Code as amended. And then prior to any development on the property an
18 appropriate zoning district designation needs to be established per code.
19 The C-3C zoning district is an appropriate zoning district given the
20 surrounding area, the lot size, and intended development. It would
21 certainly accommodate what they're proposing to do. The property is
22 within the Suburban Place type characterized by low and moderate
23 density residential uses, intermixed with areas of commercial
24 development, and several goals, policies, and actions from Elevate
25 support the request and meet the purpose and intent of the 2001 Zoning
26 Code as amended and Section 2- 382, the criteria for decisions. And also
27 the surrounding area has little commercial office and multifamily
28 residential development and thus the proposed development and zone
29 change could help achieve a mixed use node at that specific intersection
30 of those two significant roadways.

31
32 So your options this evening, Mr. Chair, Commissioners, is to vote "yes"
33 and approve, doing so would approve the condition as stipulated on that
34 list and so it would be a C-3C. You can vote "no" and deny the request.
35 Please provide any information or facts, findings of facts that are different
36 from staff's, in that staff is in support of the request. And you could
37 certainly vote "yes" and add conditions. If you feel that the conditions that
38 are established are still a little too loose, you can recommend that some
39 additional conditions be placed on the zone change. And then you can
40 vote to table. And that concludes staff's presentation Mr. Chairman. I
41 believe the applicants are in house and can maybe answer questions. I
42 don't know if they have anything specific to add. And that concludes my
43 presentation.
44

1 Kaiser: Thank you very much. Before we go to the Commission, does the
2 applicant wish to speak or say anything at this time? The applicant please
3 come forward. Please state your name for the record.
4
5 Wilcox: Raylyn Wilcox.
6
7 Kaiser: And do you swear or affirm that the testimony you're about to give is the
8 truth and nothing but the truth under penalty of law?
9
10 Wilcox: Yes, I do.
11
12 Kaiser: Go ahead.
13
14 Wilcox: All right, with all these people that have attended, it's very clear that all
15 these people love our neighborhood, as well as I do. And hopefully my
16 goal and the planner's goal is to make you feel comfortable that nobody is
17 going to do anything crazy out there. I think we've agreed to a pretty good
18 set of rules where we can't build a strip club, we can't build truck stops,
19 nothing crazy at all. I've lived here all my life. And all my life everybody
20 talks about, there's nothing to do in Las Cruces, nowhere for me take my
21 kids. And I really see a botanical garden as being something kind of nice.
22 And I'd actually like to team up with all these people and let's build
23 something really nice together where we can bring our senior citizens to
24 visit, bring your little kids, just have a really safe place. If you have any
25 questions, just let me know.
26
27 Kaiser: Thank you. All right, any questions from the Commission? All right, we'll
28 go ahead and open it for public comments. Can I get a show of hands of
29 who wishes to speak on this item? Get a quick head count here. I count
30 14. That may not be accurate, but it's a good headcount. So we we'll go
31 ahead and provide two minutes of comment for each individual tonight. I
32 do ask that you listen to speakers that may go before you, and let's try to
33 minimize the amount of similar talking points if that makes sense. We'll all
34 have a chance to speak but we understand that there's probably going to
35 be similar comments and themes of this evening, so we just keep that in
36 mind. So can I get everybody to raise their hands again and we'll figure
37 out where to start. Let's start with this gentleman over here in the front
38 row.
39
40 And given the nature of where this project is located, if you please
41 wouldn't mind stating whether or not you live within the City boundary or
42 the county before you give your comments. That would be appreciated.
43 So please state your name for the record.
44
45 Milligan: Okay. I'm Brook Milligan. I live in the county. I'm also rep ...
46

1 Kaiser: Hold on one second. I need to swear to you. Do you swear or affirm that
2 the testimony you're about to give is the truth and nothing but the truth
3 under penalty of law?
4

5 Milligan: Yes, I do.
6

7 Kaiser: You have two minutes.
8

9 Milligan: I'm also representing a number of people and I would like to request
10 several extra minutes to present our collective views so we can be more
11 efficient about this.
12

13 Nichols: Mr. Chair. If the other people that were going to speak will yield their time
14 to you, then we can give you additional time.
15

16 Kaiser: So for those individuals who may be allowing this gentleman to speak on
17 their behalf tonight, can you please raise your hand? All right. When we
18 get a head count, keep your hands up. Okay, we're going to go ahead
19 and grant you 10 minutes. Does that work?
20

21 Milligan: Okay, that's plenty of time.
22

23 Kaiser: You may begin.
24

25 Milligan: Thank you. So I wish to start by stating our joint strong objection to this
26 motion to change the zoning on this property okay. You have before you
27 a recommendation to support that zoning request. However, I point out
28 that the recommendation is fundamentally flawed in several different
29 ways. It does not reflect the nuanced understanding of the neighborhood
30 around the site, nor does it present a reasoned analysis of the situation. It
31 includes flawed logic and statements that do not follow from the
32 information presented in the report. As a result, it does not reflect the
33 principles underlying the Las Cruces Comprehensive Plan. As a
34 consequence, the recommendation should not stand as justification for the
35 proposed rezoning.
36

37 In another document I've submitted before you in advance, I presented
38 you more details on the points that I'll introduce tonight. However, to keep
39 our focus and not prolong the comments, I want to emphasize three quick
40 examples of the flawed logic and inadequate analysis. The
41 recommendation is justified in part based upon the current zoning
42 designation, which is not in current use. That is clearly a justification for
43 some change, but no justification at all for the proposed change
44 specifically, which leads to a zoning designation that's completely
45 inconsistent with the entire surrounding neighborhood. This is simply
46 flawed logic. The recommendation also concludes that this rezoning

1 action will "ensure that any future uses remain compatible with the
2 surrounding neighborhood." Nothing in the proposal or zoning restrictions
3 justifies this conclusion. A wide range of land uses are permitted under
4 the proposed zoning category as listed in the Appendix A, almost all of
5 which are inconsistent with the current land use, and perhaps more
6 importantly, the land use that has existed in the region for the last 50
7 years. Again, this is flawed logic, justifying the request by claiming that it
8 promotes future consistency is demonstrably incorrect.

9
10 Finally, the recommendations concludes that the project will have "help
11 create a commercial/service zone node at the site which will serve the
12 surrounding residential uses." This too is demonstrably false. Permitted
13 land uses under the proposed zoning designation are intended to serve
14 communities of over 15,000 people. There is no such local community to
15 serve for any commercial purpose at that location. Two specific activities
16 are mentioned, a botanical garden and an electrical engineering firm.
17 Neither will serve the local community. The botanical garden would
18 duplicate a public park one block away that has wonderful native
19 vegetation and easy access for mobility impaired visitors. Views and
20 access to the Organ Mountains are much better achieved via many easily
21 accessible points along Dripping Springs Road and along Baylor Canyon
22 Road, both of which are approximately the same distance from most Las
23 Cruces as the proposed site, unlikely to be visited. The electrical
24 engineering firm is even less likely to serve the local community. Its
25 services are related to public works and commercial and industrial
26 projects, which include medium voltage electrical distribution systems,
27 sports lighting systems, and special telecommunication systems. No one
28 in this or any other neighborhood conceivably needs those services for
29 their residences. The proposed development will not serve the
30 surrounding neighborhood in any compelling way.

31
32 These are just a few examples of the many flaws of logic throughout the
33 recommendations to approve the rezoning project or request. It is clear
34 that a thorough and reasoned analysis of the case has not been
35 completed. This undermines the principles of the Las Cruces
36 Comprehensive Plan which has the explicit vision of "enhancing livability,
37 prosperity, and environment for the shared benefit of current and future
38 generations." Elements of that vision include reasoned development that
39 "encourages context sensitive development, promotes development that
40 compliments surrounding neighborhoods, supports efforts to preserve
41 natural open space, and enables neighborhoods to define their unique
42 identities and needs." The proposed rezoning accomplishes none of that
43 and is being justified based upon inadequate assessment and faulty
44 reasoning. The request should be rejected directly. On behalf of all of the
45 people here who raised their hands earlier and many who have are not
46 present tonight who have expressed these ideas to me separately, we all

1 urge you to reject the rezoning request for 4003 Tellbrook Road. Thank
2 you very much.

3
4 Kaiser: Okay, may I see another raise of hands for those who did not cede their
5 time to that gentleman? Okay, we'll start with this lady here in the front
6 row.

7
8 Nichols: Two minutes.

9
10 Kaiser: Two minutes. Please state your name.

11
12 McGuinn: My name is Marcie McGuinn.

13
14 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
15 and nothing but the truth under penalty of law?

16
17 McGuinn: I do have.

18
19 Kaiser: You have two minutes.

20
21 McGuinn: Thank you. I live in the county section of the Las Alturas subdivision for
22 about 22 years. And I wanted to state that we have to all remember that if
23 zoning C-3 is changed for this property, there's no going back. And any
24 kind of promises can be made before anything is built, but that site specific
25 plans cannot come in until the end of this process after the zoning has
26 changed. The proposed land use for this property is not consistent with
27 the character of the area. And while preliminary proposed plan
28 conceptually could work at this location if the zoning were changed.
29 Again, that would not be compatible with the character of the area. Some
30 of the land uses allowed under the zoning classification could be a
31 cannabis dispensary, cannabis consumption lounge, apartment, strip mall,
32 restaurant, clothing store, library, museum, health/exercise club. While we
33 welcome other single-family residence structures in the area, we don't
34 welcome the above mentioned items.

35
36 And as a last note, Mr. Wilcox the applicant, is also the owner of Lynco
37 Electric located at 1520 West Amador. That is the owner record of
38 address for this property that has been purchased in the last year. If by
39 chance Mr. Wilcox, president of Lynco Electric were to move his Lynco
40 offices from West Amador to Las Alturas, that would likely include the 15-
41 plus company electric trucks, several outbuildings, and materials and
42 supplies stored outside as shown in the Google satellite imagery and
43 pictures on the Lynco website. According to PPP records, Lynco
44 employees 23 people. This and their fleet of trucks would explain by one
45 of the drawing renderings posted or provided to the City includes plans for
46 a parking lot with at least 30 parking spaces. That's all. Thank you.

1
2 Kaiser: Thank you. All right folks I'm going to need help because I can't keep
3 track of everyone's hand raise, on this side of the room who else wishes to
4 speak but didn't cede their time. Gentleman with the (*inaudible*).
5

6 I have a very hard time hearing you.
7

8 Kaiser: Please state your name for the record.
9

10 Reser: Philip Reser.
11

12 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
13 and nothing but the truth under penalty of law?
14

15 Reser: I do have.
16

17 Kaiser: You have two minutes.
18

19 Reser: I live on Tellbrook Court. I'm going to be a neighbor to that botanical
20 garden. I would love to have a botanical garden as my neighbor. It has
21 been said that this does not fit the neighborhood, this beautiful residential
22 neighborhood. I walk my dog twice a day pass this property, that's 700
23 times in the past year. And what do I see when I walk by this property?
24 The I-25 flyover. It's kind of nice looking but it's not residential. This
25 needs to change. It's needs to be developed. They have some
26 complaints about noise from the development. A cement plant on the
27 property would not make any more noise than I got off of I-10/I-25 every
28 night. So any development there, I would appreciate. It would make the
29 area look good. And hopefully somebody would do something about that
30 rotting A-frame that I have to look at every day. Thank you.
31

32 Kaiser: Thank you. The gentleman in the tannish sweatshirt. Yes you. Please
33 state your name.
34

35 Gutschick: I am Vincent Gutschick. And I live in the county.
36

37 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
38 and nothing but the truth under penalty of law?
39

40 Gutschick: I do.
41

42 Kaiser: You have two minutes.
43

44 Gutschick: Okay, I was not privileged to see the list of approved uses under C-3C.
45 And some of them have been mentioned. The ones that were highlighted
46 earlier sounded rather benign. But I don't know that that can be affirmed.

1 I am wondering why a zoning of C-1 is not possible, which considerably
2 limits the amount of commercial activity. Now I was told outside the
3 meeting that C-1 has a limit on how much area can be covered. But I
4 went through the zoning regulations and I did not see that. In fact, it said
5 it's not applicable to state that there is an area limit. And I'd just like that
6 confirmed. So yes, if that's, can I have that confirmed somehow? And is it
7 then possible to consider C-1. Thank you.

8
9 Kaiser: Thank you. And if I may staff, we just get through everybody and we'll
10 come back and do any answers or comments. This gentleman over here.
11 Please state your name.

12
13 Allan: My name is Daniel Allan.

14
15 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
16 and nothing but the truth under penalty of law.

17
18 Allan: I do.

19
20 Kaiser: You have two minutes.

21
22 Allan: First of all, as an aside to the previous gentleman who complained about
23 the dilapidated rotten A-frame that is in the county. It needs to be
24 condemned. I've attempted to have that done but I don't think the City
25 should take the rap for that.

26
27 Now we've lived, I live in the county, just over the line there, and we've
28 lived there since 1983. And those of us who live there like it the way it is,
29 the rural atmosphere, the lack of development. There is at present no
30 commercial development in that area. It may be permissible, but there
31 isn't any that I'm aware of unless people are doing things sub-rosa.
32 Tellbrook Road is a major artery. Remington feeds into it, there's already
33 too much traffic. It's much too fast, and it's hazardous. And we don't want
34 anything to exacerbate that. One of our concerns is that despite the
35 assurances of Mr. Wilcox, at some point he or his estate will sell the
36 property. They will dispose of it and the new owners may return to the
37 City in an attempt to have it rezoned in order to build high density housing
38 or commercial whatever they want. And they'll be willing to bring the
39 utilities to the property. I have no idea what that costs, but at some point,
40 it may be feasible or have some other way of disposing of waste. And we
41 do not want to have that happen. That would impact our own property
42 values and the quality of life that we have enjoyed for these many years.
43 Thank you.

44
45 Kaiser: Thank you. Okay, is there anybody else on this side of the room that
46 wishes to speak that did not cede their time? All right, the lady in the

1 sweater, please come. Sure, yes, we'll go to the gentleman behind you
2 then.
3
4 Reynolds: Good evening.
5
6 Kaiser: Please state your name.
7
8 Reynolds: My name is Shannon Reynolds. I'm a Doña Ana County Commissioner. I
9 live in Las Cruces in the City limits.
10
11 Kaiser: Okay. Hold on. Let me swear you in real quick.
12
13 Reynolds: Sure.
14
15 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
16 and nothing but the truth under penalty of law?
17
18 Reynolds: Yes sir I do.
19
20 Kaiser: You have two minutes. Go ahead Commissioner.
21
22 Reynolds: Thank you. First, I want to say thank you guys, because this is, what
23 you're doing is difficult. And we have the same thing happens in the
24 county. Secondly, though, I'd like to say that as being representing the
25 county, and by the way my district goes through probably, two-thirds of it
26 also covers the City, that I have constituents on both sides of the line that
27 are concerned about what we do with planning and zoning. I think I've
28 received at least 60 e-mails and probably 20 phone calls over this issue in
29 the last three days, four days. So my constituents are certainly concerned
30 about what we do here. If I look at the district, there are a couple of
31 businesses south, there's a trailer park that's really in bad shape. I'm
32 trying to get that cleaned up or trying to get the guy to the burned trailers,
33 the dilapidated trailers out of there and get that fixed up. There's another
34 business also just south of that which actually deals in railroad ties, and
35 some other assorted landscaping equipment. And then about another two
36 miles down there's a trailer I think. So within about probably a mile, a mile
37 and a half some of the commercial is there. I personally believe that it
38 was there before all this development happened. And I don't think to
39 continue to put commercial businesses in this area is consistent with what
40 I believe this whole community is about. If you can go from Las Alturas
41 over to University and pretty much all the way to the mountain and not find
42 anything commercial. If you're looking for commercial we've got University
43 is opening up a whole area of commercial stuff that's going to serve this
44 neighborhood. And that is the kind of consistent plan that I see for
45 actually providing commercial development for this area. The residents
46 that I deal with, the ones I know both on the City side and the county side,

1 they're not going to be happy with this. I would recommend you consider
2 T-1, T-2. And also I agree with the risk of C-3. Once you make a C-3 it
3 doesn't go back. It's just a matter of time before somebody gets to all
4 those exceptions listed because they don't last forever. Thank you for
5 your time.
6
7 Kaiser: Thank you. Gentlemen in the very back. Please come forward. Please
8 state your name.
9
10 Fuller: Hi. My name is Roger Fuller, F-U-L-L-E-R.
11
12 Kaiser: And do you swear or affirm that the testimony you're about to give is the
13 truth and nothing but the truth under penalty of law?
14
15 Fuller: I do.
16
17 Kaiser: You have two minutes.
18
19 Fuller: And I just wanted to say that I've tried to imagine what kind of
20 development could go into this location. I live in that area. And I pass that
21 intersection many times a day. And there is nothing I can imagine that's
22 going to improve the quality of my life or my neighbor's life. But I can't
23 imagine a lot of development that's going to distract from that quality of
24 life. That's it. Somebody could have my other minute and a half.
25
26 Kaiser: Thank you. All right, moving over to my right hand side. Now can I get a
27 show of hands. Gentleman in the front right here. Please state your
28 name.
29
30 Lieberman: My name is Michael Lieberman.
31
32 Kaiser: And do you swear or affirm that the testimony you're about to give is the
33 truth and nothing but the truth under penalty of law?
34
35 Lieberman: I do.
36
37 Kaiser: You have two minutes.
38
39 Lieberman: And I've lived in the county for what 35 years now. Could you go to slide
40 six?
41
42 Kaiser: I'll have to ask staff to control that.
43
44 Banegas: Slide six.
45

1 Lieberman: Okay. This is the description of what they wanted to put in, botanical
2 garden, an engineering office, single-family residence, and accessory
3 building. Well, on Tellbrook there is also one very large barn has been
4 built already, an accessory building. An engineering office can be one or
5 two rooms, or a huge complex. If you change the designation of this area,
6 instead of changing the whole thing to C-3, part of it is a single-family
7 dwelling, part of it is practically a park. And you can designate an area
8 that will be compatible with a reasonable size structure not that different
9 from a single-family home, that can handle the office. So I request that
10 you turn down the C-3C and consider breaking up the area, if it's possible,
11 to allow what they are requesting, but only that. Thank you.

12
13 Kaiser: Thank you. And let's go to the lady in the pink sweater. Please state your
14 name.

15
16 Trujillo Hello, my name is Christine Trujillo.

17
18 Kaiser: And do you swear or affirm that the testimony you're about to give is the
19 truth and nothing but the truth under penalty of law?

20
21 Trujillo Yes I do.

22
23 Kaiser: You have two minutes.

24
25 Trujillo I grew up in Las Cruces. However I had moved away. Most recently been
26 living in Albuquerque. I live in the county now. I just recently moved back
27 last year. And part of the reason why I moved back was where I lived in
28 Albuquerque, I just bought a house in 2018. And right in front of my house
29 across from an arroyo channel was a 10 acre plot of land. My realtor at
30 the time told me just be aware that that could be developed. There is now
31 a four story, four building apartment complex under construction that it
32 certainly is not in a rural location like the area that most of us live in here,
33 it's much more housing and commercial or hospital in that area in
34 Albuquerque. But what I'm saying is that, that area of land that is now
35 being developed as an apartment complex is pretty obtrusive, a four story
36 apartment complex surrounded by residential homes. And so while I can
37 appreciate Mr. Wilcox having these ideas for a botanical garden, which
38 sounds beautiful, but shouldn't that be something that the City should
39 continue? How can an individual maintain and have a botanical garden
40 for the rest of his life and his heirs life, his family's life? How can you
41 maintain that? Shouldn't that be something for the City? So you know we
42 run the risk of having a four story apartment complex built in the future
43 should that land eventually be sold. And that completely changes the
44 landscape of that area. So I don't feel like you know looking forward that
45 that is the right type of thing for the community in that area. Thank you.

1 Kaiser: Can we have another show of hands? We're going to go to this lady right
2 here in the second row. Please state your name.
3
4 Hughes: Patty Hughes.
5
6 Kaiser: And do you swear or affirm that the testimony you're about to give is the
7 truth and nothing but the truth under penalty of law?
8
9 Hughes: I do.
10
11 Kaiser: You may begin.
12
13 Hughes: I just want to reiterate about the history of Las Alturas. Over 50 years it
14 has grown in the same direction. I was a member of a planning
15 commission that applied some of the initial zoning in that area in the
16 county, it was actually in the ETZ. What we heard was people wanted to
17 maintain the nature of the area that they had built. And as I followed
18 comprehensive plans over the years, people are giving the same input to
19 planning and zoning Commission's, to county commissions, that they want
20 to maintain the character of the area that they have built. The plan seems
21 to be pretty innocuous. But does that plan need to be adhered to? Can
22 10 acres of 60 foot high apartment buildings be erected without any further
23 approval for many body? We answer that, I'd like an answer to that
24 question. Also, if high dense 10 acres of 60 foot high apartment buildings,
25 I'm not sure how many stories that is, it used to be 10 foot per story. Is
26 that a six story? I don't think so. But what sort of population does that
27 generate? And we're not talking about doing any TIAs or anything else
28 with what the potential for this zone change could be. I'd just like to
29 reiterate what other people have said that that zoning is not compatible
30 with the area and everything I know about the input that people have given
31 about what they want to see. We have an area that is somewhat unique,
32 that is consistently grown in the same direction. People are saying
33 consistently that they don't want the nature of our area to change. There's
34 a lot of open ground out there. We really as far as the neighbors are
35 concerned, I doubt that we need a botanical park. So thank you.
36
37 Kaiser: All right, moving on up. Yes, ma'am. Yes. Please state your name.
38
39 Liptak: Charlotte Liptak.
40
41 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
42 and nothing but the truth under penalty of law?
43
44 Liptak: I do have.
45
46 Kaiser: You have two minutes.

1
2 Liptak: I live in the county. This requested C-3 designation is, as people have
3 said, not in keeping with the rest of the neighborhood. It's also not
4 appropriate or necessary for the owners stated use. The requested
5 commercial high intensity designation would still allow for retail businesses
6 and the building of apartments. There are currently no apartment
7 buildings in that area. There are a few duplexes, but everything else is
8 single-family. He could build what he wants allegedly with a residential
9 designation. In my opinion, I'm not an expert on the zoning code, or
10 perhaps an O-1 designation that would account for an office
11 neighborhood. Recently, I have seen electrical boxes put in for this
12 property, which show that at least 480 volts has been installed or is being
13 installed. This is far greater than any single-family home with an office
14 would appear to need. I'm very concerned that this property could
15 eventually be used for selling or growing cannabis if the C-3 designation is
16 allowed. That should not be allowed in a residential neighborhood. Thank
17 you for letting me address my concerns.

18
19 Kaiser: Thank you. All right, gentlemen in the white hat. Please state your name.

20
21 Gibbs: Les Gibbs.

22
23 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
24 and nothing but the truth under penalty of law?

25
26 Gibbs: I do.

27
28 Kaiser: You have two minutes.

29
30 Gibbs: I've lived in the same area 5025 Las Alturas, which is just up the road, just
31 north of this location, for 44 years. One of the reasons I live in the City
32 and pay City taxes and all the other stuff is that we have control over the
33 area. The area that the analysis that was done says that this is
34 compatible with businesses. Those businesses are in the county not in
35 the City. The City doesn't have any businesses in that area. The other
36 thing is, when I bought into that land, Las Alturas covenant said that you
37 had to have an acre for every house, and putting a business up was not
38 going to be one per acre, it's going to be much more than that and it's not
39 going to be compatible with that covenant. So the Las Alturas covenant
40 should still be in account for that area. Also, this is a two lane road that
41 supports all the Las Alturas areas and all the area south of there, that's
42 going to bring a lot more traffic to that area and cause more people to be
43 driving that road, which is already in a fairly bad shape. Also, that's one of
44 the best bicycling roads around in town, so I see many, many bicyclists
45 going on that road all the time. Adding more traffic is just going to cause

1 more problems for that. So anyway, as a City resident for 44 years on that
2 same property, I am very much against this proposal. Thank you.
3
4 Kaiser: All right. Is there anybody else on this side that wishes to speak? Yes,
5 ma'am.
6
7 Gleason: I'm Jeanne Gleason.
8
9 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
10 and nothing but the truth under penalty of law?
11
12 Gleason: I do.
13
14 Kaiser: You have two minutes.
15
16 Gleason: Thank you, sir. I live out in the Tellbrook area and have loved living there
17 for over 25 years. The pages I have given you show shows the A-frame
18 that I think a lot of, probably everybody in this room would say, "Oh, could
19 it please go down?" The biggest concern that I would add to what has
20 already been spoken to tonight is fire. And I work for the College of
21 Agriculture. I've worked for them for 45 years as faculty member, and it is
22 a very huge danger to all the people that live there. And the house right
23 now, the A-frame I think there's probably homeless people living there. It's
24 falling apart. It's got shingles, the old shakes for shingles, and a fire could
25 come through just like that. And my property, and probably many
26 properties here represented, would be consumed by the fire. So I'm very,
27 very concerned about that. And I asked that to be taken into
28 consideration. Because what happens on that land, could well engulf all
29 of us. Thank you.
30
31 Kaiser: All right. Anybody else on this side? All right, we're going to come back to
32 this individual right here. Please state your name.
33
34 McGuffey: Hi, I'm Barbara McGuffey.
35
36 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
37 and nothing but the truth under penalty of law?
38
39 McGuffey: I do.
40
41 Kaiser: You have two minutes.
42
43 McGuffey: Thank you. So one of the things that I take issue with is the comment that
44 staff made about the agricultural district being a placeholder. I don't
45 believe that's true. I'm very new to Las Cruces. I just bought my home
46 there in May. But one of the things I was very careful about was finding

1 protective covenants because I did not want to live in an urban district.
2 I've lived in a mixed development district. I want to live in a single-family
3 zone district. There are protective covenants that I'll give you for my
4 neighborhood, for my plat, that I believe may extend further. And they all
5 stop at single-family. And some people have said that there's agricultural
6 left in there. And when we bought our house, our realtor said that there's
7 maybe one house out there that was zoned to have a horse. So on Senna
8 there was a lot that just had a similar notice. And it was changed. It was
9 requesting a change from agricultural to single-family. So I think
10 agricultural has been, I'm sorry that the City has done away with that, but I
11 think it's part of the deed restrictions that the big slurs who own that
12 property specified when they allowed development of the whole area of
13 Las Alturas Estates. And also all the land I think south of Tellbrook is
14 deed restricted for single-family.

15
16 So I take issue with the fact that the surrounding area is not really a
17 Suburban Place type. It's deed restricted single-family, and those of us
18 who bought deed restricted single-family would like to see it stay that way.
19 So I would request that you deny this. And if there are other means that
20 this gentleman can achieve, you know he bought an agricultural district
21 zoned property. No one said he would get a changeup for that. So he
22 could figure out now what else he can do. And he can meet with the
23 neighbors. He offered to meet with the neighborhood. He's not met with
24 any of the neighbors that I'm aware of. The letters were sent back in
25 February of 2022. I think he needs to be sent back to the drawing board.
26 I think you need to deny this today, ask him to come back to the
27 neighborhood. Let staff work on it, see if there's a way that we can all get
28 happy. Thank you.

29
30 Kaiser: Thank you. Mr. Banegas, back to you.

31
32 Banegas: Mr. Chairman, Commissioners, members of the public. As folks were
33 talking, I kind of wrote down key points to provide answers to and/or
34 clarify. One individual questioned whether or not we could seek a zoning
35 designation that was a lesser designation than the C-3. That kind of
36 speaks to what I stated in the presentation where staff considered
37 opportunities to rezone the property using metes and bounds description
38 whereby we could designate zoning districts that are more specific to the
39 use that was being proposed and the uses, I should say plural, that were
40 being proposed. Why we cannot just drop it down from C-3 to C-1 is
41 within our code, there would be considerable size restrictions on the C-1
42 uses in general. What is being proposed, I believe could not be
43 accommodated because there's caps on the square footage of use, and
44 there's definitely caps on the square footage of acreage. So unless the
45 individual was willing to subdivide the property in compliance or
46 conformance with the C-1 district development guidelines, that wouldn't

1 work. But the opportunity to rezone using metes and bounds could work,
2 it just is going to take substantially more effort to do.

3
4 Another individual talked about conditions, and down the road the
5 conditions going away. If I heard correctly the assumption is that at some
6 point in time if this Commission and City Council ultimately votes in favor
7 of the zone change with conditions, if the assumption is that at some point
8 in time the property gets sold and the new owners want to do away with
9 those conditions, what would they need to do? Well, the answer is they'd
10 have to rezone again. They'd have to come back to this body and seek
11 either to change the designation in its entirety or seek the elimination or
12 modification of the conditions that were placed on the property to begin
13 with. So do they go away? They can, but not without some effort to do
14 so. Not without coming forward to this body and City Council to do so.

15
16 Parking for the office uses, yes parking can include any of the service
17 vehicles within reason, we're not going to allow the storage of large
18 equipment. I'm trying to think of some of the, like backhoes or anything
19 like that associated with the engineering offices. But service vehicles or
20 other vehicles to transport persons from A to B, that's fine. But beyond
21 that, no. Any outside storage related to the use would be substantially
22 restricted. So there's a whole screening type of requirement that has to be
23 dealt with. And so that would be something that'd have to be looked at,
24 specifically if that were to come forward.

25
26 The botanical gardens, just as a matter of clarification, in speaking with
27 the property owner, the question was asked whether or not it was for
28 personal enjoyment or commercial type use. And the answer I got was
29 more of a commercial type use. So if someone wanted to rent the
30 botanical gardens for a small gathering, they didn't want to expand to large
31 weddings or anything like that, but small gatherings, they could do so. So
32 in that context, it makes it commercial.

33
34 Can apartments be erected? Yes. The C-3 designation at present allows
35 dwelling units to be constructed at a minimum density of 10 dwelling units
36 per acre and a maximum of 40. The apartments is a land use designation
37 that was on the conditional or permitted use listing, the Exhibit A that I
38 showed in the presentation. And with the C-3 designation, unless there's
39 some additional condition to restrict it, the height of any apartments could
40 be at the development standards that is identified in the table and that's 60
41 feet. So that could happen as presented with the request this evening.
42 Are there apartments in the area? Yes, there's a few properties that have
43 a little bit more than just your standard duplex or triplex, but not many.
44 This property right along Micro Road, for example. When I drove by there,
45 I believe it was this one, they may be in a duplex or triplex configurations
46 but there's multiples of them. I think some of these other properties might

1 have duplex, maybe three units, but there's not many. So just want to
2 clarify that.

3
4 In terms of covenants, covenants were raised in one of the comments.
5 And just to clarify that, the City of Las Cruces does not enforce covenants.
6 So if there's any deed restrictions that are identified in any of the deeds for
7 properties that individuals purchase, the City doesn't enforce that. We
8 enforce the zoning code and the zoning on the land. So just wanted to
9 clarify that.

10
11 And in terms of the A-2 district, I know for a fact in working a little over 30
12 years with the City and the department, A-2 was used for both ag zoning
13 where you could have crops and animals and that kind of thing, but it was
14 also used as a holding designation when the property owner was
15 uncertain as to what they wanted to do with the property. And that kind of
16 covered the laundry list that I heard. If there's anything I missed, I'd be
17 happy to share.

18
19 Kaiser: Go ahead.

20
21 Vega: Just a quick question and I don't know if you'll know it or not. But is there
22 City bus service that goes on Las Alturas?

23
24 Banegas: Mr. Chairman, Commissioner Vega. I'm not aware of any at this time. No.

25
26 Kaiser: Are there any other questions from the Commission, comment?

27
28 Smith: I don't have any questions but I do have comments. Kind of taking some
29 notes myself. I've lived there for almost 25 years and someone brought
30 up cycling. I'm a cyclist and I mostly ride mountain bike, but I used to ride
31 a lot on the road. And I used to ride up to Tellbrook because it was a nice
32 place to climb, didn't have a lot of traffic. But (*inaudible*) ago you get to
33 the top of Tellbrook and you would turn around and come back down
34 because once you got to the top you know there wasn't anything there, but
35 (*inaudible*) mountain. Now you can take a right, head down, head up, La
36 Tierras Escondida is the development there. It's continuing to grow and
37 grow and grow. Every time I ride up there. If I ride from A mountain on
38 my mountain bike, I grew up there, I see this development. So I bring that
39 point up because one of the issues and complaints was about traffic.
40 Once you make that turn on Tellbrook off Las Alturas you're going into a
41 neighborhood that is increasingly being filled with more cars, because
42 there are more homes being built so there's more traffic on Tellbrook than
43 ever before. And so you know just, I'm looking at both sides of this as far
44 as the impact that it has on your community. Here there are a lot of
45 people. I mean there was a gentleman said he lived there since 1993. It
46 looks like a lot of you have lived there for quite a long time. So you live

1 there at a time when you know there were acre lots and there wasn't a lot
2 of home density as far as how close the houses are. And I'm sure you are
3 all aware that that has changed. And so I think it's important to, unless I'm
4 wrong, I mean I could be because every, it's still one acre lots. Okay.
5 Even going back to La Tierras Escondida. Okay. All right. So I stand
6 corrected on that. But my whole point is that there's this continual growth
7 going into that neighborhood where it's increasing traffic.

8
9 MANY AUDIENCE MEMBERS SHOUTING OUT, UNINTELLIGIBLE.

10
11 Smith: Excuse me, I'm sorry, ma'am.

12
13 WOMAN IN AUDIENCE SPEAKING, NOT AT THE MICROPHONE.

14
15 Smith: Right, but there's still private land that's being developed there. And I'm
16 pretty familiar with the BLM land, because I'm actually one of the Rangers
17 on the monument. So I know the boundary. But the traffic has increased
18 because there's still development happening up to the La Tierra
19 Escondida area. And so my whole point in this, and like I say I'm trying to
20 look at both sides of this is that you know this this ...

21
22 Nichols: Excuse me Mr. Chair. If we're going to receive comments to
23 Commissioner Smith, you'll have to come to the podium and state your
24 name for the record please, not just an outburst from the crowd. Thank
25 you very much.

26
27 Smith: And this proposal, where this land is has been there for a long, long time,
28 as you're all aware, and the impact that it would have from a neighborhood
29 compatibility, because according to the requirements for this property it
30 does meet that because as you make that turn and go up Tellbrook, once
31 you pass that area you're in your neighborhood, you're heading uphill, you
32 still have your views of the mountains and that's not being blocked. The
33 gentleman that talked about walking his dog every day, you know, yes it's
34 like along Las Alturas you have, basically Las Alturas is frontage road.
35 You may not see it that way, but it's basically a frontage road. And then
36 you have the highway. So to the west, you're not losing anything as far as
37 like your community and impact in your community because you have a
38 highway and a frontage road. It's not until you start to go up into your
39 neighborhood that it could be an impact as far as your quality of life, your
40 views of the mountains. Because I see the Organ Mountains every day,
41 it's part of my job, I drive there every single day. The view never gets old.
42 So those of you who live higher up in the, up in that community, you have
43 that spectacular view.

44
45 So as we move forward to make a decision on this proposal, really think
46 about how it's really impacting your quality of life. Having a botanical

1 garden is it really going to impact your quality of life? We can create a
2 narrative of what could possibly happen and make it a reality that he's
3 going to have an electrical business move there, but you don't know that.
4 That's up to the property owner to make that application, to make that
5 decision, if he wants to expand it he still has to go through that process to
6 do that. But we can't make a decision on that now based on what he
7 could do in the future. We can only make a decision based on what he's
8 allowed and permitted to do now. So I just wanted to just make those
9 comments.

10
11 AUDIENCE MEMBER SPEAKING, NOT AT MICROPHONE.

12
13 Kaiser: Hold on one minute ma'am. Let's see if there's any additional comments
14 from Commissioner. So I do have a couple of follow ups. It seems to me
15 that the crux of the matter is the potential uses under this zone change is
16 what's really concerning to folks. But the applicant has made it clear that
17 his desire is to do a botanical garden. So my question to staff is, is there
18 no other way to arrive at this ability to allow the applicant to develop this
19 botanical garden? Is this the truly the only route available? Other, I know
20 you mentioned the metes and bounds option, but it sounds like in that
21 option you're still sort of parsing out different land uses. So my question
22 is, if a botanical garden is really what he's interested in, is there no other
23 option to get there other than what's presented before us?

24
25 Banegas: Mr. Chairman, Commissioners. Keep in mind that in talking with the
26 applicant there's basically four uses that they're really interested in,
27 botanical gardens is one of them. But there's the office, there's a single-
28 family home, and then of course some accessory building for storage of
29 equipment. Metes and bounds is definitely one of them, you still, as you
30 indicated, still have to kind of go through it and parse out the type of uses
31 that wouldn't be deemed compatible. Beyond that, I think you know if they
32 wanted to go to a C-2 designation, they're still looking to parse out some
33 of the uses that are deemed questionable. So I don't know if we gain
34 anything there. Plus they're going to have to go through the effort of
35 subdivision to go to no more than one acre in size for the parcels they
36 create to chisel that 10.85 down to one acre chunks. So nothing easy,
37 and it's based on what I'm thinking, it's a whole lot like what we're going
38 through this evening.

39
40 Kaiser: Understood. And on the botanical garden piece is there a minimum lot
41 size requirement there? Or is that come into play strictly on those I guess
42 more traditional commercial uses, the office, the other things that the
43 applicant was wishing to do.

44
45 Banegas: The botanical gardens, basically, in that we're dealing with the entire
46 parcel, there's nothing proposed to be parceled out/subdivide it out. They

1 can make it as large as they'd like to. There's no restriction on a square
2 footage.
3
4 Kaiser: And they could do the opposite. They could make it as tiny as they
5 wanted to.
6
7 Banegas: Yes.
8
9 Kaiser: And then so the C-2 designate, the parcels that are C-2 to the south,
10 what's that minimum lot size requirement?
11
12 Banegas: The C-2 has a minimum of 10,000 square feet and a maximum of one
13 acre.
14
15 Kaiser: Okay, so theoretically, a metes and bounds approach, they could carve
16 off, figure out what their botanical garden is, carve off a couple of parcels
17 to get to that minimum/maximum size and they could then do a C-2
18 designation there. Because from my perspective, folks you've got C-2
19 already there. So I mean the things that we're talking about tonight can
20 already in some respects happen at the southern corner. So to say that
21 commercial was completely inconsistent or incompatible, you know that's
22 not entirely true either. So I'm just sort of thinking out loud here of
23 potential options that might be on the table so thank you. I don't have any
24 further questions. So before we ... Commissioner Smith.
25
26 Smith: I just have one question for Mr. Banegas. You know, this proposal that
27 the owner has to be in compliance with Elevate Las Cruces
28 Comprehensive Plan. And looking at your zoning decision criteria, he did
29 meet that. And under that community environment, it says to encourage
30 efficient land use development patterns that accommodate projected
31 growth in a sustainable manner. So he's met that. And so that, I think it's
32 important that we look at he's meeting you know the criteria. And so that
33 would mean that he is going to work within the criteria that are established
34 here to develop this property, correct.
35
36 Banegas: Mr. Chairman, Commissioner Smith. That is correct. To the best of my
37 knowledge in terms of the information presented to the City, what he
38 originally came forward with was very limited, very limited. The land use
39 or the permitted land use list was an afterthought of how can we ensure
40 down the road that we're restricted. It opened up a little bit. I'm not going
41 to say it did not. But in terms of consistency with the comprehensive plan
42 and what he's achieving to do, there was a lot of alignment that staff saw
43 with the plan, with policy.
44
45 Smith: All right. Thank you.
46

1 Kaiser: All right, so it sounds like there's a couple of folks in the audience that
2 wish to come back up and speak. Can I get a show of hands? Okay, I
3 see one, two, three, four, five, six, seven, eight. I'm going to give folks 30
4 seconds for those that raised their hand. I recognize it's not a lot of time,
5 but we've heard the issues. We understand them. And we need to make
6 a decision here tonight. And I'm sure you all will appreciate, regardless of
7 what the outcome is, of not being here till 2:00 a.m. So 30 seconds. Can
8 get the show hands again. I'm going to start here with this gentleman.
9
10 Milligan: Thank you. Brook Milligan. So I'd like to make a statement about that you
11 referred to the commercial designation on the south side of Tellbrook
12 Road. That is an artifact, that's a leftover designation from 1974,
13 according to the City GIS records of these plots. So it's not representative
14 of its own of the current land use by any means. And I would also like to
15 return to my point earlier, that the goal of all of this master plan is to
16 enable neighborhoods to define their unique identities and needs. And so
17 that it's not purely about individuals here that are proposing changes. It's
18 about all of the issues that he has been faced with tonight, as well about
19 us as a neighborhood defining what those unique needs ought to be.
20 Thank you.
21
22 Kaiser: Can I get, the gentleman in the green shirt? And since this is your first
23 time, I'm going to need to swear you in. So please state your name.
24
25 Vaughn: My name is Matthew Vaughn.
26
27 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
28 and nothing but the truth under penalty of law?
29
30 Vaughn: Yes.
31
32 Kaiser: Please go ahead.
33
34 Vaughn: Okay. I think Mr. Banegas, you pointed to the property south of the parcel
35 in question and called them apartment complexes several times. But each
36 one of those properties, each one of those duplexes is on its own parcel.
37 It's not an apartment complex as a whole. So it's different than what you
38 said. And Mr. Smith, you pointed out that all the further, or there's further
39 development going on up Tellbrook Road. However, all that development
40 is residential, none of its commercial. I think you made that point that lots
41 of other folks here have been saying.
42
43 Nichols: Time, Mr. Chairman.
44

1 Kaiser: We'll come to the Commission. Gentlemen in the jacket right there, no,
2 right there. This gentleman over here. Sorry Commissioner. The brown
3 jacket.
4
5 Laskin: Ron Laskin.
6
7 Kaiser: And do you swear or affirm that the testimony you're about to give is the
8 truth and nothing but the truth under penalty of law?
9
10 Laskin: Yes.
11
12 Kaiser: You have 30 seconds.
13
14 Laskin: So we heard about a botanical garden, a clothing store, a cafe, but once
15 you open up Pandora's box and make it a C-something or other, he's
16 increased the value of his property, he'll sell to somebody else and they'll
17 do what they damn please.
18
19 Kaiser: Commissioner. I'm going to go to you and then I'll go to the lady in the
20 back.
21
22 Reynolds: Thank you. First I want to tell everybody ...
23
24 Kaiser: Please state your name.
25
26 Reynolds: My name is Shannon Reynolds, County Commissioner. Tell everyone
27 that I am trying to deal with the A-frame. It's takes it's process. Okay.
28 Secondly, we had a developer who was trying to build a subdivision next
29 to where I live, which is across the highway. They started when the ETZ
30 there and they were turned down for a certain specific purpose. Then the
31 county took it over, they applied again and they were turned down for the
32 same reason. Lastly, the City took it over, they tried to do it again and
33 they were actually going to get approved until we appealed because they
34 tried to violate the same (*inaudible*) that was established 1992. I see the
35 same thing happening here. Once they get to C-3 s they can put all this
36 stuff on there, they can take two acres and put what they want, take the
37 other five ..
38
39 Nichols: Time, Mr. Chair.
40
41 Reynolds: Acres for what they want. I don't think that we have any control over this.
42 I'm concerned.
43
44 Kaiser: Please state your name. I'm going to need to swear you in.
45
46 Thornock: Hi. Nickie Thornock and I live in the county.

1
2 Kaiser: Do you swear or affirm that the testimony you're about to get is the truth
3 and nothing but the truth under penalty of law?
4

5 Thornock: I do.
6

7 Kaiser: You have 30 seconds.
8

9 Thornock: Okay, I am in favor this. I think change is good. I think a botanical garden
10 to walk my kids to would be cool. Going to the Tellbrook Park is nice, but I
11 have kids, I have a dog, we walk the neighborhood. To have a second
12 place to stop would be really fun. Even if they put in a cafe to send my 16
13 year old out of the house, not have to drive to Pic Quick, that would be
14 nice. There is a very large subdivision going in past the trailer sales. So if
15 we're talking about traffic, maybe we should address that rather than the
16 house that's going to be on the corner that already gets tons of traffic and
17 three, four, or five cars is not going to make any bigger of a difference.
18

19 Nichols: Time, Mr. Chairman.
20

21 Thornock: Than the Airbnb's do.
22

23 Kaiser: Thank you. All right, anybody else on this side? All right, moving on to
24 the man in the hat. Please state your name for the record and you have
25 30 seconds.
26

27 Zemek: John Zemek: I live in Las Alturas.
28

29 Kaiser: He's good.
30

31 Zemek: Yes sir, I promise to tell the truth and whole truth and nothing but the truth.
32

33 Kaiser: If you've already spoken ...
34

35 Zemek: I've got two things so I'm going to take more than 30 seconds. I'm in
36 constant contact with the guy with A-frame house. If anybody wants to
37 know more a little bit about that. I'm in constant contact with the guy. I
38 can tell you just about anything you want to know about it. And so you
39 can come and see me afterward. This reminds me of a story that
40 happened up in Michigan, that someone was trying to get their place
41 rezoned. It was zoned for agriculture and they were trying to get it
42 rezoned so they could build some kind of a store. And everybody said no,
43 no, no, you can't do that, you can't do that. Everything was negative.
44

45 Nichols: Time, Mr. Chairman.
46

1 Zemek: So he said okay and he went home and he said it's zoned for agriculture.
2 So he went home, put a fence around it, and built a pig farm.
3
4 Kaiser: Yes, ma'am. Please state your name.
5
6 Heavner: My name is Nancy Heavner. .
7
8 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
9 and nothing but the truth under penalty of law?
10
11 Heavner: I do.
12
13 Kaiser: You have 30 seconds.
14
15 Heavner: I do live in the county and I live on one acre. The majority of those homes
16 that built out in the Las Alturas area are one acre or more. I have an
17 absolute passion for our state and the fact that you're going to build a
18 botanical garden. Think about water, please. Our water is being depleted
19 each and every day. We bring in another garden that needs more water.
20 We bring in more apartment complexes. Think about light pollution,
21 please. One of the things that we enjoy in the county is the ...
22
23 Nichols: Time, Mr. Chairman.
24
25 Heavner: Fact that we don't have the lights. I ask that you vote no and reject this
26 offer.
27
28 Kaiser: Thank you. Is there anybody else who wishes to speak on the side? Yes,
29 sir, with the hat. Please state your name for the record. And you have 30
30 seconds.
31
32 Gibbs: Les Gibbs. The property that's right adjacent to this, just to the north of
33 that, is about 80 acres and it's owned by Mr. And Mrs. Soules. Now Mr.
34 Soules has passed away. But they have been trying to protect that area
35 and keep it in the rural for this whole time. This is going to be a domino
36 effect. If you approve it for this little area, the next thing will be that 80
37 acres will have a motel on it. Thank you.
38
39 Kaiser: Yes ma'am. Please state your name for the record. And you have 30
40 seconds.
41
42 Liptak: Charlotte Liptak. And if the owners intention is simply single-family home
43 with an office and his botanical garden, then he should have no problem to
44 put another condition that there will be no apartment buildings allowed
45 either and no cannabis sales or growth. Thank you.
46

1 Kaiser: Thank you. All right. I am going to close public comment. And I'm going
2 to return back to the Commission. Any additional comments, questions,
3 thoughts? I'm going to just come back real quick, because there's been a
4 lot of discussion about the compatibility and just want to return to the
5 comprehensive plan, quite frankly. This area, the entire Tellbrook
6 neighborhood within the City of limits is identified as a suburban
7 neighborhood. That's the place type. According to our comprehensive
8 plans, suburban neighborhoods provide for low to moderate density
9 residential land uses, intermixed with areas of commercial development.
10 Representative land uses include single-family residential, detached or
11 attached, multifamily residential, commercial services, single-family urban
12 residential zoning districts and multifamily residential zoning districts. So
13 just from my perspective, going back to what staff's presented tonight, I
14 mean I think this is totally consistent. I think a botanical garden is not
15 wildly out of character. So those are just my parting thoughts. Looking for
16 a motion.
17
18 Bennett: I make a motion to approve 10.2 with the conditions under Exhibit A.
19
20 Vega: I second.
21
22 Baum: Board Member Acosta.
23
24 Acosta: I vote no.
25
26 Baum: Board Member Vega.
27
28 Nichols: One second please. Your vote "no" needs to be supported by findings or
29 fact that was contrary to the presentation by staff.
30
31 Garrison: You just need to state them for the record.
32
33 Nichols: Statement for the record.
34
35 Acosta: I vote no based on community output tonight.
36
37 Baum: Board Member Vega please.
38
39 Vega: First of all, thank you all for coming out. It's a late night, it's freezing. And
40 it's obvious how much everyone cares about your community. I personally
41 love the idea of a botanical garden. I'd like to see it where it's accessible
42 to everyone in the community. This is a little bit outside of, I guess we
43 have like a more dense population. But with that said, I am hopeful that
44 the owner will follow through on the plan proposed. And based on staff
45 recommendation, I vote to approve.
46

1 Baum: Board Member Bennett.

2

3 Bennett: I vote to approve based on staff recommendation, the thoroughfare plan,
4 as well as the purpose and intent of the code.

5

6 Baum: Board Member Smith.

7

8 Smith: Before I vote, I respect and appreciate you know the strong feelings you
9 have for your community. That's very important within any community and
10 especially within our City. But the City does continue to grow and this
11 area that where you live will grow. And this is a very small attempt at
12 someone to grow their business, grow an opportunity to bring something
13 good to this area. And so it's just something that is not going to have a
14 negative impact only if you decide that it is a negative impact. So I am
15 going to approve. So yes with conditions.

16

17 Baum: Chair Keiser.

18

19 Kaiser: Before I give my vote, just a reminder that this does require approval by
20 the City Council. So for those of you all who came out tonight, there is
21 another opportunity to express your perspective viewpoints at City
22 Council, regardless of the outcome tonight. So with that, I vote yes, based
23 on staff recommendation and consistency with Elevate Las Cruces.

24

25 Baum: Passes four to zero.

26

27 AUDIENCE MEMBERS SHOUTING OUT.

28

29 Baum: Excuse me four to one.

30

31 Kaiser: It passed four to one.

32

33

34 **12. ADJOURNMENT (6:21)**

35

36 Kaiser: So with that, we need a motion in a second to adjourn.

37

38 Vega: I make a motion to adjourn. And congratulations again.

39

40 Smith: And I second.

41

42 Kaiser: All in favor.

43

44 MOTION PASSES UNANIMOUSLY.

45

46 Kaiser: Meeting's adjourned.

Agenda Item #11.1.

- 1
 - 2
 - 3
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-
- Chairperson

Vincent Banegas

From: ROBERT KUHN <KUHN_LIPTAK@msn.com>
Sent: Friday, January 20, 2023 2:39 PM
To: Vincent Banegas
Subject: Rezoning Request for 4003 Tellbrook

Dear Mr. Banegas. Thank you for the information you provided to me about the above topic when we spoke a few days ago. This is written to register our objection to the rezoning request filed by the owner of the above property (hereinafter "owner"). A C-3 designation is not in keeping with the rest of the neighborhood, which is overwhelmingly single-family dwellings. In fact, the properties that abut the owner's property are all single-family dwellings. Even with the conditions that you stated the owner is willing to put on the C-3 designation, such a zoning designation is still not appropriate. The rezoning would still be designated "commercial high intensity", which the rest of the area is not, and the designation would still allow for retail business and apartment uses. Such uses would be totally inappropriate for this residential area. You stated that the owner wants to build a single-family dwelling for himself and also an office for his business, and also a botanical garden/park. None of those uses require any commercial zone designation, let alone one that would be designated "high-intensity". In my review of the city code sections concerning zoning designations and their allowable uses, the owner could do what he says he wants to do with one of the residential zone designations, or at most, an O-1 designation (office neighborhood). Please do not destroy our low-density, almost rural, residential area, by allowing commercial high-intensity uses in the middle of it. Thank you for your time. Charlotte Liptak and Robert Kuhn

Vincent Banegas

From: Daniel Allan <dallan575@gmail.com>
Sent: Friday, January 20, 2023 4:33 PM
To: Vincent Banegas
Subject: Case #: 22ZO0500020

Dear Mr. Banegas,

Thank you for meeting with me earlier this week. What you told me was helpful and I don't think any of the neighboring property owners have reservations about the Wilcox's plans. What is a concern is what might happen when the property is ultimately sold, either by the Wilcoxes or their estate. Any limitations on the use of C-3 zoning would have to be binding on any future owner.

Sincerely,

Daniel Allan

Vincent Banegas

From: Julie Skinner <colorado.julie007@gmail.com>
Sent: Friday, January 20, 2023 11:48 PM
To: Vincent Banegas
Subject: Tellbrook/Las Alturas

We are writing in hopes to deter what is intended for this corner. When we bought our home in Las Alturas, our paperwork stated that the original owner of all this land intended for it to be used only for rural-residential, not commercial. Las ALturas Rd is only a 2 lane road, we like it that way, we dont want it wider to encourage more traffic. If it is left as 2 lanes, there will be alot of traffic!

We also bought in this area for the "dark skies" that we can experience. We want it left just like it is. If this happens the way the owner wants, with commercial, parking lot lights and additional street lighting on Las Alturas would be needed, and would take away the dark skies effect in this area.

Please dont allow this.

Steven and Julie Skinner
4825 Tobosa Rd
Las Cruces

Vincent Banegas

From: Jack Crabtree <jack2jesse@gmail.com>
Sent: Saturday, January 21, 2023 11:00 AM
To: Vincent Banegas

We oppose the Las Alturas/Tellbrook Zoning change proposal to high density commercial.

Thanks

Jack

Redman Road
Las Cruces, NM

Vincent Banegas

From: Barbara McGuffey <bamcguffey@gmail.com>
Sent: Saturday, January 21, 2023 12:05 PM
To: Vincent Banegas; Kyle Metzgar; sreynolds@donaanacounty.org
Subject: OPPOSITION TO ZONING CHANGE, Case # 22Z00500020, 4403 TELLBROOK/LAS ALTURAS DR

To whom it may concern,

Having recently purchased my home in Las Alturas Estates (a deed restricted single family residential neighborhood), I am OPPOSED to the major zoning change proposed for this area.

The uses allowed under Commercial High Intensity represent a very significant change from the currently zoned Agricultural use for this 11 acre tract adjacent to Las Alturas Dr. The future impact should be evaluated more carefully before this zoning change is considered or approved.

The surrounding neighborhoods deserve to be better informed about this proposed zoning change and allowed additional time before any approval is considered.

Please register this email as my opposition in the PUBLIC HEARING scheduled for Tuesday, Jan 24.

Barbara McGuffey
4845 Tobosa Rd
Las Cruces, NM 88011
409-771-1159 cell

Vincent Banegas

From: Susan Conant <susanjconant@icloud.com>
Sent: Saturday, January 21, 2023 3:21 PM
To: Vincent Banegas
Subject: Zoning change

I'm a home owner in the Las Alturas area and I am not in favor of the zoning change on the 11 acre lot on Las Alturas and Tellbrook to high density commercial.

Susan Conant
4850 Sage Road
Las Cruces 88011

Sent from my iPhone

Vincent Banegas

From: Vicki Simons <vrsimons@comcast.net>
Sent: Saturday, January 21, 2023 3:31 PM
To: Vincent Banegas
Subject: Zoning change on Tellbrook Road

Mr. Banegas,

The zoning change being requested seems disingenuous. The owners say they plan a botanical garden with a couple of buildings on approximately 11 acres.

Why have they asked the zoning to be high intensity commercial instead of low intensity commercial?

Their plans seem rather low intensity. A botanical garden at that location seems frankly ridiculous.

They seemingly have other plans for after the zoning change.

At present the area is completely residential and we residents ask that it remain so.

I hope the Planning Commission will reject their request.

Thank you for your attention.

Vicki and John Simons
4052 Sotol Drive

Vincent Banegas

From: John Bethel <foxholemine@gmail.com>
Sent: Saturday, January 21, 2023 3:41 PM
To: Vincent Banegas; Kyle Metzgar; sreynolds@donnaanacounty.org
Subject: Zoning change at Las Alturas/Tellbrook

As a home owner here in the area, I have no problem with a shopping center built in this location.
John Bethel
6865 Lazo Del Norte 88011
(530)391-6028

Sent from my iPhone

Vincent Banegas

From: Carlo Mora <cao473@gmail.com>
Sent: Saturday, January 21, 2023 6:33 PM
To: sreynolds@donaanacounty.org; Kyle Metzgar; Vincent Banegas
Subject: concerned citizens

Dear city representatives,

We are residents of Las Alturas area (Sotol Drive). With great concern, we became aware of a zoning change request from agricultural to high density commercial in Las Alturas and Tellbrook.

We are writing you to express our opposition to such a request for multiple reasons.

- the plans are vague and do not disclose critical information about the zoning request, which in my opinion, appears to be disingenuous.
- If the zoning change is approved, the land can be developed in many different non-residential ways beyond the preliminary information. Thus, no control or oversight is possible if the change is approved.
- There is no logical explanation for the zoning request. The zone has been residential since its inception, and there are no compelling benefits for the neighborhood.
- Such zoning will bring unintended negative consequences to the neighborhood, including increased traffic, noise, and light pollution, just to name a few.

I hope you seriously consider the concerns of concerned citizens like us.

Respectfully,

Carlo & Gabriela Mora.

Vincent Banegas

From: Aol Mail <pennymcandrews@aol.com>
Sent: Sunday, January 22, 2023 9:53 AM
To: Vincent Banegas
Subject: Zoning Change at Las Alturas and Tellbrook

Please vote no to changing the zoning at Las Alturas and Tellbrook. This is a residential neighborhood and we residents would like it to stay residential. A change to commercial zoning would have a negative impact on our home values.

Thank you.

Barbara and Robert Kaiser

Vincent Banegas

From: Heidi McConnell <granola1961@gmail.com>
Sent: Sunday, January 22, 2023 10:02 AM
To: Vincent Banegas
Subject: 11 Acre Zoning Change Las Alturas and Tellbrook

Hello,

We live at 5445 Remington Rd in Las Alturas and we oppose the zoning change. This will destroy our neighborhood by introducing too many people into our quiet, rural neighborhood. We moved to Las Alturas to get away from commercial zoning and to live in a peaceful environment. We plan to attend Tuesday's meeting.

Sincerely,

Brian and Heidi McConnell

Vincent Banegas

From: Kimberly Barnett <kbarnett@barnettharley.com>
Sent: Sunday, January 22, 2023 11:20 AM
To: Vincent Banegas
Cc: sreynolds@donaanacounty.org
Subject: Las Alturas/Tellbrook Zoning Change

Please do not approve zoning change referenced above, as we treasure our dark sky neighborhood. We have heavily invested in our property, and turning our neighborhood into a commercial zone will devalue the property and desire to live in Las Alturas. Thank you.

Kimberly Barnett
Sent from my iPhone

Vincent Banegas

From: jill begemann <javajill@gmail.com>
Sent: Sunday, January 22, 2023 12:20 PM
To: Vincent Banegas; Kyle Metzgar; sreynolds@donaanacounty.org
Subject: Las Alturas/Tellbrook Zoning change

Greetings,

I love my neighborhood of Las Alturas. We are centrally located and have easy access to all Las Cruces has to offer. But, our neighborhood still has a rural feel. We still have open spaces to explore. Our night-skies shine bright with stars and we love when we see and hear owls, coyotes, and even an occasional javelina or bobcat. The quails and hawks that make their homes here are a constant source of delight. We love how peaceful and safe we feel here.

Changing the zoning for the 11 acres in question for commercial use, will greatly impact all of the above. Not to mention the increased traffic, especially at the University Ave. exit.

I am all for Las Cruces adding services and businesses to meet the demands of a growing population, but wouldn't it make more sense to put new business in the areas that are already zoned for business and have new housing communities being built? Las Alturas is a mature neighborhood with no major new housing developments

Thank you for your time and consideration,
jill Begemann

Vincent Banegas

From: Sam M <samclam23@gmail.com>
Sent: Sunday, January 22, 2023 4:15 PM
To: Vincent Banegas; Kyle Metzgar; sreynolds@donaanacounty.org; Tessa Abeyta
Subject: Against Zoning Las Alturas/Tellbrook as High Density Commercial

Hello Vincent Banegas, Kyle D. Metzgar, Tessa Abeyta, and Shannon Reynolds,

I'm emailing the four of you as I have recently become aware of alarming plans to rezone the 11 acre lot at the corner of Las Alturas Drive and Tellbrook Road to become High Density Commercial. These plans are baffling to me as this area is a nice quiet neighborhood and is clearly not a fit for a commercial business. I have no doubt that should this area be rezoned, our neighborhood will be greatly negatively impacted by increased traffic, noise, and light pollution.

Another alarming part of this proposal is the vagueness of the plans for the lot, once this lot is rezoned we will have no guarantee that the preliminary plans will be followed. Who's to say they won't build a liquor store, cannabis dispensary, or bar in that spot once it's zoned favorably for those businesses?

I implore you to speak out against and stop this ridiculous rezoning as it will only have negative impacts on our neighborhood. Surely there are lots already zoned appropriately where these developers can build their business.

Thank you for your time.

Sincerely,
Sam McGuinn

Vincent Banegas

From: TR Flores <starkflores@msn.com>
Sent: Sunday, January 22, 2023 5:09 PM
Subject: Rezoning request at Las Alturas/Tellbrook

I am writing to ask that you please reject this request for rezoning in this residential area. We live very close to this on Acacia Rd and SotoI, and specifically chose this area because of the location away from commercial businesses and in a country setting. Las Alturas is already very well traveled, and this would cause it to be more busy and more dangerous due to the traffic a business would attract. It would also set a very unsettling precedent about commercial properties in this country residential area.
I implore you to please vote to reject the rezoning.

Thank you for your time,
Robin Flores

Vincent Banegas

From: TOBIAS FLORES <tobiasflores1@gmail.com>
Sent: Sunday, January 22, 2023 5:19 PM
Subject: Possible rezoning at Tellbrook/Las Alturas

I am writing to ask that you please reject this request for rezoning in this residential area. I live very close to this on Acacia Rd and Sotol, and specifically chose this area because of the location being away from commercial businesses and in a country setting. Las Alturas is already very well traveled, and this would cause it to be more busy and more dangerous due to the traffic a business would attract. It would also set a very unsettling precedent about commercial properties in this country residential area.

I implore you to please vote to reject the rezoning.

Thank you,
Tobias Flores

Vincent Banegas

From: TeriMatt <terimatt@comcast.net>
Sent: Sunday, January 22, 2023 6:49 PM
To: Vincent Banegas
Subject: Comments on zoning change case 22ZO0500020 - 4003 Tellbrook Rd.

Dear Mr. Banegas,

I am writing in regards to a rezoning case on will be hearing this Tuesday, 24January2023. The case number is 22ZO0500020.

My wife and I moved to the Las Cruces area in 2009 because we liked the area and found a nice home in a quiet and dark neighborhood.

Some of the things we particularly liked about the Las Alturas area were the dark nighttime skies, the wildlife, the native plant landscaping, and the quiet of the purely residential area. This area is inhabited with retirees, young families, university employees, and missile range employees.

We were alarmed to recently see a sign on the property at 4003 Tellbrook Rd. notifying of a zoning change request. The current zoning is A2 rural agricultural, and the requested zoning change is to C-3C (commercial high intensity). We live less than 900 ft from this property and drive by the property multiple times daily.

This is a completely residential area, and a high-intensity commercial property is against the nature of the area. We regularly see people cycling, walking, or jogging on the neighborhood roads and along Las Alturas Dr. We are incredibly concerned that a business will bring increased traffic, light pollution, and noise to our quiet neighborhood.

Please vote no on a change to the zoning of this property, and keep the nature of our quiet neighborhood intact.

Sincerely,
Matthew and Theresa Vaughn
4222 Colt Rd.

Vincent Banegas

From: Brook Milligan <brook@nmsu.edu>
Sent: Sunday, January 22, 2023 8:07 PM
To: Vincent Banegas
Cc: brook Milligan; Katy Milligan
Subject: Las Cruces Planning and Zoning Commission case 22ZO0500020: 4003 Tellbrook Road
Attachments: tellbrook_4003-20230122b.pdf

Dear Mr. Banegas,

We are writing in regard to the upcoming Las Cruces Planning and Zoning Commission meeting (Tuesday, 24 January 2023) that will be reviewing case 22ZO0500020, a request to rezone the parcel at 4003 Tellbrook Road to a high intensity commercial category. We wish to register our strong objection to this request. Our reasoning is documented in the attached memo to the Commission; in short, such a change is entirely inconsistent with existing land use, is inconsistent with parts of the Las Cruces Comprehensive Plan, and is being justified in ways that cannot be supported by the claims put forth.

Please present the attached memo to the Commission, so that the information contained can be part of the decision-making process.

Thank you very much for conveying this information to the Commission.

Sincerely,
Brook and Katy Milligan

To: City of Las Cruces Planning and Zoning Commission
From: Brook and Katy Milligan
Subject: Case # 22ZO0500020: zoning change for 4003 Tellbrook Road
Date: January 22, 2023

You are currently considering a request by Raylyn and Lezlie Wilcox to change the zoning for the property located at 4003 Tellbrook Road from A-2 (Rural Agricultural District) to C-3C (Commercial High Intensity-Conditional) (Case # 22ZO0500020). We are writing to register our **strong objection** to this change.

As long-time residents of the neighborhood, we value highly many of its characteristics that would be adversely impacted by the proposed rezoning and development that can thereafter occur. These include lack of traffic and associated noise, dark skies at night, and natural open spaces resulting from low-density residential development. These are all features that figure prominently in determining the value of property in this area, which will be reduced as a result of a rezoning action that enables commercial development. We see no compelling benefits that would mitigate these points.

Furthermore, as described below, we feel that the report prepared for the January 24, 2023 Planning and Zoning Commission meeting does not adequately reflect a thorough understanding of the neighborhood context and arrives at conclusions that are not justified. As a result, we, and a number of other residents in the neighborhood, feel that **the recommendation to grant this request is not warranted and that the the request should be rejected.**

Current zoning provides no justification for commercial designation The first considerations in the report are that the current zoning designation (A-2) is non-conforming, and that it must be updated. Nonconformance is certainly a reason to update the zoning. However, in no way does that by itself support a conclusion that rezoning to a high intensity commercial category is warranted. As elaborated in the report, remnants of A-2 zoning designation are simply an artifact of inability of the Planning and Zoning Commission staff to keep up with the consequences of introducing new zoning categories. **This situation, a simple historical artifact, provides no justification for the proposed zoning change; it simply indicates that an update is needed.**¹

Proposal is inconsistent with land use and zoning in area and creates a Spot Zone The report concludes that commercial development at 4003 Tellbrook is consistent with surrounding zoning and land use. It is clear that this conclusion derives from a narrow view of the surroundings, both in extent and nature; a view more consistent with the local conditions leads to the opposite conclusion. Every parcel, except one, along Las Alturas Drive until well south of Tellbrook Road is designated in residential or the remnant A-2 categories; all are developed as residential. The exception, on Tellbrook Road, is designated as commercial. However, this too is a remnant from 1974, does not reflect the current land use, and should not be used to justify an overly narrow interpretation of the

¹It is clear that rezoning to a limited intensity residential category would address many of the considerations identified in the report, including the need to update to a current category.

residential development in the area, there is no such local community to be served. If the intent is to serve the wider Las Cruces community, siting services elsewhere with greater accessibility would be *immensely* more consistent with this goal. The "botanical garden" mentioned in the project might appear to be a unique service to the community. However, this cannot be taken at face value for at least three reasons. First, it will be too small to be relevant; the plans indicate no more than approximately 2.5 acres devoted to this purpose. Second, the immediate community surrounding the site clearly has no need for such a facility; indeed, there is a very nice park one block away that already provides at least as many benefits, is open to the public, and includes paved walks accessible to mobility-impaired visitors. Finally, the broader Las Cruces community is very unlikely to visit the proposed facility; the Organ Mountains themselves are easily visited, much better views are available from existing facilities and turnouts all of which are accessible to the mobility-impaired, and the 496,330 acres encompassing the Organ Mountain-Desert Peaks National Monument provide much greater opportunities for people of all ages and abilities. **The proposed development will not serve the surrounding neighborhood in any compelling way, and simply serves as a foothold for future development that is *inconsistent* with existing land use.**

Conclusion It is clear that the recommendation to approve the rezoning request for 4003 Tellbrook Road (i) does not adequately accommodate knowledge about characteristics of the site and its surroundings, (ii) reaches conclusions that cannot be fully supported by the claims made, and (iii) will degrade many neighborhood features that residents value and that figure prominently in determining property values in the neighborhood.

On behalf of ourselves, as well as all of our neighbors who have expressed objection to this project but are unable to attend the public hearing, we hope you will take these issues into account. This project is not in fact consistent with the surrounding area, does not meet all the criteria of the Las Cruces Comprehensive Plan, and does not serve those it purports to.

Please reject this rezoning request directly and recommend strongly that the Las Cruces City Council do the same.

Vincent Banegas

From: McGuinn Family <mmcgufamily@gmail.com>
Sent: Sunday, January 22, 2023 9:05 PM
To: Tessa Abeyta; Vincent Banegas; Kyle Metzgar; sreynolds@donaanacounty.org
Subject: Fwd: Las Alturas and Tellbrook zoning change proposal
Attachments: 4003 Tellbrook Rd staff packet.pdf

Councilor Abeyta,

Please see my message below regarding the rezoning change proposed for an 11 acre piece of land located at the corner of Las Alturas and Tellbrook. Additionally, I understand employees at the City planning department have reviewed this proposal, completed a report, and submitted it for approval at the next planning and zoning commission meeting. (attached for your convenience.) At the bottom part of page four of the report, it is indicated that a review by staff determined the change would not adversely impact the surrounding area and that future uses that may be authorized by the proposal will be in keeping with the surrounding area. This is absolutely false. The surrounding area is residential, not commercial. It appears that nobody from the city took the time to review the actual current use for the area before preparing this report and including that statement.

Making a radical zoning change such as this in a quaint neighborhood like Las Alturas would be a travesty. There will be no limit to the commercial projects to be built once zoning is changed.

Concerned property owner,
Marcie McGuinn

----- Forwarded message -----

From: McGuinn Family <mmcgufamily@gmail.com>
Date: Fri, Jan 20, 2023 at 8:54 PM
Subject: Las Alturas and Tellbrook zoning change proposal
To: <vbanegas@las-cruces.org>, <kmetzgar@las-cruces.org>, <sreynolds@donaanacounty.org>

Dear Sirs,

Please accept this email as my formal opposition to the change in zoning on the above mentioned location. This is a residential neighborhood and commercial zoning is not welcome for the area.

Marcie McGuinn
Resident

Vincent Banegas

From: Vince Gutschick <vince.gutschick@gmail.com>
Sent: Sunday, January 22, 2023 9:17 PM
To: Vincent Banegas
Subject: Adverse zoning along Las Alturas Dr. at 4003 Tellbrook

Dear Mr. Banegas,

A rezoning proposal just below the Las Alturas area has cropped up again after about a 10-year hiatus. A developer wants to rezone 4003 Tellbrook, in a wholly residential neighborhood, to high-density commercial. This makes no business sense, for one, in that no one shops in the area, but, should it be pushed and actually start businesses, the traffic and noise would be a big problem for area residents.

The parcel seems to be in the city but the county may have a say. A number of us in the area will be attending the preliminary zoning hearing in the City Council Chambers on Tuesday. We'd appreciate your support in listening to our reasons for preventing the rezoning.

Many thanks,
Vince Gutschick
4904 Calabazilla Dr. 88011
(575) 571-2269

--
Chair of the Board, Las Cruces Academy lascrucesacademy.org
Prof., Emeritus, Biology, NMSU
vince.gutschick@gmail.com (575) 571-2269

If Shakespeare had been able to Google.... oh, never mind - Roy Blount, Jr.

Our so-called leaders still think they can bargain with physics and negotiate with the laws of nature – Greta Thunberg,
The Climate Book

Common sense is so rare these days, it should be classified as a super power - T-shirt cited on the Code Project Lounge

What does Mark Zuckerberg do on a webpage where you're supposed to click on "I'm not a robot" - Vince Gutschick

Vincent Banegas

From: Kathy Cooke <consultcooke@hotmail.com>
Sent: Sunday, January 22, 2023 9:17 PM
To: Vincent Banegas; Kyle Metzgar; sreynolds@donaanacounty.org; Tessa Abeyta
Subject: Tellbrook/Las Alturas

Dear Government official,

I have lived in Las Alturas for 20 years, first on Redman Rd and now on Charles Russell. I **STRONGLY OPPOSE** re-zoning the Tellbrook/Las Alturas corner to commercial use for the following reasons.

Such development would greatly change the nature of this neighborhood, not for the better. Residential property here draws upper economic buyers, who would not favor the sight of such development as a gateway to their neighborhood. The taxes paid by such residents should not be jeopardized by an off-putting near-by commercial zone.

The residential development since I have been here has greatly increased noise and traffic, and will continue to do so. This is inevitable, but should not be exacerbated by commercial enterprise.

Delivery trucks would pose a safety hazard in that area.

There is no need at that location for the likely businesses that would be sought. University Ave provides every sort of service and product.

The long-closed gas station on Stern is evidence that this general area will not support such endeavors.

While I support commercial development when it is properly sited and serves a verified need, this proposal does not meet those requirements.

Kathy Cooke
5587 Charles Russell Rd

Vincent Banegas

From: Jackie Hand <memejack46@gmail.com>
Sent: Monday, January 23, 2023 8:24 AM
To: Vincent Banegas; kmetzer@las-cruces.org
Subject: Fwd: Corner of Las Alturas and Tellbrook

----- Forwarded message -----

From: Jackie Hand <memejack46@gmail.com>
Date: Sun, Jan 22, 2023 at 11:00 AM
Subject: Corner of Las Alturas and Tellbrook
To: <sreynolds@donnaanacounty.org>
Cc: <vbanegas@lascruces.org>, <kmetzgar@lascruces.org>

Good morning,

On August 7th 1985 we moved from Alabama to Las Cruces at 5333 Derringer Road. One of the draws for buying in this area was the view of the mountains and the surrounding area. As a young couple it was difficult to find affordable housing with interest rates at 12 5/8%.

I have remained in my home, raised two boys, and retired from teaching in 2011 after 26 years teaching Special Education. During this time, I have diligently maintained my home. There has been development around the area especially up Tellbrook and out the Remington area, but this area has remained very stable.

I am asking that you DO NOT vote in favor of the promised development of land on the corner of Las Alturas and Tellbrook. When new families arrive, most comment that the area and surrounding area was one of the reasons for buying here. This High Density Commercial development would not add value to our present location, only providing more traffic and unwanted deterioration of our community. Tell me one area that has been developed that adds to that community.

Thanks for your consideration,

Jackie Hand

Vincent Banegas

From: Bob and Beth Czerniak <bethpackyourbag.49@gmail.com>
Sent: Monday, January 23, 2023 8:28 AM
To: Vincent Banegas
Subject: Las Alturas zoning change

Please stop the zoning change at Las Alturas. This is a residential area!

Also, not far from here on Stern drive, a commercial area was completed about 15 years ago. Today, you can see the Stern road retail gas station /car wash is empty x 5 years now ending up as a failed attempt at commercial development.

Vincent Banegas

From: Kyle Metzgar
Sent: Monday, January 23, 2023 9:24 AM
To: Celina Brusuelas
Cc: Vincent Banegas
Subject: RE: Zone Change

Good morning,

I am forwarding this email to Vincent Banegas, as he is the member of our staff that is assigned to it. If you have any questions or need any clarification he would be the best person to speak with since his knowledge is far greater than mine in respect to that. He is cc on this email as well as direct contact is VBanegas@las-cruces.org

Thank you

Kyle D. Metzgar
Planning Technician Sr./Community Development/ Building & Development Services
Direct: 575-528-3064 Main: 575-528-3043, kmetzgar@las-cruces.org



From: [Celina Brusuelas](#)
Sent: Monday, January 23, 2023 9:22 AM
To: [Kyle Metzgar](#)
Subject: Zone Change

Sent from my iPhone

I am opposed to the zoning change submitted for the corner of Tellbrook & Las Alturas. This would negatively impact the residential neighborhood in Las Alturas.
Please allow only housing in this area.

Celina Brusuelas
Tamarisk Rd

Vincent Banegas

From: Kyle Metzgar
Sent: Monday, January 23, 2023 9:25 AM
To: AOL Mail
Cc: Vincent Banegas
Subject: RE: Zoning at Las Alturas and Tellbrook

Good morning,

I am forwarding this email to Vincent Banegas, as he is the member of our staff that is assigned to it. If you have any questions or need any clarification he would be the best person to speak with since his knowledge is far greater than mine in respect to that. He is cc on this email as well as direct contact is VBanegas@las-cruces.org

Thank you

Kyle D. Metzgar
Planning Technician Sr./Community Development/ Building & Development Services
Direct: 575-528-3064 Main: 575-528-3043, kmetzgar@las-cruces.org



From: AOL Mail <pennymcandrews@aol.com>
Sent: Sunday, January 22, 2023 9:56:03 AM
To: Kyle Metzgar <kmetzgar@las-cruces.org>
Subject: Zoning at Las Alturas and Tellbrook

Dear Ms. Metzgar:

Please keep the zoning at Las Alturas and Tellbrook as Residential. A change to Commercial zoning would have a negative impact on our lovely neighborhood, increasing traffic and decreasing home values.

Thank you.

Barbara and Robert Kaiser

Vincent Banegas

From: Kyle Metzgar
Sent: Monday, January 23, 2023 10:19 AM
To: Bonnie Poulos
Cc: Vincent Banegas; Adam Ochoa; John Castillo
Subject: RE: Information about a rezoning case
Attachments: 4003 Tellbrook Road.pdf

Good morning,

Attached is a copy of the staff report that is given to our Planning and Zoning Commissioners so they have an understanding of the proposed zone change prior to the presentation at the scheduled meeting tomorrow, January 24, 2023

Thank you

Kyle D. Metzgar
Planning Technician Sr./Community Development/ Building & Development Services
Direct: 575-528-3064 Main: 575-528-3043, kmetzgar@las-cruces.org



From: Bonnie Poulos
Sent: Saturday, January 21, 2023 9:50 PM
To: Development Services
Subject: Information about a rezoning case

Hello,

I am researching information for my mother who is a resident of Las Cruces. There is a proposed rezoning going before the Planning and Zoning Commission on Jan 24, 2023. I would like to know how I can obtain the planning report, proposed development plan and other information provided to the commission about this rezoning request. The item is 10.2 on the agenda, 4003 Tellbrook Rd, A2 to C3-C, case # 2270500020.

Thank you for your assistance.

Sincerely,
Bonnie Poulos

Sent from Mail for Windows

Vincent Banegas

From: Sheri Margulies-Semel <sherinanda@yahoo.com>
Sent: Monday, January 23, 2023 12:52 PM
To: Vincent Banegas
Subject: Las Alturas Zoning Changes

I do not support the proposed zoning changes on Las Alturas adjacent to Tellbrook from agricultural to commercial. This area is an established residential, one-family home area, and should remain as such. This is not an area where commercial zoning would be appropriate. Single-family homes, larger lots, minimal traffic on our roads are all hallmarks of this area and should remain so. Please support this position when the council takes a vote.

Thank you -
Sheri Margulies-Semel
5040 Noche Bella Loop
Las Cruces, NM 88011

Vincent Banegas

From: Kristen Roybal <kvroybal@gmail.com>
Sent: Monday, January 23, 2023 2:01 PM
To: Vincent Banegas
Subject: Las Alturas/Tellbrook Zoning Change

Good afternoon,

I'm writing you to let you know that I'm high opposed to the Las Alturas/Tellbrook zoning change proposal to high density commercial zoning of the almost 11 acre lot at the corner of Las Alturas and Tellbrook from agricultural to high density commercial zoning.

This zoning change would completely change the area and make room for possible undesirable businesses and cheap apartments. As a resident off of Remington, I do not support this proposed re-zoning!

Kristen Roybal

Vincent Banegas

From: Mary and Len Hampton <mixedcompany.hampton@gmail.com>
Sent: Monday, January 23, 2023 2:05 PM
To: Vincent Banegas
Subject: Las Alturas-Telbrook Rezoning Proposal

My husband and I are solidly against the proposal to re-zone the 11 acre parcel at Las Alturas and Telbrook to high intensity commercial. This property should be zoned agricultural or residential ONLY. This is a well established neighborhood and the quality of resident's lives would be negatively impacted by this zoning change. There is no guarantee that this property couldn't eventually end up being developed into a strip mall, mini-mart or any other type of commercial venture.

Las Alturas Drive is already filled with speedy drivers, especially in early morning and late afternoon hours. Adding more traffic will put residents in harm's way. Putting ANY commercial industry onto this piece of property-that's right in the middle of a family neighborhood-would open the door for more re-zoning and commercial development in the Las Alturas area, which would lead to the degradation of the area's property values and the ability of residents to practice quiet enjoyment of the properties we've worked so hard to own.

Thank you,

Mary and Len Hampton
4845 Las Alturas Dr, LC, 88011

Sent from my iPhone

Vincent Banegas

From: Tina Hales <tvsmith@nmsu.edu>
Sent: Monday, January 23, 2023 4:32 PM
To: Vincent Banegas; Kyle Metzgar; sreynolds@donaanacounty.org; Tessa Abeyta
Subject: Las Alturas/Tellbrook Zoning Change Proposal

Importance: High

We would like to state our opposition to the proposed change from agriculture to a high intensity commercial zoning for the 11 acre lot at the corner of Las Alturas and Telbrook.

Thank you,

Bret and Tina Hales
5186 Hunters Chase Rd.
Las Cruces, NM 88011
575-650-5063
575-621-5603

Vincent Banegas

From: 4831 <4831@theisen.lc>
Sent: Monday, January 23, 2023 6:09 PM
To: Vincent Banegas; Kyle Metzgar; sreynolds@donaanacounty.org
<sreynolds@donaanacounty.org>; Tessa Abeyta
Subject: 4003 Tellbrook Road zone change 24 January 2023

Planning & Zoning Commission case 22ZO0200020

We are neighbors of the parcel, homeowners residing at 4831 Quail Run Avenue.

We take issue with two elements of the Staff recommendation:

- I. "The proposed C-3C district designation is the most appropriate ... "
 - a. What the Wilcoxes propose appears to be "small-scale ... within a neighborhood area" (C-1, Commercial Low Intensity): A layperson's reading of C-1 Allowed Land Uses does not appear to raise impediments to their proposal.
 - b. More to the point, with a C-3C designation, the Wilcoxes' less-thoughtful successors or assigns could undertake "retail, service, and wholesale activities within the City and a regional market" that residential neighbors and anyone who must use Las Alturas Drive would find more nuisance than asset.
- II. "The subject property falls within the Suburban place type." From a short distance east of Las Alturas to Tortugas Mountain, north and south of Tellbrook Road, the properties affected by "a commercial/service node at the intersection of Las Alturas and Tellbrook Road" are or would be zoned R1-c or RE.

We understand that the property must be rezoned and that there is precedent for commercial use of parcels fronting Las Alturas, but we urge the Commission to be more sensitive the character of the impacted neighborhood.

Kathrin J Theisen
T E Theisen III

Vincent Banegas

From: barbara gomez <bgomrn@yahoo.com>
Sent: Monday, January 23, 2023 7:33 PM
To: Vincent Banegas
Subject: Zoning change

Good evening Ms. Banegas. We have lived at 5322 Derringer Rd for the past 15 years and want to express our opposition to approval of zoning change from agricultural to high density commercial for the following reasons:

Increased traffic, lights and noise. This neighborhood currently doesn't have street lights so that the natural sky light can be seen. Anything commercial will deter the natural lighting.

Decrease access out of the neighborhood. There is currently one way out of our neighborhood which already slows traffic and an increase in additional traffic would significantly negatively impact residents accessing the city.

Displacement of wildlife. As animal rights activists this is greatly disturbing. With the zoning change to commercial, the disruption to the natural environment will be devastating.

In closing, we do not agree with the proposal of rezoning this land from agricultural to commercial. Thank you for your consideration.

Barbara Gomez and Dana Critchlow

Sent from my iPhone

Vincent Banegas

From: Sanjay Lahiri <sanjaylahiri@gmail.com>
Sent: Monday, January 23, 2023 10:27 PM
To: Vincent Banegas
Subject: rezoning of las Alturas and Telbrook

Respectfully,

I strongly object to the plans to rezone the land at the crossing of Las Alturas and Telbrook. There is NO NEED for commercial development in this peaceful residential area. We have seen plans for Aggie Uptown only 1.5 miles north and the traffic for Burrell has made the roads quite busy. We are close to the strip malls and restaurants on University. More development in this area will increase visual and light pollution. Riding bikes will become even more dangerous.

I would be very grateful if you would bring these concerns to the attention of the relevant officials at the Tuesday January 24 meeting.

I have lived at 5055 Noche Bella Loop, Las Cruces, NM 88011 since 2011. I pay all required taxes, and do not support or encourage a decision to put in a bunch of commercial establishments in the midst of, and at the entrance of a peaceful residential neighborhood.

Thank you for your kind attention.

Sincerely,

Sanjay Lahiri, MD
575 444 9156

--

Sanjay Lahiri, MD
575 444 9156

Vincent Banegas

From: Betty Beltran <bettybeltran@comcast.net>
Sent: Tuesday, January 24, 2023 7:53 AM
To: Vincent Banegas
Subject: Re-zoning on Las Alturas

In 1986, we purchased our home on Derringer Road and moved in with our two young daughters. We chose this area because it is a nice, quiet residential area and a great neighborhood to raise our children. We are now retired and enjoy daily walks. We often walk along Las Alturas to the beautiful NMSU campus. Many people in our area walk, ride bikes, and walk their dogs. The night skies are amazing with the stars being clearly visible. We do NOT want the zoning to be changed from residential to high density commercial. We love our quiet neighborhood. Changing the zoning will bring additional traffic and bright lights.....two things we do NOT want.

Please DO NOT change the zoning.....

Betty Beltrán
5203 Derringer Road

Sent from my iPad

Vincent Banegas

From: Sandra Hurley <nmsHurley@gmail.com>
Sent: Tuesday, January 24, 2023 11:44 AM
To: Vincent Banegas; Tessa Abeyta; Kyle Metzgar; sreynolds@donaanacounty.org
Subject: Proposed High Density Commercial Zoning Change

Greetings, this is to register our strong opposition to the proposed change from Agricultural to High Density Commercial Zoning for the 11 acre parcel on the northeast corner of Las Alturas and Tellbrook.

When we moved to Las Cruces few years ago, this was the only neighborhood we considered. Its unique characteristics include that it is totally residential and homes have adequate space around them to allow for quiet and privacy. The proposed zoning change can completely change that, among other things by increasing traffic, noise, and light pollution. We see no compelling benefits to the neighborhood

Once zoned HIGH DENSITY COMMERCIAL, the land can be developed in many different ways far beyond any currently stated plans.

The proposed rezoning action is entirely inconsistent with the nature of the surrounding region, which is entirely residential.

We urge you to vote "no" on the proposed rezoning action.

Sincerely,

Thomas & Sandra Hurley
4015 Tamarisk Road
88011

Vincent Banegas

From: Vincent Banegas
Sent: Tuesday, January 24, 2023 1:24 PM
To: Vanessa V; James A. Bennett; Enrico Smith; Luis Guerrero; Joaquin Acosta; scott.kaiser.lcpz@gmail.com
Cc: Raylyn Wilcox; Adam Ochoa; John Castillo
Subject: FW: Proposed Las Alturas/Tellbrook zoning change

Here is another one I'm forwarding along.

Vincent M. Banegas
Interim Planner – CLC Community Development
vbanegas@las-cruces.org
(575) 528-3085

Accela Portal Register:
<https://aca-prod.accela.com/lascruces/Account/RegisterDisclaimer.aspx>

Accela Portal Log-in:
<https://aca-prod.accela.com/lascruces/Default.aspx>

From: Christine Trujillo <christntnm@gmail.com>
Sent: Tuesday, January 24, 2023 1:15 PM
To: Vincent Banegas <vbanegas@las-cruces.org>
Subject: Proposed Las Alturas/Tellbrook zoning change

Good afternoon,

I hope this finds you well. I am emailing to voice my concern and extreme opposition to the proposed change on the land at Las Alturas/Tellbrook location. I recently moved to the Las Alturas South area in January of 2022 from Albuquerque. Part of my move back to Las Cruces was personal family reasons....the other was because directly across from a home I had bought in 2018 was a 4 story, 4 building apartment complex that was about to break ground on a 10 acre piece of land, called the Wintergreen Luxury apartments on the Westside of Albuquerque. This complex is now under construction and is an obtrusive development no matter how you look at it. The neighborhood right next to it will now have people in the apartment complex able to look directly into their backyards and homes. The people of Las Alturas DO NOT want this kind of development, be it an apartment complex or commercial use in our neighborhood, not only from an aesthetic standpoint, but also from an environmental standpoint. We have enough water challenges as it is, we do not need a large 'something' taking up even more of our water resources, as an apartment complex or commercial development would do. I strongly object to this proposed change as I know many others in our area do as well. I will be at the City council meeting tonight to voice my opposition.

Thank you for your time.

Regards,

Agenda Item #11.1.

Christine Trujillo

Vincent Banegas

From: Katherine Harrison Rogers
Sent: Wednesday, January 25, 2023 8:34 AM
To: Adam Ochoa; John Castillo; Vincent Banegas
Subject: FW: Telbrook zoning change

A little late...

Katherine Harrison-Rogers, AICP
Senior Planner/ Community Development/ Planning
Direct: 575-528-3049 Main: 575-528-3043, krogers@las-cruces.org

<https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.realizelascruces.com%2F&data=05%7C01%7Cvbanegas%40las-cruces.org%7C8b6796f47d204dba9e5b08dafee98a87%7Cdf81c53fa8c04af5a182cf3bce372944%7C0%7C0%7C638102576260414460%7CUnknown%7CTWFpbGZsb3d8eyJWljoImMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwILCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=F2er9mZWKRASIEWr2GNQJUtAuLnah%2BRM8xu6jOWO%2B6Q%3D&reserved=0>

-----Original Message-----

From: Chris Miller <cm289@yahoo.com>
Sent: Tuesday, January 24, 2023 6:13 PM
To: Katherine Harrison Rogers <krogers@las-cruces.org>
Subject: Telbrook zoning change

Good evening ,

I would like to urge you and the commission to deny the requested zone change at 4003 Telbrook. This has been a rural residential area since the 1970s. People, myself included, moved to this area to avoid commercial districts and the associated high-intensity traffic. The owner's of this property knew the zoning when they purchased it. Please don't punish the surrounding neighbors, many who've lived here for decades, to accommodate a single family's commercial venture. Unfortunately I cannot attend tonight's meeting but I wanted to pass along my thoughts on the matter.

Thank you,
Chris Miller

Sent from my iPhone
[O|||||O]

Agenda Item #11.1.

The following attachment was submitted to staff on March 9, 2023, by Mr. Brook Milligan and according to the document footnote, 179 area residents that oppose the zone change at 4003 Tellbrook Road. This information as presented in the attachment was **NOT** provided to the Planning and Zoning Commission on 1/24/23 for their consideration in that it was submitted to staff well after the subject meeting date. It is being included as an attachment to this CAES at the request of Mr. Milligan.

Case 22ZO0500020:
Development options for 4003 Tellbrook
Brook Milligan and 178 Las Cruces*
March 9, 2023

Neighborhood request for action

Our group of concerned community members (179 as of March 9, 2023) is compelled (i) to state our opposition to the rezoning request for 4003 Tellbrook Road, Case 22ZO0500020, and (ii) to offer actions that would be consistent with our shared views of development in Las Cruces. We are explicitly asking each City Council member (i) to act on his or her own good judgement, (ii) to demonstrate consistency with the *Elevate Las Cruces* Comprehensive Development Plan, and (iii) to carefully consider what community members are requesting.

The City Council has worked hard to identify important principles and values guiding development in our community. We applaud that effort and share many of the Council's goals.

Our opposition to the rezoning request is based upon the fact that it unnecessarily undermines those core values, because the values and the request are fundamentally incompatible.

One of the most important principles in *Elevate Las Cruces* is that development shall proceed in a context-sensitive manner (Policy CE-3, Plan page 98). The neighborhood surrounding 4003 Tellbrook is 1,113 acres of entirely residential development, a convergence of 50 years and thousands of decisions by community members that reflect an unmistakable common vision of community identity. Rezoning to allow commercial development is contrary to that vision, contrary to the City Council goals expressed in *Elevate Las Cruces*, and detrimental to conveying our shared community values to everyone entering the City from the south.

We fully recognize that *Elevate Las Cruces* seeks to foster an intentional and guided development process, one based upon principles. To that end, we identify actions that reflect shared community values, will not compromise the character of the surrounding neighborhood, and are compatible with the Council's vision in *Elevate Las Cruces*.

We request that the City Council adopt one of the actions we propose, e.g., a low-density residential zoning or an open-space zoning. Either of these actions would clearly reflect the Council's desire to "enhance liveability, prosperity, and environment for the shared benefit of current and future generations" (*Elevate Las Cruces* Vision Statement, page xv).

*The information presented here is supported by a petition signed by 179 (as of March 9, 2023) residents of Las Cruces and its surroundings; see Section 6 (page 8) for the contents and signers of the petition, and Figure 3 (page 12) for the geographic area covered by the concerned community.

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1 Guiding principles: *Elevate Las Cruces* Comprehensive Plan

Intentional and thoughtful development depends on a clearly articulated set of guiding principles. The Las Cruces Comprehensive Plan, *Elevate Las Cruces*, was adopted by the City of Las Cruces in 2020 as a “commitment to enhancing our livability, prosperity, and environment for the shared benefit of current and future generations of Las Cruces” (Vision Statement, Plan Executive Summary, page xv). The Plan outlines a number of policies that are central to achieving the stated vision, that is, to achieving sustainable neighborhoods that community members are proud to be a part of. The Plan explicitly recognizes that “pride in one’s neighborhood is intrinsically linked to establishing a neighborhood identity” (Plan page 177). As a result, the most prominent core principles address how development interacts with neighborhood identity.

Context-sensitive development Of all the principles outlined in the *Elevate Las Cruces* Comprehensive Plan, this is the most important, because it is essential for creating and respecting community identity, which makes the central goals of sustainable growth and shared community vision achievable. This principle emphasizes the fact that development decisions are not the consequence of arbitrary outlines on a map but rather are the result of nuanced decision-making that considers the specifics of each case. The importance of this principle is reflected in its recurrence multiple places within the Plan and elsewhere. For example, Policy CL-1.1 (Plan page 183) states that planning shall “enable neighborhoods to define their distinct identities and needs,” which promotes Goal CL-1 of “promoting community pride through neighborhood identity” (Plan page 182). The Plan states that development shall “encourage context sensitive development” (Policy CE-3, Plan page 98) and shall “promote development that complements surrounding neighborhoods” (Policy CE-5.1, path 114). This idea is also central to the Las Cruces Land Development Code (2023), which seeks to “ensure that proposed development is suitable and appropriate for a given parcel of land, based on its location and its environmental characteristics” (Code Section 37-41.A.) and that a spot zone with adverse effect on the surrounding neighborhood shall not be created (Code Section 2-382(a)(7)). Finally, this idea surfaces in Planning and Zoning Commission staff justifications to “ensure that any future uses remain compatible with the surrounding neighborhood” (e.g., Case 22ZO0500020, January 24, 2023).

Optimism: pride of place (Plan page 1) People are proud to be Las Cruces, but that feeling is fragile and depends on a continual sense of shared goals. Development decisions should foster that feeling, not disrupt it, which requires careful consideration of the broader impacts of development. Ongoing sense of neighborhood and community pride is ensured by context-sensitive development.

Sustainability A primary guiding principle is that “public and private investment [shall] improve the quality of life of all residents while preserving the most treasured aspects of the surrounding natural landscape” (Plan page 1). Applying this principle requires a nuanced understanding of what defines the quality of life for members of neighborhoods and communities, a process that is highly dependent on a context-sensitive approach to development.

Complementarity “Building form and scale shall complement surrounding neighborhoods” (Policy CE-5.1, Plan page 114). Complementarity is inherently context-sensitive and requires that development decisions be made on geographic scales that are relevant to existing land use and established neighborhood character.

Following these principles, and accomplishing the goal of intentional development that motivates the entire *Elevate Las Cruces* Comprehensive Plan, requires substantive evaluation of the context in which development is occurring. It is clear that this is a widely recognized theme that has been embraced by the Las Cruces City Council.

2 Neighborhood background: entirely residential

By embracing the principles established in the *Elevate Las Cruces* Comprehensive Development Plan, the Las Cruces City Council seeks to promote development that “establishes neighborhood identity” (Plan page 177). Understanding the neighborhood surrounding 4003 Tellbrook Road is therefore crucial for evaluating and understanding the implications of the proposed rezoning request.

General features: a completely residential neighborhood The area surrounding 4003 Tellbrook Road is a contiguous neighborhood of 1,113 acres, of which 83% is built and much of the remaining are arroyos unsuitable for development. Except for one parcel devoted to a volunteer fire station (0.1% of the area), the entire area is residential development (Figure 1). These represent a broad diversity of lots and present a diversity of housing options to the community. For example, two thirds of the development is on lots of less than one-half acre, while only 11% are in the range of $\frac{3}{4}$ – $1\frac{1}{4}$ acres. This development has emerged over the course of 50 years and represents a remarkable consistency among the thousands of individual decisions that have brought this community together. There is an obvious and unmistakable common view that the character of this neighborhood is residential and should remain that way.

Current zoning categories: overwhelmingly residential Unsurprisingly for a neighborhood that has developed over 50 years, during which time active zoning categories have changed, the set of zoning categories that apply to development in this neighborhood is not uniform (Table 1). Despite the different categories, however, there is a clear pattern evident: this is a completely residential neighborhood with over 97% zoned residential. The five parcels zoned C-2 are no exception to this pattern; all are recorded by the Doña Ana County Assessor as residential land, two are owner-occupied residences, the remainder contain small numbers (e.g., duplexes) of rental units. The commercial zoning category for these parcels dates to 1974 and is not an appropriate reflection of current (or even past) land use; future commercial development there would also be incompatible with the character of this neighborhood. Likewise, the parcels zoned A-2 are anomalous; Planning and Zoning Commission staff document that this is a remnant from at least 22 years ago (Case 22ZO0500020, January 24, 2023) and similarly reflects neither current use, past use, nor compatible future use.



Figure 1: Location of parcels within the neighborhood surrounding 4003 Tellbrook Road (shaded). A total of 101 and 401 current residences lie within the two arcs; those correspond to the range in number of apartment units required by Las Cruces Land Development Code for a 10 acre parcel. Clearly, the density of allowed commercial development far exceeds the density of existing residential land use anywhere within this entire neighborhood.

Neighborhood zoning categories				
Zoning		Parcels		
Category	Description	Number	Area	Percent
D1-L	Low density residential - limited	658	747.1682	80.8500
R-1a	Single-family medium density	72	47.6894	5.1604
D1	Rural agricultural district (county)	35	43.0597	4.6594
RE	Single-family residential estate	29	31.1092	3.3663
R-1aC	Single-family medium density - conditional	67	24.1527	2.6135
A-2	Rural agricultural district (city)	9	23.9839	2.5953
C-2	Commercial medium intensity	5	2.3703	0.2565
R-3	Multi-dwelling medium density	4	1.8393	0.1990
R-2	Multi-dwelling low density	3	1.6267	0.1760
Inst	Institutional/Government	1	1.1417	0.1235

Table 1: Zoning categories within the neighborhood surrounding 4003 Tellbrook Road. The zoning categories are listed in descending order of the developed area (acres and percent of total) to which they apply. Categories D1, D1-L, and Inst are within Doña Ana County; the remainder are within the City of Las Cruces.

Gateway to Las Cruces: messaging our values The neighborhood in question spans almost 2 miles along Las Alturas Road and I-25, and forms the most obvious visual impression of Las Cruces for everyone entering from the south. Thus, for many the character of the neighborhood has a lot to say about the character of Las Cruces. Over its 50 years of existence, the neighborhood has developed to embody at least two of the six best practice principles identified by the American Planning Association: a liveable built environment in harmony with nature (Plan page 12). Those principles are clearly evident to anyone driving along I-25 on their way into Las Cruces, which creates a very positive message regarding the values that Las Cruces hold dear. Commercial development in this area will needlessly undermine that message and replace it with a completely different one; Las Cruces will lose some of its “shared pride of place, and a feeling that this city is truly unique among its peers” (Vision Framework, Plan page 1).

3 Context-sensitive development: commercial zoning is inappropriate

Rezoning the parcel at 4003 Tellbrook Road to C-3C, high-intensity commercial with conditions, is a permanent change that enables a broad range of developments to proceed, regardless of the specific plans that motivate the immediate request. Any land use compatible with that zoning category is allowable and could happen at any time in the future. This is true independent of the intentions of the current owners as there is no guarantee that those intentions will not change or that future owners will not have different intentions.

As a consequence, *Elevate Las Cruces* guides us to evaluate this rezoning request in the context of the current neighborhood *and all possible developments* that a C-3C zoning designa-

tion would allow. The conditions presented to the Las Cruces Planning and Zoning Commission (Case 22ZO0500020, January 24, 2023, Exhibit A) were identified by the owners and include a much broader range of possibilities than represented by their stated intent. Under the proposed conditions, the following land uses are allowed:

- | | | |
|---|--|--|
| • Apartments | and bookkeeping | • Legal services |
| • Accessory units and structures | • Architectural, engineering, and surveying services | • Lessons for art, dance, music, etc. |
| • Greenhouse, garden shed or tool shed (ancillary to botanical gardens) | • Art studio | • Photography studio |
| • Community buildings | • Barber or beauty shop, hair salon, and related personal care | • Real estate office |
| • Library or museum | • Business offices | • Tax preparation services |
| • Health club, exercise club, gymnasium, sports instruction | • Consulting | • Café, cafeteria, coffee shop, or restaurant (ancillary to botanical gardens) |
| • Botanical park | • Counseling services | • Clothing store |
| • Accounting, auditing, | • Desktop publishing and graphic design | • Garden supply store |
| | | • Plant nursery |

Developing any of these will convert a significant portion of land into impervious surface for parking, and will require substantial construction of buildings. This will have a direct impact on the message our community sends to everyone arriving on I-25, and will degrade the living environment for everyone living in the neighborhood.

As one example, if apartments are constructed (one of the allowed land uses that must be considered to be a possibility), they must follow the Las Cruces Land Development Code, which states that (i) they “must comply with R-4 development standards, including minimum density of ten dwelling units per acre and maximum density of 40 dwelling units per acre” (Code Section 38-32.B.2.C-3: Commercial high intensity) and that (ii) they can be as large as 60 feet in height (Code Section Section 38-31.D. Development standards). Such a development would be equivalent to creating residences for as many people as currently reside within 0.3–0.7 miles of 4003 Tellbrook Road (Figure 1), all crammed within a single 10 acre parcel. This alone could increase the population in the neighborhood by 50% and lead to much greater demands for scarce resources such as water and wastewater services.

Such intense development (Figure 2) would undermine the philosophy of context-sensitive development that is embraced by the Las Cruces City Council and so prevalent within the *Elevate Las Cruces* Comprehensive Plan, yet it would be an allowable land use should this rezoning be approved.

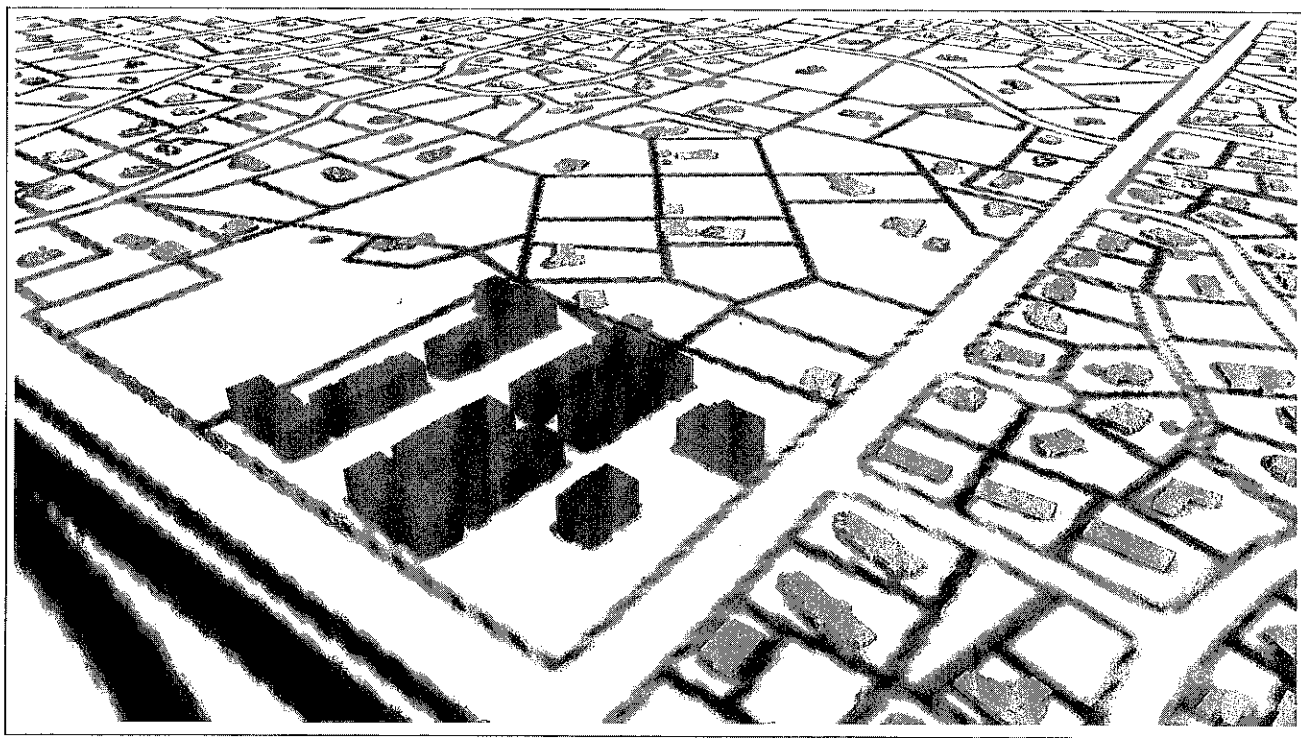


Figure 2: Three-dimensional rendering of an allowable apartment complex at 4003 Tellbrook Road. This is a view to the northeast from the corner of Las Alturas and Tellbrook Roads. Building heights are at the same scale as horizontal distances. The density and building height of such an apartment complex, which is dictated by the Las Cruces Land Development Code (Code Section 38-32.B.2.C-3), is wildly incompatible with the surrounding neighborhood.

4 Appropriate actions: compatible zoning options exist

The owners of 4003 Tellbrook Road have emphasized two intended land uses, both in their documents and in their presentation to the Las Cruces Planning and Zoning Commission (January 24, 2023): a personal residence and a botanical garden. Neither of these land uses require a commercial zoning category. That should be self-evident with respect to a personal residence; there are a number of low density zoning categories that would accommodate that intended land use, that are already in use in the neighborhood, and that would be consistent with the goal of context-sensitive development.

A botanical garden can be accommodated in one of two ways. If the residence is an important component of the proposed development, then the Las Cruces Land Development Code accommodates that within a residentially zoned parcel. For example, Code Section 38-31 (Residential zoning districts) states that botanic gardens may be sited in Residential Estates (RE) (38-31.1.A.2), Single-family low density (R-1c), Single-family medium density (R-1a), and Single-family high density (R-1b) (38-31.1.B.2) districts. Thus, an appropriate residential zoning category is *not incompatible* with the owner's stated intent of establishing a botanic garden.

We note that to serve the Las Cruces community best, better locations exist for establishing a botanic garden; for example, locating it next to the Farm and Ranch Heritage Museum would offer an additional reason to visit an important cultural resource for the community and add to the gateway for Organ Mountain-Desert Peaks National Monument. However, if the owner wishes to prioritize the botanic garden, then another option is possible. The Las Cruces Land Development Code identifies two open space zoning districts (Code Section 38-41.1). One of those (OS-NC) can accommodate a Community Nature Park, which is certainly what a botanic garden on this parcel would be (Code Section 38-33E. Park, Public and Private). It is important to recognize that most, if not all, botanic gardens are much larger in size than is proposed here, are directly associated with major institutions, often have significant dedicated governmental funding sources, or are backed by major non-profit organizations; an open-space zoning category would be much more appropriate than a commercial one for this type of activity, because it emphasizes a botanic garden's fundamental characteristic, which is to provide open space recreational experiences.

There are actions that are consistent with the principles of context-sensitive development outlined in the *Elevate Las Cruces* Comprehensive Development Plan, that members of the neighborhood recognize as beneficial, and that achieve the stated goals of the owners: change the zoning designation to either (i) a low-density residential category with conditions allowing a botanic garden, or (ii) the open-space OS-NC zoning category to allow a small botanic garden. There is no need to permanently open possibilities for commercial development that is entirely incompatible with the surrounding neighborhood. Either of these options enables the City Council to remain true to the guiding principles outlined in *Elevate Las Cruces*.

5 Conclusion: promote neighborhood identity and Council intent

By adopting the *Elevate Las Cruces* Comprehensive Plan, the Las Cruces City Council has embraced a clear set of principles guiding development; we applaud that effort and support the principles that have been identified. They form the basis of well guided and intentional development that “improves the quality of life of all residents while preserving the most treasured aspects of the surrounding natural landscape” (Plan page 1). The most prominent of these principles is context-sensitive development, because it is essential to achieving the Council’s vision. In this case, rezoning the parcel at 4003 Tellbrook Road to C-3C, high intensity commercial, would be clearly incompatible with the entire surrounding neighborhood, which is entirely residential over a contiguous area of 1,113 acres. It would also transform the message our community conveys about itself to everyone entering from the south. This needlessly undermines the hard work already undertaken by the Council to articulate the principles in *Elevate Las Cruces*.

There are, however, rezoning options that would be compatible with the neighborhood identity and that would also be compatible with the owner’s emphasized intent. We promote those options as ways for the City Council to remain faithful to the *Elevate Las Cruces* principles, to further neighborhood identity, and to support intended land uses that are compatible.

6 Petition supporting the positions in this document

To document the depth and breadth of support for the ideas presented here, we made a petition available to the Las Cruces community. Below is the text of the petition, the list of 179 signatories (as of March 9, 2023), representative comments, and a figure (Figure 3) illustrating that those in support represent the *entire* Las Cruces community.

Promoting context-sensitive development: A common vision for development in Las Cruces, NM

The City Council of Las Cruces has before it a request to rezone a parcel to a High Density Commercial category of land use; all of the surrounding area, over 1,000 acres, is entirely residential. As a result, a rezoning decision will create an island that is incompatible with the character of the neighborhood.

We are opposed to this rezoning action in part because of its potential to affect the neighborhood. Much more importantly, though, we are opposed because this action would be counter to many of the core principles outlined by the Las Cruces Comprehensive Plan, which was adopted by the City in 2020 to promote sustainable growth and achieve a shared community vision for the City and its surroundings. A theme throughout the Plan is the principle of context-dependent development, which must be considered on a geographic scale that is relevant to existing land use and established neighborhood character. Imposing an island of

high density commercial development within a sea of residential uses is clearly counter to the goals of context-sensitive development.

Should this request be granted, any similar location within Las Cruces or the surrounding area is at risk of a similar transformation, despite the principled statements made in the guiding document, the Comprehensive Plan. For that reason, we feel this case is important for residents throughout the City and surrounding neighborhoods.

We urge you to sign this petition to express your agreement and support that strong context-sensitive principles guide development decisions in Las Cruces.

Signatures: as of March 9, 2023, 179 residents of Las Cruces and its surroundings.

- | | | |
|--------------------------|------------------------------------|------------------------|
| • Kathleen Albers | • Longino Bustillos | • Donald Dutton |
| • Carla Alford | • Sylvia Bustillos | • Brent Emanuel |
| • Jeff Amato | • Karen Casci | • Kenna Eversole |
| • James Archey | • Tracy Castle-Diaz | • Jo Lynn Farthing |
| • Jan Archey | • Greg Cates | • Robin Flores |
| • Shirley Armstrong | • Kristina J. Cervantes-Vanderlugt | • Denise Forand |
| • April Arzate | • Erik Chang | • Roger Forand |
| • Ernest Arzate | • James Chantrill | • Karen Foster |
| • Carl Donovan Bailey | • Patricia Chantrill | • Roger Fuller |
| • George Bailey | • Raf Chavez | • Laura Garcia |
| • Ginny Bailey | • Janet Clark | • Luis Garcia |
| • John Barclay | • Carla Clouser | • Greg Garland |
| • Kimberly Barnett | • Jeffrey Colin | • Doug Gegax |
| • Garcille Bauer | • Susan Conant | • Danielle Marie Gibbs |
| • Kathryn Bauer | • Kathleen Cooke | • Edna Marie Gibbs |
| • Jill Begemann | • Linda White Cox | • Leslie (Les) Gibbs |
| • Al Beltran | • Jack Crabtree | • Randi Goode |
| • William Boecklen | • Crystal Crawley | • Sharbani Das Gupta |
| • Diane Bolak | • Vicki Dannhaus | • Vincent Gutschick |
| • William Bolak | • Ellen Davis | • Irene Guzman |
| • Evelyn Bruder | • Jon Day | • Cynthia Hakkila |
| • Michelle Burns-Cogdill | • Alesia Dutton | • Lenwood Hampton |

- | | | |
|--------------------------|--------------------------|-------------------------------|
| • Mary Hampton | • Dana Loy | • Helen Prouty |
| • Travis Harding | • Kenneth Lujan | • Ermelinda Quintela |
| • Nancy Heavner | • Yvonne Madero | • Betty Jo Randazzo |
| • Jerry A. Hernandez | • Keith mandabach | • Melissa Reeves |
| • Patsy Hill | • Laura Mandabach | • Manuela Reyes |
| • Bianca Holguin | • Gay Mansouri-Rad | • Mario Reyes |
| • Lorena Holguin | • Annie Mason | • Elizabeth Rodriguez-Johnson |
| • Clyde Hudson | • Rebecca Mccleery | • Ashely Romero |
| • Sandra Hurley | • Barbara McGuffey | • Dolores Rosell |
| • Tom Hurley | • Patrick McGuffey | • Bernard Ryan |
| • Avis James | • Alex McGuinn | • Jacalyn Ryberg |
| • Tim James | • Brandon McGuinn | • Hermelinda Sanchez |
| • Ruth Jaure | • Margaret McGuinn | • Bill and Londa Seiffert |
| • Sara Jensen | • Richard McGuinn | • Londa Seiffert |
| • Terence Johnson | • Samantha McGuinn | • Olivia Serna |
| • Robert Jones | • Dana Mcrimmon | • Cynthia Settles |
| • Leslie Kelley | • Jacquelyn Meinecke | • Carol Sherick |
| • Gene Killgore | • Guadalupe Meraz | • Tim Shoffstall |
| • Barbara Kim | • Brook Milligan | • Roberta Silva |
| • Kyrsti Kinders | • Catherine Milligan | • Janina Singleton |
| • Luciana Kirkland | • Veronika Molina | • Julie Skinner |
| • Robert Kirschner | • Rebecca Monroe | • Mike Skinner |
| • Yolanda Koontz | • Gabriela Mora | • Rachel Smith |
| • Joshua Krause | • Heather Morton | • Antoinette Terrell |
| • Jeffrey Lanan | • Michele Murphy | • Kathrin Theisen |
| • Carol Laskin | • Harold Myers | • Jerry Thompson |
| • Elaine LeVine | • Paul Nevarez | • Joe Triste |
| • Vicki Ligon | • Richard Patton | • Christine Trujillo |
| • Charlotte Liptak | • Steven Pedroncelli | • Cindy Trujillo |
| • Joachim Lohn-Jaramillo | • Tracy Pedroncelli | • Janine Trujillo |
| • Manion Long | • Cynthia Fabrizio Pelak | |

- | | | |
|---------------------|-------------------|--------------------|
| • Cindy Tunnell | • Margot Vos | • Michelle Wiens |
| • Larry Tunnell | • John Wagner | • Robert Wimberly |
| • Matthew Vaughn | • Fritz Wagoner | • Rita Worrell |
| • Teri Vaughn | • Bruce Watenpugh | • Cagla Yildirim |
| • Rosella Vialpando | • Matt Watson | • Ken Ystesund |
| • Judi Voelz | • Nancy Weaver | • Kernie Zimmerman |
| • Kathryn Voelz | • Judy Wendell | • Mark Zimmerman |

Specific reasons for signing The following are comments made by signers of the petition to express their views more explicitly than is possible with a simple signature.

I am signing because I have experienced the ramifications of what can happen within a neighborhood with a zoning change such as this proposed change, with an apartment complex being built directly in front of my previous home once a zoning change took effect. I do not believe any kind of high density commercial development is the vision we have for our residential neighborhood.

I live in Summit Chase and drive by the site every time I leave or enter the neighborhood. The traffic is already increasing and this IS a residential neighborhood. Any little bit of open space is important!!! PLEASE consider this carefully. We do not want that land developed!

I am signing because this is a foolish and heartbreaking threat to this community. We built our home here in 1996 and have been so happy walking and enjoying the beauty of this area. Our home are built with respect to the natural landscape and what Mother Nature has created. If this person wants to help this community he should use property designated for such use. Maybe build by the Farm and Ranch. This city has demonstrated that they only care for business and not families. Not one ounce of me believes that this venture is only for profit. If the city cared to do something for families, create activity centers, bike paths etc. No, we only have more bars and pot businesses. The desert is beautiful and doesn't need a "garden" business, we can walk outside and enjoy. Please oh please don't destroy this area.

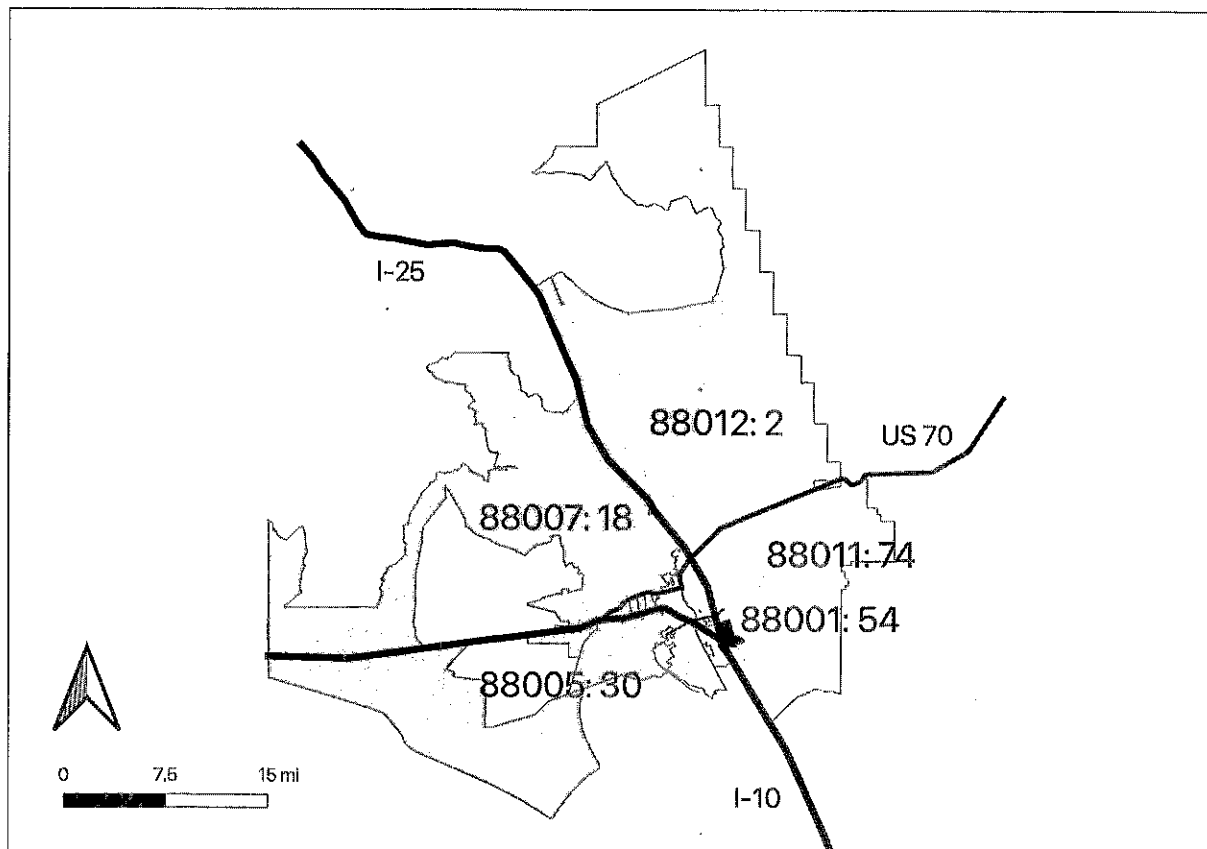


Figure 3: Geographic diversity of petition signers. Each zip code is followed by the number of petition signers (as of March 9, 2023). People from throughout Las Cruces (shaded zip code areas) have signed this petition, an indication that the views presented here are shared all over the Las Cruces community.

City of Las Cruces
City Council Action and Executive Summary

3032; Council Bill 23-026

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A			
1st Reading:	May 1, 2023	Adopted:	May 15, 2023	
Drafter:	John Castillo	Department:	Community Development	
Program:	Planning	Line of Business:	Planning	
Title:	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.			

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

PURPOSE(S) OF ACTION:
Planned Unit Development (PUD) Major Amendment.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City Council is required to review and take final action on Planned Unit Development (PUD) concept plans (new or major amendments) that have received a recommendation by the Planning and Zoning Commission. The process is outlined in Section 38-10.B.2.b (Planning and Zoning Commission-Recommendation to City Council) and Section 38-49.D (Planned Unit Development Review Procedures).

Pursuant to Code, PUDs need to comply with established growth management policies and are generally afforded greater design and development flexibility in terms of issues to land use, density, architecture, open public space, building arrangements, etc. With this flexibility, the developer in turn provides the community with benefits such as provisions for affordable housing. Key elements of a concept plan include information related to land use, residential density, non-residential intensity, major road infrastructure/network, conceptual utility and drainage infrastructure, and development phasing. Other elements in the concept plan may include development standards much like what is contained in the zoning code for specific land uses.

Current services offered at Community of Hope are a soup kitchen, medical clinic, a daycare, a homeless management and day service center, a food bank, and a safe space encampment for the homeless. The Community of Hope will provide additional services in the future as funds become available. Including a permanent homeless campground, community garden, substance abuse center, job center, community kitchen, permanent supportive housing program, donations and distribution center, respite care center, and similar uses as approved by the Community Development Director. Unknown uses proposed to be approved by the Community Development Director are those uses that may not currently be listed or anticipated but may be needed by the campus in the future. These uses are anticipated to be similar or complimentary social services or institutional uses to those already existing or desired, for example, a welfare office or human rights advocacy center.

Agenda Item #11.2.

The proposed amendment will alter the current boundary of the Mesilla Valley Community of Hope (MVCH) campus from the original 8.01 acres to a total of 16.59 acres. This will include newly acquired land that the City has purchased for future development. As part of the proposed amendment, the newly adopted Master Plan for the MVCH campus will be made part of the PUD to help guide the future development of the MVCH campus.

The proposed plan amendment is consistent with the intent of Elevate Las Cruces including the Future Development Map and several Goals, Policies, and Actions. Amador Avenue is classified as an arterial roadway in Elevate Las Cruces' Future Thoroughfare Map and the MPO Future Thoroughfare Plan. The subject property is also located near a proposed Mixed-Use Corridor within the Urban Neighborhood Place Type. As Mixed-Use Corridors support residential and non-residential land uses along roadway or trail corridors the Urban Neighborhood Place Type includes a variety of residential housing types and areas that support neighborhood development. These corridors link existing urban destinations such as downtown, medical complexes, and NMSU, and projected Town Centers and Neighborhood Centers. The Mixed-Use Corridor concept also provides a feasible way for transforming communities to incorporate urban form and intensity among single-family neighborhoods of lower density. They weave new mixed-use development into older opportunity areas - reinvigorating commercial corridors and increasing the value of adjacent residential areas.

On January 24, 2023 the Planning and Zoning Commission (P&Z), per Section 38-10.B.2.b. of the 2001 Zoning Code, as amended, recommended approval with conditions of the proposed plan amendment by a vote of 4-1-0 (Two Commissioner Seats Vacant) based on the following findings reflected in Exhibit "B": The Planning and Zoning Commission added an additional condition that to the ones recommended by staff. This condition is to provide a pedestrian master plan that outlines accessibility from Amador into the facility and throughout the facility. The case was publicly noticed in accordance with the City's notification provisions; staff received no phone calls in support or denial for the zone change prior or during the P&Z hearing.

SUPPORT INFORMATION:

[Exhibit "A"-MVCH Conceptual Site Plan](#)

[Exhibit "B"-Findings and Conditions](#)

[Exhibit "C"- MVCH Master Plan](#)

[Exhibit "D" - Pedestrian Master Plan](#)

[Attachment "A"-MVCH PUD Concept Plan staff report](#)

[Attachment "B"-01-24-23 PNZ Minutes](#)

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

P&Z, DRC

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

Agenda Item #11.2.

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this will approve the Ordinance and affirm the P&Z recommendation for approval.
2. Vote "No", this will deny the Ordinance and will reject the recommendation made by P&Z. Denial will require new information or facts of finding not identified or presented during staff review or the P&Z meeting.
3. Vote to "Amend", this could allow City Council to modify the Ordinance by adding conditions as determined appropriate.
4. Vote to "Table", this could allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3032; COUNCIL BILL 23-026

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.

The City Council is informed that:

WHEREAS, The City of Las Cruces, the applicant and property owner, has submitted a request for approval of a Planned Unit Development (PUD) amendment, altering the concept plan, boundaries and incorporating a newly adopted master plan for the Mesilla Valley Community of Hope (MVCH) campus; and

WHEREAS, the PUD concept plan is for a 16.59 acre property that is owned by the City of Las Cruces and will incorporate the newly adopted MVCH Master Plan; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on January 24, 2023 recommended approval with conditions of the PUD boundary amendment and master plan incorporation with the condition that a pedestrian master plan be included, by a vote of 4-1-0 (Two Commissioner Seats Vacant).

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

(I)

THAT the land more particularly described in Exhibit "A" attached here to and made part of this Ordinance, is hereby zoned PUD (Planned Unit Development) and alters the boundaries.

(II)

THAT the MVCH campus master plan Exhibit "C", attached hereto and made apart of this Ordinance, are here by approved

(III)

THAT the PUD amendment is based on the findings and conditions set forth by staff contained in Exhibit "B" with the inclusion of a condition placed by the Planning and Zoning Commission that a pedestrian master plan contained in Exhibit "D" be included in, attached hereto and made part of this Ordinance.

(IV)

THAT the zoning and PUD amendment for said property be shown accordingly on the City Zoning Atlas

(V)

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

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

Imagery: © 2022 Google

EXHIBIT "A"

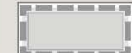


**Mesilla Valley
Community of Hope**

999 W. Amador Ave
Las Cruces, New Mexico 88001

Conceptual Development Site Plan

- 1 Amador Health Center & El Caldito Soup Kitchen
- 2 Jardin de los Niños Daycare
- 3 Mesilla Valley Community of Hope
- 4 Casa de Peregrinos Food Rescue Warehouse (Future)

-  Existing Building
-  Repurposed Existing Building
-  Existing Structure to be Demolished
-  Addition - Planned
-  Addition - Potential
-  Potential New Building
-  Covered Parking with Solar Panels (Planned)
-  New Parking Area / Roadway
-  Development Zone

Establish new entrance road along West Amador Ave.

Provide pull-out bus lane.

Develop 3-story housing block with open-air courtyard.

Provide controlled single point of entry to housing block.

Establish expansion zone to provide opportunities for compatible uses (e.g., housing or relocated daycare).

Expand parking and provide access to south staff parking.

Expand building and reorient entrance. Modify Camp Hope. Construct security station.

Site improvements and renovations/additions to building 4 to accommodate Casa de Peregrinos.

Relocate soup kitchen in Building 4 south area. Demolish existing metal shed.

Acquire property. Reuse existing warehouse for campus storage. Expand parking.

Relocate soup kitchen and expand Amador Health Center into vacated area. Create loop road.

Relocate existing daycare. Renovate existing building (usage to be determined). Create loop road and additional parking.

Conceptual Housing Plan Unit Mix

	SRO	1BR	2BR
Ground Floor:	22	8	1
2nd Floor:	28	8	-
3rd Floor:	26	8	-
Subtotal:	76	24	1
Total:	101 Units		

Parking area provides 20 spaces with potential for another 20 in the future.

0'100'200'400'

Approximate Scale in Feet



NORTH

 Architectural Research Consultants, Incorporated

22018.0000

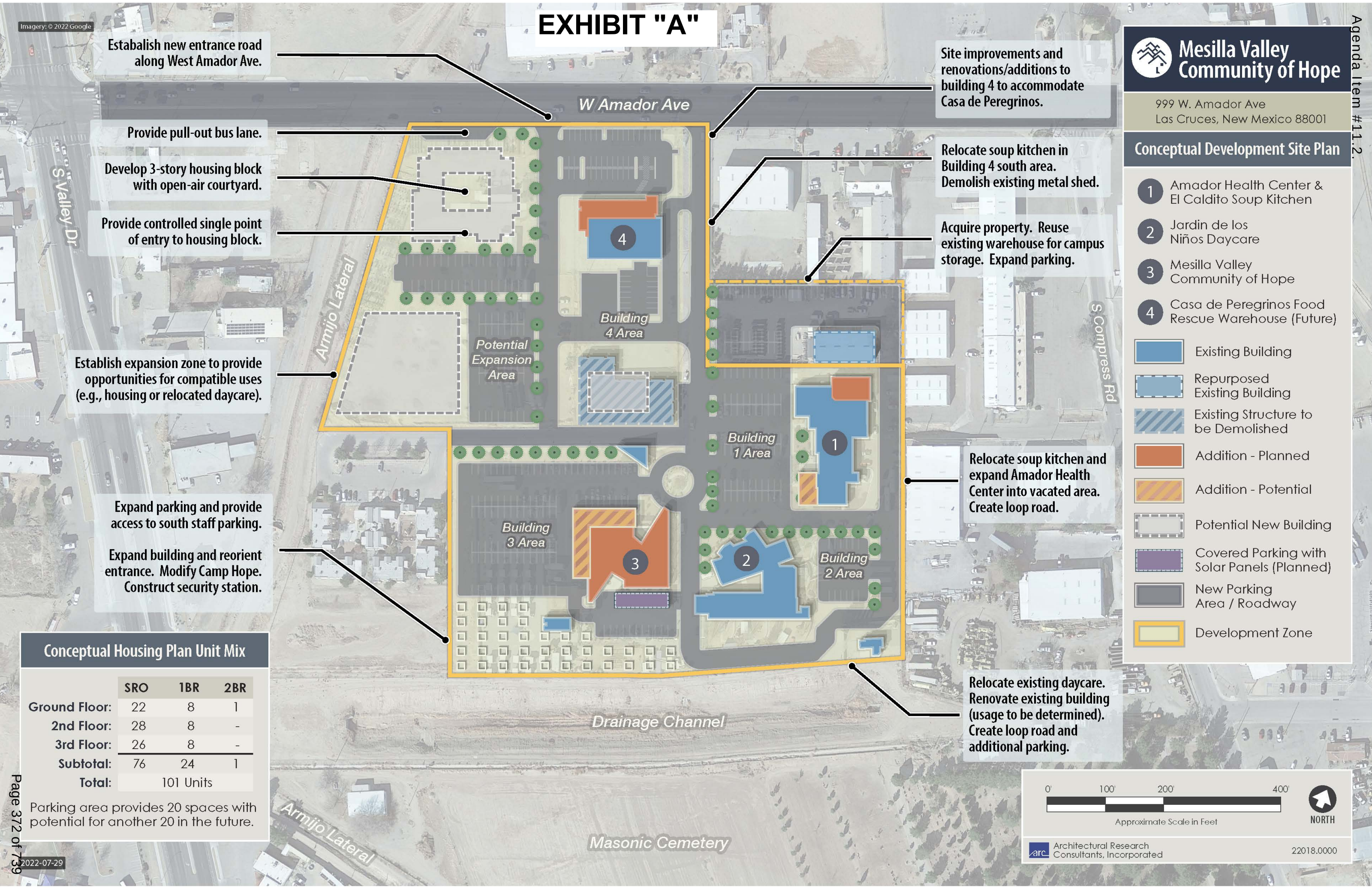


Exhibit “B”

Findings

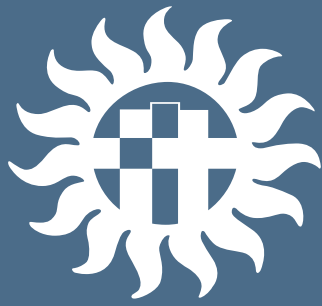
1. The proposed concept plan amendment is compliant with Section 38-49 of the 2001 Zoning Code, as amended.
2. The proposed construction and use of the PUD will not be detrimental to the health, safety, or welfare of the community or adjacent neighborhood.
3. The proposal will promote the infill of vacant land in the center of the City.
4. More specifically, the proposed concept plan amendment follows earlier efforts to balance flexibility in development to benefits the community receives. (Sections 38-49.A.6)
5. The proposed concept plan amendment addresses all relevant development related issues in both a specific and conceptual manner.(Section 38-49.C.)
6. The proposed concept plan amendment is supported by various goals, objectives and policies found within the Elevate Las Cruces Comprehensive Plan and companion planning documents.

Conditions:

1. An opaque perimeter wall or fence at least 5 feet in height and adequate landscaping in conformance with all applicable regulations shall be constructed around the external perimeter of Camp Hope.
2. The camping facilities shall be constructed to the Bureau of Reclamation’s camping standards or other equivalent standards as approved by the Community Development Director.
3. Permanent potable water and bathroom facilities accessible 24 hours a day seven days a week shall be provided for Camp Hope residents.
4. Trash receptacles in compliance with CLC regulations shall be provided for Camp Hope residents.
5. The PUD shall Comply with the International Fire Code, specifically chapters 3- General Precautions Against Fire, 9- Fire Protection Systems, and 24-Tents & Canopies.
6. Emergency access routes shall be maintained throughout the campus and Camp Hope in accordance with section 503.
7. The use of temporary electrical wiring, open flame, and liquid/gas fueled heating appliances, generators, or smoking will be strictly prohibited.
8. A current list of residents’ names and their tent locations shall be kept at the camp to aid in emergency response.
9. One person minimum must remain on watch overnight to ensure security and provide a fire watch for Camp Hope.
- 10.No tent can be utilized for more than 10 persons at any time.
- 11.The PUD will follow the Mesilla Valley Community of Hope Master Plan and Management Structure Recommendations (Attachment #4)
- 12.A Traffic Impact Analysis (TIA) shall be submitted and approved for the entire campus prior to the issuing of a Certificate of Occupancy.

Exhibit “B”

- 13.A Pedestrian Master Plan shall be developed and incorporated into the MVCH Master Plan



City of Las Cruces®



Mesilla Valley Community of Hope

Master Plan & Management Structure Recommendations

Final March 2022

HUITT-ZOLLARS *With:*

 **Architectural Research
Consultants, Incorporated**

 **REAL ESTATE
ADVISORS**

Acknowledgements

City of Las Cruces Mayor and City Council

Ken Miyagishima, <i>Mayor</i>	Johana Bencomo, <i>District 4</i>
Kasandra Gandara, <i>District 1</i>	Becky Corran, <i>District 5</i>
Tessa Abeyta, <i>District 2</i>	Yvonne Flores, <i>District 6</i>
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Mesilla Valley Community of Hope

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Casa de Peregrinos Food Rescue Warehouse

Lorenzo Alba, *Director*

El Caldito Soup Kitchen

Brian Hollinger, *Operations Manager*
Gabe Anaya, *President, Board of Directors*
Sam Hancock, *Vice President, Board of Directors*
Herb Torrez, *Treasurer, Board of Directors*

Amador Health Center

Pamela Angell, *CEO*
Fatima McElveen, *CMO*
Ray Stewart, *Program Director*
Liz Ellis, *Board President*
Diana Salcedo, *Office Manager*

Jardin De Los Niños

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See **Appendix 1** for more information about MVCH campus programs



The electronic version of this report contains clickable bookmarks, hyperlinks, and interactive elements for supported PDF viewing applications.

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List of Abbreviations and Acronyms

Acronym	Definition
ADA	American with Disabilities Act
AHC	Amador Health Center
ARC	Architectural Research Consultants, Incorporated
ACS	US Census American Community Survey
CIP	Capital Improvement Project
CLC	City of Las Cruces
CRV	Current Replacement Value
FCA	Facility Condition Assessment
FCI	Facility Condition Index
FMP	Facilities Master Plan
GO	General Obligation (Bond)
GSF	Gross Square Feet
FY	Fiscal Year
HVAC	Heating, Ventilation, and Air Conditioning
LS	Lump Sum
MACC	Maximum Allowable Construction Cost
MVCH	Mesilla Valley Community of Hope
NASF	Net Assignable Square Feet
NM	New Mexico
REA	Real Estate Advisors
SF	Square feet
TPC	Total Project Cost
YDI	Youth Development, Incorporated

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Introduction / Process

The City of Las Cruces (CLC) selected Huitt-Zollars with Architectural Research Consultants, Incorporated (ARC), and Real Estate Advisors (REA) to prepare a master plan and management structure recommendations for the Mesilla Valley Community of Hope (MVCH) campus. The scope of the study consists of two phases:

- Phase One: Prepare a Campus Master Plan
 - Develop a Master Plan for the campus in consultation with the existing non-profits that identifies potential campus buildout that is reflective of their current needs and future plans, but addresses site limitations, opportunities and constraints.
 - Key aspects of phase one include conducting a site entity review to understand the MVCH programs, needs and future plans, and conducting a comprehensive Facility Condition Assessment to assess the existing condition of the buildings and site to identify potential capital improvements. The assessment includes evaluation of site utility infrastructure and circulation.
- Phase Two: Assess MVCH's Management Structure and Prepare a Comprehensive Development Report
 - Assess the existing entity relationships, management structure, and campus operations and make recommendations for future relationships, management structure, and campus operations between the non-profit organizations with one another on the management of the campus and the relationship to the City as the existing owner.

The Master Plan results from collaborative planning effort by MVHC administrators, the City of Las Cruces, and the project planning team. The planning team gathered information through on-site interviews with site users and detailed investigation of building and site conditions. The planning team engaged site and city representatives in workshop sessions to validate collected information and explore and choose a preferred development option. The recommended master plan results from the consensus input from these workshop meetings.

The plan is divided into four parts:

- Introduction / Process
- Plan Overview that discusses:
 - Background information about the mission, programs and existing facilities
 - Existing site and facility conditions
 - Development constraints, opportunities, and development options
 - Capital needs based on a preferred development option
- Management Structure Recommendations

Agenda Item #11.2.

- Appendices that provide additional information regarding:
 - Existing programs
 - Existing Campus Building Floor Plans
 - Casa de Peregrinos Food Rescue Warehouse Site Plan
 - Site Utility Information
 - Facility Condition Assessment of Campus Buildings

Plan Overview

Background

Location

Established in 1998, the Mesilla Valley Community of Hope (MVCH) campus is located on a common site at 999 W. Amador Ave. in Las Cruces, New Mexico.



See *Exhibit 01*

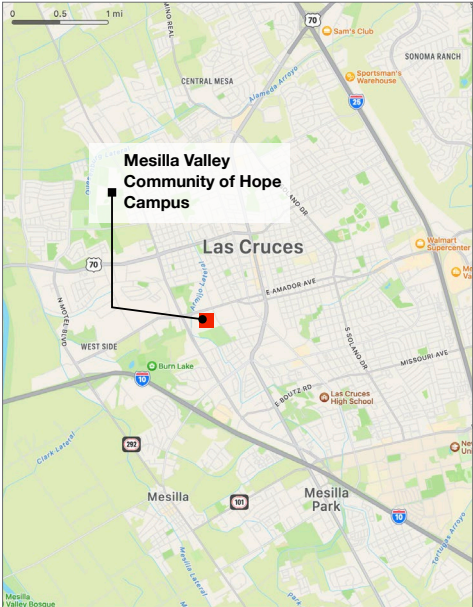
About MVCH

MVCH is an alliance of five non-profit agencies with a common mission to provide basic human needs for the indigent, homeless, and near-homeless population in the Las Cruces area.

- Mesilla Valley Community of Hope (lead agency), provides services to shelter and support the homeless, including housing assistance and case management
- Amador Health Center, which provides integrated health and wellness support to the community including medical, dental, and behavioral health services
- El Caldito, a soup kitchen which provides meals 6 days a week and sack lunches on the 7th day, 365 days a year
- Casa de Peregrinos, a warehouse for storing and distributing surplus and salvaged food that serves Las Cruces and Doña Ana County
- Jardin de los Niños, a daycare center and pre-school providing comprehensive early childhood education, after-school programming, and therapeutic intervention services to homeless and near-homeless children from the ages of six weeks to 10 years, and their families

The City of Las Cruces owns the campus, and leases it to MVCH. The other four agencies sublease from MVCH.

Exhibit 01: MVCH Location



The mission of Mesilla Valley Community of Hope is to promote dignity and empowerment among the homeless population by providing shelter services, case management, income support, and permanent housing programs.



See *Appendix 1* for more information about MVCH campus programs

Existing Conditions

Site and Facilities

Existing Site

The MVCH campus comprised of three City-owned properties totalling approximately 15 acres.

 See *Exhibit 02*

- The original 8.1-acre property contains three facilities, housing Amador Health Center and El Caldito Soup Kitchen (Building 1), the Jardin de Los Niños Daycare (Building 2), and Mesilla Valley Community of Hope (Building 3). The MVCH property was originally acquired by the City of Las Cruces in 1994 for use as a homeless shelter to be operated by the Mesilla Valley Community of Hope. Between 1994 and 2002, a portion the original land acquisition was sold and another adjacent property acquired. In 2009, the City of Las Cruces acquired another small portion of land on the west side of the campus, formerly belonging to Youth Development, Inc. (YDI).
- The City of Las Cruces recently acquired a 2.2-acre parcel with frontage on Amador Ave., adding it to the campus’s available area. The existing building on this site will be renovated and expanded for use by the Casa de Peregrinos food rescue warehouse. The acquired land also contains a large open-air metal storage structure for which a use has not been determined. This structure has no HVAC utilities and limited electrical service.
- A 4.28-acre parcel of adjacent land was also recently acquired by the City of Las Cruces, which may provide additional expansion opportunities for MVCH.

 See *Appendix 4* for a site plan of the relocated facility

Site Context

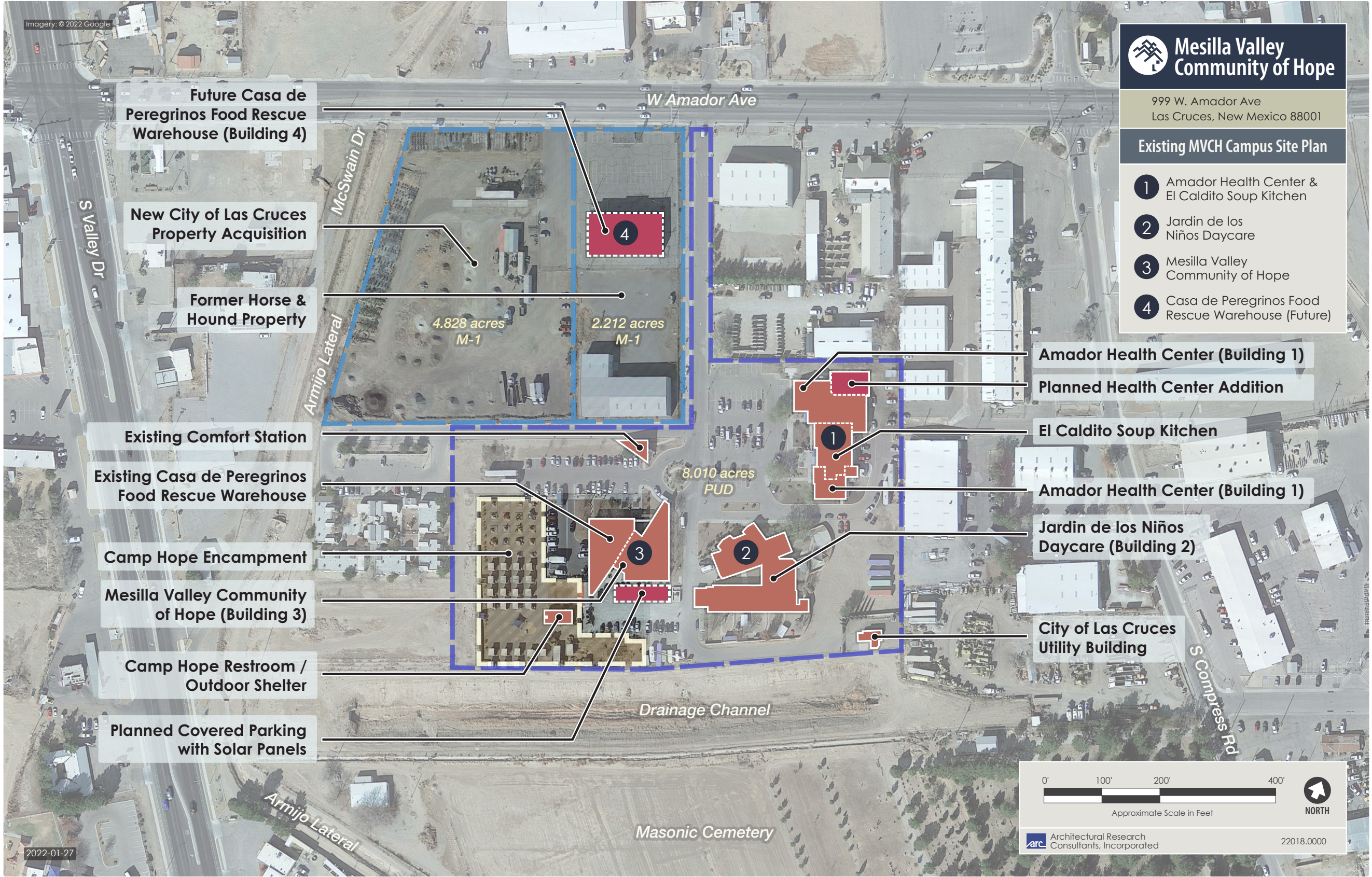
The campus is bounded on the north by W. Amador Ave., a mix of industrial properties to the east and northeast, a drainage channel to the south beyond which is the Masonic Cemetery, and to the west by the YDI multi-family housing complex, and the two vacant recently acquired industrial properties. To the west of the (YDI) housing complex lies the Armijo Lateral irrigation channel and McSwain Drive.

The neighborhood around the MVCH campus consists largely of light industrial properties, with a few retail properties along W. Amador Ave. Directly across W. Amador from the MVCH access drive is the Las Cruces Gospel Rescue mission, which also provides services to the homeless and the needy.

Zoning

The City of Las Cruces acquired the site in 1994 and rezoned it in 2013 from Light Manufacturing (M-1) and Multifamily Residence (R-3) to Planned Unit Development (PUD)

Exhibit 02: Existing MVCH Campus Site Plan



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to comply with local zoning codes at the time. However, the City's current zoning maps indicate that a portion of Lot 2B, which YDI previously owned, still bears a designation of M-1.

The other two parcels that the City of Las Cruces recently acquired are also zoned M-1.

Upon adoption of a master plan for the entire campus the CLC should consider rezoning these parcels as part of a larger PUD development to bring all uses in conformance with city zoning intentions.

Existing Buildings

The campus consists of four primary buildings:

- Building 1 was constructed in 1997/98, housing a homeless shelter, St. Luke's Health Care Clinic and El Caldito soup kitchen. The shelter was renovated in 2017 to accommodate the growing needs of the health center, which was renamed Amador Health Center. An expansion of the health center is currently in the planning stages.
- Building 2, constructed in 2000/2001, houses Jardin de los Niños daycare center.
- Building 3 was completed in 2004/2005, providing space for the Mesilla Valley Community of Hope's administrative offices and resource center for the homeless, and the Casa de Peregrinos Food Rescue Warehouse.
 - Associated with MVCH is Camp Hope, a transitional living facility providing temporary transitional shelter in the form of tents, with one permanent building with indoor toilet/showers and outdoor cooking facilities. Camp Hope has approximately 45 tent platforms, 30 of which have 3-sided, roofed shelters.
- Building 4 is located at the recently acquired Horse and Hound property. This building will be remodeled to house the Casa de Peregrinos Food Rescue Warehouse, which will relocate from Building 3.
- Other buildings on the campus include a CLC utility building at the southeast corner of the campus and a restroom/shade pavilion to the north of Building 3.



See *Appendix 2*
for floor plans of
campus buildings

Condition of Buildings and Site

The Planning Team conducted facilities condition assessments (FCAs) on buildings 1, 2, and 3, including site improvements.

Evaluated as a campus, MVCH scored a 62.3% (Borderline is 50-69%) in the Facilities Condition Assessment (FCA) completed by ARC.

The three primary buildings on the MVCH campus are now 23, 20 and 16 years old. Although the buildings appear to be structurally sound, all of the buildings experience heavy use and require significant facility renewal, with the exception of the Amador Health Center at the north end of Building one which was renovated in 2017. Fixtures and finishes in the remaining sections of building one and all of buildings two and three are dated and worn, the buildings lack compliant ADA accessibility components, and the flat membrane roofs leak and are in

need of replacement. Plumbing system fixtures are dated and worn, and the occupants regularly report issues with wastewater system odors in the buildings. The HVAC systems are reportedly inadequate to keep the current occupants comfortable, and are approaching an age that will require renewal or replacement. Additionally, all of the occupying agencies have outgrown their respective spaces and have expressed a desire for additional space.

The site has limited access with only one access drive in/out that is shared by the YDI multi-family housing complex. Site circulation is poor, particularly for large delivery trucks. There is no dedicated parking area or dedicated pickup/drop off zone for the childcare facility, and limited parking for volunteers. Site security is inadequate. Overall the site landscape and hardscape elements (parking and sidewalks) are in fair condition, however the site has some areas with inadequate drainage, and there are areas exhibiting erosion that is undermining sidewalks and landscape ground cover materials. The sidewalks along the access road leading into the campus from W. Amador Ave exhibit some heaving, and do not provide adequate ADA access. Also of concern is a lack of separation between the daycare center and the other functions on the campus which inhibits the ability for the daycare center to properly screen its clientele from adult activities commonly occurring on the campus.

 See *Appendix 5* for site plan information

The condition assessment identified about \$26.1 million in capital improvements recommended over the next five years or longer to meet MVCH’s goals and help guide future planning. The Appendix provides detailed information about the results of the condition assessment including:

- A history of the building and when it may have been renovated and remodeled
- Assessment scores for its site, and physical plant assessment, and adequacy/environment
- Narratives describing the characteristics for each category and system for the building
- Capital Improvement Project (CIP) descriptions and preliminary cost estimates for recommended repairs and improvements

Access and Parking

The current main entrance to the campus is from the north, traversing from West Amador to a “driveway” that runs through the campus. The driveway serves the existing MVCH buildings and the YDI housing site. All agencies share two paved parking lots located west of Building 1 and north of Building 3. An unpaved parking lot for staff resides south of Building 3. Staff and volunteers also park in undesignated parking areas east of Buildings 1 and 2.

An additional north entrance to the site is planned from West Amador between the 4.28-acre parcel recently acquired by the City of Las Cruces and the 2.2-acre Horse and Hound property being renovated for use by the Casa de Peregrinos Food Rescue Warehouse.

 See *Appendix 3* for maps of existing utilities

Utility Infrastructure

Water, sewer, gas and telephone service for the campus comes from primary service lines in W. Amador Ave. Electric service into the campus comes via overhead lines originating on the east side of the campus off of South Compress Rd. The service transitions underground just east of the MVCH property boundary to a transformer on the east edge of the campus serving building one. When building one was constructed, a stub-out was constructed to feed later phases of the MVCH campus. While we have not located any drawings for the service line feeding buildings two and three, we believe it wraps along the east and south side of building two and comes north to the transformers feeding buildings 2 and 3. Two sets of fiber optic lines border the MVCH campus: One set run along the West Amador Ave. roadway, and another traverses the southern fence line, near the drainage channel. MVCH's archives of existing site drawings do not specify which set of fiber optic lines actively serve the campus.

All infrastructure for the campus dates from the construction of Building one in 1997/98, with extensions to buildings two and three in 2000/01 and 2004/05, making the oldest components approximately 23 years old in 2021.

The plan for the new north roadway from West Amador Ave. between the recently-acquired CLC properties will include additional utility infrastructure into the campus.

Site User Input

Site Issues / Functional Conflicts

The MVCH agencies have identified the following overall site and facility issues/concerns:

- Parking, site drainage, site circulation and site access are insufficient (emergency access is a particular concern with only one access point)
- Site security and separation of functions (especially for the daycare center) is insufficient
- All agencies have outgrown their existing facilities and have no room for desired growth/expansion
- None of the existing buildings readily lend themselves to expansion that can alleviate their individual space needs.
- All buildings require significant facility renewal as they are high use facilities now 23, 20 and 16 years old
- The FYI housing complex, which is not affiliated with MVCH uses the same access road through the middle of the campus

Expectations of Space Needs by Site Users

The organizations that make up MVCH have identified the following potential program growth and space needs:

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- Casa de Peregrinos will soon be moving into a new facility in the renovated old Horse and Hound building adjacent to the MVCH campus. The new facility is designed to meet the current needs of the Food Rescue Warehouse along with space to implement some desired new programs. Leadership at Casa de Peregrinos envisions future expansion of the agency's program offerings to assist in lifting more people out of poverty by providing training in food-related industries. Depending on the level of program expansion, the Food Rescue Warehouse may need additional space in the future.
- Mesilla Valley Community of Hope anticipates expanding into the current Casa de Peregrinos space in Building 3, once the Food Rescue Warehouse moves into its new facility. This expansion will almost double MVCH's space, and with proper renovation should provide ample administrative office and support space for the agency. However, the existing space may not fully meet the agency's space needs, particularly for storage. The agency currently uses a number of storage containers distributed across the campus to store donations and supplies intended for use in assisting their clientele in furnishing and stocking a home once housing is acquired. MVCH does not anticipate significant expansion of Camp Hope, but the existing shower and kitchen facility does require some facility renewal.
- Amador Health Center currently serves about 1,000 patients a year, and anticipates growth at a rate of 5-10% per year to a maximum of 1,500 patients a year at this location. Expansion beyond 1,500 patients per year will likely require establishment of a second location to serve a patient base for which the MVCH campus is not conveniently located. However, the health center has already outgrown its current space and does intend to expand its service offerings on the campus. The health center's leadership has identified two potential expansion projects:
 - A plan is in development for an addition to the northeast corner of Building 1 to add approximately 3,300 sf of office space along with a dental suite. This expansion does not fully meet the current space needs of the health center, and provides no space for future program expansion.
 - Another proposal under consideration is a 1,600 sf addition to the south end of Building 1 to provide additional expansion space for the health center's behavioral health program offerings.
- El Caldito soup kitchen has expanded its meal service offerings significantly since it moved into the current facility, and has outgrown the existing space. Its dining hall has a maximum capacity of 96 which is often at capacity, the kitchen and baking areas are overcrowded with insufficient space around equipment to adequately meet safety standards, and storage for dry goods, refrigerated and frozen foodstuffs is insufficient. The agency uses storage containers and some off-site storage to augment its storage needs. The existing facility is landlocked between the two clinical suites in Building 1, with very limited expansion options, most of which further exacerbate circulation issues on the campus.
- Jardin de los Niños would like to double the number of classrooms in its facility, and has a need for a larger community room. The center's kitchen is too small and is also overcrowded with insufficient space around equipment to adequately meet safety standards. Additional storage for supplies and donations is also needed. At the site level, Jardin would like dedicated parking for staff and volunteers, and does not have a properly designed pick-up and drop-off zone. Accommodating all of the needs and expansion desires for Jardin on the

available site area around the building will be challenging, and not all of the desired needs may be met. Providing desired screening between the daycare center and adult activities on the campus is also difficult to accomplish within the existing site footprint.

Consideration of Development Options

The planning team discussed site constraints and opportunities, and three development options with the MVCH and CLC representatives. The options generally ranged from less intensive to more intensive development, progressively adding various improvements onto the previous option.

 See *Exhibit 03*
to *Exhibit 06*

Option 3 was chosen as the preferred option encompassing a broad, but potentially achievable long-range development vision meeting MVCH and CLC goals.

Exhibit 03: Opportunities and Constraints

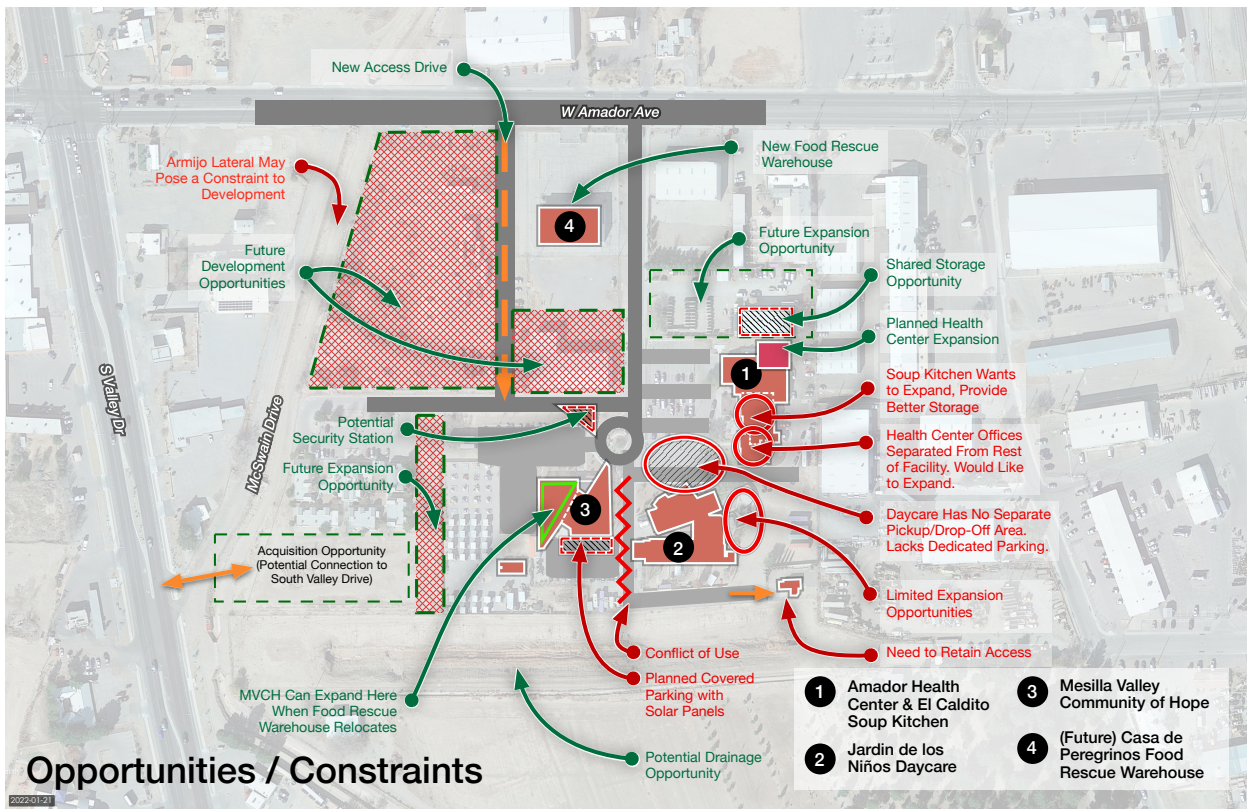
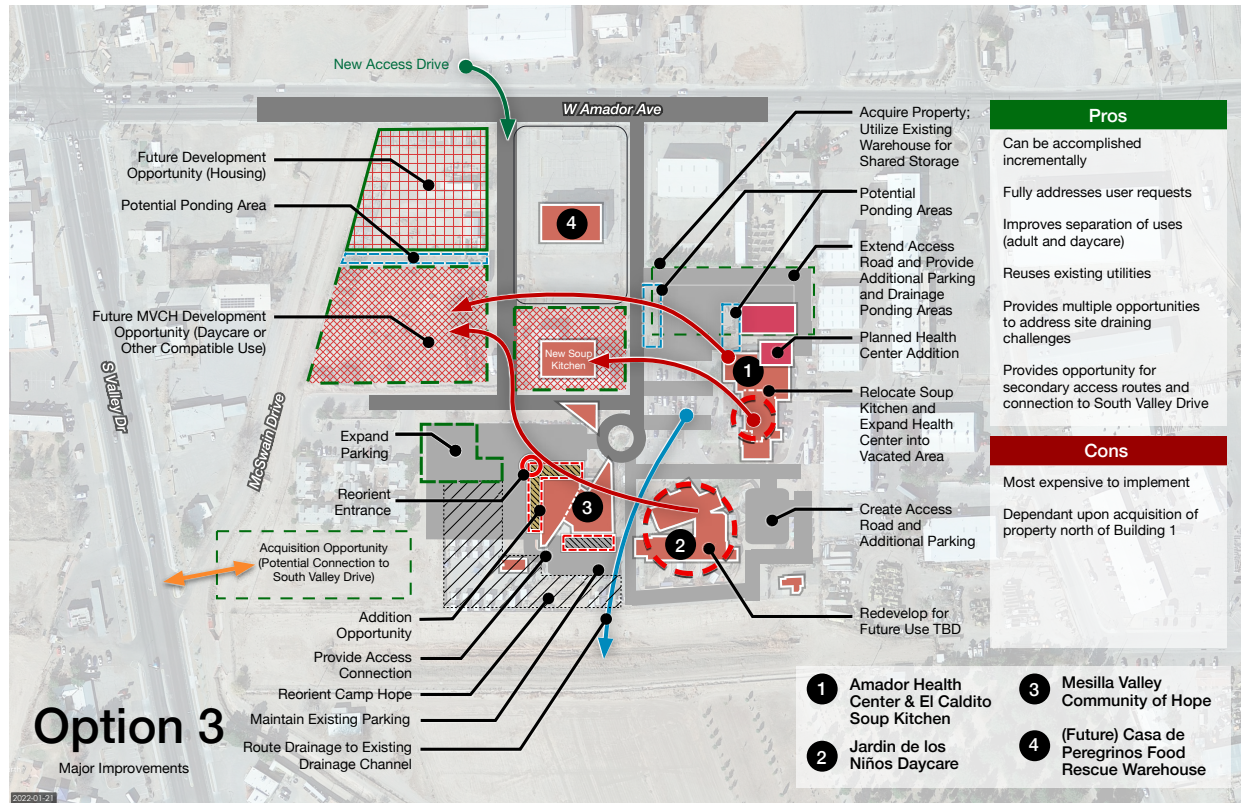


Exhibit 06: Option 3



Master Plan

The preferred option represents a future long-range development vision that reflects the following elements:

- General Site:
 - Create an additional access road to the campus to provide relief to existing driveway access and redundancy. This improvement is planned and funded as part of the future Casa de Peregrinos Food Rescue Warehouse renovation (Building 4).
- Building 1 Area (Existing Amador Health Center and Soup Kitchen):
 - Relieve existing building space crowding by relocating the El Caldito Soup Kitchen to a new building at a central part of the campus (South of Building 4).
 - Expand the Amador Health Center into the area vacated by El Caldito.
 - Acquire the property north of the health center.
 - » Use the existing warehouse on the site for shared storage for all entities on the campus.
 - » Extend the access road around the center and provide additional parking and drainage ponding areas.



See Exhibit 07 for a conceptual site development plan

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- Building 2 Area (Existing Daycare Center)
 - There are at least two options to relieve conflicts between young children and other site uses and expand the daycare program.
 - Option 1: Relocate
 - » Relocate the Jardin de los Niños Daycare to a new site, possibly to the recently acquired property west of Building 4, providing an opportunity to expand the program into a larger facility with additional classrooms.
 - » Renovate existing building for a future compatible campus use to be determined.
 - » Create additional parking and an access road to support the future use and to maintain access to the CLC utility building.
 - Option 2: Remain and Expand to Site Capacity
 - » Expand daycare east into the existing courtyard and vacant land beyond the courtyard. Since there are limitations to the site available, this option does not allow the program to double in size as desired.
 - » Create parent drop off / pick up area.
 - » Create additional parking and an access road to support the future use and to maintain access to the existing CLC utility building.
- Building 3 Area: (Existing MVCH Administration Building)
 - Relieve existing MVCH building crowding by remodeling and relocating staff area vacated by the Food Rescue Warehouse.
 - Construct security station at the site entrance near Building 3 to monitor access and site activity.
 - Expand building to north and west as needed to provide additional program growth opportunities. Consider reorienting the main entrance to the west to relieve exterior crowding between buildings 2 and 3.
 - Expand visitor parking and provide access to the south staff parking area from the west.
 - Reoriented Camp Hope to the east to adjust for camp site lost to expanded parking area.
- Building 4 Area (Future Casa de Peregrino Food Rescue Warehouse)
 - Remodel existing building to house Casa de Peregrino Food Rescue Warehouse.
 - Construct facility to house the relocated El Caldito Soup Kitchen (from Building 1).
- Expansion Zone

This zone provides development opportunities for compatible uses to the MVCH campus for possibly housing, a relocated daycare, or other compatible uses.

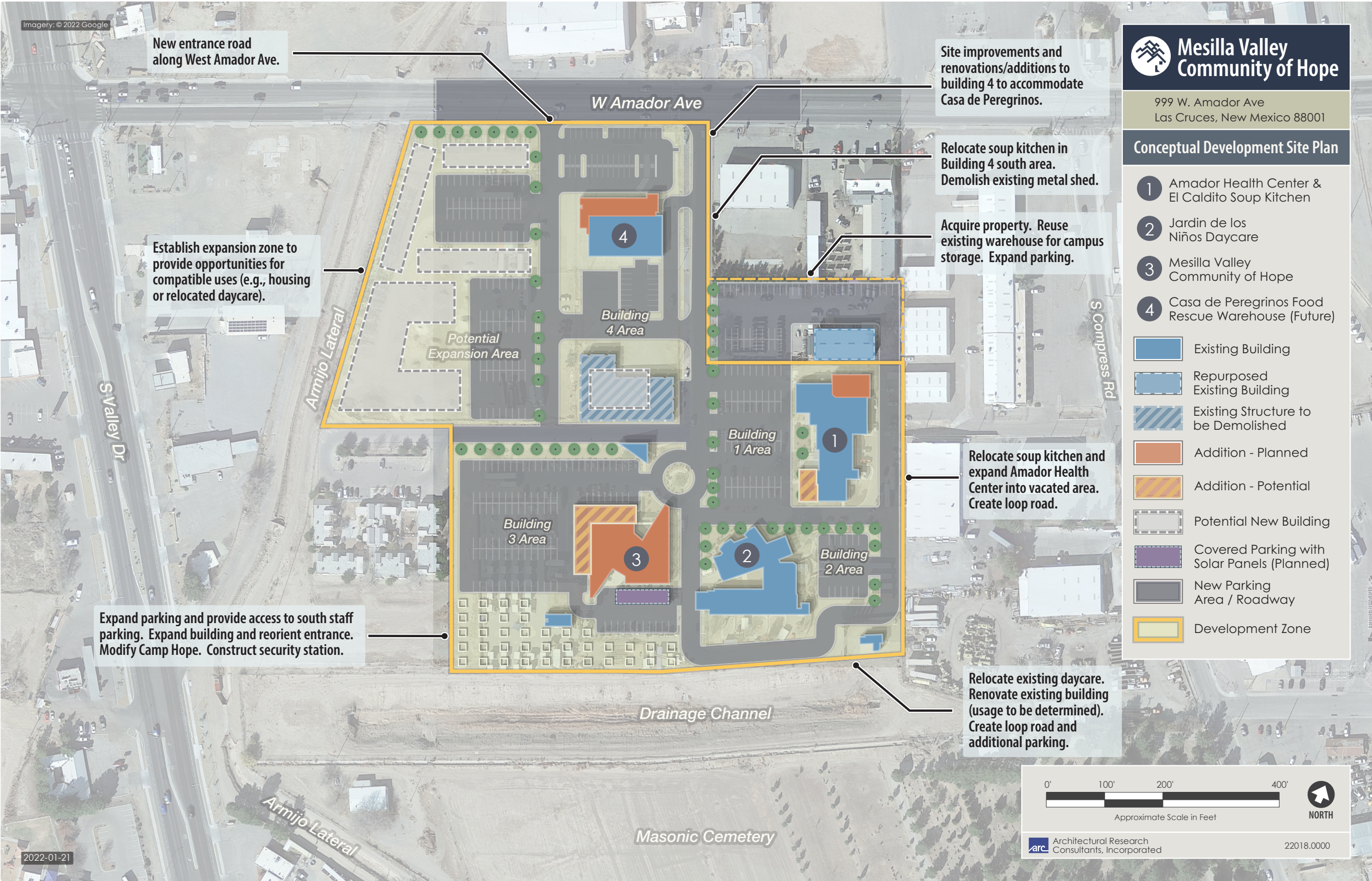
Estimated Cost of Construction of Preferred Option

The estimated cost of construction of the preferred option is \$27.6 million (2021 dollars).



See *Exhibit 08* for
table itemizing costs

Exhibit 07: MVCH Conceptual Development Site Plan



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Exhibit 08: Estimated Construction Costs

Area	Quantity	Units	\$ / Unit	Total	Notes
General Site					
Construct New Access Drive	1	LS	\$650,000	\$650,000	
Construct New Security Building	800	SF	\$280	\$224,000	
General Site Improvements	1	LS	\$3,879,448	\$3,879,448	Landscaping, security systems, playgrounds, roof replacements, electrical upgrades campus-wide and new PA system campus-wide
Drainage System Study	1	LS	\$613,035	\$613,035	Includes \$500k allotments for potential work
Parking Lot Improvements	1	LS	\$3,149,115	\$3,149,115	Repaving existing / paving dirt lots, dumpster enclosures, restriping, ADA spaces
Building 1 Area					
Renovate/ Expand Amador Health Center int El Caldito Soup Kitchen Area)	7,300	SF	\$320	\$2,336,000	
Expand Parking Lot North of Amador Health Center	32,000	SF	\$45	\$1,440,000	Assumes acquisition of property to north of Building 1. Estimate does not include land acquisition or renovations to warehouse building.
Building 2 Area					
Renovate Day Care (Building 2)	12,200	SF	\$260	\$3,172,000	For future use TBD
Building 3 Area					
Expand Parking Lot	14,150	SF	\$45	\$636,750	
Renovate MVCH Building	1	LS	\$1,632,400	\$1,632,400	Assume 10,900 sf
Building 4 Area					
Construct New El Caldito Soup Kitchen	1	LS	\$4,022,370	\$4,022,370	Assume 9,000 sf
Expansion Area					
Extend Utilities	1	LS	\$125,000	\$125,000	
Construct New Jardin De Los Niños Day Care	31,400	SF	\$350	\$10,990,000	Doubling the number of classrooms from 7 to 14
Contingency @ 15%				\$3,282,018	
Total Cost				\$27,636,538	

Management Plan Recommendations—Prepared by Real Estate Advisors (REA)

The purpose of this management plan is to make recommendations for future relationships, management structure, and campus operations between the non-profit organizations and the management of the campus, as well as between the organizations and the City of Las Cruces (City) as the existing owner. These recommendations stem from an assessment of the existing entity relationships, management structure, and campus operations at the Mesilla Valley Community of Hope (MVCH), as determined through a three-step process:

1. Review - A comprehensive review of how the physical plant is currently being used and managed was critical to build upon for recommended best practices
2. Evaluate and Assess - Evaluation and assessment of current resources is a vital component in determining capacity and identification of management inadequacies.
3. Recommendations - The purpose of the management recommendations are to increase the efficiency and effectiveness of the current facility management, to properly maintain the building components based on the current systems inventory, and to confirm that the management structure is in place for future development and growth of the campus.

Step 1: Review

Real Estate Advisors (REA) reviewed and abstracted the Master Lease and Amendment (See **Exhibit A**) between the City of Las Cruces (“Lessor”) and Mesilla Valley Community of Hope (“Lessee”) and the subleases between Mesilla Valley Community of Hope (“Sublessor”) and the respective sublessees (St Luke’s, El Caldito, Jardin de Los Nino’s, and Casa de Peregrinos).

Article 4 of the Master Lease (See **Exhibit B**) provides the City is responsible for maintenance and repair of major mechanical systems, the roof, major capital improvement and major maintenance items. The City shall also be responsible for necessary building renovations as determined by the City, and as deemed necessary from time to time during the lease. The lease provides the City will bill lessee for requested minor repairs at normal hourly rate.

The Lessee’s responsibility of maintaining the Leasehold Property is limited. Lease Article 4 also outlines those items that are to be maintained, repaired, or replaced by lessee/tenant. Sublessee responsibilities in the lease provides that:

“All subleases must ensure that MVCH responsibilities as stated herein are passed through as appropriate to all organizations signing subleases under this lease. All subleases for current occupants must be signed by MVCH and sublessee within Thirty (30) days of executing this Lease, with copies provided to the Land and Real Estate Services/Facilities Section of the City.”

The Mesilla Valley Community of Hope facility condition assessment compiled by Architectural Research Consultants, Incorporated identified significant deferred maintenance and aged out building elements. Additionally, the master plan outlines significant new construction for the expansion of the campus.

A key component in the process to complete the Step 1 was for the REA team to meet virtually with the City, MVCH, and all the Individual agencies (except for Amador Health Center) to review existing Property Management Process, Procedures, and Personnel. The interviews built upon the prior work completed in the Facility Summary to determine management operations needed to support the uses, hours of operation and current and future facility management needs of each agency. The interviews included discussions with the City, MVCH, and each individual agency to learn their perspective on the current Management Performance of building operations in meeting their needs and expectations.

Step 2: Evaluate and Assess

REA's assessment of the management of the campus is that all parties have a vested interest in the project and show an ownership of their facilities. There is mutual respect for one another, a sincere desire to help the other organizations within the campus, and a true passion for the services that each provides. The person(s) running each program were devoted, intelligent, and enthusiastic about what they are doing in the community. Although REA identified areas for improvement, it has been noted that all the parties "make it work" for their entity and support the other agencies on the campus. Identified areas of improvement were:

1. The most significant item for improvement in the management at the campus is record keeping of maintenance issues. Without these records it is difficult to put into place cost savings preventative maintenance programs and/or service records for enforcement of warrantees.
 - a. The master lease and subleases require that the lessor and sublessors submit quarterly reports of maintenance records. It was apparent by reviewing the documents provided that each organization currently submits their own version of a quarterly report to Mesilla Valley Community of Hope. In our interview the lessor acknowledges receipt and filing of the reports, but notes there is not an established process or person to regularly reviews the reports. Reviewing and compiling the maintenance activity at each location would be made easier if the subtenants were required to use the same form. It would then be prudent for preventative and anticipated maintenance purposes, for the City to have in place a process to review and document any issues and concerns.
 - b. The tenants reported to REA that it is not unusual for the person(s) or vendor responding to a recurring issue to have little or no knowledge of the history of breakdowns and/or repairs. Whether this record keeping is a standardized written report of each visit and task performed, or something more sophisticated like a software program, records of the maintenance performed should be well documented. This documentation will allow both MVCH and the City to better understand what is, or in some cases, what is not, being addressed at the facility. This

potential cost savings information would be very valuable in budgeting and planning and could also identify any potential liability issues.

- c. City Maintenance is responding to maintenance calls, but currently Accounting and Tracking Systems are not being used to record the cost, maintenance, and personnel performing the calls. The lease and subleases provide that the lessor has the right to bill the Lessee for minor repairs it makes at the campus at normal hourly rates. Therefore, tasks are performed and not billed, or repairs and maintenance issues are not addressed at all, as each entity believes that other is responsible. Additionally, records are not available of third-party vendor services and repairs at the campus. Without this information it is not possible to benchmark the cost effectiveness and identify inefficiencies in the facility operations.
2. During our interviews it was apparent that the subtenants were not clear who was responsible for the maintenance of certain items within their buildings. Several of the persons that REA talked to convey a belief that ultimately the City was responsible for everything including fixtures and equipment specific to their services. The message coming from the City or MVCH should mimic what is in the lease. Without a consistent message each time a request is made, outside the terms and conditions of the lease, a precedence is set that is hard to break.

It would be in the best interests of all parties to compile a table for each facility which itemizes who is performing required maintenance (MVCH, its respective sublessee, or no one). This would ensure all parties have a clear understanding of the designation of duties between MVCH and the sublessee and that the responsible party designated is completing its responsibilities and task. It is further in the City's best interest to determine that these agencies have the capability and capacity to perform such duties and if they do not, to put into place a process to ensure both repairs and preventative maintenance are addressed. REA's understanding of the maintenance responsibilities is presented in the maintenance requirements in *Exhibit C*.

3. The current master lease and all the subleases, except for the Amador Health Center, are scheduled to expire in December of 2025 and no renewal rights are in place. Consideration should be given that if there is substantial planned capital investment in the project in the near future, the term of the respective leases should be increased, or the agreements should be revised to provide for additional renewal options reflecting planned investments.
4. The subleases do not identify the specific space each subtenant uses. The agreements should clearly define the premises of MVCH and the subtenants as each has maintenance responsibilities for the premises they occupy. Additionally, the leases provide that MVCH and the subtenants are solely responsible for 100% of the maintenance for any new additions and buildings on the campus constructed for their use.

Step 3: Suggestions and Recommendations

While REA understands that funds are often limited and staffing issue plague us all right now, it would be in the best interest of City of Las Cruces to provide as much support (financial and management) as possible to enhance and maintain this campus. This additional investment should save the City money in the long-term thru a more proactive management approach. Specific suggestions and recommendations are as follows:

1. Given the substantial amount of maintenance required to care for each building on site, REA recommends that there be a full-time maintenance person dedicated to the facility. This would allow for consistency in performing minor task in a timely manner and better communications between the subtenants, MVCH and the City. This position would also provide campus knowledge of the facilities and prior work orders. This person would be in addition to existing custodial personnel currently employed by MVCH and Jardin.
2. The written quarterly logs of in-kind services and maintenance performed at each location, as required by the Subleases, should be standardized.
3. Maintenance and Repair request by subtenants, should go to MVCH first for evaluation; MVCH would then assign the tasks to the appropriate party or reject. A written response of the action taken or an explanation of the rejection to perform the task, should be sent back to the requestor. This should be on a standardized format which is recorded. It is REA's recommendation that this be through a computerized work order software where:
 - a. Tenants are able to place a work order request
 - b. MVCH can review request and provide approval and delegation to the appropriate responsible party.
 - c. Respective responsible party will have the ability to provide notes as work progresses.
 - d. Responsible party shall close out the work orders when complete with notification to tenant and subtenant.
4. All subleases should be amended to clearly specify and denote the location of the subtenant within the project, the area within the building, and the square footage occupied.
5. Amendments should be drafted for each subtenant who has altered or is in the process of expanding their facilities. The amendment should provide detailed information (construction drawings, work description, etc.) of service activity that has been approved or completed on the premises. This documentation should also clearly state who is responsible for the maintenance of said expansion. If substantial capital improvements are planned or completed for any of the agencies, consideration should also be given to extending the lease term and/or adding renewal options for the subtenant. At this time, we recommend that amendments be completed for:
 - a. MVCH Camp Hope and the supporting bathroom and outdoor kitchen facilities
 - b. Amador Health Center Expansion
 - c. Casa de Peregrinos Storehouse Facility
6. The Master Lease expires 12/30/25. The Amador Health Center's lease expires 6/30/2026. By the very nature of a sublease, the term cannot exceed the term of the Master Lease.

Therefore, either the term of the MVCH Master Lease needs to be extended or the term of Amador Health Center needs to be revised to be co-terminus with the Master Lease.

7. If it does not already exist, the City of Las Cruces should develop a matrix for understanding and recording the services rendered by each organization. Conversely, the agencies should provide greater detail of the services provided in their quarterly reports. Tremendous hours and money are being spent to service the homeless and less fortunate community in Las Cruces. It would be beneficial for the City to be able to quantify these essential services. Most, if not all, of the organizations have this information but state detailed information is not requested.

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Exhibit A: Lease Abstract

Lease Abstract									
Prepared by:		Real Estate Advisors LLC			Date:		9/17/2021		
Tenant:		Mesilla Valley Community of Hope			Property:		999 West Amador Ave.		
		MVCH - 6,173 sf					16.59%		
Commencement Date:		12/01/15		Casa de Peregrinos - 4,727 sf		%		12.71%	
Expiration Date:		12/30/25		El Caldito Soup Kitchen - 5,200 sf		%		13.98%	
Term (months):		60 Months		Jardin De Los Ninos - 12,200 sf		%		32.80%	
Total Project Size:		37,200 SF		Amador Clinic Suite A - 6,800 sf		%		18.28%	
Land Size (if stated):		8 acre		Amador Clinic Suite D - 2,100 sf		%		5.65%	
Rent Schedule: Annual ☒ Monthly ☐ PSF/Year ☐									
Date:		12/01/15		\$		\$400,000.00.			
In lieu of \$400,000 market rental payment, and beginning on December 1, 2015, the Lessee providing services for the care and maintenance of sick and indigent persons, persons who are homeless, or have low income, as well as abused and/or neglected children. The services to the public shall be at least equal in value to the Market Annual Rate and are to be performed on an on-going basis during the Lease Term. Lessee shall provide a report to the City at least annually to document the type of services with both quantity and quality measures which describes the caseload of services and the approximate amount of same being offered to residents of the City.									
Storage Space Rent Schedule (if no SF is attributable to the storage space): Annual ☐ Monthly ☐ PSF/Year ☐									
Date:				\$					
Date:				\$					
Reimbursements:									
Method:		NNN ☐		Gross w/ BY ☐		Full Service ☐		Other ☒	
Refer to Exhibit C for Maintenance Responsibilities. The City shall be responsible for maintenance and repair of major mechanical systems and the roof. City shall be responsible for capital improvements and major maintenance items. City is also responsible for building renovations. City shall bill Lessee for minor repairs at normal hourly rates. Lessee shall maintain the Property excluding City's responsibilities. Lessee shall be responsible for all maintained in Exhibit and provide a quarterly log. Lessee shall pay all utilities cost for electric power, water, waste water and natural gas. Telecommunications and valid taxes, assessments, license and fees.									
Expense Category:		Base Year:		Amount:		Gross-Up:		Yes ☐ No ☒	
						Percentage:			
Options:						Parking: (noted in lease)		Yes ☒ No ☐	
Renewal Options:		Yes ☐ No ☒				131 Total, 8 ADA and approximately 40 unmarked. The parking area on the Leasehold Property shall be for the exclusive use of the customers, clients, patrons, officers and employees of the Lessee. Lessee must accommodate parking needs as a result of expansion to meet code.			
Tenant exercised its option to renew for that period from 12/1/21 thru 11/30/25. Tenant has no other renewal rights.									
Sublease		Yes ☒ No ☐				Percentage Rent:		Yes ☐ No ☒	
Lessee has the responsibility of issuing, requiring and executing subleases for any other organization providing services. All sub-leases must insure the Lessor responsibilities as stated herein are passed through as						Percentage:			
						Breakpoints:			
						Offsets:		Yes ☐ No ☐	
Expansion Options:		Yes ☐ No ☒				Outstanding LC's or TI's:		Yes ☐ No ☒	

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Exhibit A: Lease Abstract (Continued)

Lease Abstract									
Prepared by:		Real Estate Advisors LLC				Date:		2/8/2022	
Tenant:		Casa de Peregrinos - Warehouse				Property:		999 West Amador Ave.	
Commencement Date:		07/01/15		Casa de Peregrinos		% of total project		12.71%	
Expiration Date:		12/30/25							
Term (months):		60 Months							
Tenant Premises:		4,727 sf							
Land Size (if stated):		8 acre							
Rent Schedule:						Annual ☒		Monthly ☐ PSF/Year ☐	
Date:		07/01/15		\$		55,823.25			
In lieu of \$55,823.25 market rental payment, and beginning on July 1, 2015 (original Sub Lease Agreement) and extended for an additional 5 Years on December 1, 2020, the Sublessee provided for the care and maintenance of sick and indigent persons, persons who are homeless, or have low income, as well as abused and/or neglected children who are residents of Las Cruces and the surrounding area of Dona County. The services to the public shall be at least equal in value to the Market Annual Rate and are to be performed on an on-going basis during the Sublease Term. Sublessee shall provide a report to the Sublessor at least annually to document the type of services with both quantity and quality measures which describes the caseload of services and the approximate amount of same being offered to residents of the City.									
Storage Space Rent Schedule (if no SF is attributable to the storage space):						Annual ☐		Monthly ☐ PSF/Year ☐	
Date:				\$					
Date:				\$					
Reimbursements:									
Method:		NNN ☐		Gross w/ BY ☐		Full Service ☐		Other ☒	
Refer to Exhibit C for Maintenance Responsibilities. The City shall be responsible for maintenance and repair of major mechanical systems and the roof. City shall be responsible for capital improvements and major maintenance items. City is also responsible for building renovations. City shall bill Lessee for minor repairs at normal hourly rates. Lessee shall maintain the Property excluding City's responsibilities. Lessee shall be responsible for all maintained in Exhibit C and provide a quarterly log. Lessee shall pay all utilities cost for electric power, water, waste water and natural gas, telecommunications and valid taxes, assessments, license and fees.									
Expense Category:		Base Year:		Amount:		Gross-Up:		Yes ☐ No ☒	
						Percentage:			
Options:						Parking: (noted in lease)		Yes ☒ No ☐	
Renewal Options:		Yes ☐ No ☒				131 Total, 8 ADA and approximately 40 unmarked. The parking area on the Leasehold Property shall be for the exclusive use of the customers, clients, patrons, officers and employees of the Lessee. Lessee must accommodate parking needs as a result of expansion to meet code.			
Tenant exercised it option to renew for that period from 12/1/20 thru 12/30/25. Tenant has no other renewal rights.									
Sublease		Yes ☒ No ☐				Percentage Rent:		Yes ☐ No ☒	
Lessee has the responsibility of issuing, requiring and executing subleases for any other organization providing services. All sub-leases must insure the Lessor responsibilities as stated herein are passed through as						Percentage:			
						Breakpoints:			
						Offsets:		Yes ☐ No ☐	
Expansion Options:		Yes ☐ No ☒				Outstanding LC's or TI's:		Yes ☐ No ☒	
1st Amend		Com Date		Exp Date					
Lease		12/1/2020		12/30/2025					
		12/1/2015		11/30/2020					

Exhibit B: Lease Article 4. Maintenance and Repairs

Article 4. Maintenance and Repairs

- A. Lessee and City shall jointly share the responsibility for maintenance and repair of the Leasehold Property as defined in this Article 4 and more specifically defined on Exhibit 'C' The City shall be responsible for maintenance and repair of major mechanical systems and the roof. Lessee shall be responsible for servicing and maintenance of the building and equipment therein. Lessee agrees to comply with the City building codes at all times.
- B. The City shall be responsible for capital improvement and major maintenance items as set out on Exhibit C attached hereto and made a part hereof being within the buildings owned by City. The City shall also be responsible for necessary building renovations as determined by the City, and as deemed necessary from time to time during the Lease. City will bill Lessee for requested minor repairs at normal hourly rate.
- C. Lessee shall maintain the Leasehold Property and any improvements, fixtures, or equipment on the Leasehold Property in a workman-like manner excluding the City's responsibilities in Sections 5A and 5B above. Lessee shall be responsible for all maintenance responsibilities as set out on Exhibit 'C' attached hereto and made a part hereof.
- D. Lessee shall maintain and provide the City with a copy of written log on a quarterly basis of the maintenance records whether handled by their staff or contracted to an outside party. Any servicing maintenance or replacement parts must meet and be maintained as per manufacturer recommendations and specifications.
- E. Lessee shall be responsible for any expenses required to repair or replace any damage or injury done to the building, or any part thereof, caused by Lessee, Lessee's agents, employees, licensees, invitees or visitors, provided, however, if Lessee fails to make such repairs or replacements promptly, City may at its option, make such repairs or replacements and Lessee shall pay the cost thereof to City on demand.
- F. City, its officers, agents and representatives, subject to any security regulations imposed by any government authority or Lessee, shall have the right to enter all parts of the premises, subject to a Twenty-four (24) hour notice and at a reasonable hour, to inspect, clean, make repairs, conduct safety inspections on the buildings or premises which are reasonably required and as it may deem necessary or desirable, or to provide any service which it is obligated to furnish to Lessee. Notwithstanding the above, the City shall have the right to enter the Leasehold Property without notice in the event of an accident or urgent situation, such as a fire, medical or police emergency being declared on the Leasehold Property.
- G. All trade fixtures, portable buildings, equipment and other personal property brought, installed, erected or placed by Lessee in, on or about the Leasehold Property shall be deemed to be personal and shall be and remain the property of Lessee, except as otherwise provided herein; and Lessee shall have the right at any time during the term hereof when not in default and when not prohibited by any mortgages of Lessee to remove any or all of its property, subject to Lessee's obligation to repair all damage, if any resulting from such removal. All such portable buildings, trade fixtures, and other personal property of Lessee shall be removed by Lessee from the Leasehold Property at the expiration of this Lease or the expiration of any renewal hereof, whichever occurs last, unless this Lease is earlier terminated as provided for herein.

Exhibit C: Maintenance Responsibilities

Maintenance Responsibilities – Page 1

City of Las Cruces shall be responsible for the following:

- Capital Improvements and major maintenance items.
- Necessary building renovations, as determined by the City, and deemed necessary time to time during the lease.
- Roof repair and replacement
- Fire alarms
- Parking lot repaving and repair
- Parking lot lighting fixture and bulbs and time set for lights
- Boiler repair and replacement
- Heating and Cooling system equipment replacement-including maintenance of filters
- Plumbing system replacement
- Light systems and fixtures for interior and exterior of buildings and parking lot
- Power distribution-wiring or main breaker panel
- Built in Refrigerators and Freezers in Casa De Peregrinos only
- Landscaping Irrigation system
- Replacement, Maintenance and Repair of Grease Trap
- Exterior Doors, also include Glass Exterior doors.
- Windows

Mesilla Valley Community of Hope shall be responsible for the following:

Agencies must obtain written permission through MVCH first then City's Facility Department, or assigned must be notified before making any alterations or improvements of a permanent nature to the grounds or buildings

- Responsible for all Kitchen equipment repair and replacement except for built-in refrigerated equipment
- Kitchen refrigeration equipment (Built In)-Equipment in Caldito only
- All laundry equipment or replacement
- Any other equipment at the Leasehold property that is owned by the Lessee or Lessee's clients or visitors.
- Maintain and keep the interior of the Leasehold property in good repair and condition at the Lessee's expense
- Interior Cleaning, painting, custodial and landscaping services as necessary
- Responsible for all plate Glass
- Glass Doors
- Glass Walls-Interior
- Light bulbs Interior
- Interior Doors
- Interior Flooring
- Carpet
- Ceiling vent and duct cleaning

Exhibit C: Maintenance Responsibilities (Continued)

Maintenance Responsibilities – Page 2

Mesilla Valley Community of Hope shall be responsible for the following:

- Landscaping, Plants, Lawn and Landscaping materials
- Exterior plumbing associated with Camp Hope
- Grease Traps, cleaning
- Intrusion Alarms
- Fire Extinguishers
- Hood Alarm-Operational done with annual inspection
- Pest Control
- Clogs drains and lavatories
- Keys and any Key replacement. City must be provided with duplicate keys. Upon agreement termination all keys must by surrendered to the City
- Clean and sweeping of Parking and Driveway and Campus area.
- Provide a copy of quarterly written maintenance log to the city of all services performed.

Appendices

1. MVCH Agency Information

Mesilla Valley Community of Hope (MVCH)

Mission

MVCH serves the homeless and near-homeless population in Las Cruces and Doña Ana County. MVCH started from an alliance of faith organizations, community leaders and homeless service providers who in 1991 envisioned a common campus where services would be provided. MVCH was officially incorporated in 1993, and has occupied its space on the campus since Building 3 was completed in 2005.

The mission of Mesilla Valley Community of Hope is to promote dignity and empowerment among the homeless population by providing shelter services, case management, income support, and permanent housing programs. MVCH envisions a world in which homelessness and poverty are eradicated.

Services

MVCH provides a variety of services designed to assist with the provision of temporary and permanent housing for its clients with the ultimate goal of getting the client into permanent housing. MVCH staff provide case management and support resources including a clothing bank, laundry, shower facilities, mail, internet access, income support, day labor programs, and linkages to other service providers.

- Several housing support options are available through MVCH including individual apartments, subsidized rent, veterans housing, group homes for the chronically homeless and for chronically homeless women. MVCH also provides assistance in furnishing homes and providing household goods.
- Camp Hope is a tent city located on the MVCH campus which provides a safe place for homeless residents to stay while they transition to housing. The campground amenities include full service bathrooms, a kitchen and 3-sided shade structures on 45 tent pad sites.
- Desert Hope, MVCH's latest initiative is a permanent supportive housing project developed in collaboration with the Mesilla Valley Housing Authority and the City of Las Cruces. The facility can house up to 40 people and is supported by MVCH staff on-site to offer supportive services to help residents avoid homelessness.

Staffing

MVCH staff includes approximately 19 full-time, 6 part-time, and 5 contract personnel. Additionally, MVCH is supported by several volunteers and interns. Some MVCH personnel oversee and are housed at the agency's group homes located throughout the community.

Potential additional future staff include a future deputy director/HR manager, and additional housing stability staff.

Existing Facility Condition / Concerns

MVCH is currently located in the east side of Building 3, which it shares with Casa de Peregrinos. MVCH's side of the building includes administrative and counseling offices and support resource facilities including a clothing bank, laundry facilities, toilet and shower facilities, and a resource/day activities room.

- The agency has long outgrown the facility - it lacks sufficient administrative office space, and administrative staff currently share offices, some with 3 or 4 to a room. Interview/intake rooms and rooms intended for a clothing bank have been taken over for administrative offices, and workstations have been installed in corridors. There is only one staff restroom and no real break room.
- The building is worn from heavy use. In particular the toilet and restroom facilities provided to their clientele require updates.
- The agency is constantly acquiring donations including clothing, personal hygiene items, furniture, and other household items. Storage space is inadequate and must be augmented by external transportainers located behind the building.
- Traffic in and out of the building is constant, and is further exacerbated by the activities and traffic in and out of the Casa de Peregrinos Food Rescue Warehouse on the west side of the building. Both MVCH and Casa de Peregrinos share one public front access point, which is a hang-out area for their clients.
- There is insufficient parking for staff and visitors, and on days when the Food Rescue Warehouse does food distributions the vehicular traffic can be heavy.

Potential Future Program Growth

MVCH anticipates being able to expand into the current Casa de Peregrinos space in Building 3 once the food bank moves into its new facility. This will almost double the space available for MVCH's functions and activities, but may not be totally sufficient to meet the program's space needs. Relocating the Food Rescue Warehouse activities will also serve to alleviate much of MVCH's parking needs.

In addition to sufficient administrative office and support space, MVCH requires additional storage space, along with better outdoor covered shaded areas for its clients to congregate during the day while they await their turn accessing resources inside the building.

MVCH does not anticipate significant expansion of Camp Hope, as its goal is to work toward permanent housing rather than temporary, transitional housing.

Master Planning Considerations

- MVCH has strong ties to El Caldito and to Amador Health Center, and the current adjacency to these provider services is good. However, the proximity of MVCH and the Center to Jardin de los Niños is problematic. Children attending the daycare facility are often exposed to inappropriate adult activities as there is little separation and no screening between the two facilities.
- Adjacency to Camp Hope is desirable for oversight and support.
- There is a potential for additional supportive permanent housing similar to Desert Hope on the newly acquired property.
- Warehouse storage could be a shared asset with other campus agencies.

Amador Health Center

Program

Amador Health Center (AHC) provides medical care, dental care, pharmacy, behavioral health care, drug and alcohol recovery support, and harm reduction care services to members of the community, including the homeless and indigent. The health center turns no-one away regardless of insurance coverage, criminal background, immigration status, sexual orientation, drug use or ability to pay.

AHC's mission is to provide access to vital integrated health and wellness services to our community, and to promote dignity, one life at a time

AHC's vision is to provide care and bridge gaps between social services and people in need to restore hope and break the cycle of poverty

AHC was incorporated in 1990 as St. Luke's Health Care Clinic, and opened its doors in January of 1991. The health center moved into the MVCH campus in 1998, sharing Building 1 with El Caldito soup kitchen and a family shelter. In 2017, the health center expanded into what was the family shelter at the north side of the building, renovating the space into modern medical and behavioral health clinical space, renaming itself as the Amador Health Center. The original clinic space at the south side of the building is now devoted to substance abuse services.

Amador Health Center is open six days a week, 8:00 AM to 4:30 PM (with some appointment as late as 6:00 PM), and averages about 200 visits per week, or about 5,000 visits per year for around 1,000 patients.

About 50% of AHC's clients are homeless, 45% are low-income and immigrant community members, and about 5% are farm workers.

Services Provided

AHC provides Clinical Care, Dental Care, Pharmacy, Behavioral Health, Harm Reduction, Homeless Clinic and LGBTQ Support services to the greater Las Cruces community. Both in-person and Telehealth services are available, and much of the health center's behavioral health and harm reduction services are performed off-site in patient homes.

Staffing

AHC currently has a staff of 22 full-time employees and 12 part-time employees.

Seven of AHC's staff serve the behavioral health programs located in the south wing of Building 1 (Suite D) - the remaining personnel serve the main health center programs in the north wing (Suite A/B). AHC's staff is augmented by a number of volunteers and partner providers who come to the health center as needed.

Existing Facility Condition / Concerns

Suite A/B was renovated in 2017 and is in good condition, but there remain unmet needs. Two of the exam rooms have been converted to office space so the health center is short two exam rooms. The lobby space is small, and there is one clinical room that is accessed from outside of the secure clinical zone.

The space at the south side of the building (Suite D) has not had any significant renovations, and is not optimally laid out for providing behavioral health services. The lobby space is too big, and the clinical rooms are not soundproof. The space is dated and would benefit from facility renewal efforts to refresh the space.

Planned and Proposed Additions

A new addition to be located at the northeast side of Building 1 is in the planning stages, along with some renovation to expand an existing conference/meeting room. This addition of approximately 3,300 sf will double the size of the conference room, provide about six additional offices, and house a dental suite with four stations.

The new addition will not accommodate all of the clinic staff. A proposed 1,600 sf addition to Suite D at the south end of the building would provide additional offices and counseling rooms for the behavioral health programs.

Potential Future Program Growth

Amador Health Center currently serves about 1,000 patients a year, and anticipates growth at a rate of 5-10% per year to a maximum capacity of 1,500 patients per year at this site.

The health center's patient base is not likely to grow beyond 1,500 at this site. Future growth (in the 5-10 year and beyond timeframe) will likely mean establishing a second location to serve the

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patient base that cannot get to the MVCH campus location. However, the agency is a long way from being able to fund and operate a second location.

Potential service expansion might include:

- A walk-in urgent care facility, full dental services (currently provide only preventative dental care services), and more pediatric services.
- Provision of x-ray capabilities
- An OBGYN clinic (with ultrasound equipment)
- A medical respite area where the homeless can stay during recovery after medical procedures (would require overnight patient accommodations and additional staffing)
- Additional counseling/testing rooms

The Behavioral Health services program envisions significant growth, with a goal of serving 100 clients/year. About 70% of the substance abuse clients have other medical issues, so colocation with the health center is important

Other potential services under consideration include diagnostic services, marriage counseling, behavioral management services for children, a custodial pharmacy, and hosting of programs such as Alcoholics Anonymous meetings.

The proposed addition to Suite D would accommodate much of the proposed program growth needs.

Master Planning Considerations

Amador Health Center gets many of its referrals from the other agencies located on the MVCH campus, and some of its staff provide services to Jardin de los Niños.

The health center's needle exchange program is in close proximity to the daycare center, which is a concern.

Both the planned expansion on the north side and the proposed expansion on the south side further exacerbate circulation around Building 1, and limit options for addressing delivery access to the soup kitchen.

Based on the health center's potential program growth, in the long-term it may make sense to relocate El Caldito elsewhere on the campus and dedicate all of Building 1 to health center programs. This would also provide an opportunity to address the needs of the soup kitchen in a new facility.

El Caldito Soup Kitchen

Program

El Caldito's mission is to provide a healthy meal daily, in a safe and clean environment, for any hungry person.

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El Caldito's vision is to continue to fight hunger by providing nutritious meals to our community until the need no longer exists.

Founded in January of 1984, El Caldito started out offering a mid-day meal once a week at St. Andrew's church, prepared by volunteer groups from several community churches. El Caldito occupied their current facility on the MVCH campus in 1998, and has over time grown and expanded its programs offering hot meals six days a week, and a sack lunch on Saturdays, 365 days a year.

Services Provided

El Caldito serves breakfast Monday through Friday and lunch Sunday through Friday. A typical breakfast or lunch service provides between 150 and 225 meals. Meal preparation begins at 6:00 AM, and is largely prepared by community volunteers.

- Breakfast is served from 7:00 AM to 8:30 AM
- Lunch is served from 11:30 AM to 1:00 PM Sunday through Friday
- A sack lunch is distributed from 11:30 AM to 12:00 PM on Saturdays.

El Caldito operates a gleaning program (also with volunteers) that collects unused quality food items from local bakeries, restaurants, hospitals, supermarkets and farms for use in preparing its meals.

The kitchen also prepares and delivers meals to migrant workers and asylum-seeking immigrants in the Las Cruces area.

El Caldito serves full holiday meals for Easter, Thanksgiving and Christmas.

El Caldito's dining facility is also utilized by a day labor program each morning.

Staffing

Caldito has only four (4) paid staff - an operations manager, a business manager, a kitchen assistant and a custodian.

All food preparation is done by community volunteers (10 to 15 volunteers are schedule each day).

Volunteers are from the community, student and church groups, service organizations, and various businesses. Most are retirees.

Existing Facility Condition / Concerns

- The existing dining room has a maximum capacity of 96, and is often at capacity.
- The kitchen and baking areas are tight, with insufficient space around equipment to meet OSHA safety guidelines.
- Storage for dry goods, refrigerated goods, pots, pans and dishware is also insufficient. El Caldito has expanded into space formerly part of the shelter (now the health center), and has

added a small storage room on the east side of the building. It also relies on transportainers for additional storage, and must use off-site freezer space to meet its storage needs. The cooling system does not serve the addition.

- The facility does not have sufficient space for the agency's office needs - a storage room has been commandeered for office space.
- There is inadequate parking space for volunteers, and the delivery area is difficult for large vehicles to maneuver.

Potential Future Program Growth

El Caldito does not plan to offer evening meals, but would like to expand its satellite kitchen/dining capability to provide meals to those who cannot get to the MVCH campus. The agency is contemplating servicing the southern Mesilla Valley communities. One potential solution is acquisition of a mobile kitchen unit.

El Caldito would like to see the following improvements to its facility:

- Expand and upgrade the kitchen
- Expand the dining area to provide for a higher capacity, and provide outdoor, shaded dining opportunities
- Extend cooling to service the storage addition Acquire additional office space
- Construct more dry and cold storage space to replace the transportainers and off-site storage
- Improved delivery capabilities including a loading dock that can accommodate semi-trucks and other large delivery vehicles
- Additional staff and volunteer parking

Master Planning Considerations

- El Caldito occupies the center suite in Building 1, and is landlocked with limited expansion options.
- The service and delivery side of the building (east side) presents a challenge for semi-trucks and large delivery vehicles. Turn-around space is limited.
- El Caldito has very strong ties to Casa de Peregrinos (70% of its food supplies are provided by the food rescue warehouse), and much of its clientele also get support services from MVCH in Building 3 and from the Amador Health Center, with which it shares Building 1.
- Adjacency to Jardin de los Niños is not a requirement.
- Warehouse storage could be a shared asset with other campus agencies, if shared management concerns can be resolved.
- The master plan should consider potentially relocating El Caldito to a new facility on the site and allowing the health center to occupy all of Building 1.

Jardin de los Niños

Program 1

Jardin de los Niños provides childcare and early childhood education to children from the age of six weeks to 10 years old who are homeless and near-homeless.

Funding for the program comes from a variety of sources, including city, state and federal funds, private donations and fund raising events.

The need for safe childcare for homeless families was identified by community leaders in 1994, and Jardin de los Niños opened its doors at Peace Lutheran church in December of 1995. The program moved into a new purpose-built facility on the MVCH campus in 2001 as one of only two programs in the state serving the homeless population, and one of five programs of its kind in the nation.

Services Provided

Jardin operates a five-star educational program that supports its children and families. In conjunction with the Amador Health Center, Jardin also provides pediatric clinic and behavioral health services. Services are provided for five age levels:

- Infant
- Mobile Infant (combined with Infant)
- Toddler / Early pre-K
- Pre-Kindergarten
- School programs for Elementary age students

The program operates from 7:30 am to 2:30 pm, plus after-school programs that continue until 5 pm.

Jardin provides bus transportation services for children who do not have reliable transportation, including AM pickups and PM rides home. The after-school program picks up students at nearby schools and provides rides home after 5 pm if needed.

The agency accepts donations of educational materials, clothing, toys and other supplies that are provided to the needy. Jardin also provides a meals for its children, including food baskets sent home with the child on Fridays to ensure they have food for the weekend.

Staffing

Jardin currently has a full-time staff of 19, which is supported by numerous volunteers, interns, therapists and parents.

On any given day there may be up to 35 personnel on site including the above staff, 10 volunteers, 5 interns, 3 or 4 therapists and up to 30 parents.

Existing Facility Condition / Concerns

Jardin management has identified the following areas of concern:

- HVAC controls are problematic, and it is unclear which thermostats control which building zones (some of these issues may be resolved by the ongoing ESCO building controls upgrade project)
- The roof leaks and is in need of replacement (on 2023 ICIP list)
- The courtyard has drainage issues and has flooded in the past, impacting walls inside the building around the courtyard perimeter. Although some drainage correction has been completed, flooding in the courtyard is still a problem during heavy monsoon rains.
- Parking for staff, visitors and busses is inadequate. Currently no dedicated parking is assigned to the daycare center. Ideally Jardin should have about 50 dedicated parking spaces.
- Jardin administrators would like to have the outdoor play area walls raised to provide additional security and privacy.
- Some landscaping tree selections have thorns that are a hazard, and should be removed and replaced.
- The playground areas require renovation - equipment is outdated with wood play structures and sand fall areas.
- Security concerns identified include inadequate door access controls, insufficient security camera coverage, and a lack of a secure/safe room for lock-down events.
- Additionally, the planning team has observed the following areas of concern:
- Appropriate, well-designed drop-off and pick-up lanes are non-existent on the site.
- There is insufficient separation between the daycare areas and other service providers on the campus, and the children in the program can be exposed to inappropriate adult activity.
- Several key functional areas including the multi-purpose/lunch room and the kitchen are too small for the functions served, and equipment is too tight to meet OSHA safety requirements.
- Storage for supplies, chairs and donations is inadequate.

Potential Future Program Growth

Jardin de los Niños has a maximum capacity of 55 inside (185 including outside capacity). The program does not currently provide outside instruction due to a lack of appropriate outdoor spaces.

The program has a long waiting list, but cannot expand its offerings within the existing facility. The program would like to double its classroom capacity with an additional seven (7) classrooms.

Other desired spaces include:

- A larger cafeteria
- A large conference/board room
- Additional storage rooms for chairs, tables, donations, etc.

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- Dedicated clinical and behavioral health therapy rooms
- A dedicated mother's room
- A separate laundry room (now doubles as a pantry)
- Outdoor Classrooms / larger play areas / more outdoor storage
- Secure, covered parking for the bus fleet (currently have 3 busses)
- Adequate parking for staff, visitors and parents, sufficient to meet the demand generated by the proposed expansion (potentially double the existing)

Master Planning Considerations

- The location of Jardin de los Niños in the center of the campus poses challenges in keeping the children separated and shielded from adult activities occurring on the MVCH campus.
- Expansion of the facility is limited due to access and site circulation needs for the center and the adjacent service providers. Access to the CLC utility building at the southeast corner of the campus must be maintained.
- Identifying potential locations for appropriately designed drop-off and pick-up zones and additional parking areas while maintaining access to other campus service/delivery areas will be challenging.
- Deliveries from large vehicles and semi-trucks are a regular occurrence, and can be challenging due to the limited circulation and turn-around space.
- Warehouse storage could be a shared asset with other campus agencies.

Casa de Peregrinos Food Rescue Warehouse

Program

Casa de Peregrinos Food Rescue Warehouse was founded in 1979 with a vision to provide food and shelter to the homeless and transient population of Doña Ana county. Today, the agency operates a food distribution system for the needy based at the MVCH campus, with mobile pantries distributed throughout the county.

The current location of Casa de Peregrinos is in the west side of Building 3 of the campus, which is shared by MVCH. It was occupied in 2005.

A recently acquired building adjacent to the MVCH campus is currently being designed to house Casa de Peregrinos, and is scheduled for occupancy in the summer of 2022.

Services Provided

Casa de Peregrinos distributes about 4.7 million pounds of food a year, and services about 35,000 people each year.

The Food Rescue Warehouse prepares and distributes +/- 200 food baskets for each distribution, which occur 3 times per week (Monday/Wednesday/Friday). Baskets include fresh foods, canned goods, staples, dairy, and bakery products.

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The Food Rescue Warehouse has established several programs to serve the varied populations affected by food insecurity, including seniors, students, the homeless, and those living in rural areas that do not have easy access to in-town distribution centers. Casa de Peregrinos also operates a food rescue program that collects food from local retailers that is past its “sell-by” date but still viable for distribution to low-income families. Casa’s Thanksgiving Program distributes fixings for a full holiday meal to the needy at Easter, Thanksgiving, and Christmas.

Staffing

Casa’s staffing consists of 14 full-time staff and a support team of about 180 volunteers. Between 5 and 10 volunteers are scheduled on any given day.

Potential future staffing may require up to 2 additional offices.

Existing Facility Condition / Concerns

The existing Casa de Peregrinos space was designed for an annual distribution capacity of 500,000 pounds per year, and the program is now distributing about 4.7m pounds per year, or almost 10x the original intended capacity. The facility is beyond capacity, and like the MVCH suite is worn and in need of updates. Like the MVCH suite, there is only one staff restroom on this side of the building.

Although the program makes do with the existing facility, the space for basket assembly, food storage, public distribution and administrative offices are all very tight. The agency has added additional cold storage units and shelving within its warehouse space, but still has to augment both its dry and refrigerated storage capacity with transportainers and mobile refrigerated units on campus, and with leased space off-site. With the existing space beyond capacity the agency cannot expand its program offerings.

Parking is a concern, particularly on distribution days.

Potential Future Program Growth

Casa de Peregrinos anticipates the renovation of the recently acquired former Horse and Hound building will meet its current needs, along with space to implement some desired new programs.

Leadership at Casa de Peregrinos believes that the recent acquisition of additional property adjacent to the former Horse and Hound presents new opportunities for the agency. The vision is for the agency to expand its program offerings to assist in lifting more people out of poverty, providing training for people to work in food-related industries.

Partnerships could be forged with entities associated with economic development, community development, workforce training, education and emergency services.

Training could include food and beverage service, food safety certification and food inspector certification.

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Business incubator space could be provided for entrepreneurs such as food truck vendors or individuals wishing to produce and market specialty foods. With the appropriate partnerships, business management training could be provided to ensure entrepreneurial start-up success.

Potential Components to serve expanded program services include:

- Large commercial cooking, baking and prep kitchens (where clients/ trainees can produce entrepreneurs' start-up products or where food-truck vendors can prepare goods)
- Clean processing room
- Dry good storage / Refrigerated and Freezer storage (potentially providing storage for start-ups and food truck vendors)
- Shipping and packaging facilities (to allow start-ups to package and ship product)
- A dining room (for food and beverage service training)
- Classrooms
- Other potential opportunities include providing contracted food service to private and charter schools with no kitchens, and providing an emergency disaster kitchen facilities to local emergency preparedness agencies.

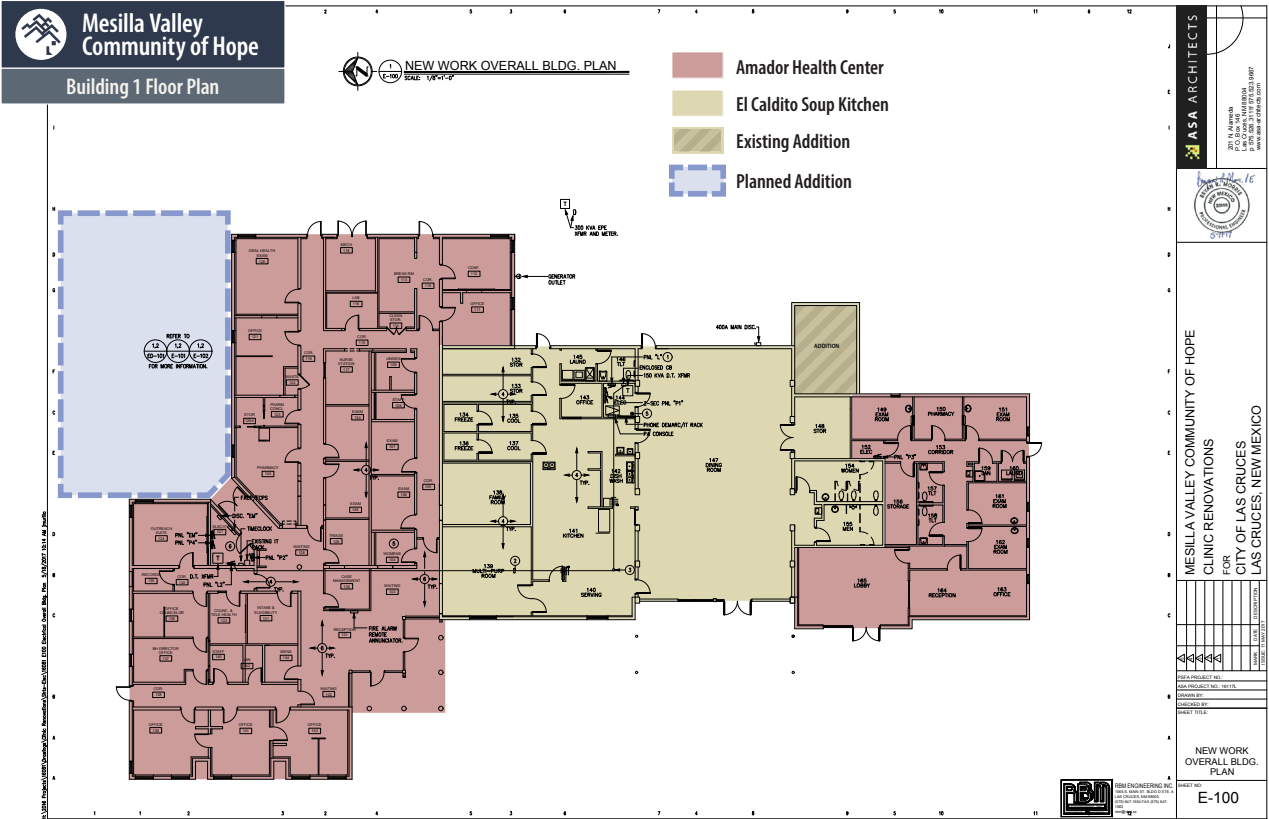
Some of these opportunities may mean funding for Casa de Peregrinos changes such that it is no longer a pure non-profit.

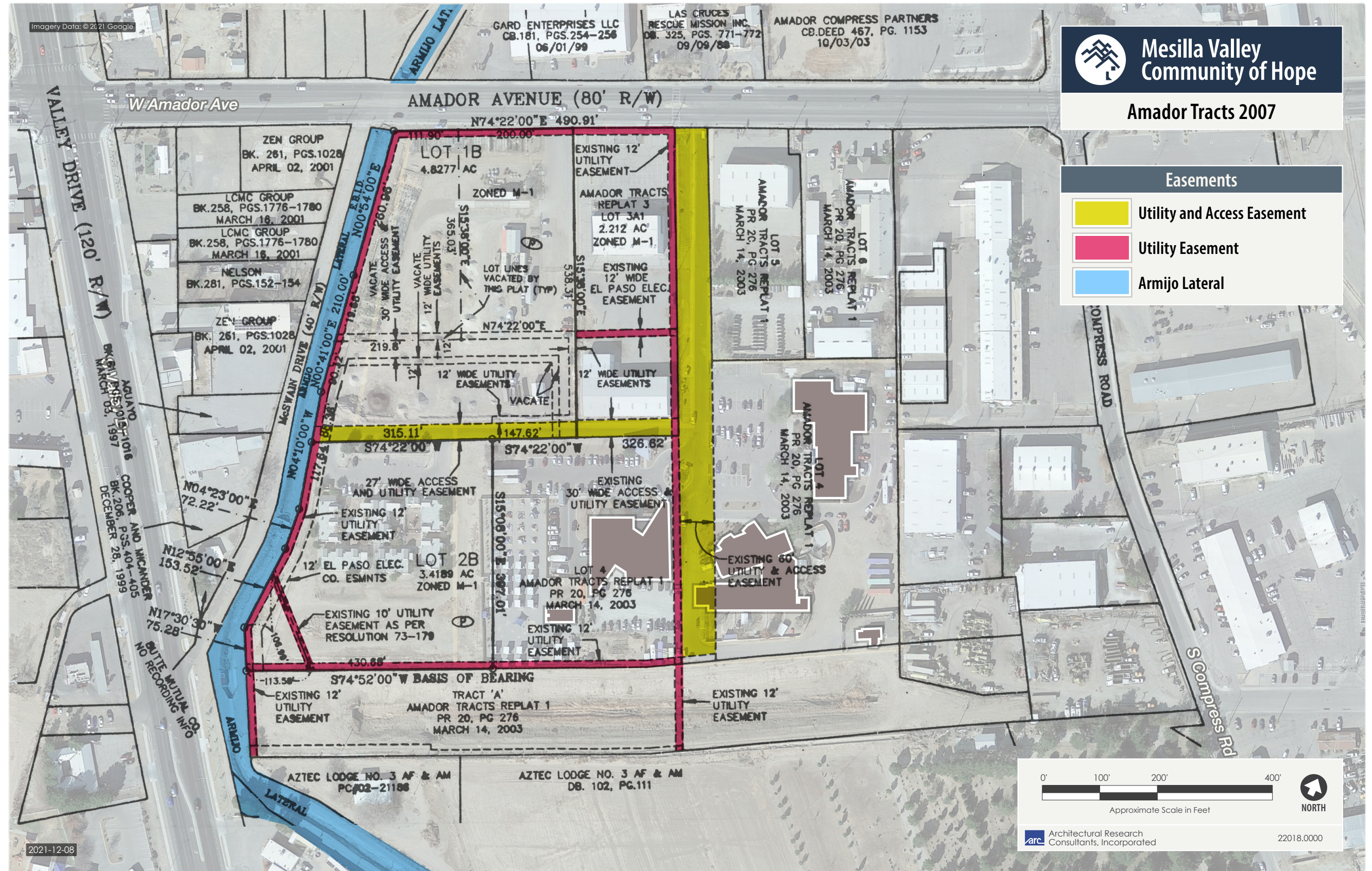
Master Planning Considerations

- Casa de Peregrinos has a very close relationship with El Caldito, providing a good amount of the food used in preparing daily meals. A continued location in close proximity is desired.
- Both Casa de Peregrinos and El Caldito have a need for warehouse-type storage for dry goods and for refrigerator/freezer storage. There is a potential for sharing this type of space if control and separation of agency goods can be resolved.
- Both agencies have a need for delivery bays with appropriate loading dock capabilities, which could also be shared.
- Locating Casa de Peregrinos closer to Amador pulls a significant amount of traffic away from the core of the campus, which will in turn alleviate some of the traffic and parking issues identified by the other MVCH agencies.

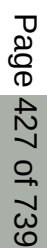
2. Floor Plans of Existing Campus Buildings

Exhibit 09: Building 1 Floor Plan



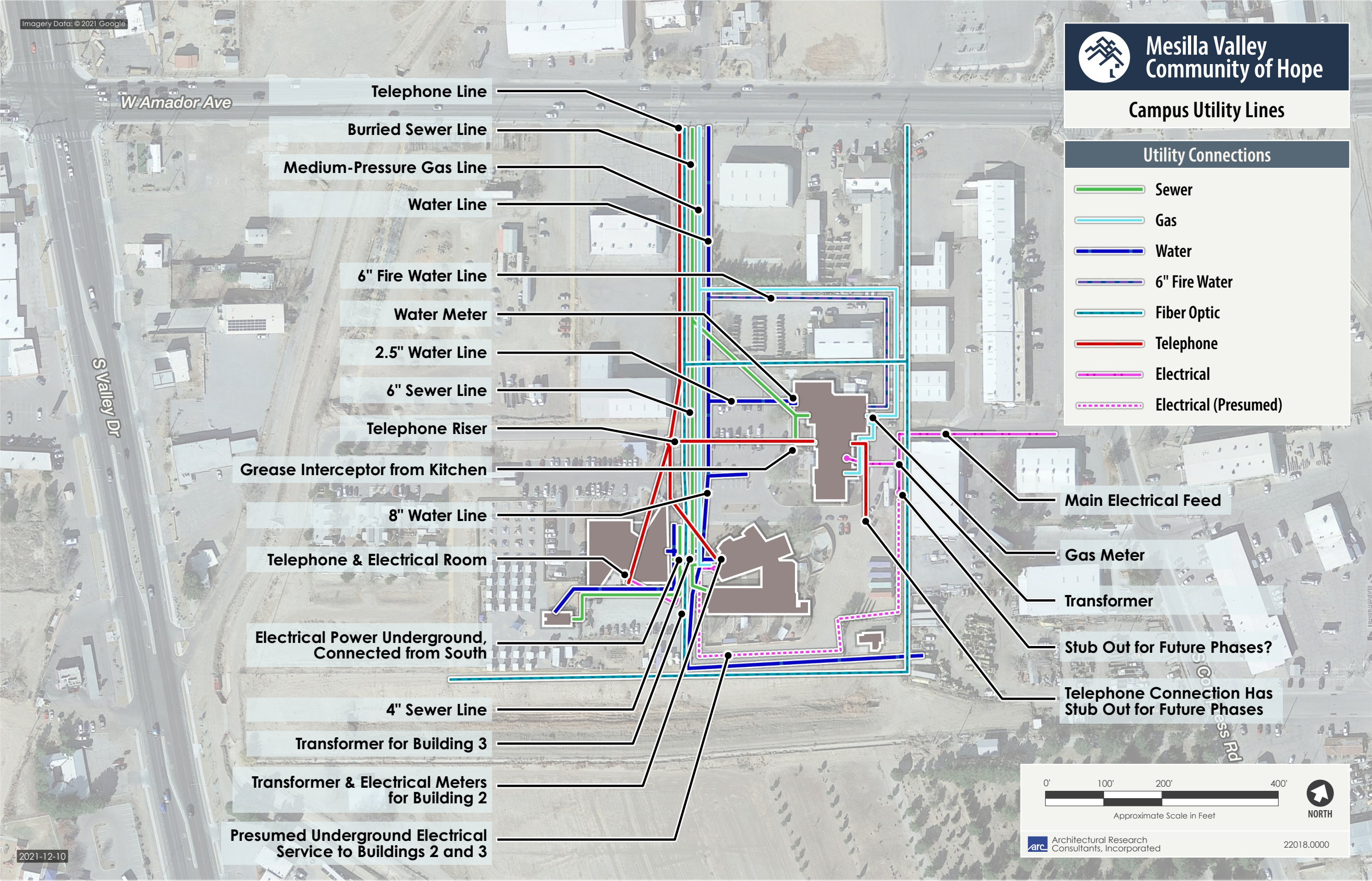


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Exhibit 14: Utility Line Notes

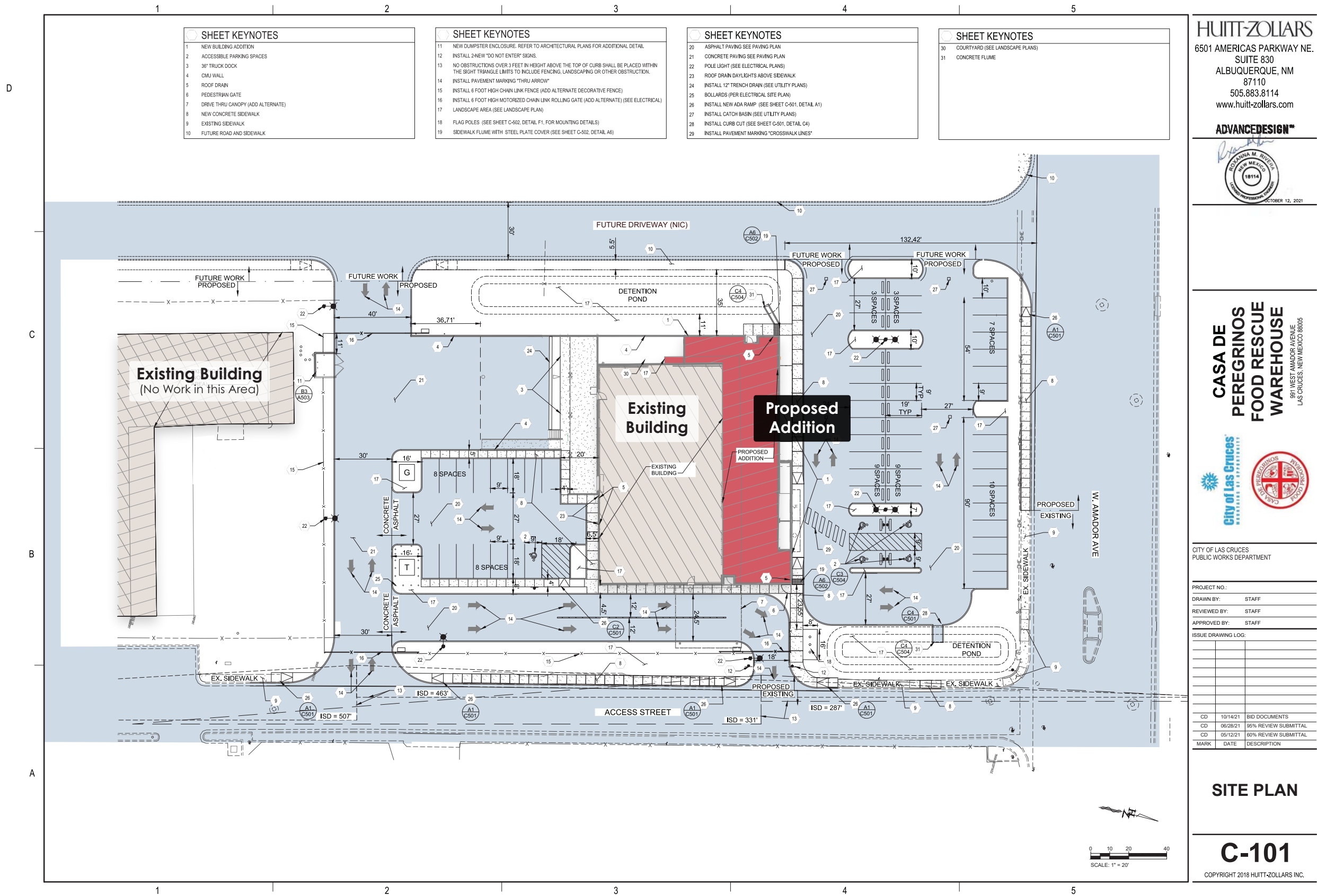


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4. Casa de Peregrinos Food Rescue Warehouse Site Plan

Exhibit 15: Casa de Peregrinos Food Rescue Warehouse

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5. Facility Condition Assessment Summaries

This Appendix documents a facility condition assessment of the MVCH campus buildings. ARC's facility evaluator, Margaret Hirsch completed a physical assessment of the facility on July 19 and 20, 2021 which was the basis for this Facility Condition Assessment (FCA).

The FCA includes a data sheet with basic information including building square footage, year of construction and major renovations, replacement value based on estimated current costs per square foot for similar medical/long-term care facilities, a facility condition index (FCI) score, and a score based on ARC's scoring system which looks at site, physical plant, and adequacy and environment.

The FCA also includes a list of recommended capital improvement projects, each with an individual sheet that provides a project description stating the problem or deficiency and the recommended work required to address identified deficiency, along with a preliminary cost estimate that can be used for capital planning.

Assessment Scope

Architectural Research Consultants, Incorporated evaluated all components of the assessment in accordance with the following requirements and recommendations:

- 2015 International Building Code
- CABO/ANSI 117.1 2009
- NMBC 2015 Accessibility Amendments to the IBC 2015
- 2010 Americans with Disabilities Act
- 2015 New Mexico Commercial Building Code
- 2009 New Mexico Energy Conservation Code
- 2015 New Mexico Existing Building Code
- 2012 New Mexico Mechanical Code
- 2017 New Mexico Electrical Code
- 2012 New Mexico Electrical Safety Code

Site considerations include:

- Access: pedestrian access and vehicular access – Site development: landscaping, drainage, walkways, seating, shade
- Safety / security: fencing, lighting, site utilities, fire protection, security
- Accessibility Attributes: ADA walkways, egress routes, ramps, steps, ADA parking

Building considerations include but are not limited to:

- Exterior: foundation / slab exterior walls, exterior doors and windows, roof / roof drainage / access

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- Interior: floor finishes, interior walls, interior doors, ceilings, fixtures, casework, equipment, signage / wayfinding
- Systems: HVAC, plumbing, electrical / lighting, energy conservation measures
- Safety / security: communications / security, fire detection / alarm, sprinklers and standpipes systems
- ADA and code compliance: accessible entrances / routes, tactile and Braille signage, protruding objects, ramps and stairs, restrooms.

Cost Estimates

The cost estimates are a compilation of RS Means Cost Estimating Data, and actual costs of local construction company projects within the last two years, adjusted for Truth or Consequences, NM local site conditions for 2020/21. Evaluators calculated these costs as a maximum allowable construction cost (MACC), or the base cost that the State would pay a contractor to perform the work. Evaluators also calculated the total project cost (TPC), which adds “soft costs,” or expenses not considered direct construction costs, such as taxes, architectural fees, engineering fees, legal fees, permits, and other pre- and post-construction expenses.

Facility Assessment Report Contents

The results of the assessment includes a web-based report that documents the condition for each building and site. Each report includes:

- An executive summary that describes repair, renovation and maintenance needs for site, building, HVAC and roof, as well as how well the building is supporting the assigned activities and programs.
- Facility condition index (FCI) scores are based on a national scoring system that applies only to building condition. The FCI score is ratio of the cost of repairs to the building within the next five years divided by the current replacement value (CRV) of the building (insurance) based on the age and condition of each building system with respect to its expected life cycle.
- An ARC condition rating score which is a composite weighted scoring method that reflects the observed conditions for the site, building, and functional adequacy.
- Buildings scoring 90-100% are considered “excellent,” (“A”) indicating recommended minor upgrades or cyclical improvements. Scores of 80-89% (“B”) are considered “good,” requiring slightly more investments. Scores of 70-79% are “satisfactory,” (a “C”) indicating a need for capital investment to bring them up to current standards, building codes, current ADA requirements and cyclical systems renewal. Scores of 60-69% are considered “borderline” (“D”) which indicates a need for major renovations and capital investments. Scores below 50% (“F”) indicate a poor building which should be replaced and is bordering on a health hazard for occupants.
- These scores aid in prioritizing facilities and projects, and assigning resources that would have the greatest impact on individual assets, state needs and available resources.

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- A list of capital improvement projects (CIPs) and associated cost to rectify observed deficiencies coded by major, secondary, and tertiary categories that describe the nature of the project to assist in information searches and the prioritization process. CIP costs are based on national cost guides adjusted to Santa Fe location conditions, and experience of state construction history.
- Digital photographs

Mesilla Valley Community of Hope FCA
2021 CIP List of Projects Summary

IDNO	Facility	Budget
500	Mesilla Valley Community of Hope	\$26,138,756
	Total Projects Budget	\$26,138,756

500 · Mesilla Valley Community of Hope

999 W. Amador Ave., Suite A, Las Cruces, NM 88001

Evaluation Date: 2021-07-19

Evaluator: Maggie Hirsch

Evaluation Status: Evaluated

Facility Summary

Location Data

Site Data			
Ownership:	Owned	SHRD/NRHD:	-
Site acres:	8.00	No/type of parking spaces:	131 total, 8 ADA, approx. 40 unmarked
Building Data			
Permanent building area:	35362 GSF	Number of floors:	1
Modular building area:	0 GSF	Modular buildings:	0.0% of GSF
Construction Dates			
Year Built:	1998 *	Building age:	23 *
Initial Construction Date:	Bldg. 1-1998	Renovation/Addition 1:	Bldg. 2-2001
Renovation/Addition 2:	Bldg. 3-2005	Renovation/Addition 3:	Bldg. 1 renovation-2017/18
<i>Starred (*) year built and facility age numbers are approximates.</i>			
FCI Data			
Building Type:	Other	Facility Class:	
Building Height:	Single Story	CRV:	\$11,315,840
Cost per GSF:	\$320.00	FCI Cost:	\$25,375,415
FCI Score:	2.242	FCI:	Poor

FCI Scoring: 0.00-0.050=Good 0.051-0.100=Fair Greater than 0.100=Poor

Assessment Score for Mesilla Valley Community of Hope

Scoring Category	Possible Points	Actual	Earned	Percent Score (E/A)
The Site		230.0	128.0	55.7%
Physical Plant Assessment		352.0	203.5	57.8%
Adequacy and Environment		372.0	263.0	70.7%
Total		954.0	594.5	62.3%

Excellent=90-100% Satisfactory=70-89% Borderline=50-69% Poor=30-49% Very Inadequate

Notes from Evaluation Meeting and Questionnaire

- * Programs throughout the site have outgrown the facilities
- * Security throughout the site is minimal
- * Police are frequently called to the site

Site Assessment



The Mesilla Valley Community of Hope (MVCH) campus lies in Las Cruces, New Mexico. A long access drive branches south from Amador Avenue. This access road is difficult to see, with poor identifying signage. The approximately eight acre site sits within a mixed-use neighborhood comprised of commercial properties, retail and automotive shops, warehouses, residential housing, and open space. A transitional living program and juvenile assessment center sits immediately west of the campus and is only reachable via the access drive. The campus is closed between 6 p.m. and 8 a.m., although no closable gate protects the entrance drive. Unprotected parking lots and open areas in the immediate vicinity of the campus facilitates undesirable activities, loitering, and unsanctioned residence after hours.

The campus consists of three main permanent buildings and four secondary small buildings. The main buildings include the Amador Health Center and Annex, which surround the El Caldito Soup Kitchen in Building 1, Jardin De Los Ninos Daycare in Building 2, and the MVCH administrative offices and intake center connected to the Casa de Peregrinos Food Rescue Warehouse in Building 3. Building 1 sits on the northeast corner of the site. Building 2 sits in the center of the site, on the south border. Building 3 sits at the southwest quadrant of the site adjacent to Camp Hope, which occupies the west and some of the southern portion of the property. Two parking lots hold approximately 131 marked spaces adjacent to Building 3 and Building 1. Large unpaved areas behind Building 3, Building 1, and to the east of Building 2 accommodate additional parking, but show no marked spaces. Camp Hope sits on the western side of the campus and includes non-permanent, three-sided structures on tent pads, open tent pads, a restroom and shower building, and the community garden space. Camp Hope is protected by concrete masonry unit (CMU) walls and chain-link fencing. A small, city-owned utility building sits on the southeast corner of the site surrounded by CMU walls and a chain-link gate. The only access to this building is through the MVCH campus. Multiple storage containers and sheds hold donations. A small metal building called, "clinic-in-a-can," sits at the north end of Building 1, receiving power from roof-mounted solar panels. Chain-link fencing with a lockable gate surrounds the building.

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It offers two exam rooms with separate entrances. A small CMU restroom/shower room building within Camp Hope has a metal roof which extends over a concrete shaded outdoor kitchen area. A small CMU storage building sits on the north corner of the parking lot in front Building 2 and the access road. A shed-style, metal roof overhangs a seating area with concrete paving surrounded by chain-link fencing with a locked gate. This area is locked and inaccessible. Broken glass, garbage, and broken furniture sit outside the locked gate.

Multiple signs mark the access drive on Amador Ave., and define the campus buildings and services. Many clients, visitors, and people requesting services access the campus on foot or bicycle via sidewalks on both sides of the access drive. Chain-link fencing and gates protect neighboring businesses. Sidewalks are in fair to good condition. A portable toilet sits next to the sidewalk at the northwest corner of the campus across from a parking lot. A sign near this portable toilet identifies campus buildings and directs visitors with arrows to building locations. A sign attached to a light pole at the entrance to the first parking lot reads, "Campus Closed 6PM - 8AM NO Alcohol or drugs allowed on premises." It is difficult for the staff to enforce these rules with no lockable gates at the entrance drive, and no visible security surveillance or personnel at the point of entry. The health clinic sustains a walk-up window to provide harm reduction supplies to the community. Undesirable activities also occur along the access road. Arrests are frequent on this access road. Personal belongings, clothing, drug paraphernalia, garbage, and human waste litter the access drive and the adjacent sidewalks and xeriscaped areas. The access drive curves to the west at a stop sign, which faces west. A sign attached to the sign post faces north, and reads, "FYI El Crucero Transitional Living Program Juvenile Assessment & Reporting Center," with a large arrow pointing west.

Parking lots serve Building 1 and Building 3, but Building 2 has no dedicated parking lot. Staff and maintenance personnel use an unpaved area directly east of Building 2. Visitors to Building 2 park in either the parking lot serving Building 1, or along the service road for Building 1. The parent and bus loop for Building 2 is undersized, and its location and design interferes with other campus traffic. Staff and maintenance personnel use an unpaved gravel area to the south of Building 3. A small parking lot on the west side of Building 3 holds parking for volunteers and staff, and also functions as the delivery and service area for large trucks, which interferes with the function of the parking lot. A larger parking lot to the north of Building 3 accommodates visitors to the building and families picking up food. The large parking lot to the west of Building 1 functions as the main lot for the campus. Staff also utilize a small lot behind Building 1 to the east, adjacent to the service and delivery area, as well as an unpaved area behind the northeast part of the building for parking. A centralized roundabout sits at the northeast corner of Building 3, and holds a new circular sidewalk, xeriscaped gravel with native low-water use plantings, with a monolithic sign that reads, "Community of Hope 999 West Amador Ave." One-way signs posted on this central piece move traffic in a circular, counterclockwise direction. A drive-up loop in front of Building 1 accommodates emergency vehicles, although the curb is not painted to indicate this function. Asphalt paving and concrete curbs are in fair to good condition, with some peeling paint, oil stains, loose gravel and sand erosion, cracks, and patching. Americans with Disabilities Act (ADA)-accessible parking spaces show faded paint, and noncompliant signs. Access drives leading to service areas exhibit cracked and broken pavement edges with no curbs. Curb cuts at painted crosswalks are adequate, although the painted lanes show fading. Parking lots and access and service roads slope toward storm drains throughout the campus. Water ponding occurs in the unpaved parking areas. Light poles are in good condition in parking lots, but no lights serve the access drives or

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unpaved areas. One light serves Camp Hope, and one light serves the community garden.

Concrete sidewalks, walkways, and plazas in front of building entrances are in fair condition, with cracks, uneven surfaces, and weeds. Some sidewalk sections exhibit erosion from adjacent loose dirt, sand, and rocks. Sidewalks along the east side of Building 3 exhibit extreme erosion, with dirt washed away from beneath the edges. Exposed concrete edges hang over deeply eroded soil and holes. Clients sit along this sidewalk during the day to take advantage of shade, with proximity to outdoor lockers near the main administrative entry. These clients are either awaiting evaluation for assistance or programs, or have nowhere else to go during the day. Staff cannot always monitor this area. The raised concrete plaza in front of Building 3 is small and crowded. The entrance to the administrative offices sits on the east side of the plaza, which is the point of contact for clients to begin evaluations for programs and receive assistance. This is also the entrance where clients may utilize the laundry room, bathrooms, and showers. The entrance to the resource room and the free clothing exchange sits in the center of the two parts of Building 3, also accessed from the plaza. Clients sometimes show impatience or irritation, and altercations occur, despite the presence of a security guard. Police are often called to the site. The west side of the plaza contains the entry into the Food Rescue Warehouse where families receive baskets of food and other social services. A softly sloped sidewalk to the plaza level from the parking lot is available. Concrete stairs rise to the plaza on the east side, and show ADA-noncompliant metal pipe handrails, and stair nosings with no contrasting color. Metal lockers sit near the stairs, and separate the east sidewalk along the building from the entry plaza. Concrete plazas at Buildings 1 and 3 show permanent dirt, oil stains and discoloration, gum, and signs of water ponding. Staff has installed trash cans and portable toilets throughout the site in an effort to minimize pollution in all forms. However, a problem persists with litter throughout the campus. Many site utility pedestals and transformers are easily accessible throughout the site, and some show damage and exposed wires. Approximately 15 storage containers on campus hold a surplus of supplies and donations, and sheds hold maintenance supplies and equipment. Stray cats and other animals make homes beneath the sheds. A concrete sidewalk and plaza in front of Building 1 contains concrete benches covered with mosaic tiles, and landscaped sections with larger lava rocks. Staff has installed utility sinks connected to a water line mounted to the side of the building, which provides hand washing stations to clients before they enter the soup kitchen. Clients loiter and sit against the building near the entrance to the health center annex. Unenclosed dumpsters sit behind Building 3 and in the undeveloped area between Buildings 1 and 2.

Landscaping on the campus consists mostly of xeriscaped areas with gravel, rocks, lava rocks, and minimal plantings of low-water-use plants and trees. Many areas on site are undeveloped with loose dirt and sand or crusher fines. Erosion of xeriscaped materials washes onto sidewalks and into parking lots. Drip irrigation systems supply water to plantings. Fiber underlayment lies exposed and in poor condition where ground cover has eroded. Undeveloped areas serve for parking and storage, and water ponds there. The site slopes from northeast to southwest with a large retention pond to the south of the campus which hosts mosquitos. Storm drains throughout the campus accommodate water runoff from parking lots and access drives. Staff notes drainage occurs in unpaved areas that lack drains, and because of clogged storm drains in paved areas. Shade on site is minimal and clients gather and remain wherever it is. Camp Hope occupies the southwest side of campus. A community garden, directly adjacent to Camp Hope, is maintained by its residents. The garden is a large open space with a grass area, old furniture, hoses attached to standing spigots, raised planting beds, and a horno. Clients have

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constructed makeshift fencing surrounding the gardens. Metal shade structures form makeshift stores which include women's clothing, personal items, and other household items for clients residing in the tent camp. A barbecue grill serves clients in the tent camp. Plastic chairs and picnic tables sit beneath a canvas shade structure in the center of the camp, which creates a central gathering space. A check-in house with a small shaded front porch sits facing the entrance to the camp, and is inhabited by someone from within the camp who acts as a security guard. Three-sided wood sheds hold tents, and multiple raised ground squares supported by railroad ties hold tents throughout the camp. A CMU building with a standing seam metal hip-style roof holds restrooms and showers for the camp community. Xeriscaped areas surrounding Building 2 are in good condition. An interior courtyard holds a concrete sidewalk and gravel, but no play equipment. A low stucco-covered CMU wall surrounds another courtyard on the northeast corner of the building and contains grass, concrete sidewalks, and a picnic table area covered by a fabric shade structure, gravel, and a tree which staff notes sheds sharp, thorny seed pods which can penetrate through children's shoes. Another stucco-covered CMU wall encloses play areas on the south side of the building. A large tree recently fell within the playground area, and at the time of evaluation, had left a hole in the ground surrounded by plastic safety cones. Grass surrounding the play areas shows drought-stressed conditions and bald patches. A dead tree stands within the play area, but other shade trees are in good condition. Concrete sidewalks surround sand play areas, which hold outdated wood and metal play equipment. A metal shade structure covers part of the play areas. The low CMU wall allows unwanted visitors to jump over it and sleep within the playgrounds and equipment. Staff reports flies affecting all buildings on campus.

Underground municipal water, sewer, gas, and electrical lines serve the campus. Fire hydrants, electrical transformers, and accessible panels sit throughout the site. Un-knuckled, chain-link fencing surrounds the site with three rows of barbed wire along the top edge.

Building Assessment



Building 1: Amador Health Center and Annex, El Caldito Soup Kitchen

Building 1 was originally constructed in 1997/98 in three sections including a homeless shelter, the St. Luke's Health Clinic, and the El Caldito Soup Kitchen. In 2017, the city renovated the north homeless shelter portion of the building to accommodate the renamed and expanded Amador Health Center. The Amador Health Center and Annex are called Suites A/B and Suite D. They are two separate single-story spaces within Building 1, with the El Caldito Soup Kitchen (Suite C) between them. Exterior signs on posts and the facade of the building identify each building section near their main entrances. The north section contains the Health Clinic, with a reception and two waiting areas, health services administrative offices, counselors offices, a conference room, pharmacy, and multiple exam rooms. This portion of the Health Center handles physical and situational health concerns, while the Annex handles mental health, including behavioral and addiction support services. The Annex contains a large lobby and office with a reception window and a walk-up harm reduction supply window accessible from the building's exterior. Counseling offices, two restrooms, and a storage room comprise the remainder of the space. A larger set of restrooms and a storage room sit within the annex footprint, but they are only accessible from within the soup kitchen dining room. Both building sections show steel column and beam construction with CMU infill on concrete stem walls, and CMU structural columns and CMU infill on concrete stem walls in the center space. Steel column and beam structures hold standing seam metal roofs which shade the main entrances to the north health clinic and the central soup kitchen entrance. Corrugated metal wall panels and painted hollow metal frames hold storefront system windows and doors at these main entries. No covering protects the main entrance to the south health clinic annex. Painted CMU is in fair condition and shows cracks, cracked and peeling paint, water damage, and stains. Windows consist of fixed-pane, dual-glazed tinted glass units in painted hollow metal frames. Storefront system doors and sidelites show damaged and peeling tinting material. The lower panel of one door leaf at the entry into the soup kitchen is shattered. Some windows in both the north and south building sections are casement style and operable. Some doors in all three building sections are solid metal and show damage, and scratched and chipped paint. Windows exhibit a combination of shading devices including mini blinds, and staff-installed curtains. Mini blinds in the south annex are outdated.

Roofs over all three building sections show a combination of flat, single-ply membrane systems and sloped standing seam metal sections. Some portions of sloped standing seam metal roofs show no gutters. Water drains directly onto adjacent flat roofs where electrical panels, restroom exhaust pipes,

and mechanical ducts are located. Flat roofs exhibit dirt and stains, bubbles, and signs of patching and water ponding. Flat roofs exhibit soft spots, noise, and movement when tread upon. Outdated and abandoned heating, ventilation, and air conditioning (HVAC) equipment sits on rusted supports, and gas lines are unpainted. Water sits beneath combined heating and cooling units, and ducts show separation at seams which have been repaired with painted material which is dried and cracked. Sloped standing seam metals roofs are in good condition. Flashing and metal coping show exposed fasteners and some separation at seams. Some newer HVAC combined units sit on curbs. Staff reports that the flat roof over the south building section is less than a year old.

Amador Health Center and Annex

The Amador Health Center's north building section (Suites A/B) features recent renovations which include a new room layout, finishes, fixtures, and equipment. Painted CMU walls with sound-absorbing panels, vinyl base, and high clerestory windows, vinyl composition tile (VCT) flooring, and exposed metal structural ceilings accentuate the entry lobby and waiting areas. A reception station sits facing the main entrance doors and is enclosed by partial height walls with wood panels, and sliding glass transaction windows in aluminum frames. Two undersized waiting areas sit to the south and west of the reception station. Walls throughout the north building section are CMU and painted gypsum board with vinyl base. Flooring materials include carpet and VCT separated by vinyl transition strips. Restrooms feature VCT and ceramic tile floors, and ceramic wall tiles. Fixtures, accessories, and grab bars are ADA compliant. Acoustic tile ceilings hold updated LED lights, and room signs are ADA compliant. Painted hollow metal frames hold wood doors, some with view lites. Clients receive medications from the pharmacy through a glass transaction window with a speaker, and transaction drawer within a laminate counter. Access into the pharmacy for staff is via an electronic badge locking mechanism. Laminate casework throughout the north building section is in good condition. Staff reports a prevalent sewer smell. Two repurposed exam rooms hold staff offices. Space is at a premium for the health center, and storage space is insufficient. The program has outgrown its space.

The Amador Health Center and Annex's south building section (Suite D) features outdated, worn, and damaged finishes. Updates to the south building section include a recently replaced roof, and new exterior and interior paint. The main entrance doors into the Annex and adjacent windows sit on the west facade of the building, with no shade or protective covering. The concrete plaza in front of the building is a place where people gather and loiter, sometimes sitting against and blocking the doors. No secure entrance lobby protects the Annex or provides shelter from wind and weather into the main lobby space. The entrance lobby space is large and underused. A large reception office holds an interior transaction window into the lobby, which is not secure. Staff notes that this window would function more efficiently and safer as a pharmacy-styled window with a plexiglass window with a speaker and transaction drawer. A walk-up window at the opposite end of this office serves clients from the exterior of the building where staff distributes harm reduction supplies. Staff notes that this window would also be more secure with the same pharmacy-styled unit. This office is large, underused and not secure. The interior corridor has access through a door adjacent to the reception window, with an insufficient locking mechanism. No restroom serves clients from within the lobby. No personal lockers or storage spaces are offered for clients. Gypsum-board partitions end at the suspended acoustic ceilings, and provide insufficient sound barriers between offices. Staff offices lack separation by function, compromising privacy. An exit door at the end of the main corridor functions as a staff entry and delivery location. A doorbell next to this door on the building exterior incites clients wishing to gain

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entrance into the secured portion of the building. The door offers no peephole or visibility to the exterior. Offices contain unused sinks and outdated laminate cabinets. Painted wood office doors with no view lites sit in painted hollow metal frames in poor condition with chipped and peeling paint, stains, and dents. Staff notes that doors without view lites are not safe. Some doors do not close securely in their frames. No identifying room signs define any of the spaces. Casement-style windows with mini blinds sit in painted CMU walls. Walls are painted with semigloss finish paint, causing the adhesive material on the vinyl base to fail, resulting in peeling base throughout the spaces. Outdated acoustic tile ceilings show water stains, dirt, and damaged tiles. Fluorescent lights show stained lenses. Roof leaks have damaged ceiling tiles, which have been repainted to cover stains. Laminate throughout the Annex shows peeling material and stains. VCT and ceramic floor tiles are outdated, and show stains and wear. Vinyl transition strips show chips and delamination. Two restrooms with damaged, stained, and missing VCT floors show floor drains without caps. Sewer odors permeate the spaces. Fixtures are outdated and ADA noncompliant. No grab bars serve the restrooms. Outdated ceramic tiles on wet walls show stains, and water damage. Uninsulated pipes sit beneath noncompliant sinks. A drinking fountain lacks wall protection and ADA access from the front or sides. Electrical supply is insufficient to the annex. Breakers often trip, and staff notes an insufficient number of outlets. Staff also notes that temperature control is poor in the offices. The program has outgrown its space, and an addition to the northeast corner of the building is in the design process.

El Caldito Soup Kitchen

The El Caldito Soup Kitchen (Suite C) dining room, kitchen, storage spaces, and restrooms occupy the center of Building 1, between the two health clinic sections. The front facade is recessed from the two adjacent building sections, shows painted corrugated metal panels, and is covered by the roof which extends over the entire building section. No secure entrance lobby protects the dining room or provides shelter from wind and weather. A bench sits next to the entry doors which provides shaded seating for clients. Fly-catching strips sit in front of the entry doors, which staff notes do not function to control the significant fly population. Tinted coating on the doors is peeling and damaged. One leaf of the doors holds a shattered glass panel. Door frames exhibit dents and damage. Corner guards which flank the entry doors show broken and chipped material with exposed drywall and broken floor tiles. Outdated, damaged, and stained pulldown-style window blinds cover the high storefront windows and sidelites. Finishes throughout the central space are outdated, worn, show permanent stains and dirt, and damage. Room signs are either missing or ADA noncompliant. The dining room is a tall space, with an exposed roof pitch, painted structure, and high clerestory windows. Suspended LED lights brighten the space. Painted CMU walls hold damaged and delaminating vinyl base material. The south CMU wall shows water damage and stains. Outdated ceramic tile floors show permanent dirt and stains, aging, stained grout, and damage from caustic cleaning products. The space is small for the volume of people who receive meals. The shutter at the dish window does not close correctly, and the stainless steel counter shows separation on the underside with a large gap between the CMU wall and the underside of the counter. Staff has installed wood blocking to support the counter here, and notes the presence of insects in this gap.

The kitchen contains a food pick-up line area, dish and equipment pantry, hot lines and food preparation areas, dish room, a large walk-in cooler, two dry storage pantries, an office, a small laundry space, and a dedicated staff restroom all within a 1,200 square-foot space. The delivery door is on the east end of the space, and opens onto a concrete sidewalk area at the rear of the building. The direction

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of travel through the food pick-up line flows from the entry door, located on the north wall of the dining room directly adjacent to the south entrance door wall, then through the exit door, located to the north along the same wall, and next to the dish window. The setup is crowded and does not function efficiently. No walls or doors separate the food pick-up line from the kitchen. Finish materials in the kitchen are outdated and worn, and in poor condition. Textured quarry-tile floors and grout show permanent stains and dirt. No fiber-reinforced plastic panels (FRP) protect stained and damaged CMU walls, and coated acoustic tile ceilings and fluorescent light lenses are coated with grime. Most of the ceiling tiles are not coated and exhibit damage and stains. Staff has taped kitchen towels to protect a corner of the hood over the dish machine. This corner is low and protrudes into the work space, where staff can hit their heads. Stainless steel counters exhibit dents and laminate casework is worn, peeling, and damaged. Food preparation areas with integral stainless steel sinks, counters, and wall protection panels are in good condition. Many pieces of equipment are aging and stained. No mechanical supply or return ducts serve pantry 3, which holds dry goods, and supplies. VCT floors in this pantry are outdated and badly worn. Acoustic ceiling tiles show water stains. Multiple freezer units line the east wall. An ADA-noncompliant drinking fountain with no wall protection sits directly next to a hand-washing sink, which blocks its access. Tile floors end at an unprotected edge and cover a small ramp down a level change of four inches into an open storage area in front of the walk-in cooling unit. A narrow space beside the walk-in and the wall of the room serves as a maintenance storage space. Painted gypsum-board walls with no base show damage and wear. The dish pantry holds free standing freezer units and wire storage shelves. Pantry 2 is a long, narrow space which holds wire shelves and dry goods. An open door frame shows damage, dents, and peeling paint. Pantry 1 is a similar space. Both pantries have concrete floors. A small alcove holds a washer and dryer and floor utility sink. Walls surrounding this sink show severe water damage, and rotting gypsum board. No protective housing surrounds exposed heating coils attached to the opposite wall near the ceiling. A staff restroom shows water-damaged quarry tiles behind the toilet, and no wall protection on the wet wall. Vertical grab bars are not installed, and the painted gypsum-board ceiling show water damage and large bubbles. The painted gypsum-board wall behind the sink shows water damage, bubbles, and rotting material. No corner guards protect walls and partial wall corners throughout the kitchen, which show severe damage. Staff reports roof leaks damaging light fixture lenses, and a leaking roof pipe damaging the CMU wall on the dining room's southwest side.

A storage room on the south side of the dining room holds dry and canned goods on wire shelves, and doubles as the program manager's office. A drinking fountain adjacent to restrooms on the south side of the dining room shows no wall protection, no corner guards, and is ADA noncompliant. Restroom finishes are outdated and worn. Porcelain and ceramic tile floors and walls are outdated, mismatched, and show permanent dirt and grime. A laminate countertop held in place with exposed wood supports shows water damage, and peeling, chipped material. A painted metal privacy screen attached to the counter in the men's room is peeling away from the countertop. Quarry tile wall base in the women's room is broken and some tiles are missing. The laminate counter in the women's room is peeling away from the surrounding partition and wall. Metal partitions are mismatched and show rust damage. No vertical grab bars serve the ADA stalls. Room signs are either missing or are ADA noncompliant. Space is at a premium in the soup kitchen and dining room, and all spaces serve as storage. The program has outgrown its space and must use external storage units to meet its storage space requirements. A small CMU building addition located on the east side of the Annex (Suite D), shows a standing seam metal roof. This addition houses food and pantry storage for the soup kitchen and has external access near the

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kitchen delivery area. A mechanical unit sits on the ground adjacent to this addition.

Building 1 is heated and cooled by roof-mounted combination units. Staff reports that the system is not functional on the southwest side of the dining room. A fire suppression system serves the central soup kitchen and dining room, and the health clinic annex. No fire suppression system serves the north health clinic.

Building 2: Jardin de los Ninos

Constructed in 2000/2001, Building 2 holds Jardin de los Ninos, a daycare and early learning facility which serves homeless and nearly homeless children. The building is designed with three distinct wings. The first wing, which contains the main entrance and reception/waiting area also houses staff offices, a small clinic and exam room, public restrooms, a donations room, kitchen, and common room. The second wing contains a small library and resource room, staff offices, and infant and toddler classrooms. The third wing provides classroom spaces for mobile infants through pre-kindergarten students, and a kindergarten through 5th grade before- and after-school classroom. The three building sections surround a central courtyard with a CMU wall and gate at a narrow edge not enclosed by the building. The seven classrooms each open into play yards protected by low CMU walls.

The main entrance is clearly defined by an arched architectural element with a metal roof which provides protection from the elements. Building construction includes steel frame with an exterior insulated finish system (EIFS), and painted CMU. Painted hollow metal frames hold dual-glazed fixed panel windows. A painted hollow metal storefront system with fixed pane sidelites and a single door defines the main entrance which opens into a reception area, with no secure vestibule. Staff notes that the absence of a secured entry vestibule results in visits from noncustodial parents and unwanted visitors who use the covered entrance area as a sleeping place and a restroom. This main entrance lies at the front of the building facing the combined parent and bus loop, and serves as the main entrance for visitors, and parents with students. Other entries into the building consist of painted storefront systems and doors, and solid metal doors which show wear, rust, and faded paint. A gravel-covered courtyard sits amid the three building sections, with a concrete sidewalk running through the center and connecting exterior doors which access to a classroom corridor to the south and a staff corridor to the north. This courtyard lacks adequate drainage and frequently floods. Staff notes that this courtyard is underused and lacks play and other equipment. EIFS on the building's sides which face walled play areas shows damage, dents, and faded colors. A five-foot high painted CMU wall with painted wood gates protects the play areas, accessed directly from classrooms. Sidewalks directly adjacent to the building are covered by shed-style metal roofs which are attached to the building, and supported by painted metal columns, and protect the classroom entry doors. Play areas hold grass and sand fall areas beneath outdated and wood play structures. A large pitched metal roof structure provides some shade. Staff notes that unwanted visitors frequently jump over the CMU walls and sleep among the play equipment, under the roof structure, and against the covered side of the building. These visitors also use the play areas and equipment as a restroom.

Roofs over Building 2 show a combination of flat, single-ply membrane systems and sloped standing seam metal sections. Flat roofs exhibit dirt and stains, bubbles, signs of patching and water ponding, soft spots, noise, and movement when tread upon. The single-ply system exhibits exposed fasteners,

separation at seams, and multiple sections of material pieced together at parapets. Roof drains show poor drainage with dirt, permanent stains, and a buildup of material and water ponding. Unpainted gas lines show rust and sit on rotting wood supports. Sloped standing seam metal roof sections are in good condition. Flashing and metal coping show some separation at seams. Newer HVAC combined units sit on curbs. Staff reports that persistent roof leaks cause repeated damage to ceilings within the building. The roof is scheduled to be replaced in 2022.

Jardin de Los Ninos exhibits outdated and worn finishes, and insufficient space for its program. The main entrance door brings visitors into a reception area with no secure entry vestibule. Outdated and worn textured porcelain tiles, and grout with permanent stains and wear cover the floors. Walls exhibit painted CMU and gypsum board with porcelain tile base. Acoustic ceiling tiles with integral fluorescent lights show water damage and stains which have been covered with paint. A laminate reception desk separates the waiting area from staff areas and shows chips and peeling material. A wood door on the west side of the reception area leads into a behavioral health clinic. The front office of this two-room suite shows outdated and worn sheet vinyl flooring, fixed-pane windows with mini blinds, and painted EIFS and gypsum-board walls. Acoustic ceiling tiles show recessed can lights, and surface mounted track fixtures. A single wood door leads into an exam room which is filled with storage materials, and contains a portable sink and exam table. A second door leads from the reception room into a common room which serves for meetings and meal service. The space is tall with minimal windows and no sound absorbent panels. Staff notes that this room is inefficient and loud, and that the food pick-up window, which separates the common room from the kitchen, allows noise during meal preparation to permeate during meetings. Staff also notes deficiencies with the delivery of heating and cooling in all three of these spaces due to the lack of temperature control. The common room is filled with donations, storage items, tables and chairs. Outdated finishes include aging and worn VCT floors, a vaulted metal panel ceiling, and painted CMU walls. Breakfast and lunch are prepared and served from the kitchen, which is tiny and inefficient. Clearances between equipment and counters is tight. The kitchen offers no dedicated staff restrooms or lockers. The kitchen does not meet the US Occupational and Health Administration (OSHA) standards for clearances and accommodations. Storage is undersized for the kitchen program. Textured quarry floor tiles and grout show permanent dirt and grime and chemical damage. Fiber-reinforced plastic panels on walls protect the surfaces from dirt and grease. Plastic-coated acoustic ceiling tiles show dirt and grime stains. A donation room with cracked concrete floors holds an unused overhead door. Donations come in through a single solid metal door. Storage cabinets and shelves line the walls, some with holes cut into the backs to access light switches and the thermostat. The room is crowded with donations and kitchen storage materials. A third door in the reception area leads to a corridor with entrances to the common room, kitchen, donations room, a small staff lounge, two public restrooms, and a short corridor which provides an exit into the central courtyard. Acoustic ceiling tiles in the staff lounge show water stains, and damaged and repainted acoustic ceiling tiles. Staff reports that the lights in this room cannot be used due to water damage and infiltration from roof leaks. Restrooms show porcelain tile floors, ceramic tile and painted gypsum-board walls, and laminate counters with water damage and peeling material. Fixtures show iron stains and accessible stalls are ADA noncompliant, with no vertical grab bars.

Narrow corridors curve and branch in multiple directions, which makes wayfinding and orientation difficult. Storage items and carts with food baskets sit in the corridors. Textured walls, wood chair rails, and corners show damage and chipped paint. Many corridor wall corners are without protective corner

guards. Curved walls with built-in painted gypsum-board benches sit opposite classroom entrances, which are recessed from the corridors in clusters of two, with a single classroom and entry door at the corner which connects the two main classroom wings. Outdated carpet in the staff storage and work area behind the reception desk exhibits damage from recent flooding. Offices show carpet in fair to good condition, painted and textured gypsum-board walls with vinyl base, and damaged and repainted acoustic ceiling tiles. A small office serves multiple functions, which staff notes require separate spaces. Staff notes that the quantity of therapy rooms is insufficient. A toilet fixture in the single unisex staff restroom runs persistently. A small library and resource room are undersized for the program. Classrooms show VCT and outdated carpet floors, separated by vinyl transition strips, and 18" high painted gypsum-board walls with painted wood caps. Painted gypsum-board soffits separate ceiling sections and help to define the restroom/changing/kitchen area between classrooms. Outdated and damaged laminate cabinets and counters show wear, stains, broken, chipped, and peeling material. Low wall-mounted sinks with uninsulated pipes show leaks which have stained the VCT floor beneath. Painted hollow metal storefront systems hold dual-glazed, fixed-pane glass windows and doors with damaged and peeling paint. Restrooms between classrooms show outdated and stained porcelain floor tiles and ceramic wall tiles. Fixtures are stained and aging. No vertical grab bars serve the restrooms. No visual connection exists between classrooms, classroom corridors, and the front reception area and administrative offices. Classrooms are crowded and filled with storage materials. Jardin de Los Ninos has outgrown its space and shows no room for growth.

Building 2 is heated and cooled by roof-mounted combination units. Staff reports that they have trouble controlling temperatures within the building, and that zones and thermostats are not well coordinated. Electrical outlets throughout the building are insufficient in quantity. No fire suppression system serves the building.

Building 3: Mesilla Valley Community of Hope, Casa de Peregrinos

Constructed in 2004/2005, Building 3 holds the Mesilla Valley Community of Hope administrative offices and client support services on the east half of the building, and the Casa de Peregrinos Food Rescue Warehouse on the west half. The eastern building portion contains a community-based laundry room, four community-accessible restrooms - two with showers, a reception area, donations room, a resource room, offices, counseling rooms, and one staff restroom. The western portion contains a delivery garage, a large packaging and storage space, refrigerated and dry storage, offices, a single unisex restroom, a reception office, and a waiting area used for volunteer coordination, meetings, and as a work room.

Three main entrances serve the building, all opening onto a concrete pentagonal shaped entrance plaza that acts as a gathering space. Entrance doors are in close proximity to and facing each other, which creates congestion. Concrete shows permanent stains and dirt, and deterioration and erosion at the edges. The east facing side of the building sits in shade during the warmest times of the day. Visitors, clients, and people awaiting services sit along the shaded concrete sidewalk on the building's east side. Shade trees planted in a xeriscaped area separate the east side of the building and its sidewalk from the concrete curb along the campus access drive. Perforated metal lockers provide temporary storage, and show rust. Trash litters the sidewalk near the lockers. Building 3 is a steel frame structure with an EIFS coating, on concrete stem walls. Exterior doors consist of painted metal storefront systems with fixed-pane glass door panels and sidelites, and solid painted metal doors which show faded and scratched

paint, rust, and dents. An overhead roll-up door provides access for delivery/loading of trucks in the Food Rescue Warehouse, and shows damage and dents. Wall corners surrounding the door show damage and exposed, dented metal corner beads. Painted hollow metal frames hold single-glazed, fixed-pane glass windows with peeling and damaged tinted coatings. Solid metal shade structures above windows on the east and south sides of the building protect the tops, south, and west sides of the windows from direct sunlight. The EIFS shows dirt, wear, and damage, particularly at the main entrance plaza.

Roofs over Building 3 show a combination of flat, single-ply membrane systems and sloped standing seam metal sections. Flat roofs exhibit dirt and stains, bubbles, signs of patching and water ponding, soft spots, noise, and movement when tread upon. Roof material shows a painted coating in some areas. Deteriorating and peeling material appear close to edges without flashing, and some membrane material covers parapet cap edges. Painted gas lines show rust. Sloped standing seam metal roof sections cover the resource room and restrooms which sit below. The standing seam metal roof material is applied to the top part of the vertical surface EIFS-covered walls on this portion. The metal roof material shows buckling and separation from the EIFS. Permanent dark water stains show on the EIFS, directly corresponding to the standing seams of the metal roofing material applied to them. The EIFS is in poor condition, with water damage, holes, and deteriorating material. Staff reports that ceiling leaks are repaired as they occur. Flashing and metal coping show some separation at seams.

Mesilla Valley Community of Hope

The Mesilla Valley Community of Hope administrative offices, restrooms, and the resource center show aging and worn finishes, in poor condition. The front reception area, desk, and open corridor contain built-in concrete benches which are covered with gypsum plaster and paint. Rounded edges, corners, and the base of the benches exhibit damage, missing paint, and exposed concrete. Polished concrete floors in corridors show wear and loss of finish from the front area to the staff corridor. Offices hold concrete floors with an integral color finish, and outdated, worn carpet separated by vinyl transition strips. Painted gypsum-board walls show metal channel reveals in similar patterns to the exterior EIFS. Wood chair rails sit at 36" and vinyl base is peeling away from walls. Painted hollow metal frames hold fixed-pane, single glazed windows with outdated mini blinds. Painted hollow metal frames hold wood doors with lever-style hardware, and are in good condition. Room signs are adequate and ADA compliant. Ceilings are acoustic tile, with integral fluorescent and LED lights. Ceiling tiles are painted where roof leaks have occurred. A donations room is filled with materials, and donations sit in corridors awaiting sorting and distribution. Unused and outdated furniture sits in alcoves near shower rooms. No separation protects the staff corridor from the front entry area and reception counter, where people awaiting services, counseling, and laundry sit and gather. Offices are crowded and over extended. Single-occupant offices hold two to three people, and in one instance, five people. A workstation with panels sits in a corner of the staff corridor, and another in the corner of the resource room. Electrical supply is deficient in the building with an insufficient number of outlets for the number of occupants. Staff utilizes multiple power cords and strips. The resource room is a tall space with a vaulted, exposed structure and ductwork ceiling, and high clerestory windows. A corner of the room holds outdated and damaged laminate cabinets and counter with a sink, microwave, and refrigerator. The sink sits too high to be accessible. Another corner of the room holds a staff-installed workstation with a panel and a curtain suspended from coat hangers to provide privacy. Work equipment and a copier sit in another corner of the space, and bookshelves line the walls near the entry. The space is crowded with furniture,

and hosts multiple functions.

The laundry, shower, and restrooms are worn from overuse, are in poor condition, and show worn and damaged finishes. One staff restroom serves all of the staff and volunteers and is insufficient for the number of people who use it. Outdated ceramic tile floor and walls are in good condition. No vertical grab bar, and a paper towel dispenser mounted too high for access, make this restroom ADA noncompliant. Client shower rooms and restrooms with epoxy-coated concrete and ceramic tile floors, show permanent dirt, stains, damaged and stained grout. Laminate counters with sinks and wood edges exhibit wear, water stains and faded material, and metal partitions with rust, damage, and dents. The epoxy coating on the floors is peeling and stained. Ceramic tiles and grout in the showers show dirt, stains, permanent grime, and bleached and missing material. Plastic shower curtains at shower entrances are covered with grime. No vertical grab bars serve accessible toilet stalls, which makes them ADA noncompliant. Painted gypsum-board ceilings show water damage, stains, and deteriorating, falling material. Wood thresholds separating the concrete/epoxy floors and ceramic tile are rotting and splintered. Missing ceramic tiles are replaced with mismatched tiles, or filled with grout. An accessible shower stall is unusable, and filled with discarded furniture. No ADA-compliant shower stall serves the community. Client restrooms have access from a lobby space at the south end of the entrance plaza, and sit adjacent to the resource room. The lobby space is small and crowded when clients enter to utilize the facilities, and obtain clothing from tables located in the space. The restrooms show ceramic tile floors and grout with stains and wear, metal partitions with rust and damage, and laminate counters with wood edges which exhibit wear, stains, and faded, bleached material. No vertical grab bars serve toilet stalls, and hand dryers are mounted too high for ADA compliance.

Casa de Peregrinos

The Casa de Peregrinos Food Rescue Warehouse sits on the west side of Building 3, and shows aging and worn finishes in fair to poor condition. The large warehouse serves as food storage and packaging. Freezers and a large walk-in refrigeration unit hold perishable foods and meats. The space is crowded and filled with industrial shelving, shopping carts, boxes, and various other bins and boxes containing items for distribution. Epoxy-coated concrete floors show damage and scratched coating. Painted, exposed structure and ducts occupy the ceiling, and chicken wire holds paper-coated insulation in place. Painted steel columns stand dispersed throughout the space. A dish washing area contains double stainless steel sinks and a commercial washing system. Chemicals sit on stainless steel counters and shelves. Two offices are accessed from within the warehouse near the dish area. A single restroom serves the entire staff and volunteers, and is insufficient for the number of people who use it. A reception office has access from the warehouse and the staff/volunteer corridor. A single door leads from the dish area in the warehouse to the staff and volunteer corridor with two offices, entry into the reception office, and a large open waiting area, which serves for volunteer coordination and the assembly and distribution of food baskets. Outdated and worn carpet in the offices shows stains and damaged material. Multiple extension cords supply power to equipment. Too few outlets in offices necessitates the use of power strips by staff. Roof leaks have caused water damage at painted gypsum-board walls. The staff/volunteer corridor shows concrete floors, painted gypsum-board walls with a wood chair rail and stained vinyl wall base, and water damaged and stained acoustic ceiling tiles. Walls and ceilings exhibit severe water damage and damaged finish materials. The entire suite is overused and crowded.

Roof-mounted combination units heat and cool Building 3. Some units are aging, and air handling

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filters show rust and damage. Zones and thermostats are not well coordinated. Large warehouse spaces are difficult to heat and cool, and control of temperatures is a challenge for staff. Electrical outlets throughout the building are insufficient in quantity. No fire suppression system serves the building. The functions within Building 3 have outgrown their spaces.

Camp Hope

Camp Hope is a self-governed, temporary tent camp on the southwest side of the campus. An outdoor kitchen, partially sheltered tent pads, and a small restroom/shower building serve the tent community. Covered outdoor spaces provide access to clothing and simple household and personal necessities exchange areas, and gathering spaces. The residents of Camp Hope tend a community garden. The restroom/shower building is a small, painted CMU structure with a standing seam metal roof. Painted metal doors stand open and show dents and damage. Concrete floors and painted CMU walls inside the entry to each restroom show wear, and painted gypsum-board entry walls exhibit damage, dents, and peeling paint. Interior spaces are poorly lit.

Adequacy and Environment



The Mesilla Valley Community of Hope (MVCH) campus, comprised of three main buildings, is an important part of the Las Cruces community, and a vital lifeline for the homeless, near homeless, addicted, and indigent population in southern New Mexico. The goods and services provided through the program are a necessary survival means for people in life-altering transitions. Services include housing, case management, employment coaching, mental, behavioral and medical health care, food, clothing, and household goods distribution, prepared meals, daycare, showers, and laundry facilities. Each of the three main buildings serves a vital role in providing these programs and services, and the importance of their condition and adequate size is the cornerstone to the success of all of the programs. The presence of a community-accessible campus which provides all of the goods and services within a singular location is the best possible solution for the population served.

The campus is at risk with insufficient active security. The program is designed to be inclusive for all who need services; however, the layout and open access to the campus compromises safety and security observation. The single, long entrance drive from Amador Ave. is difficult to supervise and creates a long path of travel. The locations of the buildings present challenges for some of the programs. The Jardin de los Ninos daycare center in Building 2 sits in the center of the site, between the Amador Health Center and El Caldito Soup Kitchen in Building 1, and the MVCH administrative offices and Casa de Peregrinos Food Rescue Warehouse in Building 3. Security is challenging for Buildings 1 and 3, with children attending the daycare exposed to adult activities at these buildings and their entrance plazas. Building 2 is also located at the end of the campus entrance drive, and lacks an adequate bus and parent loop. No dedicated parking lot serves Building 2. Campus and building signs are difficult to see, and set back from the entrance drive. Camp Hope is self-governed and well guarded by the temporary residents of the community. It exists as its own micro-community within the campus, although access to it is only gained by crossing through the campus.

Building 1 exhibits outdated, worn, and damaged finishes. Spaces are too small for the programs and community served. Programs have outgrown their spaces, and storage is insufficient. The layout of rooms within the different building sections is confusing and inadequately marked. ADA accommodations are insufficient. Roofs exhibit leaks, and mechanical equipment is outdated and partially functional. Electrical services are insufficient for all spaces in Building 1. The entrance plaza, and area surrounding a walk-up harm reduction supply distribution window, present opportunities for people to hang out. These areas are located in direct sight lines and close proximity to Building 2, which

contains the daycare program.

Building 2 exhibits outdated, worn, and damaged finishes. Spaces are inadequate in size and number for the program, and storage is insufficient. The program has outgrown the building. Furniture is outdated, worn, and damaged. Fixtures are outdated, worn, and damaged. The layout of the building is confusing, inefficient, and inadequately marked. No secure entrance vestibule secures the building. The kitchen and common room are insufficient in size. ADA accommodations are insufficient. Roofs exhibit leaks, and mechanical equipment does not function efficiently for the building. Outdoor playgrounds exhibit outdated play equipment and poor fall surfaces. Play areas are not secure. Electrical outlets are insufficient in number for Building 2.

Building 3 exhibits outdated, worn, and damaged finishes. Spaces are inadequate in size and number for the programs and community served. Programs have outgrown their spaces, and storage is insufficient. The Food Rescue Warehouse now handles more than ten times the amount of food that it was originally designed to distribute. Roofs exhibit leaks, and mechanical equipment is outdated and partially functional. Electrical services are insufficient for all spaces in Building 3. No secure entrance vestibule serves the building. The entrance plaza, and area along the building's east edge, present opportunities for people to hang out. These areas are located in direct sight lines and close proximity to Building 2, which contains the daycare program. No secure separation protects the staff corridor from the entrance lobby, which is another area where people hang out. Restrooms and showers are in need of significant upgrades.

Restrooms and shower facilities for the community are insufficient for the population served. Portable restrooms throughout the site are unsanitary and overused. Few developed shaded and supervised gathering areas are available for the community. Clients, and those awaiting goods or services, utilize any shaded area in which to gather or loiter. Parking lots show faded paint and inadequate ADA-compliant parking spaces. Landscaping and xeriscaping show erosion, water ponding, and deterioration.

No secure, shaded central gathering space serves the campus. Security cameras do not surveil the entire site and building exteriors. The campus lacks a centralized public address system. No lockable gate serves the entrance drive.

Review Participants

Nicole Martinez, MVCH Executive Director

Michelle Saenz-Adames, Jardin De Los Ninos Director

Brian Hollinger, El Caldito Soup Kitchen Operations Manager

Ray Stewart, Amador Health Center Programs Director

Maggie Hirsch, ARC Facilities Evaluator

2021 CIP List of Projects for Mesilla Valley Community of Hope

Project No.	Code	Project Name	MACC	Project Budget
500.2001	4.06.B03.3.	Parking Lot Improvements	\$2,469,894	\$3,149,115
500.2002	4.06.D06.2.	Security Improvements	\$463,834	\$591,388
500.2003	4.06.B01.4.	Campus Improvements	\$396,072	\$504,991
500.2004	4.06.B02.4.	Landscaping and Site Improvements	\$174,265	\$222,187
500.2005	4.05.E01.3.	Refurbish Camp Hope Restroom/Shower Building	\$31,811	\$42,626
500.2006	4.06.B08.3.	Playground improvements	\$454,238	\$579,154
500.2007	4.08.C05.2.	Roof Replacement	\$963,393	\$1,228,326
500.2008	4.05.D04.2.	Electrical Upgrades	\$701,064	\$939,426
500.2009	4.04.G01.2.	Building 1 Improvements	\$2,525,395	\$3,384,029
500.2010	6.00.F13.2.	Alternative Solution - Soup Kitchen Replacement Facility	\$0	\$0
500.2011	6.04.F01.2.3.	Building 2 Improvements and Additions	\$8,067,563	\$10,810,534
500.2012	6.09.F13.2.	Alternative Solution - Daycare Facility Replacement	\$0	\$0
500.2013	6.04.F02.3.	Building 3 Improvements	\$1,218,094	\$1,632,246
500.2014	4.13.D03.3.	Mechanical Study	\$1,756,500	\$2,099,018
500.2015	4.13.D05.3.	Plumbing Study	\$256,500	\$306,518
500.2016	4.13.B05.2.	Drainage Study	\$513,000	\$613,035
500.2017	1.05.D04.2.	Public Address System Installation	\$26,987	\$36,163
Total of Project Budgets				\$26,138,756

Project 500.2001 · Parking Lot Improvements

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 06. **Type 2:** B03. **P/Class:** 3.



Project Description

No dedicated, paved parking lot serves Building 2. Unenclosed dumpsters sit in an unpaved area adjacent to Building 2 and behind Building 3. The parking area behind Building 3 is not paved or marked. The parking lots in front of Buildings 1 and 3 show peeling paint, oil stains, loose gravel, sand erosion, cracks, and patching. ADA-accessible parking spaces show faded paint and noncompliant signs.

Construct paved parking lots which include ADA-compliant spaces adjacent to Building 2, and behind Buildings 1 and 3. Construct a dumpster enclosure. Repave the parking lot in front of Building 1, including the front loop. Repaint parking spaces, including new ADA-compliant spaces and signs. Repave the parking lot in front of Building 3, including new ADA-compliant spaces and signs.

	Description	Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Construct parking lots	1.1437	48,222.0	SF	1.00	\$48.59	\$2,343,107
2	Construct dumpster enclosures	1.2119	2.0	EA	1.00	\$20,790.00	\$41,580
3	Repave parking lots	1.1417	40,615.0	SF	1.00	\$1.90	\$77,169
4	Paint parking spaces	1.1439	95.0	Stall	1.00	\$40.35	\$3,833
5	ADA parking spaces	1.1412	11.0	Stall	1.00	\$382.31	\$4,205
Maximum Allowable Construction Cost							\$2,469,894
Total Project Cost							\$3,149,115

Project 500.2002 · Security Improvements

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 06. **Type 2:** D06. **P/Class:** 2.



Project Description

The campus is vulnerable, with no secure gate or gatehouse at the main entrance drive. Buildings 2 and 3 lack secure entrance vestibules. The soup kitchen and the health center annex at Building 1 also lack secure entrance vestibules. Security cameras on the site provide inadequate coverage.

Construct a vehicle checkpoint, including a small gatehouse (50 SF) and a motorized gate with key card control.

Construct secure entrance vestibules (4 x 300 sf) - two at Building 1 and one each at Buildings 2 and 3. Install additional security cameras throughout the site.

Vestibule additions: 1,200 sf / 0.9 = 1,333 GSF

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Construct gatehouse	3.2126	50.0	SF	1.00	\$175.00	\$8,750
2	Install gate	1.4117	1.0	LF	1.00	\$6,136.05	\$6,136
3	Construct secure entrance vestibules	3.2112	1,333.0	SF	1.00	\$310.00	\$413,230
4	Install security camera head end	2.4028	1.0	EA	1.00	\$13,500.00	\$13,500
5	Install security cameras	2.4024	20.0	EA	1.00	\$1,110.90	\$22,218
Maximum Allowable Construction Cost							\$463,834
Total Project Cost							\$591,388

Project 500.2003 · Campus Improvements

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 06. **Type 2:** B01. **P/Class:** 4.



Project Description

The parent and bus loop for Building 2 is undersized, and its location and design interfere with other campus traffic. Emergency vehicle lanes on campus show faded and peeling paint. Exterior lighting is outdated and insufficient. Wayfinding and building signs are outdated, missing, and inaccurate. No lit campus identifying sign sits on Amador Avenue, and the site access road is difficult to find. Concrete stairs at Building 3 show cracks and damage, lack contrasting edges, and the handrails are ADA noncompliant. Entrance plazas outside Buildings 1 and 3 exhibit damaged and stained concrete and cause crowded circumstances. Upon completion of secure entrance vestibules into Buildings 1 and 3, replace entrance plazas. To accommodate a secure entrance vestibule at Building 3, the existing stairs and handrails will need to be removed and replaced.

Construct a parent/bus loop at Building 2. Paint curbs to define emergency vehicle access. Install additional and replacement lights at building exteriors and throughout the campus. Install campus directional signs and building identification signs. Install a site marquee sign at the entrance to the access drive with electrical power for lighting (assume a 20' trench to nearest power connection). Replace the exterior concrete stairs and handrails at Building 3. Construct entrance plazas with landscaping at Buildings 1 and 3.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Construct a bus and parent loop (adj. for buses)	1.1434	1.0	Per	1.50	\$51,909.52	\$77,864
2	Paint curbs (adj. for specialty paint)	2.3328	742.0	SF	2.00	\$2.96	\$4,393
3	Install site lighting	1.1438	20.0	EA	1.00	\$8,317.73	\$166,355
4	Install wall-mounted lighting	1.4121	40.0	EA	1.00	\$909.27	\$36,371
5	Install directional campus signs	2.3620	3.0	EA	1.00	\$160.01	\$480
6	Install building identification signs	2.3614	6.0	EA	1.00	\$272.52	\$1,635
7	Construct a foundation for marquee sign	1.1427	1.0	EA	1.00	\$304.57	\$305

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8	Electrical power connection to marquee sign	2.3917	20.0	SF	1.00	\$4.26	\$85
9	Install a site marquee sign	2.3619	1.0	EA	1.00	\$17,500.00	\$17,500
10	Construct concrete stairs	2.3223	5.0	Riser	1.00	\$493.77	\$2,469
11	Install handrails	1.1212	20.0	LF	1.00	\$66.08	\$1,322
12	Construct entrance plazas	1.2111	3,000.0	SF	1.00	\$28.85	\$86,550
13	Demolish stairs and handrails	1.1116	200.0	SF	1.00	\$3.72	\$744
Maximum Allowable Construction Cost							\$396,072
Total Project Cost							\$504,991

Project 500.2004 · Landscaping and Site Improvements

Facility:	Mesilla Valley Community of Hope	IDNO:	500				
Category:	4.	Type 1:	06.	Type 2:	B02.	P/Class:	4.



Project Description

Xeriscaped areas throughout the campus exhibit erosion, missing aggregate, and exposed and torn underlayments. Sand and rocks wash onto sidewalks, and large regions have no ground cover and inappropriate ground covering materials. Water washes dirt, sand, and xeriscape materials onto sidewalks, roads, walkways, and parking lots.

Replace xeriscaped areas with new ground cover and underlayment near Buildings 1, 2, and 3. Install low-water-use plants and shrubs to control erosion.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Replace xeric landscaping (adj. for demo)	1.2126	20,468.0	SF	1.10	\$7.74	\$174,265
Maximum Allowable Construction Cost							\$174,265
Total Project Cost							\$222,187

Project 500.2005 · Refurbish Camp Hope Restroom/Shower Building

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 05. **Type 2:** E01. **P/Class:** 3.



Project Description

The restroom and shower building within Camp Hope exhibits worn finishes. The facility is not secure and has doors that stand open, limiting privacy. Lighting is insufficient, and fixtures are worn. A metal roof extends from the restroom building to cover an outdoor kitchen area.

Once the City takes ownership and maintenance responsibility for the building, refurbish the restroom and shower building with durable fixtures and finishes.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Refurbish the restroom/shower building	2.1116	787.0	SF	1.00	\$40.42	\$31,811
Maximum Allowable Construction Cost							\$31,811
Total Project Cost							\$42,626

Project 500.2006 · Playground improvements

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 06. **Type 2:** B08. **P/Class:** 3.



Project Description

A concrete masonry unit (CMU) wall surrounds the playground area behind Building 2. Unwanted visitors often jump over this wall and sleep within the play area. Play equipment is outdated, in poor condition, and sits on sand fall areas.

Increase the heights of the CMU walls surrounding the play areas. Replace the play equipment and install fall-area mulch.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Add to CMU walls	1.4122	2,092.0	SF	1.00	\$23.10	\$48,325
2	Replace playgrounds (adj. for demo and disposal)	1.3143	3.0	EA	1.10	\$123,004.00	\$405,913
Maximum Allowable Construction Cost							\$454,238
Total Project Cost							\$579,154

Project 500.2007 · Roof Replacement

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 08. **Type 2:** C05. **P/Class:** 2.



Project Description

Flat roofs over Buildings 1, 2, and 3 exhibit soft spots, noise, and when tread upon, show movement. Outdated and abandoned mechanical equipment sits on rusted supports, and gas lines are unpainted. Water sits beneath combined heating and cooling units, and ducts show repaired seam separations with dried and cracked material. Flashing and metal coping exhibit exposed fasteners and some separation at seams. The single-ply roof systems exhibit exposed fasteners, seam separation, and multiple sections of material pieced together at parapets. The roof material shows a painted coating in some areas. Deteriorating and peeling materials appear near edges without flashing, and some membrane material covers parapet cap edges. Roof drains provide inadequate drainage with dirt, permanent stains, and a buildup of material and water ponding. Staff reports that persistent roof leaks cause repeated damage to ceilings.

Replace the roofs on all buildings.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Replace flat roofs	2.2439	28,758.0	SF	1.00	\$33.50	\$963,393
Maximum Allowable Construction Cost							\$963,393
Total Project Cost							\$1,228,326

Project 500.2008 · Electrical Upgrades

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 05. **Type 2:** D04. **P/Class:** 2.



Project Description

An insufficient number of electrical outlets serve the permanent buildings. Staff utilizes power strips. Breakers trip often due to the inadequate service.

Upgrade the secondary electrical service.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Upgrade the secondary electrical service	2.3925	29,960.0	SF	1.00	\$23.40	\$701,064
Maximum Allowable Construction Cost							\$701,064
Total Project Cost							\$939,426

Project 500.2009 · Building 1 Improvements

Facility:	Mesilla Valley Community of Hope	IDNO:	500
Category:	4.	Type 1:	04.
		Type 2:	G01.
		P/Class:	2.



Project Description

Storefront systems, windows, and doors at Building 1, including the El Caldito Soup Kitchen and the Amador Health Center Annex, show damaged glass and frames, peeling tint material, scratches, and deteriorating caulk. Painted hollow metal frames exhibit dents, rust, and broken and missing sections. Metal doors show damage, faded paint, and rusted painted hollow metal frames. A metal door on the annex lacks a visual connection to the exterior. The El Caldito Soup Kitchen's kitchen offers an inefficient layout with poor spacing between equipment, low-hung hoods, outdated equipment, and deteriorating finishes, cabinets, and casework. Storage pantries are tiny, the food pick-up line is inefficient, the dish room is too small, and its location is inappropriate. Food preparation areas are tight, and the dish pantry holds too many dishes, storage items, and equipment. Finishes and fixtures in the dining room and restrooms are outdated, worn, and damaged. The Amador Health Center Annex exhibits outdated, worn finishes in poor condition and an inefficient layout. The entrance lobby is oversized and inefficient, and the front office serves too many functions. The offices are small and poorly laid out. Restroom fixtures and finishes are outdated, worn, and damaged. Both El Caldito Soup Kitchen and the Amador Health Center Annex have spaces too small to accommodate the increased demand for services. However, the site offers limited expansion opportunities.

Replace storefront systems on the central and south portions of Building 1, including doors. Replace casement style and fixed pane windows and exterior metal doors. Renovate the kitchen. Refurbish the dining room, including new lighting. Renovate the restrooms in the El Caldito Soup Kitchen. Renovate the Amador Health Center Annex, including the restrooms.

	Description	Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Replace storefront systems (adj. for demo/disposal)	2.2224	300.0	SF	1.10	\$114.81	\$37,887
2	Replace storefront system doors (adj. for demo/disposal)	2.2130	4.0	EA	1.10	\$2,699.53	\$11,878

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3	Replace windows	2.2232	2,160.0	SF	1.00	\$139.28	\$300,845
4	Replace fixed windows	2.2227	900.0	SF	1.00	\$69.44	\$62,496
5	Replace metal doors and frames	2.2125	3.0	EA	1.00	\$3,037.26	\$9,112
6	Renovate kitchen	3.1139	2,510.0	SF	1.00	\$596.70	\$1,497,717
7	Refurbish dining room	2.1117	1,600.0	SF	1.00	\$90.95	\$145,520
8	Renovate restrooms	2.1119	440.0	SF	1.00	\$495.93	\$218,209
9	Renovate the Amador Health Center Annex, including refurbished finishes	2.1118	2,100.0	SF	1.00	\$115.11	\$241,731
Maximum Allowable Construction Cost					\$2,525,395		
Total Project Cost					\$3,384,029		

Project 500.2010 · Alternative Solution - Soup Kitchen Replacement Facility

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 6. **Type 1:** 00. **Type 2:** F13. **P/Class:** 2.



Project Description

The health center and soup kitchen are undersized for their programs, with little room for expansion.

Construct a new building (9,000 GSF) to house the El Caldito Soup Kitchen. Renovate the former soup kitchen and existing health center annex spaces to accommodate an expanded health center.

The cost for a 9,000 SF replacement building for El Caldito is \$3,366,000 MACC / \$4,022,370 TPC
The cost to renovate El Caldito and Suite D for Health Center use (7,300 sf general renovation) is \$840,303 MACC / \$1,004,162 TPC

The total estimated project cost is \$5,026,532.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Replacement building	3.2129	9,000.0	SF	0.00	\$374.00	\$0
2	Renovate spaces	2.1118	7,300.0	SF	0.00	\$115.11	\$0
Maximum Allowable Construction Cost							\$0
Total Project Cost							\$0

Project 500.2011 · Building 2 Improvements and Additions

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 6. **Type 1:** 04. **Type 2:** F01.2. **P/Class:** 3.



Project Description

The Jardin de los Ninos daycare facility (Building 2) shows outdated finishes and fixtures in fair to poor condition. Spaces are not well utilized and the layout is confusing and inefficient. Staff wish to expand to double the classroom capacity.

Renovate Building 2, including new finishes and lighting. Construct an addition including classrooms (7 x1,200 sf), a kitchen and cafeteria (3,500 sf), and additional offices and counseling rooms (5 x150 sf).

Addition: $8,400 + 3,500 + 750 = 12,650 / .7 = 18,071$ GSF

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Renovate building	2.1118	12,196.0	SF	1.00	\$115.11	\$1,403,882
2	Construct an addition (adj. for kitchen)	3.2111	18,071.0	SF	1.25	\$295.00	\$6,663,681
Maximum Allowable Construction Cost							\$8,067,563
Total Project Cost							\$10,810,534

Project 500.2012 · Alternative Solution - Daycare Facility Replacement

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 6. **Type 1:** 09. **Type 2:** F13. **P/Class:** 2.



Project Description

Jardin de Los Ninos exhibits outdated and worn finishes and insufficient space for its program. The layout of the building is confusing and inefficient. The location on campus between the administrative offices and intake functions in Building 3, and the health clinic with the walk-up window for harm reduction supplies in Building 1, exposes children to adult and potentially inappropriate activities.

Construct a replacement building (22,000 sf) to accommodate a daycare facility with expanded capacity, including playgrounds and protected outdoor space.

Replacement facility: $22,000 / 0.7 = 31,400$ GSF

The estimated total project cost is \$10,731,578, including parking lots and playgrounds.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Replacement building (adj. 1.1 for parking/playgrounds)	3.2119	31,400.0	SF	0.00	\$260.00	\$0
Maximum Allowable Construction Cost							\$0
Total Project Cost							\$0

Project 500.2013 · Building 3 Improvements

Facility:	Mesilla Valley Community of Hope	IDNO:	500				
Category:	6.	Type 1:	04.	Type 2:	F02.	P/Class:	3.



Project Description

Building 3 exhibits outdated and worn finishes and fixtures. The administrative and Food Rescue Warehouse functions have outgrown their spaces. A project is in progress to renovate an adjacent building (formerly the Horse and Hound feed store) for the Casa de Peregrinos Food Rescue Warehouse.

After the Casa de Peregrinos Food Rescue Warehouse relocates to the former Horse and Hound Building, renovate Building 3 to accommodate the functional requirements for MVCH administrative and support functions. Accommodate the following:

- A staff of 19 full-time, six part-time, and five contract personnel, plus space for volunteers and interns. Staff requires a minimum of three private offices. The remaining staff can use open workstations or two- to three-person offices.
- Interview and counseling rooms for caseworkers to meet with clients (minimum of 5 rooms) near the reception/waiting area.
- Additional staff restrooms on both the east and west sides of the building (currently, only one single-occupant restroom exists on each side)
- Additional storage for donations of clothing, personal hygiene items, furniture, and other household items (a minimum of 600 square feet - more if possible)
- Additional file storage space, a fully functional staff break area, and additional custodial supply and maintenance space

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Renovate building	2.1118	10,582.0	SF	1.00	\$115.11	\$1,218,094
Maximum Allowable Construction Cost							\$1,218,094
Total Project Cost							\$1,632,246

Project 500.2014 · Mechanical Study

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 13. **Type 2:** D03. **P/Class:** 3.



Project Description

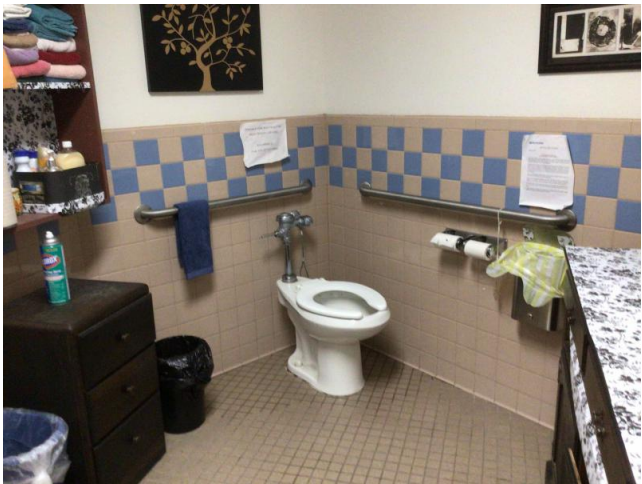
Many mechanical units throughout the campus are aging and function poorly. Some units do not function. Temperature control is challenging in all buildings.

Commission a mechanical study for all three permanent buildings to determine necessary repairs and upgrades. The CIP includes an allowance for repairs and upgrades.

	Description	Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Commission a mechanical study	2.4314	1.0	Per	1.00	\$6,500.00	\$6,500
2	Allowance for replacement	0.0000	1.0	Allowance	1.00	\$1,750,000.00	\$1,750,000
Maximum Allowable Construction Cost							\$1,756,500
Total Project Cost							\$2,099,018

Project 500.2015 · Plumbing Study

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 13. **Type 2:** D05. **P/Class:** 3.



Project Description

Plumbing fixtures and pipes throughout the campus are old. Dry drains and incorrectly capped open floor drains emit odors and fumes. Plumbing fixtures back up frequently.

Commission a plumbing study for the three permanent buildings, and the stand-alone restroom and shower building within Camp Hope to determine necessary repairs and upgrades. The CIP includes an allowance for repairs and upgrades.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Commission a plumbing study	2.4314	1.0	Per	1.00	\$6,500.00	\$6,500
2	Allowance for repairs	0.0000	1.0	Allowance	1.00	\$250,000.00	\$250,000
Maximum Allowable Construction Cost							\$256,500
Total Project Cost							\$306,518

Project 500.2016 · Drainage Study

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 4. **Type 1:** 13. **Type 2:** B05. **P/Class:** 2.



Project Description

Multiple areas throughout the campus show erosion and water ponding. Water washes sand, dirt, and rocks onto sidewalks, roads, and parking lots. Unpaved areas hold large amounts of water and mud.

Commission a drainage study for the entire campus to identify solutions. The CIP includes an allowance for repairs and upgrades.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Commission a drainage study, (adj. for campus continuity)	2.4311	4.0	Acre	0.50	\$6,500.00	\$13,000
2	Allowance for drainage improvements	0.0000	1.0	Allowance	1.00	\$500,000.00	\$500,000
Maximum Allowable Construction Cost							\$513,000
Total Project Cost							\$613,035

Project 500.2017 · Public Address System Installation

Facility: Mesilla Valley Community of Hope **IDNO:** 500
Category: 1. **Type 1:** 05. **Type 2:** D04. **P/Class:** 2.

Project Description

No central public address (PA) communication system serves the campus or connects the buildings.

Install a campus-wide PA system.

Description		Cost Code	Quantity	Unit	Adjustment	Cost	Subtotal Cost
1	Install PA console and speakers	2.4112	1.0	EA	1.00	\$26,987.10	\$26,987
Maximum Allowable Construction Cost							\$26,987
Total Project Cost							\$36,163

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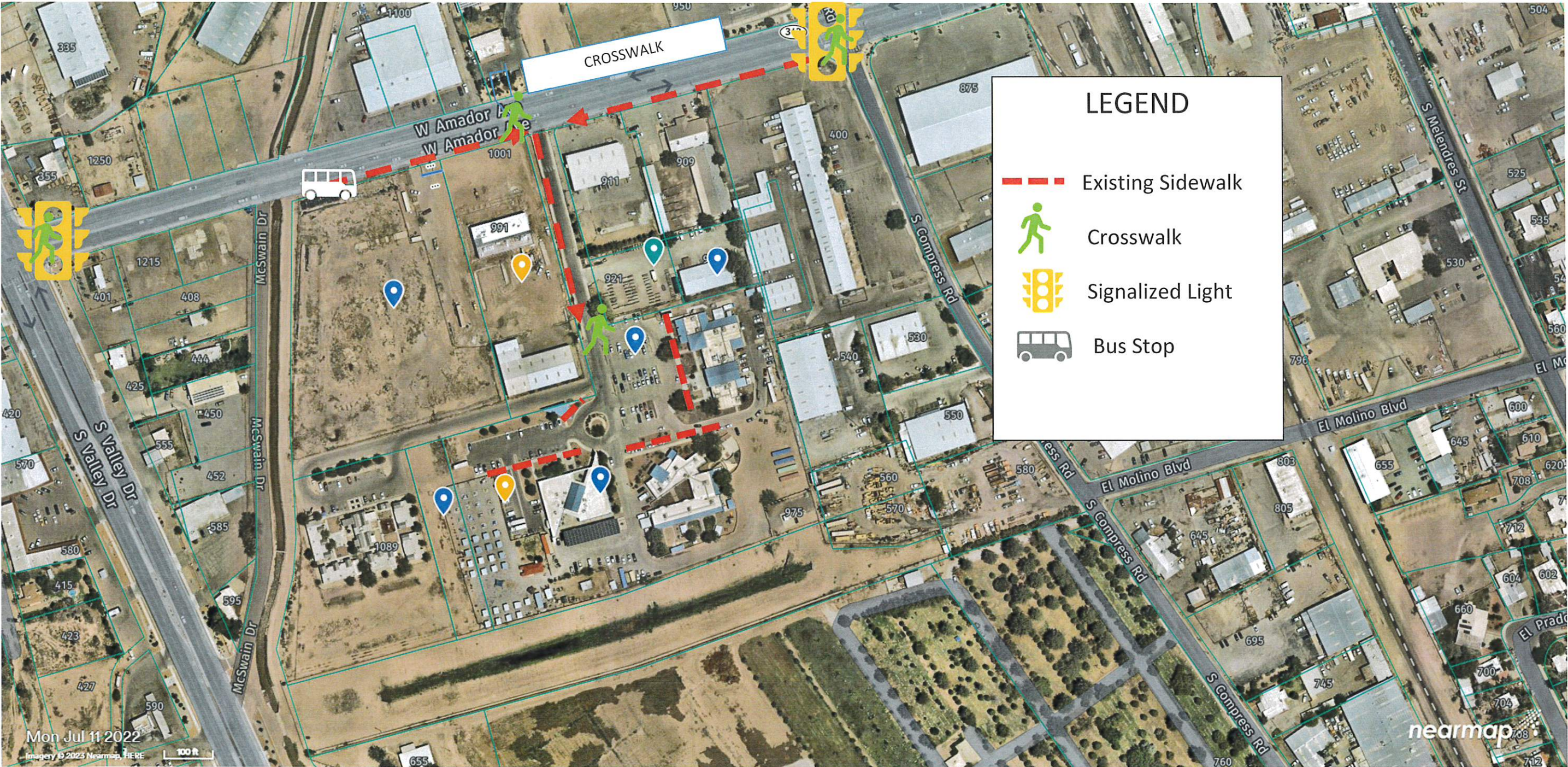
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PEDISTRIAN MASTER PLAN





Planning & Zoning Commission 01/24/2023 CASE 22ZO2500106: PUD CONCEPT PLAN AMENDMENT

STAFF CONTACT:	John Castillo, (575) 541-2288, jcastillo@las-cruces.org
OWNER:	City of Las Cruces
REPRESENTATIVE:	City of Las Cruces
COUNCIL DISTRICT:	District #4
SITE LOCATION:	999 W Amador Avenue
EXISTING ZONING:	PUD (Planned Unit Development)
REQUEST:	An amendment to the Mesilla Valley Community of Hope PUD expanding the boundary of the PUD and integrating the newly adopted master plan to the concept plan.
RELATED APPLICATIONS:	22CS0500142 – Amador Tracts Replat No. 2 Administrative Replat
STAFF RECOMMENDATION:	Approval with Conditions

SUMMARY OF REQUEST CASE 22ZO2500106:

The Mesilla Valley Community of Hope (MVCH) campus is seeking approval to amend the MVCH Planned Unit Development (PUD) concept plan. The amendment will incorporate five (5) lots expanding the boundary of the Concept Plan and increasing the acreage from 8.01 ± acres to 16.59 ± acres in size. The PUD amendment will also include the incorporation of the recently adopted MVCH Master Plan.

SUMMARY OF RECOMMENDATION:

Staff Recommendation: **APPROVAL WITH CONDITIONS** based on the findings listed below:

1. The proposed concept plan amendment is compliant with Section 38-49 of the 2001 Zoning Code, as amended.
2. The proposed construction and use of the PUD will not be detrimental to the health, safety, or welfare of the community or adjacent neighborhood.
3. The proposal will promote the infill of vacant land in the center of the City.

4. More specifically, the proposed concept plan amendment follows earlier efforts to balance flexibility in development to benefits the community receives. (Sections 38-49.A.6)
5. The proposed concept plan amendment addresses all relevant development related issues in both a specific and conceptual manner.(Section 38-49.C.)
6. The proposed concept plan amendment is supported by various goals, objectives and policies found within the Elevate Las Cruces Comprehensive Plan and companion planning documents.

Conditions:

1. An opaque perimeter wall or fence at least 5 feet in height and adequate landscaping in conformance with all applicable regulations shall be constructed around the external perimeter of Camp Hope.
2. The camping facilities shall be constructed to the Bureau of Reclamation's camping standards or other equivalent standards as approved by the Community Development Director.
3. Permanent potable water and bathroom facilities accessible 24 hours a day seven days a week shall be provided for Camp Hope residents.
4. Trash receptacles in compliance with CLC regulations shall be provided for Camp Hope residents.
5. The PUD shall Comply with the International Fire Code, specifically chapters 3- General Precautions Against Fire, 9- Fire Protection Systems, and 24-Tents & Canopies.
6. Emergency access routes shall be maintained throughout the campus and Camp Hope in accordance with section 503.
7. The use of temporary electrical wiring, open flame, and liquid/gas fueled heating appliances, generators, or smoking will be strictly prohibited.
8. A current list of residents' names and their tent locations shall be kept at the camp to aid in emergency response.
9. One person minimum must remain on watch overnight to ensure security and provide a fire watch for Camp Hope.
- 10.No tent can be utilized for more than 10 persons at any time.
- 11.The PUD will follow the Mesilla Valley Community of Hope Master Plan and Management Structure Recommendations (Attachment #4)
- 12.A Traffic Impact Analysis (TIA) shall be submitted and approved for the entire campus prior to the issuing of a Certificate of Occupancy.

PROPOSAL AND LAND USE HISTORY

PROJECT DESCRIPTION:

The PUD area is located south of Amador Avenue at 999 W. Amador Avenue. The concept plan amendment area encompasses 16.59 ± acres and contains land that is currently developed and developing. The proposed amendment seeks to combine the originally acquired land of 8.01 acres and other recently acquired properties over the years that are adjacent to the MVCH campus. The amendment allows for the expansion of the boundary of the originally acquired land and incorporate a new master plan and management structure recommendation plan for the future growth of the MVCH campus.

LAND USE HISTORY:

The MVCH campus was originally acquired by the City of Las Cruces in 1994 and consisted of the Amador Health Center and El Caldito Soup Kitchen. The Jardin De Los Ninos Daycare, Casa de Peregrinos and Mesilla Valley Community of Hope were to be used as a homeless shelter that would be operated by the Mesilla Valley Community of Hope. In 1996 the property applied and was approved for a Special Use Permit to allow for the use of Quasi-Institutional Housing. Within the same year the subject property also underwent a zone change from M-1 (Light Manufacturing) to R-3 (Multi-Dwelling Medium Density) and was approved through Ordinance 1554 to allow for quasi-institutional housing. Then in 2013 the property had another zone change from R-3 to Planned Unit Development (PUD) which was approved through Ordinance 2676.

Between 1994 and 2009 the City of Las Cruces would sell a small portion of the originally acquired land and also acquired other adjacent properties. This was then replatted through the the Chilton Tracts Replat No. 1, the Woodward Lumber Company Subdivision, Amador Tracts Subdivision and finally the Amador Tracts Replat No. 1 Subdivision that was filed in 2003. Then between 2004 and 2018 the campus underwent five more replats known as Amador Tracts Replat No. 3 through 6. Currently the property is going through an administrative replat known as Las Cruces Community of Hope Subdivision to incorporate recently acquired property that will amend the boundary lines of the original land acquisition and previous replats of the property.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
<u>Neighborhood Character and Compatibility</u>	Yes
<u>Elevate Las Cruces Comprehensive Plan</u>	Yes
<u>Thoroughfare Plans</u>	Yes
<u>Criteria for PUD: Section 38-49 D.(d)(1) b</u>	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

Much of the area surrounding the MVCH PUD area is developed commercial, industrial and institutional land uses with the following zoning districts: C-3C (Commercial High Intensity-Conditional); C-3 (Commercial High Intensity); M-1/M-2 (Industrial Standard). From a compatibility perspective, the expanded MVCH PUD is in keeping with the area and the originally approved PUD.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

The property is located in the Urban Neighborhood Place Type and along a mixed-use corridor as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. The comprehensive plan has numerous goals, policies and actions that support the proposed amendment and concept plan elements. The following is a list of some of the key supporting goals and policies:

➤ Community Environment (CE):

- Goal CE-3: Community Environment - 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: Complete Neighborhoods – Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
 - Policy CE-4.1 – Encourage a variety of housing types into new and redeveloping neighborhoods to provide options for all ages and incomes throughout the city.
 - Policy CE-4.4 – Integrate parks, schools, and other civic space into neighborhoods.
- Goal CE-5: Building and Site Design - Establish standards to integrate new development with surrounding built and natural features while mitigating long-term natural resource and climate impacts.
 - Policy CE-5.1- Promote building form and scale that complements surrounding neighborhoods and creates strong linkages between the development site, the street, and other public grounds.
 - Policy CE-5.3- Ensure that development concepts provide an interconnected network of pedestrian facilities linking streets, buildings, parking, and public gathering space.
 - Policy CE-5.4- Provide motor vehicle access and parking options that preserve thoroughfare function and the comfort of pedestrians and bicycles.
- Goal CE-6: Context Sensitive Street Design – Design streets to support varying levels of pedestrian activity based on the intended built context of surrounding development.
 - Policy CE-6.2 – Design and construct city streets that support vehicular, truck, bus, pedestrian, and bicycle travel within the same right-of-way.

➤ Community Prosperity (CP):

- Goal CP-7: Attainable housing – Provide affordable, clean, and safe housing options for all residents regardless of income.
 - Policy CP-7.1 – Coordinate with local community organizations to provide education and implement attainable housing.
 - Policy CP-7.2 – Disperse affordable housing units to promote the development of mixed-income neighborhoods.
 - Policy CP-8.1 – Support efforts to provide transitory populations permanent, stable homes.
 - Action CP-8.1.1 – Coordinate with Community Organizations such as the Mesilla Valley Community of Hope to expand resources for the homeless population.
 - Action CP-8.1.2 – Provide local and federal funds to resource agencies that provide emergency housing and supportive services to the homeless population as available.

- Goal CP-9: Housing Diversity – Provide a diverse range of housing options to accommodate residents at all stages in life.
 - Policy CP-9.1 – Encourage the use of alternative housing types, styles, and living arrangements as a means to provide additional housing opportunities.
 - Policy CP-9.2 – Promote denser housing options in the urban neighborhood, downtown, town centers, neighborhood centers, and mixed-use corridors identified in the future development map.
- Community Livability (CL):
 - Goal CL-7: Transportation -Land Use Connection – Develop an accessible and efficient transportation systems that provides seamless connectivity to surrounding land uses and complements various development patterns.
 - Policy CL-7.2 – Promote street interconnectivity within and between neighborhoods, between commercial developments, and within town centers and neighborhood centers.
 - Goal CL-8: Multi-modal System – Develop an equitable, multi-modal transportation system that presents feasible travel options for residents.
 - Policy CL-8.1 – Design new and retrofit existing streets in a manner that balance the needs of all modes and users.
 - Policy CL-8.4 – Require the inclusion of safe and connected bicycle and pedestrian infrastructure with all new roadways or roadway reconstruction.
 - Goal CL-9: Transportation Safety – Incorporate public health and safety enhancements into transportation system investments and policies.

As shown above, the Elevate Las Cruces Comprehensive Plan provides ample support for the MVCH PUD Concept Plan Amendment.

COMPLIANCE WITH THOROUGHFARE PLAN:

Amador Avenue, a designated arterial roadway as per Elevate Las Cruces and the Mesilla Valley Metropolitan Planning Organization (MVMPO), is the roadway that provides primary access for the development. Amador Avenue is designed to accommodate uses such as the MVCH and other high intensity types of land uses.

OBJECTIVES OF PLANNED UNIT DEVELOPMENT:

The purpose of a Planned Unit Development (PUD) is to:

- (1) Comply with growth management policy as established in the land use element, other applicable elements, and all companion documents to the comprehensive plan;
- (2) Produce more flexibility in development than would result from a strict application of this Code;
- (3) Permit design flexibility that will encourage a more creative approach to the development of land and that will result in more efficient and aesthetically desirable alternatives to the housing and other development needs of the community;
- (4) Permit flexibility in land use, density, placement of buildings, arrangement of open space, circulation facilities, and off-street parking areas, and maximize the potential of individual sites under development;

- (5) Promote the infill of vacant land; and
- (6) Create developments that balance the benefits to the community with the developer's interests.

Approval of a PUD concept plan (major amendment) must receive a recommendation from the Planning and Zoning Commission to the Las Cruces City Council. City Council is the final authority on the request. Concept Plan recommendations and decisions are based on findings and as presented, the findings show strong support for the proposed request.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR CURRENT USE:

The campus has developed with the majority of land servicing the MVCH. This includes a medical clinic, soup kitchen, daycare, food bank, a homeless case management and day service center, and temporary tent camp for the homeless. As the property currently exists, it is compliant with the current rules and regulations of the PUD.

SITE SUITABILITY FOR PROPOSED USE:

In that the current PUD exists, amending the PUD as proposed with inclusion of the 8.58 acres makes perfect sense. Many elements proposed with the new master plan are for the future expansion of the campus.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, sewer and gas serves the MVCH campus development as it exists to date. Any applicable utility extension and/or upgrade of service will follow the development and be made available as need dictates. Capacity to serve should not be an issue with the proposed built outs.

FLOOD PLAIN:

The property is not located in a designated 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. As of this report's writing, staff has received a phone call regarding more information on the expansion of the PUD.

STAFF COMMENTS:

No reviewing departments had any negative technical comments on the proposed concept plan amendment. On November 23, 2022, the DRC reviewed the proposed concept plan amendment and recommended unanimous approval with conditions to the Planning and Zoning Commission. The condition that was placed as part of the approval is that a Traffic Impact Analysis (TIA) be submitted and approved prior to the issuance of a Certificate of Occupancy. The other listed conditions were placed on the original PUD and staff is bringing them over with this PUD Concept Plan Amendment for consistency.

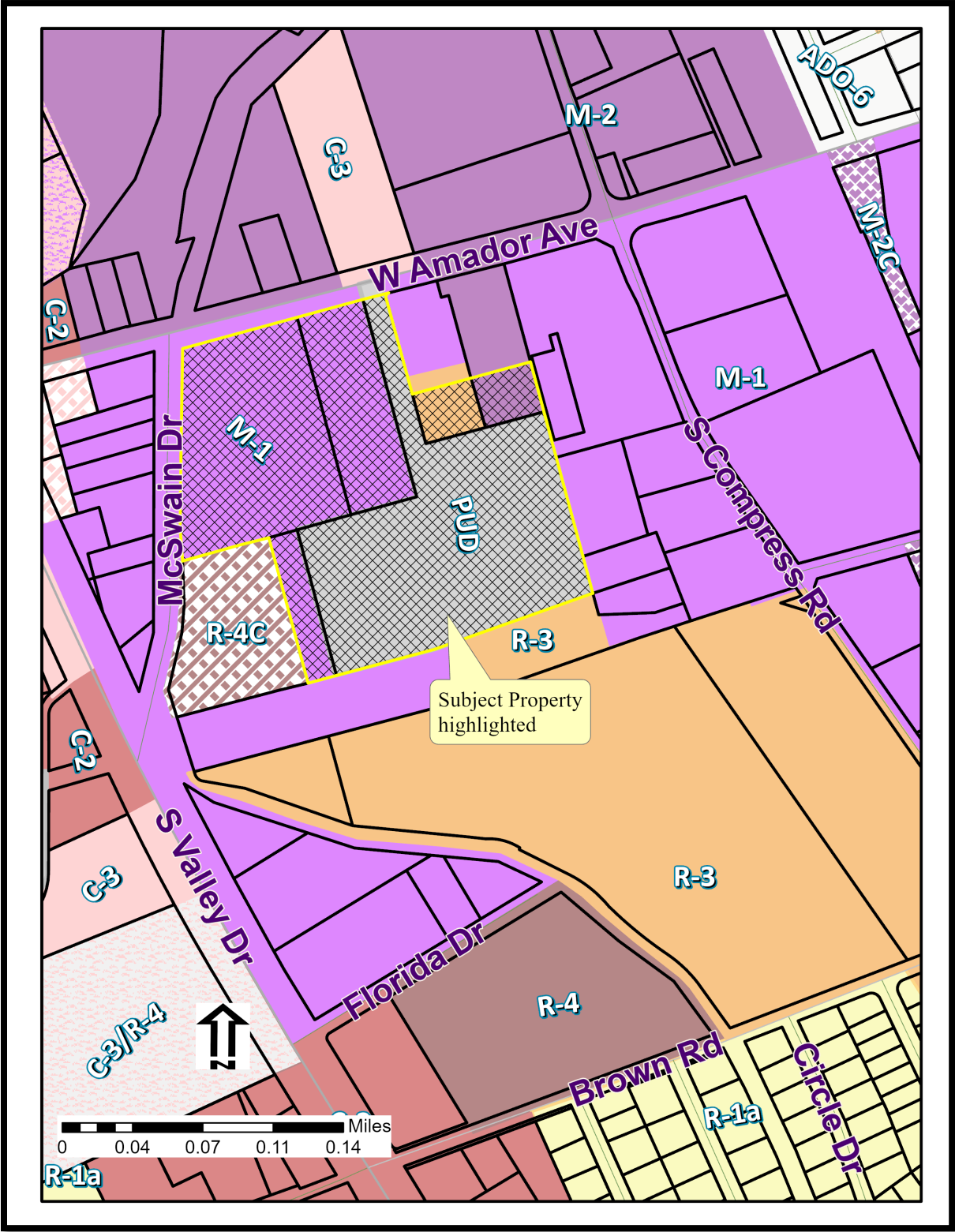
ATTACHMENTS:

1. Zoning Map

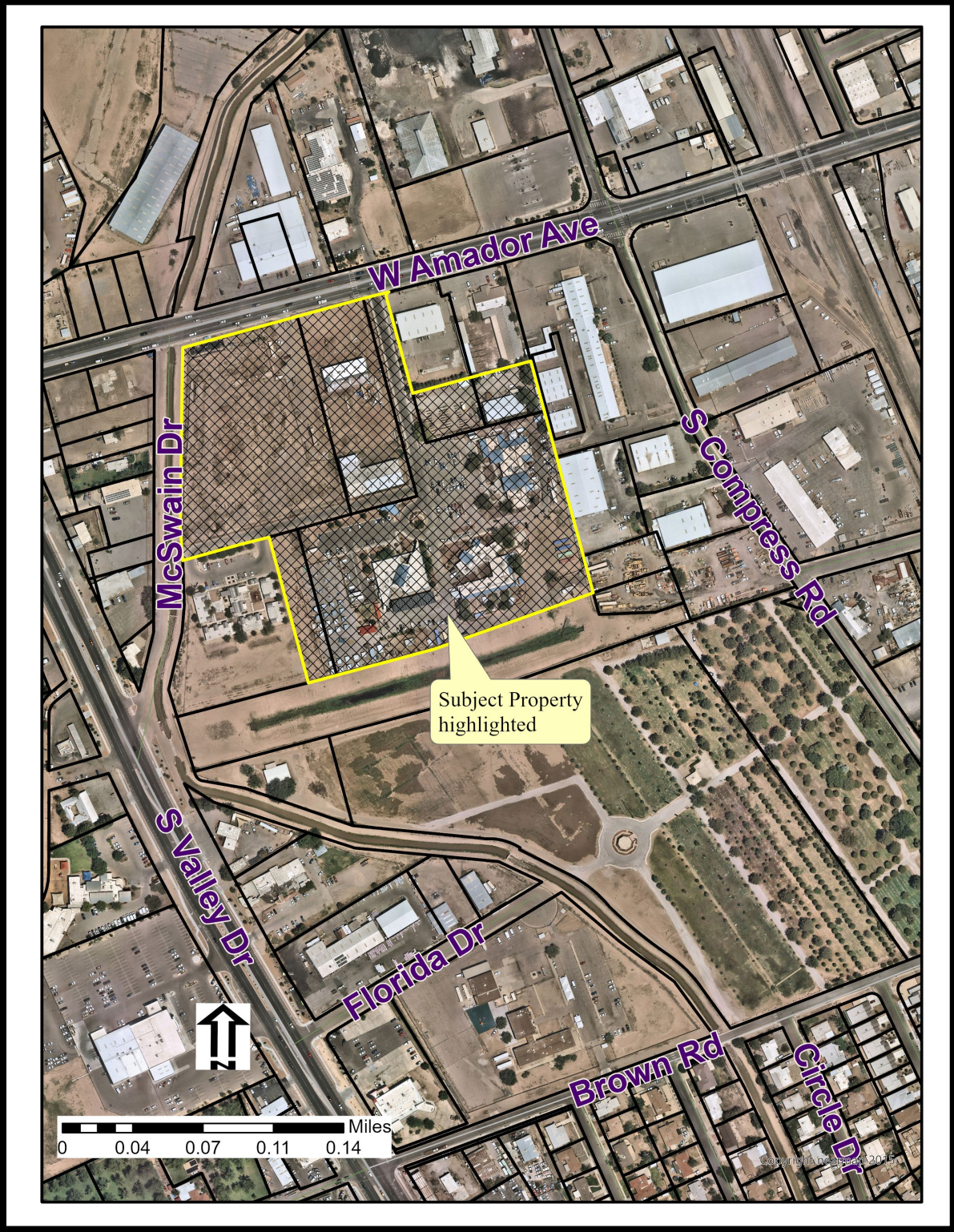
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2. Aerial Map
3. Proposed Mesilla Valley Community of Hope Concept Plan
4. Adopted Master Plan and Management Structure Recommendations
5. Department Comments
6. Development Review Committee Meeting November 23, 2022

ATTACHMENT 1
Zoning Map

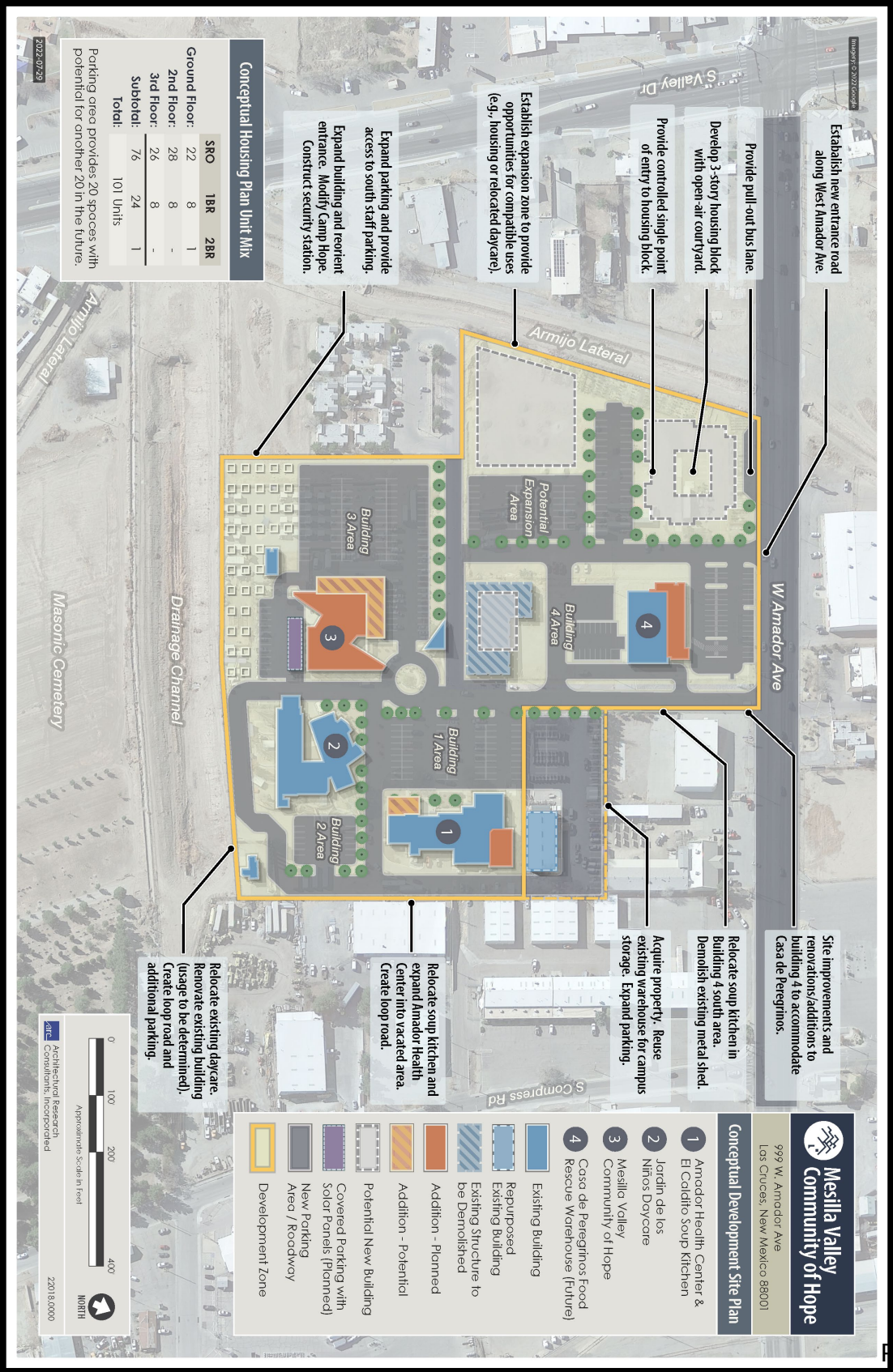


ATTACHMENT 2
Aerial Map



ATTACHMENT 3

Proposed Concept Plan



ATTACHMENT 5

Department Review Comments

Department: Planning

Status: YES

Department: Traffic Engineering

Status: YES

Department: Engineering

Status: YES

Department: Parks and Recreation

Status: YES

Department: Utility Engineering

STATUS: YES

Department: Fire

Status: YES

Department: City MPO

Status: YES

Department: CLC Flood Administration

Status: YES

ATTACHMENT 6

Development Review Committee

Case 22ZO2500106: MVCH Planned Unit Development (PUD) Major Amendment

- A request for approval of a PUD major amendment, known as Mesilla Valley Community of Hope Planned Unit Development (PUD)
- The proposed subdivision currently encompasses 8.01 + acres, is zoned PUD (Planned Unit Development), is located at 999 W Amador.
- The PUD major amendment will amend the original boundary of the concept plan and incorporate an additional 15.7 ± acres for a new total of 23.71 acres. It will also incorporate the new master plan that was created for the property.
- Submitted by the City of Las Cruces, property owners.

Ochoa: All righty, so well go ahead, so next item up for bid is Case No. 22ZO2500106, this is the Mesilla Valley Community of Hope Planned Unit Development Major Amendment. It is a request to essentially amend the existing Planned Unit Development known as the Mesilla Valley Community of Hope Planned Unit Development. Essentially currently the PUD encompasses 8.01 acres in size and is located at 999 W. Amador. The PUD amendment will amend the original boundaries of the PUD which will incorporate an additional approximately 15.7 acres in size for a new total of 23.71 acres in size. The amendment also essentially will incorporate or will essentially now follow the new approved master plan for the Community of Hope area as well. That is what the amendment is. This was submitted by the City of Las Cruces. We do have Natalie on the phone with Neighborhood Services, who is taking care of this Planned Unit Development amendment. That being said, staff did not see that there was too many outstanding issues with this PUD amendment in staff comments. That being said, does anybody have anything additional to state for this amendment? Yes.

Kinney: The last time we had a meeting on this we discussed about the traffic impact analysis.

Ochoa: Right, the TIA.

Kinney: And we also had a lengthy discussion in our PR too last weekend. Initially during the first DRC meeting it was I guess determined by the DRC that that was not the time to require the TIA, it would be at the time of additional platting or subdividing and stuff.

Ochoa: Correct. Essentially that ...

Kinney: Just went through an administrative replat and one of the arguments was this was just an admin replat. And now we're at the end of

everything and myself and I think traffic engineers still have concerns about the traffic impact analysis which we believe needs to be done by the City.

Ochoa: Right.

Kinney: Not necessarily by Economic Development. And you know there's various items like in section 32-407 where it says, "Preparation of a TIAs," one of them states, "Smaller developments may warrant a study if there are issues as determined by the traffic engineer or traffic safety or the development is located in already congested LOSD" means level of service D area.

Ochoa: Right.

Kinney: The traffic engineers informed me that Amador is a level of service D.

Ochoa: Okay.

Kinney: And that, a regular private development that would require a traffic impact analysis. And then section 38-49 the PUD, Planned Unit Developments in paragraph C, parentheses six states, "Off sight roadway and intersection improvements necessary in whole or in part because of the PUD's impact will have to be provided according to the improvements scheduled outlined in the required traffic impact analysis called for in the transportation element of the comprehensive plan." Policy 1.5 of goal 7, growth management. Now that was, I can't find that comprehensive plan. Elevate Las Cruces is now comprehensive. But policy 1.5 of goal 7 does not appear in there.

Ochoa: Yes, that's the old comprehensive plan unfortunately I think. So that comprehensive plan no longer exists, it was replaced by Elevate Las Cruces. But I believe Community Development we have seen that this is an issue and that traffic impact analysis does need to happen. But that being said I think we need to get City administration involved as to getting some type of direction as to who, when, and where, or how that TIA is going to happen. But it does need to happen because we do need to follow our own rules if you will. So that definitely does have to happen. The problem is though we need to get some type of direction from City admin for that. That being said, I believe we're going to reach out to City administration to see ...

Green: There is a TIA being done. It's only to cover the two new parcels, the two five acre plus parcels. The vacant one that's Brewers, and the new Horse and Hound.

Ochoa: Okay. So the actual addition to this PUD is what's going to be studied.

Green: Correct.

Agenda Item #11.2.

Kinney: I guess my first question would be, was there a traffic impact analysis performed back when Community of Hope was first done?

Ochoa: Tim.

Pitts: I don't have an answer to that.

Kinney: Was there a TIA done?

Ochoa: So when that initial concept plan was done there was not a TIA done, there was just kind of like a minor study if you will I think that was done, but no actual traffic impact analysis was done with the initial one.

Kinney: Typically when, my understanding and Gary you can correct me, is when a TIA is called for then there's generally, one of the first things to happen is a scoping meeting between the traffic engineer and the parties required or the firm or whoever is performing the TIA as to what the scope would be. Although we're only adding you know to the PUD the size of the development is basically in acreage is almost doubling and I believe that probably the traffic engineer would probably request not only just what is the additional impact going to do, but what is actually, you have to look at the entire development as a whole in addition to what's coming in.

Ochoa: Okay. So the addition if you will.

Kinney: Right.

Ochoa: Yes Tim.

Pitts: I did speak to the City Manager's office yesterday about this. They are aware and are willing - they said that they will need to find money to do this. They agree that it's a requirement of code. I think that if we already have an engineer working on a TIA I think we need to work with that engineer and see if we can. But either Public Works or Economic Development, someone's going to have to talk to City Manager's office to determine where that funding is going to come from. I think it needs to be done.

Kinney: My understanding Dr. Pitts you're referring to Huitt-Zollars who had done a trip generation report for the Casa de Peregrinos. That's my understanding that Huitt-Zollars firm is not doing a TIA. My understanding. They're updating the trip generation report.

Ochoa: Okay.

Kinney: Which is different than a traffic impact analysis.

Agenda Item #11.2.

- Ochoa: Understood. But Natalie, you said there was a TIA being created for the existing. Do you know who was doing that TIA?
- Green: It was Huitt-Zollars. They told me it was a TIA. Hold on, let me find that e-mail.
- Ochoa: Awesome. Appreciate that.
- Kinney: Yes, I think we may be getting semantics but you know Huitt-Zollars did submit a report which was a trip generation type report it was not what is considered a TIA.
- Ochoa: So they did a trip generation not an actual TIA.
- Kinney: It would need to be expanded.
- Green: Did they just submit it? Because I haven't seen it. They said the completion date was coming, on November 3rd they said they were doing, the TIA will be completed in the next three weeks.
- Ochoa: Okay.
- Green: And that's an e-mail from John Jarrard Huitt-Zollars, copy to Steve Harris in Public Works.
- Skelton: To my knowledge traffic management hasn't been consulted regarding any TIA. No scoping I believe has been for this project. My believe would be we would need to look at the TIA encompassing the entire development, not just the new addition stuff like that because the development in its entirety is going to have a major impact on the area.
- Ochoa: Sure.
- Skelton: We'd also need to scope out intersections that may be affected.
- Green: And my goal guys is only to adjust the zoning on the Brewers parcel to be able to accommodate an affordable housing development complex because it doesn't do that now because it's industrial. The rest of the campus I could care less about, I'm not interested in rezoning it, but from an administrative it just makes sense to clean it up since we're going through zoning anyways. So whatever accomplishes my goal of rezoning Brewers Oil, that's what I want to do.
- Ochoa: Understood. And I think since we did ...
- Green: If we need to adjust the scope back, I'm happy to do that and we can just do the rezone on Brewers.

Agenda Item #11.2.

- Ochoa: Okay. So I don't think we need to scale back, especially if we're already talked to City administration, City Manager's office and they have agreed that a TIA needs to happen for this. Since we already got their backing on it we need to see how it's going to happen, or we're going to get direction to get it done. I think we'll be okay to kind of move this one forward as is because we've heard it from the third floor saying essentially that this is going to happen. So with that being said I think we just as staff are going to have to keep an eye on that and make sure that this happens before, sooner than later I guess is kind of the best way to put it. So they do understand that we need to follow our own code so we do need to follow our own requirements if you will. So since we do have the backing from City admin, I don't know what else we can do other than just taking their word that they're going to take care of this issue. Any other comments?
- Kinney: If we were to approve it on the contingency that the traffic impact analysis, the complete one, the scoping would be done.
- Ochoa: I think that is within DRC's power to go ahead and put that condition. Essentially a condition stating that ...
- Kinney: But then it's open ended. If this was a private development how would we handle it?
- Ochoa: So I guess that is something we could - yes Tim.
- Pitts: I believe we've done this with the horseshoe apartments. We did it for CofO.
- Kinney: Okay.
- Pitts: So I'd be okay with that.
- Ochoa: Okay. So a condition basically stating that a traffic impact analysis shall be required to be submitted prior to the issuing of any certificate of occupancy for the development of I guess this PUD area.
- Skelton: Just semantics, are we submittal or approval prior to CofO? Because submittal of a TIA doesn't necessary mean approval.
- Ochoa: I guess approval would be better.
- Skelton: So I wasn't sure we were on the same.
- Ochoa: I think approval is probably a little more feet to the fire if you will. So Natalie, if you're (*inaudible*) with that condition will you be okay with that?
- Green: Yes, that's fine.

Agenda Item #11.2.

Ochoa: Okay.

Kinney: Of course the scoping you know.

Green: My only question would be what happens if the apartment doesn't trigger a full TIA? Or we'll just require it regardless. And it will have to be for the entire campus?

Ochoa: It'll be required period for the entire campus. Yes, that's what the condition will be. But the project can continue for your affordable housing development, it could be submitted, it could be inspected, it's just a TIA will have to be approved for the entire campus prior to a certificate of occupancy being issued.

Green: All right. Sounds good.

Ochoa: Okay. So if everybody's okay with that, I guess can I get a motion to approve the proposed PUD amendment with said condition?

Kinney: I have a motion to approve it on contingency that a traffic impact analysis for the entire campus, not just the new additions to it, which will be part of the campus, but the entire campus and the scoping step of the traffic impact analysis would need to be in conjunction or approved by City's traffic engineering section and that the TIA would need to be submitted and approved by the traffic engineer, Community Development, prior to any issuance of certificate of occupancy.

Ochoa: So moved. Do I have a second?

Skelton: Second.

Ochoa: All right. That being said, all in favor for the approval with conditions say "aye."

MOTION PASSES UNANIMOUSLY.

Ochoa: All opposed. Seeing none. The proposed PUD amendment is moving forward to the December 20th Planning and Zoning Commission meeting with a recommendation of approval with conditions. All righty. Thank you folks.

**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
January 24, 2023 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Vanessa Vega, Secretary
Joaquin Acosta, Member
James Bennett, Member
Enrico Smith, Member

BOARD MEMBERS ABSENT:

STAFF PRESENT:

Larry Nichols, Director Community Development Department, CLC
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Jocelyn Garrison, CLC Senior Assistant City Attorney
Adrian Guzman, CLC Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:10)

Kaiser: Once again thank you all for your patience. We will now call this meeting to order. It is 6:10 on January 24, 2023. Before we get started, I'd just like to wish everybody a happy new year. This is our first meeting of the year. And it looks like we're going to have some good discussion tonight.

2. CONFLICT OF INTEREST

Kaiser: So before we get started, are there any conflicts of interest from any of the Commissioners? Hearing none.

3. ACCEPTANCE OF THE AGENDA

Kaiser: We'll move down to the acceptance of the agenda. Can I get a motion to approve tonight's agenda?

Bennett: I'll make a motion to approve tonight's agenda.

Vega: Second.

Baum: Board Member Acosta.

1 Acosta: Yes.
2
3 Baum: Board Member Vega:
4
5 Vega: Yes.
6
7 Baum: Board Member Bennett.
8
9 Bennett: Yes.
10
11 Baum: Chair Kaiser.
12
13 Kaiser: Yes.
14

15 **4. ELECTION OF OFFICERS**
16

17 Kaiser: All right. Moving along down the agenda. I've been advised to hold off on
18 the election of officers this evening until we can fill the two vacant positions.
19 So we'll stand by for that.
20

21 **5. APPROVAL OF MINUTES – December 20, 2022**
22

23 Kaiser: Next, we need a motion to approve the minutes from the December 20th
24 meeting. That I do understand we have a correction to make.
25
26 Vega: Yes, so in the original packet my name is listed as president. It's been
27 corrected, so just want to make a note of that.
28
29 Kaiser: Thank you. Are there any other comments? All right, can I get a motion to
30 approve the minutes from last month?
31
32 Bennett: I make a motion to approve the minutes from last month.
33
34 Acosta: I second.
35
36 Baum: Board Member Acosta.
37
38 Acosta: Yes.
39
40 Baum: Board Member Vega.
41
42 Vega: I abstain.
43
44 Baum: Board Member Bennett.
45
46 Bennett: Yes.

1
2 Baum: Chair Kaiser.

3
4 Kaiser: Yes.

5
6 Baum: Please note for the record Board Member Smith has arrived. Thank you.

7
8 **6. POSTPONEMENTS**
9

10 Kaiser: Okay, moving on to postponements tonight. We do have one
11 postponement, item 10.3, which is a Special Use Permit for a cannabis retail
12 establishment. My understanding is that we are going to postpone that
13 indefinitely.
14

15 Banegas: Mr. Chairman. Vincent Banegas, Interim Planner. That is correct. We'll
16 postpone indefinitely. Staff will have to readvertise. We are aware of an
17 error in our zoning map and the actual ordinance that adopted the zoning
18 for the property, so we need to make sure those coincide.
19

20 Kaiser: All right. Thank you very much. All right. I'm looking for a motion to
21 postpone item 10.3 indefinitely.
22

23 Bennett: I make a motion to postpone 10.3 indefinitely.
24

25 Acosta: I second.
26

27 Baum: Board Member Acosta.
28

29 Acosta: Yes.
30

31 Baum: Board Member Vega.
32

33 Vega: Yes.
34

35 Baum: Board Member Bennett.
36

37 Bennett: Yes.
38

39 Baum: Board Member Smith.
40

41 Smith: Yes.
42

43 Baum: Chair Kaiser.
44

45 Kaiser: Yes.
46

1 Baum: Thank you.

2
3 **7. PUBLIC PARTICIPATION**
4

5 Kaiser: All right, item number seven is public participation. Looks like we definitely
6 have some folks in the audience tonight. But I'd like to open this opportunity
7 for anybody who is here and wishes to speak on an item that is not on
8 tonight's agenda. Can I get a show of hands? All right, seeing none.
9

10 **8. CONSENT AGENDA**
11

12 Kaiser: We do not have any consent agenda items to meet.
13

14 **9. OLD BUSINESS**
15

16 **9.1 Mesilla Valley Community of Hope Planned Unit Development (PUD)**
17 **Major Amendment:** A request to approve a Major Amendment to a PUD
18 Concept Plan known as the Mesilla Valley Community of Hope PUD. The
19 proposed PUD currently encompasses 8.01 ± acres, is zoned PUD and
20 located at 999 W. Amador. The PUD major amendment will increase the
21 size of the PUD area to be a total of 16.59 ± acres and will also incorporate
22 the new master plan that was created for the campus. Submitted by the
23 City of Las Cruces Property owners. (Case #22ZO25500106)
24

25 Kaiser: So we will move on to old business. That would be item 9.1 Mesilla Valley
26 Community of Hope Planned Unit Development major amendment. Staff,
27 it's all yours.
28

29 Castillo: Good evening, Mr. Chair, Commission. My name is John Castillo. I'm a
30 Planner with the City. Tonight we're going to be discussing the Mesilla
31 Valley Community of Hope Planned Unit concept plan amendment.
32

33 So a Planned Unit Development is a process similar that's traditional style
34 of land development. You have your master plan or what we would consider
35 a concept plan. The next step would be a preliminary plat or what we would
36 call a final site plan. And then the final step would be a final plat or what we
37 call still a final plat. A PUD complies with growth management policies,
38 affords greater design and development flexibility, development promoting
39 incentives to developer, while obtaining community benefits. The key
40 elements to a Planned Unit Development or PUD is the land use residential
41 density, intensity of uses, major transportation alignments and phasing.
42 Other elements may be included, but the foundation by which a developer
43 may write a development code for a subject development.
44

45 The property is currently located at 999 West Amador Avenue and is
46 currently 8.01 acres in size. The land under consideration was originally

1 acquired by the City of Las Cruces in 1994. Underwent the transition to a
2 PUD style of development in 2013 from R-3 which is our multidwelling
3 medium density and M-1 industrial standard zoning districts. Presently the
4 Mesilla Valley Community of Hope campus development is subject to the
5 adopted concept plan and the associated conditions as outlined in
6 ordinance number 2676.

7
8 The key development strategies outlined in the MVCH campus concept plan
9 is to better serve the homeless, near homeless, and low income families
10 and individuals of the community. This includes accessibility, driveways
11 and parking, additions to the existing campus through rehabilitation of
12 buildings, camping, possible additional agencies. And relocation and new
13 construction on campus. This includes new buildings and possible new
14 agencies to be included in what's already existing.

15
16 This as you can see as an aerial image of the subject property outlined in
17 yellow. The main campus is going to be this area right here. The additions
18 are going to be these two properties and this over here as well. As we can
19 see the zoning of the surrounding area and the current PUD. So today's
20 proposal is to amend the boundary of the MVCH PUD concept plan. This
21 will incorporate newly acquired property and property that has been
22 acquired between 1994 and 2009 into the new concept plan. This will also
23 update and modify a related PUD concept plan based on the newly adopted
24 master plan.

25
26 This master plan is going to be done in two phases. The first phase will
27 prepare the campus master plan or the overall conceptual site plan. And
28 then the second phase is to assess management structure, prepare
29 comprehensive development reports. So as we can see here, this is part
30 of the master plan concept plan. As we talked about before, this is the
31 existing facility as it is, this will be new development that will occur over time.

32
33 So upon staff analysis, no health, safety or welfare issues identified by staff.
34 The proposal furthers development strategies. The property is within the
35 Urban Place type, which is generally characterized by single-family,
36 multifamily, and commercial services. The proposal aligns with existing
37 Elevate Las Cruces Comprehensive Plan and other companion plans. It's
38 also consistent with Section 38-49 of the 2001 Las Cruces Zoning Code.

39
40 At the time of the creation of this presentation, notice was sent out to
41 surrounding properties and properties within 500 feet. Staff did receive an
42 e-mail seeking general information regarding the property. It also received
43 some phone calls regarding general information as well. Tonight staff
44 recommends approval with condition based on the following findings: the
45 proposed concept plan amendment is compliant with Section 38-49 of the
46 Zoning Code. The proposed construction and use of the PUD will not be

detrimental to health, safety, or welfare of the community or adjacent neighborhoods. The proposal will promote the infill of vacant land in the center of the City. More specifically, the proposed concept plan amendment follows earlier efforts to balance flexibility and development to benefits with the community receives. The proposed concept plan amendment addresses all relevant development related issues in both a specific and conceptual manner. The proposed concept plan and amendment is supported by various goals, objectives, and policies found within Elevate Las Cruces Comprehensive Plan and any companion planning documents. The conditions of part of this approval are to have an opaque perimeter wall or fence at least five feet in height and adequate landscaping and conformance with all applicable regulations that shall be constructed around the external perimeter of Camp Hope. The camping facilities shall be constructed to the Bureau of Reclamation's camping standards or other equivalent standards as approved by the Community Development Director. Permanent potable water and bathroom facilities accessible 24 hours a day seven days a week shall be provided for Camp Hope residents. Trash receptacles in compliance with CLC regulations shall be provided for Camp Hope residents. The PUD shall comply with the International Fire Code, specifically Chapter 3 general precautions against fire, Chapter 9 and Chapter 24. Emergency access routes shall be maintained throughout the campus and Camp Hope in accordance with Section 503. The use of temporary electrical wiring, open flame, and liquid gas fueled by heating appliances, generators, or smoking will be strictly prohibited. And then a current list of residents names and their tent locations shall be kept at the Camp to eight in emergency response. One person minimum must remain on watch overnight to ensure security and provide a fire watch for Camp Hope. No tent can be utilized for more than 10 persons at any time. It will also follow the Mesilla Valley Community of Hope Master Plan and management structure recommendations. And then finally, a Traffic Impact Analysis or TIA shall be submitted and approved for the entire campus prior to the issuance of a Certificate of Occupancy. This went before the Development Review Committee or DRC on November 23, 2022, with a recommendation of approval with conditions to the amendment concept plan. The condition was at a Traffic Impact Analysis be submitted and approved for the entire MVCH campus prior to an issuance of a Certificate of Occupancy. Today, your options are to vote "yes" to approve, vote "no" to deny, vote "yes" with conditions, or vote to table.

Kaiser: All right. Thank you very much. Are there any questions from the Commission? I have some questions. Can you get back to the slide, the process slide that you had? Yes, this one. Or actually go forward one more. Okay, go back. I'm not sure if that's the slide I was thinking about that. So can you explain a little bit what the process is for this? So if the PUD amendment is approved, what are the next steps?

1 Castillo: So the next step, it's going to be based on your recommendation, we would
2 then have to go to City Council for a final determination.
3
4 Kaiser: Okay, but beyond that. If it gets approved at City Council, what's the next
5 step?
6
7 Castillo: The next step after that, they would submit any final site plans or final plats
8 for the area. There is an associated replat for the property to adjust lot lines
9 and incorporate the new acquired lands.
10
11 Kaiser: Okay. So I thought that there was a slide that said one of the next steps
12 would be a detailed master plan. Did I miss something?
13
14 Castillo: Yes. Mr. Chair, Commission. Provided in the packet was the approved
15 master plan for the Mesilla Valley Community of Hope.
16
17 Kaiser: Okay, so the master plan that we were given a copy of has already been
18 completed.
19
20 Castillo: Correct.
21
22 Kaiser: Okay. Thank you for that clarification. So in your staff report, you talked
23 about consistency with Elevate Las Cruces, specifically around building and
24 site design, policies, CE-5.3. That's ensure development concepts provide
25 an interconnected network of pedestrian facilities linking streets, buildings,
26 parking, and public gathering space, as well as goal CE-6, context sensitive
27 street design. Can you talk a little bit more about how the master plan would
28 accomplish that?
29
30 Castillo: I'll actually direct that question to Natalie Green, she's going to be our
31 Neighborhood Services Coordinator.
32
33 Green: Good evening, Commissioner. Natalie Green, Housing and Neighborhood
34 Services Manager for the City of Las Cruces. So I just want to clarify, so
35 the existing campus is pretty much staying the same. Our intent in this
36 rezone was to incorporate the Brewers Oil parcel which is going to be an
37 affordable housing development. As part of that development we are
38 working with transit, they've requested a bus pull out lane. And then given
39 that this housing development is for a population that's traditionally
40 pedestrian or uses bicycles, we have reduced parking and increased bicycle
41 parking and bicycle access. So that's how we're incorporating those
42 particular items. There's not an official design on the actual housing
43 development. We have done an RFQ for a developer, but we'll work
44 through that with both Community Development and the community at large
45 as we move forward in the development process.
46

1 Kaiser: Okay, and that's all really great to hear but I'm just curious because I did
2 read the master plan and there's almost zero discussion about pedestrian
3 mobility either to the site, from the site, inside the site. You know you've got
4 that existing crosswalk that goes across Amador. That is in no way, shape,
5 or form safe. You've got multiple lanes of traffic that are flying through there.
6 There's no lights, there's no traffic control devices other than a little sign.
7 And so you know I'm encouraged to hear these things, but it's not coming
8 through in the master plan and I'm just wondering how we can be sure that
9 those things are actually going to be implemented?

10
11 Green Correct, Commissioner Kaiser. So there's two things. The first is, is the
12 master plan is really like a misnomer, it's not your traditional master plan.
13 What it is, is really a facility management plan. So it's how the City is going
14 to manage growth of the campus over time. I recognize that it's called a
15 master plan. But it's not like your traditional master plan of a subdivision to
16 lay out the growth.

17
18 The other thing is the condition of the Traffic Impact Analysis. So we have
19 already done the scoping with that we anticipate getting the bid back and
20 going under contract in the next couple of weeks to have that Traffic Impact
21 Analysis. It's going to be a multimodal TIA. So it'll cover not only vehicular
22 traffic, but primarily that pedestrian and crosswalk traffic. And we'll have to
23 wait for those recommendations to come back. Staff sort of preliminary
24 estimate is that we'll likely need that cross HAWK system for the pedestrian
25 crossing. And so we do recognize that that Traffic Impact Analysis will be
26 needed. And the plan is to do that well before we get to Certificate of
27 Occupancy as the condition is outlined.

28
29 Kaiser: Okay, that's excellent. I'm really glad to hear that. And I hope that that is
30 very clearly stated in the scope of work for that Traffic Impact Analysis,
31 because I know oftentimes if you're not in a vehicle in their models, you
32 practically don't exist. And so I really hope that that is greatly emphasized
33 in this particular analysis.

34
35 Going back to the reduced parking for a minute, I did read in the master
36 plan, and let's see if I can find it real quick here. Yes, this is on page 39.
37 There was mention of the childcare center ideally should have 50 dedicated
38 parking spots for a childcare center that has a maximum capacity of 55 kids.
39 I'm not sure how you came up with that number, but that doesn't sound like
40 a parking reduction to me.

41
42 Green Commissioner Kaiser. So that assessment was done by the consultant to
43 prepare that. The parking reduction that we're talking about is for the
44 Brewers Oil parcel for the actual housing development. The campus itself
45 will remain as it is, unless we move the daycare out from its current location.
46 So those facility assessments was just to notify the City about the current

1 conditions of those uses and occupants, and what their projected future
2 needs are. And so that's why you see the smaller block where it becomes
3 a potential new daycare area that could accommodate those parking
4 spaces.

5
6 The second thing is that the City has a signed purchase agreement for the
7 two parcels that are northeast to become added parking for the existing
8 campus, because the existing campus does have a current parking issue
9 primarily for staff parking, not necessarily the users of the campus.

10
11 Nichols: Excuse me. Natalie, you might use the mouse there with the cursor to
12 further identify what you're speaking about.

13
14 Green Sure. Because again the populations that traditionally use the campus and
15 their services are more pedestrian than actual vehicular traffic. So the
16 additional parking is really for the support staff that's providing case
17 management. In my years, working with the Mesilla Valley Community of
18 Hope and the different various agencies, what started as very small
19 organizations are much larger organizations as the need has grown. So
20 again, the parking reduction is really for the housing development, because
21 that population does not have a need for vehicle parking. So it would just
22 be parking for some of the case management staff or the few individuals
23 that have cars.

24
25 Kaiser: Yes, I mean I certainly can't disagree with you the need for this master plan,
26 this expansion of the services, but to your point you know the clientele who's
27 going to access these services and needs them the most, they're not the
28 ones showing up by car. And looking at the site plan I mean you're basically
29 asking them to traverse an extraordinary amount of parking lot and asphalt
30 to access these services when they're arriving by some other means. And
31 so I think that that's sort of the point that I'm trying to ask about is none of
32 that was taken into consideration in the master plan. And so while you're
33 seeing some great ideas about the bus pull out, the reduced parking,
34 increased bike parking, I just, I don't, I'm having trouble seeing how that kind
35 of all fits together in a way that best protects the clientele that are arriving
36 to and from the site, as well as you know welcomes them. You've got the
37 Camp Hope tent complex all the way at the back of the property. And these
38 are individuals who I am pretty confident to say probably don't have a car
39 and so they're going to be having to traverse this entire site with all their
40 belongings. I'm just not seeing how that's being addressed. It's not
41 discussed at all in the master plan and that's kind of where I'm getting hung
42 up.

43
44 Green I'm going to defer some of that to Nicole Martinez with the Community of
45 Hope.

1 Martinez: Good evening. Nicole Martinez, Director Mesilla Valley Community of
2 Hope. Thank you, Mr. Chairman, for your questions. So I'm at the
3 Community of Hope often. And, yes, when we started this master plan it
4 was really in response to how we are growing and how we wanted to grow
5 responsibly, sustainably, and because we are located on City property and
6 have a lease agreement with the City, a lot of this had to do with capital
7 outlay requests that we were making, so that we weren't just going up to
8 Santa Fe getting money and then willy nilly putting things together. So we
9 wanted to plan out the next 10 years for our agency growth. And yes you
10 know part of that is traffic, walkability, bicycling is very popular at
11 Community of Hope of course. But the main focus, I don't know, if you've
12 been to the Community of Hope, it's all very close together. The beauty of
13 the Community of Hope is that we have all of these services right within a
14 stone's throw of each other. So even though Camp Hope is located in the
15 back, it's very appropriate where it is situated. A few of the people do have
16 cars that are staying at Camp Hope and varies with the population.

17
18 The reason we are here today is because of the new property that has been
19 acquired, and what that development will look like. And so we anticipate
20 that with the movement of Casa de Peregrinos, the food pantry, which is
21 currently sharing the building with Community of Hope in number three on
22 this map, is moving up to number four. That's going to reduce a ton of the
23 traffic coming into the Community of Hope campus proper, because it will
24 just be right there in that Amador circle in their parking lot. And then people
25 at the apartment complex, they will still likely be coming down into the
26 campus, but there have always been sidewalks for the clients who are
27 walking into the property. And right now that's all under construction. But
28 we do still have one sidewalk that's there. So we anticipate that we're going
29 to have people at the new apartment complex with less vehicles. And that
30 if they do have vehicles, hopefully we will be able to design it as that is all
31 torn up right now on the entry, that it's designed in such a way that people
32 feel comfortable walking down, coming to the soup kitchen, or to the
33 Community of Hope if they need services, or to Amador Health Center if
34 they're looking for clinic opportunities. So as somebody who has been
35 going in and out of this property for the last 17 years, we're really excited
36 for this expansion. We're trying to be really conscious about how we're
37 making it walkable and for people with bicycles and trying to reduce the
38 vehicles that are coming in.

39
40 Kaiser: Thank you very much. Anybody from the Commission have any other
41 questions? All right, we'll open up for public comments. Is there anybody
42 in the audience who wishes to speak on this item agenda tonight? All right,
43 I see two individuals, three individuals. So we'll go ahead and give you
44 three minutes each. So sir in the red shirt mind coming forward and stating
45 your name for the record.

1 Young: My name is Henry Young. I'm really ...
2
3 Kaiser: Hold on one second sir. I need to swear you in. Can I have my cheat sheet
4 please? Should have this memorized but I do not. All right. Do you swear
5 or affirm that the testimony you're about to give is the truth and nothing but
6 the truth under penalty of law?
7
8 Young: I do.
9
10 Kaiser: You have three minutes. You may begin.
11
12 Young: My name is Henry Young. I'm the Executive Director of the Las Cruces
13 Gospel Rescue Mission. Former member and Chair of the City of Las
14 Cruces Planning and Zoning Commission. I would like to see a few
15 changes here. For one thing back when I was on the Commission, anything
16 of this size would require a second avenue of ingress/egress. I think that
17 would be very beneficial to the west end of this proposed PUD.
18
19 Also, that crosswalk is in the wrong place, and I've said that for years. I can
20 sit in my office and look out, we've had several accidents with people being
21 hit, pedestrians. There either needs to be a traffic light, and that crosswalk
22 needs to be moved to the intersection where the sidewalks are rather than
23 where it is placed now, for safety. And that is something that has to be
24 addressed.
25
26 Now you've mentioned lights, as far as blinking lights, the only thing we
27 have on both ends quite a bit away from the crosswalk says reduce speed
28 to 30 miles an hour. And that is very seldom observed. We need either a
29 full traffic light there or the proper crosswalks like you have on University
30 Avenue.
31
32 Also, I would like to see, I think I saw something there on the requirements
33 for the fencing around the new tent areas. Is that Is that correct? Okay. All
34 right. So that's my basic thing as far as what we're doing here. And that's
35 for the safety of everyone involved on both sides of the street.
36
37 Kaiser: Thank you.
38
39 Green Commissioner Kaiser. I will address one of the concerns. A second
40 driveway access point is being added as part of the renovation of the Casa
41 de Peregrinos on the west side of that building, in between the housing
42 development and the new food bank. And there is not an option at this time
43 to go over the EBID lateral. It's just not financially feasible or possible at
44 this time.
45
46 Nichols: That was Natalie Green for the record, please.

Green Yes, thank you.

Kaiser: All right, may I have the lady. Please state your name for the record.

M. McDaniel: My name is Mary McDaniel.

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?

M. McDaniel: Yes.

Kaiser: You have three minutes.

M. McDaniel I'm with Mesilla Valley Investment Corporation. And when I hear a five foot fence, is not going to do it. We've had people climb over our fences and defecate on our property. I think the homeless population in this City is out growing the City. It has become uncontrolled. And I don't hear anything how they're going to control them. They've already ran the businesses out of business there on Amador. They've closed their doors and moved because the homeless are standing there and nobody wants to go into a business with a bunch of homeless people standing around. A lot of businesses throughout the entire City are locking their doors because they just wander in and take over the place, just do whatever they feel like. They have no boundaries. So something needs to be done about controlling these people before you make a bigger place and invite more people in. I mean it's already doubled this year. And the tents along Amador are absolutely outrageously horrible. I could not believe that it was allowed. And now they're still on the ditches and now you're still talking about increasing the number of people so that's going to be more people wandering the streets of Las Cruces and walking up to houses and whatever they do. I mean they have no control or boundaries about where they go to the bathroom, the trash they leave around. And something needs to be done about this. Like I said, we have at Mesilla Valley we've had to raise our fence, five foot fence is not going to keep anybody in. It's not going to keep anybody out. And we've raised our fence, we had to put extra razor wire around it to keep them from coming over the back fence there. And I'm concerned because we have renters there, and they may move out, which means that means the property value is going to decrease and be worth nothing. And that's my concern about having more, bigger facilities for homeless people, because nobody is controlling them. The police can't control them. There's too many of them. They're all over the place. These people and their plans have no plan for how to control them. And that's what I have to say.

Kaiser: Thank you. Please come up. Please state your name for the record.

1
2 L. McDaniel: Loren McDaniel.

3
4 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
5 and nothing but the truth under penalty of law?
6

7 L. McDaniel Yes sir.
8

9 Kaiser: You have three minutes.
10

11 L. McDaniel: I am with her. I'm the Mesilla Valley State auction, not auction. Our property
12 is right here. And where she was talking about they cross right here. And
13 we have installed when we did initially a six foot tall fence with razor wire.
14 We have gone back eight times to fix this problem. Our tenant who lives in
15 that corner, we've had replaced three different times because they keep
16 crossing that section. You talk about empty lots in the middle of Las Cruces,
17 there were businesses there that left because these people were there.
18 Horse and Hound moved away because they got tired of dealing with them.
19 Stone masters, the property you're talking about taking up for the bigger lot
20 left, because they got tired of dealing with these people. There was a
21 landscape business in that area for a while, they left because they got tired
22 of dealing with those people. Why this location? You have land outside of
23 Las Cruces that these people can be moved to and then they're not a bother
24 to anybody. All you're doing when bringing in these kind of places is chasing
25 businesses that have been there away. And we're not far behind them
26 because like she said, we've had to make different compromises. We have
27 to shut off our outside water because they will take showers in the middle
28 of the parking lot. We've had to shut off all our outside power because they
29 will sit there and plug their electrical devices. I'm not the only business that
30 had this problem. From Redwing over on Main Street, he had to go shut all
31 his outside outlets, he doesn't even own the business, because he had
32 women who would not go in because these people were hanging around.
33 Our business is off of Picacho, out in Fairacres area, we had people, she
34 was lucky the door was locked because she had just gotten in that day. A
35 drunk homeless person was banging at the door trying to get in. What is
36 being done? You said safety. I don't see anything for safety. Seventeen
37 years, you said this facility has been there. In 17 years, I have seen all the
38 businesses leave and it slowly degenerate what's around there. I'm afraid
39 for the cemetery. I can't even imagine what they're dealing with as far as
40 trash and defecation on the cemetery. And then you have the houses
41 behind there. I don't think the location for this expansion is appropriate. I
42 think it needs to be moved elsewhere, besides the heart of Las Cruces.
43

44 Kaiser: Thank you. I'd like to direct a couple of those questions back to staff
45 particularly around the safety concerns for adjacent properties. I would
46 agree there's not a lot of discussion about that in the master plan. You know

1 I do believe that the investments that we're making here will certainly help
2 alleviate some of those. But has staff looked into any of these particular
3 concerns when that master plan was being developed? And are there any
4 recommendations to try to address what some of these adjacent properties
5 might be experiencing?
6

7 Green Commissioner Kaiser. I can assure you City staff daily looks into how we
8 can assist and address this very, very complex issue. I will tell you that
9 homelessness is an absolutely solvable solution. It has a solvable solution.
10 It's a condition of someone's living. And housing, especially affordable
11 housing, is that solution. So the easiest way to keep someone off the street
12 from pestering a local business is for them to have a place to live and then
13 they're not a person experiencing homelessness. And so that's one of the
14 reasons that we picked this location because we do know that people
15 experiencing homelessness also need those intensive supportive services
16 that are already being offered on this campus. And I will note that the three
17 businesses that were mentioned, came in after this campus was already in
18 existence. So while I can't speak to necessarily their departure from the
19 campus, they sold their properties to the City to help solve this mission.
20

21 And then the other thing I will note is conditions one through 10 were the
22 original conditions of the PUD when it was first adopted for the purpose of
23 including Camp Hope. All of those conditions have already been met. Staff
24 noted in their report that they're just carrying it over for consistency, they're
25 not actually being applied to the rest of the campus. It's specific to the Camp
26 Hope location. Again, that has been in existence for 10-plus years.
27

28 Kaiser: Great. Thank you. And just one last follow up, maybe a little bit more
29 specific. So one of the speakers commented, I don't have a mouse so I
30 can't really point, but coming off the South Compress Road, no over, sorry,
31 I wish I had a pointer.
32

33 Green Right here.
34

35 Kaiser: There you go. There was mentioned it looks like there's maybe a driveway
36 access kind of right there heading straight back to the campus. Is that
37 actually what it is or is that a private driveway?
38

39 AUDIENCE MEMBER NOT AT THE PODIUM STATED, "PRIVATE DRIVEWAY."
40

41 Castillo: Commissioner Kaiser. That would be a private driveway for the property.
42

43 Kaiser: Okay. And so my follow up question is that's a very specific instance where
44 people probably are trying to access the site in a location that they shouldn't
45 be, so how is this master plan maybe trying to facilitate again the
46 appropriate ingress and egress of clients accessing these services?

1
2 Green Commissioner Kaiser. Honestly, that's a good question since it's private
3 access, short of purchasing those properties to create the access. At this
4 time, it's not feasible. We are looking into a potential access point with our
5 partners, Families and Youth Innovations Plus. As you can see in this map
6 they have some vacant land on the backside. But that challenge is working
7 with another governmental organization who has their own desires and
8 responsibilities. And so the likelihood of short of building a bridge and
9 getting over it, that's probably the only way to be able to connect and add
10 an additional access point, either in front of FYI or behind FYI.

11
12 Kaiser: Yes, and to be clear I'm not advocating for additional access, I guess my
13 question is, how can we better design the site to facilitate the correct
14 access? Where do we want people to access these services? How do we
15 want them to access these services? That's sort of the point I'm trying to
16 make.

17
18 All right. Coming back to the Commission. Are there any other questions?
19

20 Smith: I don't have a question but I do have a couple of comments. I'm very familiar
21 with this area, this facility, the Community of Hope. I've lived here for almost
22 25 years. I live within half a mile of this facility. And as a former Las Cruces
23 police officer, this was part of my area that I was responsible for patrolling.
24 And I've noticed, I mean we've all seen how housing has been, come a
25 great shortage. And then you compound that with the increased homeless
26 population, you know it does create a very critical situation. We have a
27 large homeless population in the City. It's increased over the last 10 years.
28 It's happened all over the state. The solution, I know we want the Las
29 Cruces police officers to be able to handle it, but what does that mean? Do
30 you force them to move? Do you move them? Because they will come
31 back or they will continue or just stay. We have to understand that these
32 are human beings. They do deserve to be treated with dignity as much as
33 possible. They're not rats to be run out. And so the tent city that has, the
34 tent town that existed beside Horse and Hound for many, many years, this
35 plan will help address that. It's not going to be perfect. You know we have
36 to do something. You can complain about the homeless population all day
37 long but when we have a group, an organization that's trying to make a
38 positive change and reduce the homeless population, this is part of that. It's
39 not the only solution. It's not the solution, but it is a solution.

40
41 And our responsibility here on the Commission is to work through some of
42 these issues before it moves on to the City Council. But I think it's important
43 that we really take time to look at the fact that this homeless population has
44 to be addressed, number one, and number two it's not going to be solved
45 overnight. And the issues, the problems that they may have with this plan
46 will be worked through. But I think it's still important that we look at it in the

1 positive way, look at how we can help this population. And we'll be able to
2 address some of the problems that the property owners surrounding it have.
3 And that's really what we're here to do and what we can possibly do to move
4 this forward. Thank you.

5
6 Kaiser: All right, I'm going to go ahead and make a motion. I'm going to make a
7 motion to approve with the recommended conditions provided by staff. But
8 I'd also like to add a condition number 13. At the time of the Traffic Impact
9 Analysis, a pedestrian master plan shall be prepared. A pedestrian master
10 plan shall examine nonmotorized travel to and from the site, as well as the
11 circulation through the site including pedestrian and cyclist safety. The
12 master plan shall also identify how clients access services at the location
13 and recommend design standards as appropriate.

14
15 I'll need a second if anybody agrees with me.

16
17 Bennett: I'll second

18
19 Nichols: Mr. Chair. You'll need to vote on the condition that you added first and then
20 on to the case after that.

21
22 Kaiser: Understood. So make a motion to add a condition, is that ...

23
24 Nichols: The condition you mentioned.

25
26 Kaiser: Okay. So I'll start that over I guess so it's clear. I'm going to make a motion
27 to add a condition, in addition to the conditions already provided by staff, I'd
28 like to add number 13. At the time of the Traffic Impact Analysis a
29 pedestrian master plan shall be prepared. A pedestrian master plan shall
30 examine nonmotorized travel to and from the site and nonmotorized
31 circulation through the site, including pedestrian and cyclist safety. The
32 master plan shall also identify how clients access services at the location
33 and recommend design standards as appropriate.

34
35 Bennett: I'll second.

36
37 Baum: Board Member Acosta.

38
39 Acosta: I vote no.

40
41 Baum: Board Member Vega.

42
43 Vega: I vote yes.

44
45 Baum: Board Member Bennett.

Agenda Item #11.2.

1 Bennett: Yes.
2
3 Baum: Board Member Smith.
4
5 Smith: Yes.
6
7 Baum: Chair Kaiser.
8
9 Kaiser: Yes.
10
11 Baum: Passes four to one.
12
13 Kaiser: Okay. And now I'll make a motion to approve item 9.1 based on staff's
14 conditions and the condition we just approved.
15
16 Vega: I second.
17
18 Baum: Board Member Acosta.
19
20 Acosta: No.
21
22 Baum: Board Member Vega.
23
24 Vega: I vote yes with conditions that were previously outlined, also happy to see
25 all the potential for growth within the Community of Hope.
26
27 Baum: Board Member Bennett.
28
29 Bennett: I vote to approve based on staff recommendations with the conditions one
30 through 13. This meets Las Cruces and the criteria for a PUD.
31
32 Baum: Board Member Smith.
33
34 Smith: I vote yes with conditions. And as I earlier stated this is just part of a solution
35 that we have for the homeless population in the City and I think it's important
36 that we do something to help that.
37
38 Baum: Chair Kaiser
39
40 Kaiser: Yes with conditions as already addressed based on staff recommendation
41 and consistency with Elevate Las Cruces.
42
43 Baum: Passes four to one.
44

45 10. NEW BUSINESS

46

1 **10.1 3161 N. Main Street Special Use Permit:** A Special Use Permit (SUP) to
2 allow for a cannabis retail establishment within the required buffer distance
3 between said establishment and a single-family residential zoning district
4 boundary. The subject property is located at 3161 N. Main Street, is 0.5 ±
5 acres in size, and is zoned C-2 (Commercial Medium Intensity). Submitted
6 by Gonzalo Chavez. (Case # 22ZO1000140)
7

8 Kaiser: Okay, we are moving on to new business. This is item 10.1, a Special Use
9 Permit to allow cannabis retail establishment at 3161 North Main Street.
10

11 Castillo: Good evening, Mr. Chair and Commission. Today we're going to be talking
12 about 3161 North Main Street. It's for a Special Use Permit to allow for a
13 cannabis retail establishment within a single-family zoning district. The
14 property is currently zoned C-2 which is a commercial medium intensity. It's
15 originally developed as a small retail service center. The property is located
16 at 3161 North Main Street near the intersection of Scanlon Drive and Main
17 Street. And it is approximately 0.5 acres in size. The surrounding
18 neighborhood is retail office, quasi-institutional, and single-family uses
19 immediately north to the subject location. The supporting zoning areas
20 include R-1a, R-2, R-3, C-2, and C-3. As we can see from the zoning map,
21 the subject property is here highlighted in yellow. As we can see it is directly
22 north of single-family residential zoning districts so it does not meet the
23 condition of being 300 feet away from that.
24

25 Here's an aerial view of the property. So the applicant is proposing a
26 Special Use Permit to sell cannabis with the development of a cannabis
27 retail store. The buffer distance between the cannabis retail establishment
28 and the closest single-family residential zoning district boundary is
29 approximately 167 feet, just shy of the 300 foot requirement. All other buffer
30 distances are met which would be the distance between cannabis retailers
31 and the distance between schools and daycare properties. The cannabis
32 retail establishment will follow all City of Las Cruces and State of New
33 Mexico regulations governing cannabis related retail activity. I apologize
34 these are the incorrect pictures.
35

36 Notice was sent to the surrounding properties. Staff received one e-mail in
37 opposition to the proposed Special Use Permit at the time of the
38 presentation was created. Today staff recommends approval. Below are
39 the findings as follows, except for the distance to single-family zoning district
40 boundaries, the proposed use meets all other distance requirements. The
41 subject property has shared access with the property adjacent from Scanlon
42 Drive to Lenox Avenue or Main Street. The subject property is compatible
43 with other fronting properties along Main Street. And the ingress/egress on
44 the site has very little to no traffic impacts to the residential properties
45 located to the north. It meets the purpose and intent of Section 38-2 of the
46 Zoning Code. The requirements outlined in the Zoning Code and those

1 stipulated by the State of New Mexico will be followed. It meets the intent
2 and purpose of Elevate Las Cruces Comprehensive Plan as it's located
3 adjacent to a proposed town center and mixed use corridor, and it's along
4 the regional commercial place type. Today your options are to vote "yes"
5 to approve, vote "no" to deny, or vote "yes" with conditions, or to vote to
6 table.

7
8 Kaiser: Thank you. Are there any questions from the Commission? All right. Are
9 there anybody in the audience who wishes to speak on this item this
10 evening? I see one. Any additional? All right I will give you three minutes.
11 Please come forward. Please state your name for the record.

12
13 Josefa: My name is Rose Josefa.

14
15 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
16 and nothing but the truth under penalty of law?

17
18 Josefa: I affirm it. I just have questions.

19
20 Kaiser: Sure. Please go ahead.

21
22 Josef: No testimony. Okay. First of all I wanted to point out that I find an
23 (*inaudible*) that said City speeds permits for large projects. I don't know if
24 this is a large project or not. But I want you to take your time to consider
25 how it will impact our families in that north area on Northridge. So anybody
26 who lives in that area knows that Main and Elks, Main and Triviz are
27 extremely busy. You have to wait a long time sometimes to make a left turn.
28 You take your chance going into a left going towards Elks if you're on
29 Scanlon. The same thing, I never make a left onto Main, it's impossible. So
30 I make rights and (*inaudible*) I have to go out of my way. And I'm retired.
31 When I make appointments I try not to make them during your traffic hours.
32 So I have a few questions to ask please.

33
34 So I disagree with the egress and ingress. It's only going on into Maine.
35 I'm surprised that the hospital that's right there on that corner is not here to
36 object, because I believe they have to go through their area. If I'm wrong,
37 please correct me. Then they can go out onto Scanlon I think, but I'm not
38 positive. So I have no problems with a cannabis. I know many people who
39 benefit from it. But I think you already have a lot of businesses and some
40 of them have multiple locations. I believe if the people could tell me, you
41 have at least 30 cannabis businesses. Yes, it's a growing business and
42 that's fabulous. But I don't think it necessarily belongs in that neighborhood.
43 And I'd like to point out that you are already going against some of your
44 guidelines. So it's not 300 feet from the nearest residential residence, it's
45 much closer. And the traffic along that area from those little businesses that
46 are there and going further down into Main and across at Lowe's, is very

1 heavy. We have a Walgreens, we have a CVS, a lot of congestion in that
2 area. I think you need to look at traffic patterns. I was here several years
3 ago, because you wanted to know, I don't know if you were the body at that
4 point, there were apartments and homes that were going to go up on the
5 Elks Club area, 16 acres. I think at that time we had many people come out
6 at that point. I know I've spoken to neighbors, and I probably represent at
7 least six of the closest neighbors along Westridge and Eastridge. They're
8 not all here. We're mostly retired people there. It's cold and it's late. But I
9 beg you to really look at the facts. You are denying it with a condition
10 already. Is that not correct? What's it called? An exception. That my time?
11 With an exception.

12 Kaiser: That is.

13

14 Josefa: You need to look at that very closely.

15

16 Kaiser: Thank you very much. And I'll go back to staff to maybe answer some of
17 those questions. I think the first one was the ingress/egress on to North
18 Main Street, and I believe the ingress/egress is actually off of Scanlon Drive,
19 is that correct?

20

21 Castillo: Commissioner Kaiser. That is correct. The main point of access is a shared
22 access between the Animal Hospital and that facility, and it is primary
23 access through Scanlon. However, you can access it from North Main,
24 generally it would be a right in, into North Main but you do have the option
25 to take a left handed turn in there.

26

27 Kaiser: Okay. Thank you. Any other comments to this lady's questions? No. Okay.
28 You have additional, you'd like to speak on this topic? Please come
29 forward. Please state your name

30

31 Thulin: Maryann Thulin.

32

33 Kaiser: Do you swear or affirm that the testimony you're about to give us the truth
34 and nothing but the truth under penalty of law?

35

36 Thulin: I do.

37

38 Kaiser: You have three minutes.

39

40 Thulin: Okay. I live maybe 400 feet from their proposed parking lot there. There
41 are 10 sites. I've driven in and out. And if I was going to buy cannabis, I
42 would come out on Scanlon, take a left and go up to Lenox, and then take
43 a left and come down to Elks. Now Elks and Lenox is the most dangerous
44 intersection in the City. Look up the, whatever you call, the accident reports.
45 It's a horrible, horrible intersection. So that's, its traffic is horrendous. So

1 that's all I have to say. And defecation is a big problem there too, and it's
2 going to get worse. Thank you.
3
4 Kaiser: Thank you. All right. Is there anybody else from the audience that wishes
5 to speak on this item? All right. Seeing none. I'll come back to the
6 Commission. Any additional questions or comments? Okay. Looking for a
7 motion.
8
9 Castillo: Mr. Chair. Before we move forward, I do have a little point of clarification.
10 As it was mentioned that we were circumventing our ordinances and stuff.
11 However, cannabis is a conditional use, and as we are not meeting all the
12 conditions we are now moving forward as a Special Use, meaning that we
13 are taking a look at this property as a whole and how it affects the
14 neighborhood.
15
16 Kaiser: Thank you. Looking for a motion,
17
18 Bennett: I make a motion to approve 10.1.
19
20 Vega: I second.
21
22 Baum: Board Member Acosta.
23
24 Acosta: I vote yes based on staff recommendation and Elevate Las Cruces.
25
26 Baum: Board Member Vega.
27
28 Vega: I vote yes based on site visit and staff recommendation.
29
30 Baum: Board Member Bennett.
31
32 Bennett: I vote to approve based on staff recommendation.
33
34 Baum: Board Member Smith.
35
36 Smith: I vote yes based on staff recommendation and site visit
37
38 Baum: Board Member, excuse me Chairman Kaiser.
39
40 Kaiser: Yes based on staff recommendation and consistency with Elevate Las
41 Cruces.
42
43 Baum: Passes five/zero.
44
45 **10.2 4003 Tellbrook Road Zone Change Request:** A zone change from A-2
46 (Rural Agricultural District) to C-3C (Commercial High Intensity-Conditional)

for property located at 4003 Tellbrook Road. The property is ± 10.85 acres and located on the northeast corner of Tellbrook Road and Las Alturas Drive. Submitted by Raylyn and Lezlie Wilcox, property owners. (Case # 22ZO0500020)

Kaiser: Okay, we are moving on to our final item this evening. This is 10.2 a zone change from A-2 to C-3C at 4003 Tellbrook. Staff, all yours.

Banegas: Mr. Chairman, members of the Commission. Vincent Banegas, Interim Planner. I'll be presenting tonight's Case 22ZO00500020. It is involving property located at 4003 Tellbrook Road. It is a rezoning request from the current zoning of the property which is A-2, our agricultural district which is defunct in the present code. We no longer have an A-2 designation. That did not carry over from our 1981 Code. And they are seeking to go to a C-3C designation. The C-3C is our commercial high intensity district. And the C at the back end there refers to some conditions that we'd like to have you consider, that is part of the request this evening.

The property itself is just shy of 11 acres in size. It's 10.85 according to our assessor records. And again it was originally zoned A-2 and staff and based on our research has found that it was A-2 probably as a placeholder at the time of annexation. The A-2 zone back in the day was used as a placeholder when the property owner wasn't quite sure what they wanted to do with the land upon annexation. And so here we are, this evening. Indicated it was a defunct zone currently in the 2001 Code as written. In order for the property owner to develop the property they have to come into compliance and find a suitable district that will meet the need in terms of what they're focusing in on in terms of development perspective and what the rules as written speak to. The property itself in context with the Elevate Las Cruces Comprehensive Plan is within the Suburban Place type. That place type as defined incorporates both low and moderate density residential with intermixed areas of commercial development.

The property as you'll see here in a moment is vacant. It's part of the I-10/I-25 interchange annexation that I referenced in terms of annexation back in 1968. And it's part of the Las Alturas Estate Block A Subdivision. At present, there's no sewer service, which is a key point to keep in mind. No sewer service available to the site. So at this point in time any development that takes place on site will have to receive approval, at least from the wastewater perspective from New Mexico Environment Department and/or their counterpart the EHB, which I believe is the Environmental Health Bureau.

So here we have the zoning map showing Tellbrook Road located to the south of the subject property. The subject property is outlined here in red. Right along the east border is the City limit line. And it does jog out

1 incorporate other properties south of Tellbrook. And then it follows along
2 on the north side upwards towards University Avenue, etc. The areas that
3 are not shaded are in the county. And if I'm not mistaken, almost all of the
4 properties you see in this area are a DL-1 designation which is a single-
5 family, low density residential district, low and moderate I believe.

6
7 The aerial map here shows the property in question. It is vacant at present.
8 You do have some surrounding development both north, you'll have some
9 residential uses. East you'll have some additional residential uses on large
10 lots. And then further south of the subject property you'll have a few
11 apartment complexes in the area, and then it transitions over to a single-
12 family style of development. One thing I wanted to point out on the zoning
13 map is south of Tellbrook you'll see this node, at least on the south side of
14 Tellbrook, of commercial zoning, transitioning over to R-2 going east and
15 then to the single-family designation going further east.

16
17 So in terms of the proposal, the original request that came forward to the
18 City from the applicant was a type of conversion request from the A-2 to
19 straight C-3. The idea being in terms of development focus to create a
20 botanical garden, engineering office to accommodate the property owners
21 office needs, and a single-family detached dwelling in terms of residential
22 use where they would reside. And then the accessory building or shed to
23 store some of the equipment to maintain the property, 11 acres, just shy of
24 that anyway, and the botanical gardens that they sought to develop. The
25 request itself in terms of the mixture of uses, etc. is consistent with the
26 Suburban Place type, as found in our Elevate Las Cruces Comprehensive
27 Plan. And then the C-3 designation accommodates the uses, and
28 particularly it accommodates the parcel size. If you recall, our zoning code,
29 at least in the commercial designation, relies on parcel size, relies on uses
30 to an extent, and other development standards to help mitigate the types of
31 uses or the intensity of uses that can occur on site. And so that's what we're
32 dealing with here.

33
34 The applicant was informed by staff back when they originally came forward
35 with their proposal to provide early notification to the surrounding property
36 owners in concert with the zoning code as written. Staff provided a list of
37 property owners that met our notice requirement. Letter was sent out and
38 dated February 27, 2022. In that letter the applicant identified these uses
39 that I've gone over as the focus of their development pattern that they
40 wanted to produce on site. And they also provided some clarification as to
41 what could occur and what could not occur, and sought some
42 recommendations on how to make it better, that kind of thing. They did
43 receive some input from what I was informed and what I was provided in
44 terms of content, it seemed like it was rather limited. But nonetheless, they
45 did go through that endeavor. They also stated that they'd be willing to have

1 a neighborhood meeting if that was indeed going to be helpful to clarify the
2 development proposal.

3
4 So staff took a look at the request, took a look at the overall acreage, their
5 surrounding area, that kind of thing, the transportation network, the zones
6 in the area. And admittedly, we had some concern over the straight C-3
7 designation. We felt that the potential for 10.83 acres of C-3 could indeed
8 overwhelm that particular location with commercial activity and so we
9 started taking a look at what we could do to lessen the potential impact.
10 One of those ideas that came to mind was to try and zone the property
11 through a metes and bounds type of approach whereby through the use of
12 a survey we can identify the exact boundaries for different uses on the
13 property, have those defined, and then seek a zoning designation that
14 pertains to the type of use that would occur within those metes and bounds
15 boundaries. A little bit convoluted, yes, a little bit expensive in terms of the
16 survey effort, absolutely. But that was one option. They countered, they
17 being the property owners, countered with the idea of conditioning the C-3
18 district and really tying down the types of uses they really sought to provide
19 and incorporating a little possibility for future growth. So that's the approach
20 that staff went with. And we received a conditional listing of permitted uses,
21 that is in your packet, and I'll show here as part of the presentation to help
22 identify and control the impacts that the C-3 zoning might have on the area.

23
24 The use list is called out as Exhibit A. And what it does is seek to remove
25 multiple service land uses that are otherwise identified in the C-3 listing of
26 permitted uses. And it also strikes majority of the retail uses that are found
27 on the existing list. And those retail uses that are identified, some of those
28 are controlled, or at least one of those is controlled by maximum square
29 footage of the use itself. And the others, there's one that pertains to the
30 botanical garden specifically as an accessory to that use. And then the
31 others kind of open it back up and are listed there. So we go from a large
32 number of retail uses down to I believe it's about five. A couple of photos
33 for this case, this is at the intersection of Tellbrook and Las Alturas.
34 Tellbrook of course being here, and Las Alturas here along, adjacent to the
35 interstate. And so we're looking northeast at this location. You can see
36 some of the residential development off in the distance here. This is looking
37 more west/northwest along the property. Looking east. And then looking a
38 little south and southeast. And this one, this is where you start seeing some
39 of the development. This is C-2 presently, and obviously vacant at the
40 present time, but you'll start seeing some of the development shortly
41 thereafter and beyond this property as well.

42
43 So in terms of analysis, staff found no health, safety, or welfare issues
44 specifically identified. We had proposed the development and conditional
45 zoning to help maintain a reasonable, or significant degree actually, of
46 compatibility for the surrounding area. Again, we're citing some of the

1 intersection of some key roadways, in this case Las Alturas being a minor
2 arterial and Tellbrook being a collector status type roadway, and some of
3 the commercial zoning just south of there.
4

5 The property is within the Suburban Place type and is consistent, at least in
6 the zoning and the proposal are consistent was said place type. And the
7 comprehensive plan supports the proposed zoning district, which some of
8 the elements that are identified in there are development of vacant land,
9 potential for housing diversity, balanced growth, integrating new
10 development with surrounding built-in natural features, and the potential for
11 job housing balance in terms of what it could become with some of those
12 uses identified.
13

14 Public notice was distributed per code. Staff received numerous, a great
15 degree of input on this particular case. We received, I think that number
16 needed to be updated by one, a late call came in. And all eight calls that
17 we received that I'm aware of were opposed to the request. We had one
18 walk-in inquiry, simply inquire in the nature, and 38 e-mails that were
19 opposed. One was an inquiry as to the case itself. So those are what we
20 collected as of the preparation or final tweaking of this presentation. And
21 as indicated, the property owner had done their due diligence trying to get
22 the early notification effort out there. And they received four e-mails, two I
23 would classify as general inquiry, and two supportive. And then they also
24 received two phone calls which were supportive in nature.
25

26 So staff's recommendation this evening is approval with the conditions, and
27 the condition being that the permitted uses are as per Exhibit A. Exhibit A
28 will be this, basically one and a half, two pages of permitted land use listing.
29 This list comes right out of the C-3 district, striking several uses that would
30 otherwise be reflected. And where you see the biggest change is here
31 under the service land uses. There are several that have been struck, and
32 the retail component, and there's a good many that have also been struck.
33 The cafe which was an idea that was originally presented by the property
34 owner, one of the initial discussions I had with them would be ancillary to
35 the botanical garden use. And a clothing store, they wanted to control that
36 and limit it to 2,500 square foot of building square footage or area. And then
37 garden supply and plant nursery but all other retail uses would be
38 eliminated.
39

40 The findings for staff's recommendation is that the property has
41 nonconforming zoning and that zoning no longer exists in the 2001 Zoning
42 Code as amended. And then prior to any development on the property an
43 appropriate zoning district designation needs to be established per code.
44 The C-3C zoning district is an appropriate zoning district given the
45 surrounding area, the lot size, and intended development. It would certainly
46 accommodate what they're proposing to do. The property is within the

1 Suburban Place type characterized by low and moderate density residential
2 uses, intermixed with areas of commercial development, and several goals,
3 policies, and actions from Elevate support the request and meet the
4 purpose and intent of the 2001 Zoning Code as amended and Section 2-
5 382, the criteria for decisions. And also the surrounding area has little
6 commercial office and multifamily residential development and thus the
7 proposed development and zone change could help achieve a mixed use
8 node at that specific intersection of those two significant roadways.
9

10 So your options this evening, Mr. Chair, Commissioners, is to vote "yes"
11 and approve, doing so would approve the condition as stipulated on that list
12 and so it would be a C-3C. You can vote "no" and deny the request. Please
13 provide any information or facts, findings of facts that are different from
14 staff's, in that staff is in support of the request. And you could certainly vote
15 "yes" and add conditions. If you feel that the conditions that are established
16 are still a little too loose, you can recommend that some additional
17 conditions be placed on the zone change. And then you can vote to table.
18 And that concludes staff's presentation Mr. Chairman. I believe the
19 applicants are in house and can maybe answer questions. I don't know if
20 they have anything specific to add. And that concludes my presentation.
21

22 Kaiser: Thank you very much. Before we go to the Commission, does the applicant
23 wish to speak or say anything at this time? The applicant please come
24 forward. Please state your name for the record.
25

26 Wilcox: Raylyn Wilcox.
27

28 Kaiser: And do you swear or affirm that the testimony you're about to give is the
29 truth and nothing but the truth under penalty of law?
30

31 Wilcox: Yes, I do.
32

33 Kaiser: Go ahead.
34

35 Wilcox: All right, with all these people that have attended, it's very clear that all these
36 people love our neighborhood, as well as I do. And hopefully my goal and
37 the planner's goal is to make you feel comfortable that nobody is going to
38 do anything crazy out there. I think we've agreed to a pretty good set of
39 rules where we can't build a strip club, we can't build truck stops, nothing
40 crazy at all. I've lived here all my life. And all my life everybody talks about,
41 there's nothing to do in Las Cruces, nowhere for me take my kids. And I
42 really see a botanical garden as being something kind of nice. And I'd
43 actually like to team up with all these people and let's build something really
44 nice together where we can bring our senior citizens to visit, bring your little
45 kids, just have a really safe place. If you have any questions, just let me
46 know.

1
2 Kaiser: Thank you. All right, any questions from the Commission? All right, we'll
3 go ahead and open it for public comments. Can I get a show of hands of
4 who wishes to speak on this item? Get a quick head count here. I count
5 14. That may not be accurate, but it's a good headcount. So we we'll go
6 ahead and provide two minutes of comment for each individual tonight. I
7 do ask that you listen to speakers that may go before you, and let's try to
8 minimize the amount of similar talking points if that makes sense. We'll all
9 have a chance to speak but we understand that there's probably going to
10 be similar comments and themes of this evening, so we just keep that in
11 mind. So can I get everybody to raise their hands again and we'll figure out
12 where to start. Let's start with this gentleman over here in the front row.
13
14 And given the nature of where this project is located, if you please wouldn't
15 mind stating whether or not you live within the City boundary or the county
16 before you give your comments. That would be appreciated. So please
17 state your name for the record.
18
19 Milligan: Okay. I'm Brook Milligan. I live in the county. I'm also rep ...
20
21 Kaiser: Hold on one second. I need to swear to you. Do you swear or affirm that
22 the testimony you're about to give is the truth and nothing but the truth under
23 penalty of law?
24
25 Milligan: Yes, I do.
26
27 Kaiser: You have two minutes.
28
29 Milligan: I'm also representing a number of people and I would like to request several
30 extra minutes to present our collective views so we can be more efficient
31 about this.
32
33 Nichols: Mr. Chair. If the other people that were going to speak will yield their time
34 to you, then we can give you additional time.
35
36 Kaiser: So for those individuals who may be allowing this gentleman to speak on
37 their behalf tonight, can you please raise your hand? All right. When we
38 get a head count, keep your hands up. Okay, we're going to go ahead and
39 grant you 10 minutes. Does that work?
40
41 Milligan: Okay, that's plenty of time.
42
43 Kaiser: You may begin.
44
45 Milligan: Thank you. So I wish to start by stating our joint strong objection to this
46 motion to change the zoning on this property okay. You have before you a

1 recommendation to support that zoning request. However, I point out that
2 the recommendation is fundamentally flawed in several different ways. It
3 does not reflect the nuanced understanding of the neighborhood around the
4 site, nor does it present a reasoned analysis of the situation. It includes
5 flawed logic and statements that do not follow from the information
6 presented in the report. As a result, it does not reflect the principles
7 underlying the Las Cruces Comprehensive Plan. As a consequence, the
8 recommendation should not stand as justification for the proposed rezoning.
9

10 In another document I've submitted before you in advance, I presented you
11 more details on the points that I'll introduce tonight. However, to keep our
12 focus and not prolong the comments, I want to emphasize three quick
13 examples of the flawed logic and inadequate analysis. The
14 recommendation is justified in part based upon the current zoning
15 designation, which is not in current use. That is clearly a justification for
16 some change, but no justification at all for the proposed change specifically,
17 which leads to a zoning designation that's completely inconsistent with the
18 entire surrounding neighborhood. This is simply flawed logic. The
19 recommendation also concludes that this rezoning action will "ensure that
20 any future uses remain compatible with the surrounding neighborhood."
21 Nothing in the proposal or zoning restrictions justifies this conclusion. A
22 wide range of land uses are permitted under the proposed zoning category
23 as listed in the Appendix A, almost all of which are inconsistent with the
24 current land use, and perhaps more importantly, the land use that has
25 existed in the region for the last 50 years. Again, this is flawed logic,
26 justifying the request by claiming that it promotes future consistency is
27 demonstrably incorrect.
28

29 Finally, the recommendations concludes that the project will have "help
30 create a commercial/service zone node at the site which will serve the
31 surrounding residential uses." This too is demonstrably false. Permitted
32 land uses under the proposed zoning designation are intended to serve
33 communities of over 15,000 people. There is no such local community to
34 serve for any commercial purpose at that location. Two specific activities
35 are mentioned, a botanical garden and an electrical engineering firm.
36 Neither will serve the local community. The botanical garden would
37 duplicate a public park one block away that has wonderful native vegetation
38 and easy access for mobility impaired visitors. Views and access to the
39 Organ Mountains are much better achieved via many easily accessible
40 points along Dripping Springs Road and along Baylor Canyon Road, both
41 of which are approximately the same distance from most Las Cruceans as
42 the proposed site, unlikely to be visited. The electrical engineering firm is
43 even less likely to serve the local community. Its services are related to
44 public works and commercial and industrial projects, which include medium
45 voltage electrical distribution systems, sports lighting systems, and special
46 telecommunication systems. No one in this or any other neighborhood

1 conceivably needs those services for their residences. The proposed
2 development will not serve the surrounding neighborhood in any compelling
3 way.

4
5 These are just a few examples of the many flaws of logic throughout the
6 recommendations to approve the rezoning project or request. It is clear that
7 a thorough and reasoned analysis of the case has not been completed.
8 This undermines the principles of the Las Cruces Comprehensive Plan
9 which has the explicit vision of "enhancing livability, prosperity, and
10 environment for the shared benefit of current and future generations."
11 Elements of that vision include reasoned development that "encourages
12 context sensitive development, promotes development that compliments
13 surrounding neighborhoods, supports efforts to preserve natural open
14 space, and enables neighborhoods to define their unique identities and
15 needs." The proposed rezoning accomplishes none of that and is being
16 justified based upon inadequate assessment and faulty reasoning. The
17 request should be rejected directly. On behalf of all of the people here who
18 raised their hands earlier and many who have are not present tonight who
19 have expressed these ideas to me separately, we all urge you to reject the
20 rezoning request for 4003 Tellbrook Road. Thank you very much.

21
22 Kaiser: Okay, may I see another raise of hands for those who did not cede their
23 time to that gentleman? Okay, we'll start with this lady here in the front row.

24
25 Nichols: Two minutes.

26
27 Kaiser: Two minutes. Please state your name.

28
29 McGuinn: My name is Marcie McGuinn.

30
31 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
32 and nothing but the truth under penalty of law?

33
34 McGuinn: I do have.

35
36 Kaiser: You have two minutes.

37
38 McGuinn: Thank you. I live in the county section of the Las Alturas subdivision for
39 about 22 years. And I wanted to state that we have to all remember that if
40 zoning C-3 is changed for this property, there's no going back. And any
41 kind of promises can be made before anything is built, but that site specific
42 plans cannot come in until the end of this process after the zoning has
43 changed. The proposed land use for this property is not consistent with the
44 character of the area. And while preliminary proposed plan conceptually
45 could work at this location if the zoning were changed. Again, that would
46 not be compatible with the character of the area. Some of the land uses

1 allowed under the zoning classification could be a cannabis dispensary,
2 cannabis consumption lounge, apartment, strip mall, restaurant, clothing
3 store, library, museum, health/exercise club. While we welcome other
4 single-family residence structures in the area, we don't welcome the above
5 mentioned items.
6

7 And as a last note, Mr. Wilcox the applicant, is also the owner of Lynco
8 Electric located at 1520 West Amador. That is the owner record of address
9 for this property that has been purchased in the last year. If by chance Mr.
10 Wilcox, president of Lynco Electric were to move his Lynco offices from
11 West Amador to Las Alturas, that would likely include the 15-plus company
12 electric trucks, several outbuildings, and materials and supplies stored
13 outside as shown in the Google satellite imagery and pictures on the Lynco
14 website. According to PPP records, Lynco employees 23 people. This and
15 their fleet of trucks would explain by one of the drawing renderings posted
16 or provided to the City includes plans for a parking lot with at least 30
17 parking spaces. That's all. Thank you.
18

19 Kaiser: Thank you. All right folks I'm going to need help because I can't keep track
20 of everyone's hand raise, on this side of the room who else wishes to speak
21 but didn't cede their time. Gentleman with the (*inaudible*).
22

23 I have a very hard time hearing you.
24

25 Kaiser: Please state your name for the record.
26

27 Reser: Philip Reser.
28

29 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
30 and nothing but the truth under penalty of law?
31

32 Reser: I do have.
33

34 Kaiser: You have two minutes.
35

36 Reser: I live on Tellbrook Court. I'm going to be a neighbor to that botanical garden.
37 I would love to have a botanical garden as my neighbor. It has been said
38 that this does not fit the neighborhood, this beautiful residential
39 neighborhood. I walk my dog twice a day pass this property, that's 700
40 times in the past year. And what do I see when I walk by this property? The
41 I-25 flyover. It's kind of nice looking but it's not residential. This needs to
42 change. It's needs to be developed. They have some complaints about
43 noise from the development. A cement plant on the property would not
44 make any more noise than I got off of I-10/I-25 every night. So any
45 development there, I would appreciate. It would make the area look good.

1 And hopefully somebody would do something about that rotting A-frame that
2 I have to look at every day. Thank you.
3
4 Kaiser: Thank you. The gentleman in the tannish sweatshirt. Yes you. Please
5 state your name.
6
7 Gutschick: I am Vincent Gutschick. And I live in the county.
8
9 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
10 and nothing but the truth under penalty of law?
11
12 Gutschick: I do.
13
14 Kaiser: You have two minutes.
15
16 Gutschick: Okay, I was not privileged to see the list of approved uses under C-3C. And
17 some of them have been mentioned. The ones that were highlighted earlier
18 sounded rather benign. But I don't know that that can be affirmed. I am
19 wondering why a zoning of C-1 is not possible, which considerably limits the
20 amount of commercial activity. Now I was told outside the meeting that C-
21 1 has a limit on how much area can be covered. But I went through the
22 zoning regulations and I did not see that. In fact, it said it's not applicable
23 to state that there is an area limit. And I'd just like that confirmed. So yes,
24 if that's, can I have that confirmed somehow? And is it then possible to
25 consider C-1. Thank you.
26
27 Kaiser: Thank you. And if I may staff, we just get through everybody and we'll come
28 back and do any answers or comments. This gentleman over here. Please
29 state your name.
30
31 Allan: My name is Daniel Allan.
32
33 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
34 and nothing but the truth under penalty of law.
35
36 Allan: I do.
37
38 Kaiser: You have two minutes.
39
40 Allan: First of all, as an aside to the previous gentleman who complained about
41 the dilapidated rotten A-frame that is in the county. It needs to be
42 condemned. I've attempted to have that done but I don't think the City
43 should take the rap for that.
44
45 Now we've lived, I live in the county, just over the line there, and we've lived
46 there since 1983. And those of us who live there like it the way it is, the

1 rural atmosphere, the lack of development. There is at present no
2 commercial development in that area. It may be permissible, but there isn't
3 any that I'm aware of unless people are doing things sub-rosa. Tellbrook
4 Road is a major artery. Remington feeds into it, there's already too much
5 traffic. It's much too fast, and it's hazardous. And we don't want anything
6 to exacerbate that. One of our concerns is that despite the assurances of
7 Mr. Wilcox, at some point he or his estate will sell the property. They will
8 dispose of it and the new owners may return to the City in an attempt to
9 have it rezoned in order to build high density housing or commercial
10 whatever they want. And they'll be willing to bring the utilities to the
11 property. I have no idea what that costs, but at some point, it may be
12 feasible or have some other way of disposing of waste. And we do not want
13 to have that happen. That would impact our own property values and the
14 quality of life that we have enjoyed for these many years. Thank you.

15
16 Kaiser: Thank you. Okay, is there anybody else on this side of the room that wishes
17 to speak that did not cede their time? All right, the lady in the sweater,
18 please come. Sure, yes, we'll go to the gentleman behind you then.

19
20 Reynolds: Good evening.

21
22 Kaiser: Please state your name.

23
24 Reynolds: My name is Shannon Reynolds. I'm a Doña Ana County Commissioner. I
25 live in Las Cruces in the City limits.

26
27 Kaiser: Okay. Hold on. Let me swear you in real quick.

28
29 Reynolds: Sure.

30
31 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
32 and nothing but the truth under penalty of law?

33
34 Reynolds: Yes sir I do.

35
36 Kaiser: You have two minutes. Go ahead Commissioner.

37
38 Reynolds: Thank you. First, I want to say thank you guys, because this is, what you're
39 doing is difficult. And we have the same thing happens in the county.
40 Secondly, though, I'd like to say that as being representing the county, and
41 by the way my district goes through probably, two-thirds of it also covers the
42 City, that I have constituents on both sides of the line that are concerned
43 about what we do with planning and zoning. I think I've received at least 60
44 e-mails and probably 20 phone calls over this issue in the last three days,
45 four days. So my constituents are certainly concerned about what we do
46 here. If I look at the district, there are a couple of businesses south, there's

1 a trailer park that's really in bad shape. I'm trying to get that cleaned up or
2 trying to get the guy to the burned trailers, the dilapidated trailers out of
3 there and get that fixed up. There's another business also just south of that
4 which actually deals in railroad ties, and some other assorted landscaping
5 equipment. And then about another two miles down there's a trailer I think.
6 So within about probably a mile, a mile and a half some of the commercial
7 is there. I personally believe that it was there before all this development
8 happened. And I don't think to continue to put commercial businesses in
9 this area is consistent with what I believe this whole community is about. If
10 you can go from Las Alturas over to University and pretty much all the way
11 to the mountain and not find anything commercial. If you're looking for
12 commercial we've got University is opening up a whole area of commercial
13 stuff that's going to serve this neighborhood. And that is the kind of
14 consistent plan that I see for actually providing commercial development for
15 this area. The residents that I deal with, the ones I know both on the City
16 side and the county side, they're not going to be happy with this. I would
17 recommend you consider T-1, T-2. And also I agree with the risk of C-3.
18 Once you make a C-3 it doesn't go back. It's just a matter of time before
19 somebody gets to all those exceptions listed because they don't last forever.
20 Thank you for your time.

21
22 Kaiser: Thank you. Gentlemen in the very back. Please come forward. Please
23 state your name.

24
25 Fuller: Hi. My name is Roger Fuller, F-U-L-L-E-R.

26
27 Kaiser: And do you swear or affirm that the testimony you're about to give is the
28 truth and nothing but the truth under penalty of law?

29
30 Fuller: I do.

31
32 Kaiser: You have two minutes.

33
34 Fuller: And I just wanted to say that I've tried to imagine what kind of development
35 could go into this location. I live in that area. And I pass that intersection
36 many times a day. And there is nothing I can imagine that's going to
37 improve the quality of my life or my neighbor's life. But I can't imagine a lot
38 of development that's going to distract from that quality of life. That's it.
39 Somebody could have my other minute and a half.

40
41 Kaiser: Thank you. All right, moving over to my right hand side. Now can I get a
42 show of hands. Gentleman in the front right here. Please state your name.

43
44 Liberman: My name is Michael Lieberman.

1 Kaiser: And do you swear or affirm that the testimony you're about to give is the
2 truth and nothing but the truth under penalty of law?
3
4 Lieberman: I do.
5
6 Kaiser: You have two minutes.
7
8 Lieberman: And I've lived in the county for what 35 years now. Could you go to slide
9 six?
10
11 Kaiser: I'll have to ask staff to control that.
12
13 Banegas: Slide six.
14
15 Lieberman: Okay. This is the description of what they wanted to put in, botanical
16 garden, an engineering office, single-family residence, and accessory
17 building. Well, on Tellbrook there is also one very large barn has been built
18 already, an accessory building. An engineering office can be one or two
19 rooms, or a huge complex. If you change the designation of this area,
20 instead of changing the whole thing to C-3, part of it is a single-family
21 dwelling, part of it is practically a park. And you can designate an area that
22 will be compatible with a reasonable size structure not that different from a
23 single-family home, that can handle the office. So I request that you turn
24 down the C-3C and consider breaking up the area, if it's possible, to allow
25 what they are requesting, but only that. Thank you.
26
27 Kaiser: Thank you. And let's go to the lady in the pink sweater. Please state your
28 name.
29
30 Trujillo Hello, my name is Christine Trujillo.
31
32 Kaiser: And do you swear or affirm that the testimony you're about to give is the
33 truth and nothing but the truth under penalty of law?
34
35 Trujillo Yes I do.
36
37 Kaiser: You have two minutes.
38
39 Trujillo I grew up in Las Cruces. However I had moved away. Most recently been
40 living in Albuquerque. I live in the county now. I just recently moved back
41 last year. And part of the reason why I moved back was where I lived in
42 Albuquerque, I just bought a house in 2018. And right in front of my house
43 across from an arroyo channel was a 10 acre plot of land. My realtor at the
44 time told me just be aware that that could be developed. There is now a
45 four story, four building apartment complex under construction that it
46 certainly is not in a rural location like the area that most of us live in here,

1 it's much more housing and commercial or hospital in that area in
2 Albuquerque. But what I'm saying is that, that area of land that is now being
3 developed as an apartment complex is pretty obtrusive, a four story
4 apartment complex surrounded by residential homes. And so while I can
5 appreciate Mr. Wilcox having these ideas for a botanical garden, which
6 sounds beautiful, but shouldn't that be something that the City should
7 continue? How can an individual maintain and have a botanical garden for
8 the rest of his life and his heirs life, his family's life? How can you maintain
9 that? Shouldn't that be something for the City? So you know we run the
10 risk of having a four story apartment complex built in the future should that
11 land eventually be sold. And that completely changes the landscape of that
12 area. So I don't feel like you know looking forward that that is the right type
13 of thing for the community in that area. Thank you.
14

15 Kaiser: Can we have another show of hands? We're going to go to this lady right
16 here in the second row. Please state your name.
17

18 Hughes: Patty Hughes.
19

20 Kaiser: And do you swear or affirm that the testimony you're about to give is the
21 truth and nothing but the truth under penalty of law?
22

23 Hughes: I do.
24

25 Kaiser: You may begin.
26

27 Hughes: I just want to reiterate about the history of Las Alturas. Over 50 years it has
28 grown in the same direction. I was a member of a planning commission
29 that applied some of the initial zoning in that area in the county, it was
30 actually in the ETZ. What we heard was people wanted to maintain the
31 nature of the area that they had built. And as I followed comprehensive
32 plans over the years, people are giving the same input to planning and
33 zoning Commission's, to county commissions, that they want to maintain
34 the character of the area that they have built. The plan seems to be pretty
35 innocuous. But does that plan need to be adhered to? Can 10 acres of 60
36 foot high apartment buildings be erected without any further approval for
37 many body? We answer that, I'd like an answer to that question. Also, if
38 high dense 10 acres of 60 foot high apartment buildings, I'm not sure how
39 many stories that is, it used to be 10 foot per story. Is that a six story? I
40 don't think so. But what sort of population does that generate? And we're
41 not talking about doing any TIAs or anything else with what the potential for
42 this zone change could be. I'd just like to reiterate what other people have
43 said that that zoning is not compatible with the area and everything I know
44 about the input that people have given about what they want to see. We
45 have an area that is somewhat unique, that is consistently grown in the
46 same direction. People are saying consistently that they don't want the

1 nature of our area to change. There's a lot of open ground out there. We
2 really as far as the neighbors are concerned, I doubt that we need a
3 botanical park. So thank you.

4
5 Kaiser: All right, moving on up. Yes, ma'am. Yes. Please state your name.

6
7 Liptak: Charlotte Liptak.

8
9 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
10 and nothing but the truth under penalty of law?

11
12 Liptak: I do have.

13
14 Kaiser: You have two minutes.

15
16 Liptak: I live in the county. This requested C-3 designation is, as people have said,
17 not in keeping with the rest of the neighborhood. It's also not appropriate
18 or necessary for the owners stated use. The requested commercial high
19 intensity designation would still allow for retail businesses and the building
20 of apartments. There are currently no apartment buildings in that area.
21 There are a few duplexes, but everything else is single-family. He could
22 build what he wants allegedly with a residential designation, In my opinion,
23 I'm not an expert on the zoning code, or perhaps an O-1 designation that
24 would account for an office neighborhood. Recently, I have seen electrical
25 boxes put in for this property, which show that at least 480 volts has been
26 installed or is being installed. This is far greater than any single-family home
27 with an office would appear to need. I'm very concerned that this property
28 could eventually be used for selling or growing cannabis if the C-3
29 designation is allowed. That should not be allowed in a residential
30 neighborhood. Thank you for letting me address my concerns.

31
32 Kaiser: Thank you. All right, gentlemen in the white hat. Please state your name.

33
34 Gibbs: Les Gibbs.

35
36 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
37 and nothing but the truth under penalty of law?

38
39 Gibbs: I do.

40
41 Kaiser: You have two minutes.

42
43 Gibbs: I've lived in the same area 5025 Las Alturas, which is just up the road, just
44 north of this location, for 44 years. One of the reasons I live in the City and
45 pay City taxes and all the other stuff is that we have control over the area.
46 The area that the analysis that was done says that this is compatible with

1 businesses. Those businesses are in the county not in the City. The City
2 doesn't have any businesses in that area. The other thing is, when I bought
3 into that land, Las Alturas covenant said that you had to have an acre for
4 every house, and putting a business up was not going to be one per acre,
5 it's going to be much more than that and it's not going to be compatible with
6 that covenant. So the Las Alturas covenant should still be in account for
7 that area. Also, this is a two lane road that supports all the Las Alturas
8 areas and all the area south of there, that's going to bring a lot more traffic
9 to that area and cause more people to be driving that road, which is already
10 in a fairly bad shape. Also, that's one of the best bicycling roads around in
11 town, so I see many, many bicyclists going on that road all the time. Adding
12 more traffic is just going to cause more problems for that. So anyway, as a
13 City resident for 44 years on that same property, I am very much against
14 this proposal. Thank you.

15
16 Kaiser: All right. Is there anybody else on this side that wishes to speak? Yes,
17 ma'am.

18
19 Gleason: I'm Jeanne Gleason.

20
21 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
22 and nothing but the truth under penalty of law?

23
24 Gleason: I do.

25
26 Kaiser: You have two minutes.

27
28 Gleason: Thank you, sir. I live out in the Tellbrook area and have loved living there
29 for over 25 years. The pages I have given you show shows the A-frame
30 that I think a lot of, probably everybody in this room would say, "Oh, could
31 it please go down?" The biggest concern that I would add to what has
32 already been spoken to tonight is fire. And I work for the College of
33 Agriculture. I've worked for them for 45 years as faculty member, and it is
34 a very huge danger to all the people that live there. And the house right
35 now, the A-frame I think there's probably homeless people living there. It's
36 falling apart. It's got shingles, the old shakes for shingles, and a fire could
37 come through just like that. And my property, and probably many properties
38 here represented, would be consumed by the fire. So I'm very, very
39 concerned about that. And I asked that to be taken into consideration.
40 Because what happens on that land, could well engulf all of us. Thank you.

41
42 Kaiser: All right. Anybody else on this side? All right, we're going to come back to
43 this individual right here. Please state your name.

44
45 McGuffey: Hi, I'm Barbara McGuffey.

1 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
2 and nothing but the truth under penalty of law?
3

4 McGuffey: I do.
5

6 Kaiser: You have two minutes.
7

8 McGuffey: Thank you. So one of the things that I take issue with is the comment that
9 staff made about the agricultural district being a placeholder. I don't believe
10 that's true. I'm very new to Las Cruces. I just bought my home there in
11 May. But one of the things I was very careful about was finding protective
12 covenants because I did not want to live in an urban district. I've lived in a
13 mixed development district. I want to live in a single-family zone district.
14 There are protective covenants that I'll give you for my neighborhood, for
15 my plat, that I believe may extend further. And they all stop at single-family.
16 And some people have said that there's agricultural left in there. And when
17 we bought our house, our realtor said that there's maybe one house out
18 there that was zoned to have a horse. So on Senna there was a lot that just
19 had a similar notice. And it was changed. It was requesting a change from
20 agricultural to single-family. So I think agricultural has been, I'm sorry that
21 the City has done away with that, but I think it's part of the deed restrictions
22 that the big slurs who own that property specified when they allowed
23 development of the whole area of Las Alturas Estates. And also all the land
24 I think south of Tellbrook is deed restricted for single-family.
25

26 So I take issue with the fact that the surrounding area is not really a
27 Suburban Place type. It's deed restricted single-family, and those of us who
28 bought deed restricted single-family would like to see it stay that way. So I
29 would request that you deny this. And if there are other means that this
30 gentleman can achieve, you know he bought an agricultural district zoned
31 property. No one said he would get a changeup for that. So he could figure
32 out now what else he can do. And he can meet with the neighbors. He
33 offered to meet with the neighborhood. He's not met with any of the
34 neighbors that I'm aware of. The letters were sent back in February of 2022.
35 I think he needs to be sent back to the drawing board. I think you need to
36 deny this today, ask him to come back to the neighborhood. Let staff work
37 on it, see if there's a way that we can all get happy. Thank you.
38

39 Kaiser: Thank you. Mr. Banegas, back to you.
40

41 Banegas: Mr. Chairman, Commissioners, members of the public. As folks were
42 talking, I kind of wrote down key points to provide answers to and/or clarify.
43 One individual questioned whether or not we could seek a zoning
44 designation that was a lesser designation than the C-3. That kind of speaks
45 to what I stated in the presentation where staff considered opportunities to
46 rezone the property using metes and bounds description whereby we could

1 designate zoning districts that are more specific to the use that was being
2 proposed and the uses, I should say plural, that were being proposed. Why
3 we cannot just drop it down from C-3 to C-1 is within our code, there would
4 be considerable size restrictions on the C-1 uses in general. What is being
5 proposed, I believe could not be accommodated because there's caps on
6 the square footage of use, and there's definitely caps on the square footage
7 of acreage. So unless the individual was willing to subdivide the property
8 in compliance or conformance with the C-1 district development guidelines,
9 that wouldn't work. But the opportunity to rezone using metes and bounds
10 could work, it just is going to take substantially more effort to do.

11
12 Another individual talked about conditions, and down the road the
13 conditions going away. If I heard correctly the assumption is that at some
14 point in time if this Commission and City Council ultimately votes in favor of
15 the zone change with conditions, if the assumption is that at some point in
16 time the property gets sold and the new owners want to do away with those
17 conditions, what would they need to do? Well, the answer is they'd have to
18 rezone again. They'd have to come back to this body and seek either to
19 change the designation in its entirety or seek the elimination or modification
20 of the conditions that were placed on the property to begin with. So do they
21 go away? They can, but not without some effort to do so. Not without
22 coming forward to this body and City Council to do so.

23
24 Parking for the office uses, yes parking can include any of the service
25 vehicles within reason, we're not going to allow the storage of large
26 equipment. I'm trying to think of some of the, like backhoes or anything like
27 that associated with the engineering offices. But service vehicles or other
28 vehicles to transport persons from A to B, that's fine. But beyond that, no.
29 Any outside storage related to the use would be substantially restricted. So
30 there's a whole screening type of requirement that has to be dealt with. And
31 so that would be something that'd have to be looked at, specifically if that
32 were to come forward.

33
34 The botanical gardens, just as a matter of clarification, in speaking with the
35 property owner, the question was asked whether or not it was for personal
36 enjoyment or commercial type use. And the answer I got was more of a
37 commercial type use. So if someone wanted to rent the botanical gardens
38 for a small gathering, they didn't want to expand to large weddings or
39 anything like that, but small gatherings, they could do so. So in that context,
40 it makes it commercial.

41
42 Can apartments be erected? Yes. The C-3 designation at present allows
43 dwelling units to be constructed at a minimum density of 10 dwelling units
44 per acre and a maximum of 40. The apartments is a land use designation
45 that was on the conditional or permitted use listing, the Exhibit A that I
46 showed in the presentation. And with the C-3 designation, unless there's

1 some additional condition to restrict it, the height of any apartments could
2 be at the development standards that is identified in the table and that's 60
3 feet. So that could happen as presented with the request this evening. Are
4 there apartments in the area? Yes, there's a few properties that have a little
5 bit more than just your standard duplex or triplex, but not many. This
6 property right along Micro Road, for example. When I drove by there, I
7 believe it was this one, they may be in a duplex or triplex configurations but
8 there's multiples of them. I think some of these other properties might have
9 duplex, maybe three units, but there's not many. So just want to clarify that.

10
11 In terms of covenants, covenants were raised in one of the comments. And
12 just to clarify that, the City of Las Cruces does not enforce covenants. So
13 if there's any deed restrictions that are identified in any of the deeds for
14 properties that individuals purchase, the City doesn't enforce that. We
15 enforce the zoning code and the zoning on the land. So just wanted to
16 clarify that.

17
18 And in terms of the A-2 district, I know for a fact in working a little over 30
19 years with the City and the department, A-2 was used for both ag zoning
20 where you could have crops and animals and that kind of thing, but it was
21 also used as a holding designation when the property owner was uncertain
22 as to what they wanted to do with the property. And that kind of covered
23 the laundry list that I heard. If there's anything I missed, I'd be happy to
24 share.

25
26 Kaiser: Go ahead.

27
28 Vega: Just a quick question and I don't know if you'll know it or not. But is there
29 City bus service that goes on Las Alturas?

30
31 Banegas: Mr. Chairman, Commissioner Vega. I'm not aware of any at this time. No.

32
33 Kaiser: Are there any other questions from the Commission, comment?

34
35 Smith: I don't have any questions but I do have comments. Kind of taking some
36 notes myself. I've lived there for almost 25 years and someone brought up
37 cycling. I'm a cyclist and I mostly ride mountain bike, but I used to ride a lot
38 on the road. And I used to ride up to Tellbrook because it was a nice place
39 to climb, didn't have a lot of traffic. But (*inaudible*) ago you get to the top of
40 Tellbrook and you would turn around and come back down because once
41 you got to the top you know there wasn't anything there, but (*inaudible*)
42 mountain. Now you can take a right, head down, head up, La Tierras
43 Escondida is the development there. It's continuing to grow and grow and
44 grow. Every time I ride up there. If I ride from A mountain on my mountain
45 bike, I grew up there, I see this development. So I bring that point up
46 because one of the issues and complaints was about traffic. Once you

1 make that turn on Tellbrook off Las Alturas you're going into a neighborhood
2 that is increasingly being filled with more cars, because there are more
3 homes being built so there's more traffic on Tellbrook than ever before. And
4 so you know just, I'm looking at both sides of this as far as the impact that
5 it has on your community. Here there are a lot of people. I mean there was
6 a gentleman said he lived there since 1993. It looks like a lot of you have
7 lived there for quite a long time. So you live there at a time when you know
8 there were acre lots and there wasn't a lot of home density as far as how
9 close the houses are. And I'm sure you are all aware that that has changed.
10 And so I think it's important to, unless I'm wrong, I mean I could be because
11 every, it's still one acre lots. Okay. Even going back to La Tierras
12 Escondida. Okay. All right. So I stand corrected on that. But my whole
13 point is that there's this continual growth going into that neighborhood where
14 it's increasing traffic.

15
16 MANY AUDIENCE MEMBERS SHOUTING OUT, UNINTELLIGIBLE.

17
18 Smith: Excuse me, I'm sorry, ma'am.

19
20 WOMAN IN AUDIENCE SPEAKING, NOT AT THE MICROPHONE.

21
22 Smith: Right, but there's still private land that's being developed there. And I'm
23 pretty familiar with the BLM land, because I'm actually one of the Rangers
24 on the monument. So I know the boundary. But the traffic has increased
25 because there's still development happening up to the La Tierra Escondida
26 area. And so my whole point in this, and like I say I'm trying to look at both
27 sides of this is that you know this this ...

28
29 Nichols: Excuse me Mr. Chair. If we're going to receive comments to Commissioner
30 Smith, you'll have to come to the podium and state your name for the record
31 please, not just an outburst from the crowd. Thank you very much.

32
33 Smith: And this proposal, where this land is has been there for a long, long time,
34 as you're all aware, and the impact that it would have from a neighborhood
35 compatibility, because according to the requirements for this property it
36 does meet that because as you make that turn and go up Tellbrook, once
37 you pass that area you're in your neighborhood, you're heading uphill, you
38 still have your views of the mountains and that's not being blocked. The
39 gentleman that talked about walking his dog every day, you know, yes it's
40 like along Las Alturas you have, basically Las Alturas is frontage road. You
41 may not see it that way, but it's basically a frontage road. And then you
42 have the highway. So to the west, you're not losing anything as far as like
43 your community and impact in your community because you have a
44 highway and a frontage road. It's not until you start to go up into your
45 neighborhood that it could be an impact as far as your quality of life, your
46 views of the mountains. Because I see the Organ Mountains every day, it's

1 part of my job, I drive there every single day. The view never gets old. So
2 those of you who live higher up in the, up in that community, you have that
3 spectacular view.
4

5 So as we move forward to make a decision on this proposal, really think
6 about how it's really impacting your quality of life. Having a botanical garden
7 is it really going to impact your quality of life? We can create a narrative of
8 what could possibly happen and make it a reality that he's going to have an
9 electrical business move there, but you don't know that. That's up to the
10 property owner to make that application, to make that decision, if he wants
11 to expand it he still has to go through that process to do that. But we can't
12 make a decision on that now based on what he could do in the future. We
13 can only make a decision based on what he's allowed and permitted to do
14 now. So I just wanted to just make those comments.
15

16 AUDIENCE MEMBER SPEAKING, NOT AT MICROPHONE.
17

18 Kaiser: Hold on one minute ma'am. Let's see if there's any additional comments
19 from Commissioner. So I do have a couple of follow ups. It seems to me
20 that the crux of the matter is the potential uses under this zone change is
21 what's really concerning to folks. But the applicant has made it clear that
22 his desire is to do a botanical garden. So my question to staff is, is there
23 no other way to arrive at this ability to allow the applicant to develop this
24 botanical garden? Is this the truly the only route available? Other, I know
25 you mentioned the metes and bounds option, but it sounds like in that option
26 you're still sort of parsing out different land uses. So my question is, if a
27 botanical garden is really what he's interested in, is there no other option to
28 get there other than what's presented before us?
29

30 Banegas: Mr. Chairman, Commissioners. Keep in mind that in talking with the
31 applicant there's basically four uses that they're really interested in,
32 botanical gardens is one of them. But there's the office, there's a single-
33 family home, and then of course some accessory building for storage of
34 equipment. Metes and bounds is definitely one of them, you still, as you
35 indicated, still have to kind of go through it and parse out the type of uses
36 that wouldn't be deemed compatible. Beyond that, I think you know if they
37 wanted to go to a C-2 designation, they're still looking to parse out some of
38 the uses that are deemed questionable. So I don't know if we gain anything
39 there. Plus they're going to have to go through the effort of subdivision to
40 go to no more than one acre in size for the parcels they create to chisel that
41 10.85 down to one acre chunks. So nothing easy, and it's based on what
42 I'm thinking, it's a whole lot like what we're going through this evening.
43

44 Kaiser: Understood. And on the botanical garden piece is there a minimum lot size
45 requirement there? Or is that come into play strictly on those I guess more

1 traditional commercial uses, the office, the other things that the applicant
2 was wishing to do.
3
4 Banegas: The botanical gardens, basically, in that we're dealing with the entire parcel,
5 there's nothing proposed to be parceled out/subdivide it out. They can
6 make it as large as they'd like to. There's no restriction on a square footage.
7
8 Kaiser: And they could do the opposite. They could make it as tiny as they wanted
9 to.
10
11 Banegas: Yes.
12
13 Kaiser: And then so the C-2 designate, the parcels that are C-2 to the south, what's
14 that minimum lot size requirement?
15
16 Banegas: The C-2 has a minimum of 10,000 square feet and a maximum of one acre.
17
18 Kaiser: Okay, so theoretically, a metes and bounds approach, they could carve off,
19 figure out what their botanical garden is, carve off a couple of parcels to get
20 to that minimum/maximum size and they could then do a C-2 designation
21 there. Because from my perspective, folks you've got C-2 already there.
22 So I mean the things that we're talking about tonight can already in some
23 respects happen at the southern corner. So to say that commercial was
24 completely inconsistent or incompatible, you know that's not entirely true
25 either. So I'm just sort of thinking out loud here of potential options that
26 might be on the table so thank you. I don't have any further questions. So
27 before we ... Commissioner Smith.
28
29 Smith: I just have one question for Mr. Banegas. You know, this proposal that the
30 owner has to be in compliance with Elevate Las Cruces Comprehensive
31 Plan. And looking at your zoning decision criteria, he did meet that. And
32 under that community environment, it says to encourage efficient land use
33 development patterns that accommodate projected growth in a sustainable
34 manner. So he's met that. And so that, I think it's important that we look at
35 he's meeting you know the criteria. And so that would mean that he is going
36 to work within the criteria that are established here to develop this property,
37 correct.
38
39 Banegas: Mr. Chairman, Commissioner Smith. That is correct. To the best of my
40 knowledge in terms of the information presented to the City, what he
41 originally came forward with was very limited, very limited. The land use or
42 the permitted land use list was an afterthought of how can we ensure down
43 the road that we're restricted. It opened up a little bit. I'm not going to say
44 it did not. But in terms of consistency with the comprehensive plan and
45 what he's achieving to do, there was a lot of alignment that staff saw with
46 the plan, with policy.

1
2 Smith: All right. Thank you.
3
4 Kaiser: All right, so it sounds like there's a couple of folks in the audience that wish
5 to come back up and speak. Can I get a show of hands? Okay, I see one,
6 two, three, four, five, six, seven, eight. I'm going to give folks 30 seconds
7 for those that raised their hand. I recognize it's not a lot of time, but we've
8 heard the issues. We understand them. And we need to make a decision
9 here tonight. And I'm sure you all will appreciate, regardless of what the
10 outcome is, of not being here till 2:00 a.m. So 30 seconds. Can get the
11 show hands again. I'm going to start here with this gentleman.
12
13 Milligan: Thank you. Brook Milligan. So I'd like to make a statement about that you
14 referred to the commercial designation on the south side of Tellbrook Road.
15 That is an artifact, that's a leftover designation from 1974, according to the
16 City GIS records of these plots. So it's not representative of its own of the
17 current land use by any means. And I would also like to return to my point
18 earlier, that the goal of all of this master plan is to enable neighborhoods to
19 define their unique identities and needs. And so that it's not purely about
20 individuals here that are proposing changes. It's about all of the issues that
21 he has been faced with tonight, as well about us as a neighborhood defining
22 what those unique needs ought to be. Thank you.
23
24 Kaiser: Can I get, the gentleman in the green shirt? And since this is your first time,
25 I'm going to need to swear you in. So please state your name.
26
27 Vaughn: My name is Matthew Vaughn.
28
29 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
30 and nothing but the truth under penalty of law?
31
32 Vaughn: Yes.
33
34 Kaiser: Please go ahead.
35
36 Vaughn: Okay. I think Mr. Banegas, you pointed to the property south of the parcel
37 in question and called them apartment complexes several times. But each
38 one of those properties, each one of those duplexes is on its own parcel.
39 It's not an apartment complex as a whole. So it's different than what you
40 said. And Mr. Smith, you pointed out that all the further, or there's further
41 development going on up Tellbrook Road. However, all that development
42 is residential, none of its commercial. I think you made that point that lots
43 of other folks here have been saying.
44
45 Nichols: Time, Mr. Chairman.
46

Agenda Item #11.2.

1 Kaiser: We'll come to the Commission. Gentlemen in the jacket right there, no, right
2 there. This gentleman over here. Sorry Commissioner. The brown jacket.
3
4 Laskin: Ron Laskin.
5
6 Kaiser: And do you swear or affirm that the testimony you're about to give is the
7 truth and nothing but the truth under penalty of law?
8
9 Laskin: Yes.
10
11 Kaiser: You have 30 seconds.
12
13 Laskin: So we heard about a botanical garden, a clothing store, a cafe, but once
14 you open up Pandora's box and make it a C-something or other, he's
15 increased the value of his property, he'll sell to somebody else and they'll
16 do what they damn please.
17
18 Kaiser: Commissioner. I'm going to go to you and then I'll go to the lady in the back.
19
20 Reynolds: Thank you. First I want to tell everybody ...
21
22 Kaiser: Please state your name.
23
24 Reynolds: My name is Shannon Reynolds, County Commissioner. Tell everyone that
25 I am trying to deal with the A-frame. It's takes it's process. Okay. Secondly,
26 we had a developer who was trying to build a subdivision next to where I
27 live, which is across the highway. They started when the ETZ there and
28 they were turned down for a certain specific purpose. Then the county took
29 it over, they applied again and they were turned down for the same reason.
30 Lastly, the City took it over, they tried to do it again and they were actually
31 going to get approved until we appealed because they tried to violate the
32 same (*inaudible*) that was established 1992. I see the same thing
33 happening here. Once they get to C-3 s they can put all this stuff on there,
34 they can take two acres and put what they want, take the other five ..
35
36 Nichols: Time, Mr. Chair.
37
38 Reynolds: Acres for what they want. I don't think that we have any control over this.
39 I'm concerned.
40
41 Kaiser: Please state your name. I'm going to need to swear you in.
42
43 Thornock: Hi. Nickie Thornock and I live in the county.
44
45 Kaiser: Do you swear or affirm that the testimony you're about to get is the truth and
46 nothing but the truth under penalty of law?

1
2 Thornock: I do.
3
4 Kaiser: You have 30 seconds.
5
6 Thornock: Okay, I am in favor this. I think change is good. I think a botanical garden
7 to walk my kids to would be cool. Going to the Tellbrook Park is nice, but I
8 have kids, I have a dog, we walk the neighborhood. To have a second place
9 to stop would be really fun. Even if they put in a cafe to send my 16 year
10 old out of the house, not have to drive to Pic Quick, that would be nice.
11 There is a very large subdivision going in past the trailer sales. So if we're
12 talking about traffic, maybe we should address that rather than the house
13 that's going to be on the corner that already gets tons of traffic and three,
14 four, or five cars is not going to make any bigger of a difference.
15
16 Nichols: Time, Mr. Chairman.
17
18 Thornock: Than the Airbnb's do.
19
20 Kaiser: Thank you. All right, anybody else on this side? All right, moving on to the
21 man in the hat. Please state your name for the record and you have 30
22 seconds.
23
24 Zemek: John Zemek: I live in Las Alturas.
25
26 Kaiser: He's good.
27
28 Zemek: Yes sir, I promise to tell the truth and whole truth and nothing but the truth.
29
30 Kaiser: If you've already spoken ...
31
32 Zemek: I've got two things so I'm going to take more than 30 seconds. I'm in
33 constant contact with the guy with A-frame house. If anybody wants to know
34 more a little bit about that. I'm in constant contact with the guy. I can tell
35 you just about anything you want to know about it. And so you can come
36 and see me afterward. This reminds me of a story that happened up in
37 Michigan, that someone was trying to get their place rezoned. It was zoned
38 for agriculture and they were trying to get it rezoned so they could build
39 some kind of a store. And everybody said no, no, no, you can't do that, you
40 can't do that. Everything was negative.
41
42 Nichols: Time, Mr. Chairman.
43
44 Zemek: So he said okay and he went home and he said it's zoned for agriculture.
45 So he went home, put a fence around it, and built a pig farm.
46

1 Kaiser: Yes, ma'am. Please state your name.
2
3 Heavner: My name is Nancy Heavner. .
4
5 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
6 and nothing but the truth under penalty of law?
7
8 Heavner: I do.
9
10 Kaiser: You have 30 seconds.
11
12 Heavner: I do live in the county and I live on one acre. The majority of those homes
13 that built out in the Las Alturas area are one acre or more. I have an
14 absolute passion for our state and the fact that you're going to build a
15 botanical garden. Think about water, please. Our water is being depleted
16 each and every day. We bring in another garden that needs more water.
17 We bring in more apartment complexes. Think about light pollution, please.
18 One of the things that we enjoy in the county is the ...
19
20 Nichols: Time, Mr. Chairman.
21
22 Heavner: Fact that we don't have the lights. I ask that you vote no and reject this
23 offer.
24
25 Kaiser: Thank you. Is there anybody else who wishes to speak on the side? Yes,
26 sir, with the hat. Please state your name for the record. And you have 30
27 seconds.
28
29 Gibbs: Les Gibbs. The property that's right adjacent to this, just to the north of that,
30 is about 80 acres and it's owned by Mr. And Mrs. Soules. Now Mr. Soules
31 has passed away. But they have been trying to protect that area and keep
32 it in the rural for this whole time. This is going to be a domino effect. If you
33 approve it for this little area, the next thing will be that 80 acres will have a
34 motel on it. Thank you.
35
36 Kaiser: Yes ma'am. Please state your name for the record. And you have 30
37 seconds.
38
39 Liptak: Charlotte Liptak. And if the owners intention is simply single-family home
40 with an office and his botanical garden, then he should have no problem to
41 put another condition that there will be no apartment buildings allowed either
42 and no cannabis sales or growth. Thank you.
43
44 Kaiser: Thank you. All right. I am going to close public comment. And I'm going to
45 return back to the Commission. Any additional comments, questions,
46 thoughts? I'm going to just come back real quick, because there's been a

1 lot of discussion about the compatibility and just want to return to the
2 comprehensive plan, quite frankly. This area, the entire Tellbrook
3 neighborhood within the City of limits is identified as a suburban
4 neighborhood. That's the place type. According to our comprehensive
5 plans, suburban neighborhoods provide for low to moderate density
6 residential land uses, intermixed with areas of commercial development.
7 Representative land uses include single-family residential, detached or
8 attached, multifamily residential, commercial services, single-family urban
9 residential zoning districts and multifamily residential zoning districts. So
10 just from my perspective, going back to what staff's presented tonight, I
11 mean I think this is totally consistent. I think a botanical garden is not wildly
12 out of character. So those are just my parting thoughts. Looking for a
13 motion.
14

15 Bennett: I make a motion to approve 10.2 with the conditions under Exhibit A.

16
17 Vega: I second.

18
19 Baum: Board Member Acosta.

20
21 Acosta: I vote no.

22
23 Baum: Board Member Vega.

24
25 Nichols: One second please. Your vote "no" needs to be supported by findings or
26 fact that was contrary to the presentation by staff.
27

28 Garrison: You just need to state them for the record.

29
30 Nichols: Statement for the record.

31
32 Acosta: I vote no based on community output tonight.

33
34 Baum: Board Member Vega please.

35
36 Vega: First of all, thank you all for coming out. It's a late night, it's freezing. And
37 it's obvious how much everyone cares about your community. I personally
38 love the idea of a botanical garden. I'd like to see it where it's accessible to
39 everyone in the community. This is a little bit outside of, I guess we have
40 like a more dense population. But with that said, I am hopeful that the owner
41 will follow through on the plan proposed. And based on staff
42 recommendation, I vote to approve.
43

44 Baum: Board Member Bennett.
45

1 Bennett: I vote to approve based on staff recommendation, the thoroughfare plan, as
2 well as the purpose and intent of the code.

3
4 Baum: Board Member Smith.

5
6 Smith: Before I vote, I respect and appreciate you know the strong feelings you
7 have for your community. That's very important within any community and
8 especially within our City. But the City does continue to grow and this area
9 that where you live will grow. And this is a very small attempt at someone
10 to grow their business, grow an opportunity to bring something good to this
11 area. And so it's just something that is not going to have a negative impact
12 only if you decide that it is a negative impact. So I am going to approve. So
13 yes with conditions.

14
15 Baum: Chair Keiser.

16
17 Kaiser: Before I give my vote, just a reminder that this does require approval by the
18 City Council. So for those of you all who came out tonight, there is another
19 opportunity to express your perspective viewpoints at City Council,
20 regardless of the outcome tonight. So with that, I vote yes, based on staff
21 recommendation and consistency with Elevate Las Cruces.

22
23 Baum: Passes four to zero.

24
25 AUDIENCE MEMBERS SHOUTING OUT.

26
27 Baum: Excuse me four to one.

28
29 Kaiser: It passed four to one.

30
31 **10.3 1024 S. Main Street Special Use Permit Request:** A Special Use Permit
32 (SUP) to allow a cannabis retail establishment within the required buffer
33 distance between said establishment and a single-family residential zoning
34 district boundary. The subject property is located at 1024 S, Main Street, is
35 ± 0.20 acres in size, and is zoned C-1 (Commercial Low Intensity).
36 Submitted by Victoria Bruce, Co-Owner Bryan's Green Care. (Case #
37 22ZO1000134)

38
39 POSTPONED INDEFINITELY.

40
41 **10. DISCUSSION**

42
43 Kaiser: Lost my agenda here. I believe we are now going on to discussion and staff
44 announcements. Are there any discussion, staff announcements? None.

45
46 **11. STAFF ANNOUNCEMENTS**

1
2 Kaiser: I guess I did hear a rumor that the Community Development Department
3 received an award from APA in New Mexico. Is that true?
4

5 Nichols: Thank you, Mr. Chairman, for the opportunity to talk to you about. I'll wait a
6 moment for the noise to die.
7

8 Thank you for the opportunity Mr. Chairman, and members of board. I'm
9 very proud to say that the City of Las Cruces Community Development
10 Department was recognized for innovation and planning by the New Mexico
11 American Planning Association. This award was received by Mr. David
12 Weir, our Deputy Director. And we made a public announcement. But this
13 is the second recognition that Community Development Department has
14 had this year. The other one has to do with being recognized by the
15 International Code Council for innovation and what was called the Raising
16 the Profile Award. International Council is a membership of 64,000 people.
17 It's international, so it was really a prestigious award for the department.
18 But mostly as well for the City. And proud to announce those two
19 recognitions.
20

21 Kaiser: Congratulations. It's well deserved. And it's great to see your work
22 recognized.
23

24 **12. ADJOURNMENT (6:21)**
25

26 Kaiser: So with that, we need a motion in a second to adjourn.
27

28 Vega: I make a motion to adjourn. And congratulations again.
29

30 Smith: And I second.
31

32 Kaiser: All in favor.
33

34 MOTION PASSES UNANIMOUSLY.
35

36 Kaiser: Meeting's adjourned.
37
38
39
40
41

42 _____
Chairperson

City of Las Cruces
**City Council Action and Executive
Summary**

**3033; Council
Bill 23-027**

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:
[Attachment "A" Interim Loan Agreement CSWRF 128](#)
[Attachment "B" Promissory Note CSWRF 128](#)

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[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

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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

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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.

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“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.

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“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.

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“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 Construction 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 Construction 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.

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(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.

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(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

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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

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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

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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

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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 9.01 The 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

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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.

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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

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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

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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)

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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.

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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.

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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 irrevocable 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

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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 _____, 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



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 Joint Utility Revenues (Pledged Funds) for the repayment of the loan.

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 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. 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 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.

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- 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

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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, and the Borrower shall pay the amounts due under the Agreement and Interim and Final Promissory Note from 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, 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.

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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

Revised January 2020

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

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The Borrower is giving a security interest by dedicating the Pledged Funds. The Pledged Funds are defined as:

Joint 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 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.

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Revised January 2020

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: _____

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. [REDACTED] (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. [REDACTED].

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.

New Mexico CWSRF Contract Provision #R6: Single Audit Act Requirements

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.

New Mexico CWSRF Contract Provision #R7: Prohibition on Certain Telecomm

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 Hikvision 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 Page 596 of 739

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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 zeeks. 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

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(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.

Certification and Compliance

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.

Assistance Recipient:		SRF Project Number:	
		Project Name:	
Yes No	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.		
If YES:	DO NOT COMPLETE THE REMAINDER OF THIS FORM		
If NO:	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		

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.

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(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.

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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.

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(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

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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

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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 be 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.

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(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 that the records to be maintained under this paragraph shall be made

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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

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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

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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

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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

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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

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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

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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 be 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>.

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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.

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(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

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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

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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.

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(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.

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(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

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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.

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(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;

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(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](#).

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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 Building A Better America emblem. The EPA logo must not be displayed in a manner that implies that

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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 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, provided the costs are reasonable.

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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.

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New Mexico CWSRF Contract provision #R14: Office of Inspector General Posting

The US Environmental Protection Agency requires that contracts exceeding \$1,000,000 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

A large circular graphic with a dark blue center and a light blue outer ring. The center contains the text "REPORT FRAUD WASTE & ABUSE" in large, bold, red and white letters, followed by "U.S. EPA OIG HOTLINE 888.546.8740" in white and red. The outer ring is divided into segments, each labeled with a type of fraud or abuse: "THEFT AND MISUSE OF GOVERNMENT PROPERTY", "MISMANAGEMENT AND WASTE OF FUNDS", "PROGRAM FRAUD", "LABORATORY FRAUD", "CONFLICT OF INTEREST", "COMPUTER CRIMES", "CONTRACT, PROCUREMENT, AND GRANT FRAUD", "ABUSE OF AUTHORITY", "EMPLOYEE MISCONDUCT", and "HOTLINE COMPLAINT FORM" (which includes a QR code).

REPORT
FRAUD
WASTE
& ABUSE

U.S. EPA OIG
HOTLINE
888.546.8740

THEFT AND MISUSE OF GOVERNMENT PROPERTY
MISMANAGEMENT AND WASTE OF FUNDS
PROGRAM FRAUD
LABORATORY FRAUD
CONFLICT OF INTEREST
COMPUTER CRIMES
CONTRACT, PROCUREMENT, AND GRANT FRAUD
ABUSE OF AUTHORITY
EMPLOYEE MISCONDUCT
HOTLINE COMPLAINT FORM

Visit epa.gov/oig for anonymity guidelines and whistleblower information.



City of Las Cruces

City Council Action and Executive Summary

3034; Council Bill 23-028

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:

[ATTACHMENT "A" Sample Loan Agreement with NMFA - 2023](#)

[ATTACHMENT "B" Sample Intercept Agreement with NMFA - 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:

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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.

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“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. ____ 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

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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 disbursement 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.

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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

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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.

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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.

Agenda Item #11.4.

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. ____, 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.

Agenda Item #11.4.

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this day of

Agenda Item #11.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

\$3,100,000

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”).

WITNESSETH:

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. ____ adopted by the Governing Body on July __, 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, the Governmental Unit shall, for any reason, fail to pay into the Loan Agreement Reserve Account 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 Pledged Revenues thereafter received and not required to be otherwise applied. 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) 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) 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:	\$3,100,000
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

Agenda Item #11.4.

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%

Authorizing Legislation:

Ordinance No. ____ 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:

\$3,100,000 (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: \$3,100,000 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-_____

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

C-1

EXHIBIT “D”

CERTIFICATE OF COMPLETION

RE: \$3,100,000 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-_____

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”).

WITNESSETH:

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; 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 Taxation and Revenue Department of the State of New Mexico (the “Distributing 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. ____, passed and adopted on June 5, 2023, by the Governing Body of the Governmental Unit, as supplemented by the Pricing Certificate executed on ____, 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.



City of Las Cruces

City Council Action and Executive Summary

3035; Council Bill 23-029

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:

[ATTACHMENT "A" Sample Loan Agreement with NMFA - 2023](#)

[ATTACHMENT "B" Sample Intercept Agreement with NMFA - 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:

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Agenda Item #11.5.

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.

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“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. ____ 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,

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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 disbursement 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.

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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

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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.

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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.

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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. _____, 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.

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This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

(II)

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

DONE AND APPROVED this day of

Agenda Item #11.5.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

\$5,100,000

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”).

WITNESSETH:

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. ____ 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 disbursement 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, the Governmental Unit shall, for any reason, fail to pay into the Loan Agreement Reserve Account 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 Pledged Revenues thereafter received and not required to be otherwise applied. 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) 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) 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:	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:	\$5,100,000
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

Agenda Item #11.5.

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%

Authorizing Legislation:

Ordinance No. ____ 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:

\$5,100,000 (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: \$5,100,000 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-_____ 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-_____

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; 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 Taxation and Revenue Department of the State of New Mexico (the "Distributing 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. ____, 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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